



## RESOLUTION 2017-042

### AMENDMENT TO INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN CITY OF SHERWOOD AND CLEAN WATER SERVICES

**WHEREAS**, the City of Sherwood and Clean Water Services (CWS) entered into an Intergovernmental agreement (IGA) on January 4, 2005 (and subsequently amended on March 17, 2006, July 1, 2008, and July 1, 2009) for the operation of sanitary sewer and surface water facilities; and

**WHEREAS**, the IGA allows the agreement to be amended upon approval of the governing bodies of both parties; and

**WHEREAS**, Oregon cities have home rule authority to assess Rights of Way (ROW) Fees on utilities and these ROW Fees are assessed to account for the use of the City's ROW for the delivery and conveyance of utility services, including sanitary sewer and surface water services; and

**WHEREAS**, the City and CWS agree that it is in the best interest of both parties to strive for adequate funding for both the District and Local sanitary sewer and surface water programs; and

**WHEREAS**, City and CWS staff have negotiated an agreement to amend the IGA, subject to the approval of the respective governing bodies, to resolve issues related to the procedures for collection and payment of City ROW Fees on District established sanitary sewer and storm water charges; and

**WHEREAS**, the City has previously enacted a Utility Facilities in Public Rights-of-Way Ordinance (Ordinance 2008-011) in October 2008 which imposes a ROW fee on utilities using the City's ROW; and

**WHEREAS**, District bills certain industrial customers directly and City has the responsibility for billing all other customers; and

**WHEREAS**, the City began withholding the 5% ROW Fee from revenue collected on behalf of CWS on July 1, 2010; and

**WHEREAS**, the City and CWS have been working together through the dispute resolution process as outlined in the IGA over the collection of ROW Fees since February 2010; and

**WHEREAS**, City and CWS staff have negotiated an agreement resolving this dispute, subject to approval of the respective governing bodies, in a separate settlement agreement that will be considered by both governing bodies in a separate resolution; and

**WHEREAS**, CWS has requested the City consider this Amendment to the IGA to provide for administrative and procedural governance surrounding the implementation, collection and payment of City ROW fees subsequent to the period covered by the separate settlement agreement; and


**WHEREAS**, the CWS Board has previously approved this Amendment to the IGA on March 7, 2017.

**NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:**

**Section 1.** The Sherwood City Council hereby authorizes the City Manager to sign the amendment to the Intergovernmental Agreement with Clean Water Services, in a form substantially similar to the attached Exhibit A;

**Section 2.** This Resolution shall be effective upon its approval and adoption.

**Duly passed by the City Council this 6th of June, 2017.**

  
Krisanna Clark, Mayor

Attest:

  
Sylvia Murphy, MMC, City Recorder

AMENDMENT TO INTERGOVERNMENTAL  
AGREEMENT BETWEEN CITY OF «CITY\_NAME» AND  
CLEAN WATER SERVICES

THIS AMENDMENT is made and entered into as of the 7th day of March, 2017 between the City of «City\_Name», a municipal corporation of the State of Oregon, hereinafter referred to as “City,” and Clean Water Services, a municipal corporation and county service district, hereinafter referred to as “District”.

WHEREAS City and District entered into an Intergovernmental agreement (IGA) on «Date» (and subsequently amended on «Amendment\_Dates») for the operation of sanitary sewer and surface water facilities; and

WHEREAS the IGA allows the agreement to be amended upon approval of the governing bodies of both parties; and

WHEREAS Oregon cities have home rule authority to assess Rights of Way (ROW) Fees on utilities. Rights of way fees are assessed to account for the use of the City’s ROW for the delivery and conveyance of utility services, including sanitary sewer and surface water services; and

WHEREAS the City and the District agree that is in the best interest of both parties to strive for adequate funding for both the District and Local sanitary sewer and surface water programs; and

WHEREAS this agreement resolves issues related to the procedures for collection and payment of City ROW Fees on District established sanitary sewer and stormwater charges; and

WHEREAS District bills certain industrial customers directly and City has the responsibility for billing all other customers; and

WHEREAS District uses a resolution and order to establish rates (“Resolution”) as provided in the IGA; and

WHEREAS the City has or may enact ROW Fee ordinances, and the District has requested the City for this Amendment to the IGA to provide for administrative and procedural governance surrounding the implementation, collection, and payment of a City ROW fee; and

WHEREAS in order to avoid any disputes regarding the administration of ROW Fees, the City and District have agreed to this IGA Amendment to reflect the parties’ agreement regarding administrative matters related to ROW Fees.

NOW, THEREFORE, the parties agree, effective as of March 7, 2017, as follows:

1. Definition of Terms. Wherever the following terms are used in this amendment they shall have the following meaning unless otherwise specifically indicated by the context in which they appear.
  - a. ROW Fee is defined to include the following: Franchise Fees, Right of Way Fees, Right of Way Usage fees, Privilege Tax, or any other interchangeable term for a City imposed charge for the use of the Rights of Way in the City.
2. City's Home Rule Authority. The District recognizes the City's home rule authority to impose fees for use of City Rights of Way (ROW), separate from permit fees, to enable the conveyance and provision of services. Nothing in this Amendment shall be construed as a limitation on the District's or City's authority relative to matters outside the subject matter of this amendment. The Parties will administer ROW fees in the manner specified herein.
3. Amendment Intent. Notwithstanding any provision to the contrary in the IGA, City ROW Fee ordinance, or District Resolution, this amendment is intended to represent the City and District's agreement regarding the rate setting, implementation and remittance of ROW Fees. Nothing in this Amendment shall modify any provisions of the existing IGA except to the extent necessary to provide for the rate setting, implementation, and remittance of ROW Fees as provided herein.
4. Rate Setting.
  - a. The existing Resolution provides for District-wide rate and a Local rate for base and use charges. The Resolution will be amended to include a new rate category called City ROW Fee as set forth in Exhibit C.
  - b. The City ROW Fee is calculated on the District-Wide rate for monthly residential and commercial service charges.
  - c. The City ROW Fee is calculated on the District-Wide rate of the industrial monthly volume services charges.
  - d. The City ROW Fee will be implemented upon notice by the City and the fee is between 0 and 5% on the District-wide rate
  - e. For purposes of calculating the ROW Fees due to the City, ROW Fees are applied to gross District-wide service charge revenue collected, exclusive of the ROW Fees, for residential and commercial customers located in the City.
  - f. For purposes of calculating the ROW Fees to be remitted to the City, ROW Fees are applied to gross District-wide volume service charge revenue, exclusive of the ROW Fees, collected for industrial customers located in the City.
  - g. These provisions are to ensure that the District receives its full allocation of District-wide monthly service charges and that the City receives the ROW Fee calculated on the District rates.

- h. Upon future annual rate adjustments, the ROW Fee will be applied after the District annual rate adjustment to the service charges.
- 5. Notice of Intent to Implement ROW Fees. The City will provide CWS with at least 30 days' notice of its election to institute ROW Fees.
  - a. The notice will include a copy of the City's ordinance or other legal authority establishing the ROW Fee, and the effective date of the fee.
  - b. The notice will indicate whether the ROW Fee will be applied to the industrial revenue from volume monthly service charges in addition to being applied to the District-wide monthly service revenue for residential and commercial, which determinations will be within the City's sole discretion.
  - c. The notice will also include a proposed City rate schedule establishing rates to be applied to City billed customers.
  - d. The City and District will within the 30-day notice period, calculate rates that will be used to determine the City's remittance to the District based on the new rate schedule.
- 6. Remittance. The City will use the new rate on the District remittance form. The District will prepare a monthly industrial remittance form to be submitted to the City.
  - a. The remittance forms will include the report of all revenue billed, revenue collected, and the calculation of the ROW Fee.
  - b. The City will retain the amount of the ROW Fee derived from revenues from the monthly service rate collected from all customers billed by the City.
  - c. For industrial customers billed by the District, the District will remit to the City on a monthly basis the ROW Fee derived from the monthly District-wide volume service charges collected by the District.
  - d. Forms showing the methodology for implementing Remittance are attached as Exhibit A and B.
- 7. City Surcharge Not Limited. Nothing in this Amendment shall limit the City's authority to determine the Monthly Service Charge Rates for the Local Program.
- 8. Notice to Customers. City shall notify residential and commercial customers and District shall notify industrial customers in substantially the manner as set forth in the attached Exhibit D. Messaging may be directly on the bill or in some other similar, effective manner.
- 9. Indemnity. The City shall indemnify and defend the District in the event of third party lawsuits challenging the City's authority to impose the ROW Fee.
- 10. Licensing. If there is a licensing requirement or license fee for use of the rights of way in the City ROW Fee ordinance, that requirement and fee are considered satisfied

by the IGA. District is not required to furnish a certificate of insurance, if that is a requirement of the City ROW fee ordinance.

CITY OF «CITY\_NAME»

CLEAN WATER SERVICES

By:

\_\_\_\_\_  
Mayor or City Manager

By:

\_\_\_\_\_  
General Manager or Designee

Attest:

\_\_\_\_\_  
City Recorder (if applicable)

APPROVED AS TO FORM

\_\_\_\_\_  
District Counsel

\_\_\_\_\_  
City Attorney (if applicable)

**CLEAN WATER SERVICES  
MONTHLY REPORT OF CITY SEWER & STORM RECEIPTS & REMITTANCES  
FY 2016-17**

CITY: \_\_\_\_\_  
 MONTH: \_\_\_\_\_  
 BILLING PERIOD: \_\_\_\_\_

**SEWER SVCS ALLOCATION:**

|                                  |                |                 |
|----------------------------------|----------------|-----------------|
| District Rate (\$22.94 + \$1.52) | 24.46          | 83.567%         |
| City Rate (\$4.51 + \$0.30)      | 4.81           | 16.433%         |
| ROW Fee                          | 0.00           | 0.000%          |
|                                  | <u>\$29.27</u> | <u>100.000%</u> |

**Sewer Service Fees Collected (100%)**

|                                |         |                     |
|--------------------------------|---------|---------------------|
|                                |         | <u>1,000,000.00</u> |
| Local Portion (City Retains)   | 16.433% | \$ 164,332.08       |
| District-wide Portion (To CWS) | 83.567% |                     |

**Remittance to  
CWS**

**A \$ 835,667.92**

CWS Use

#101.000.0000.40120.0000.0000

**STORM SVCS ALLOCATION:**

|                           |                |                 |
|---------------------------|----------------|-----------------|
| District Allocation (25%) | 1.94           | 25.032%         |
| Local Allocation (75%)    | 5.81           | 74.968%         |
| ROW Fee                   | 0.00           | 0.000%          |
|                           | <u>\$ 7.75</u> | <u>100.000%</u> |

**Surface Water Management (\$7.75 per ESU)**

|                                |         |                   |
|--------------------------------|---------|-------------------|
| Service Fees Collected (100%)  |         | <u>100,000.00</u> |
| Local Portion (City Retains)   | 74.968% | \$ 74,967.74      |
| District-wide Portion (To CWS) | 25.032% |                   |

**B \$ 25,032.26**

#201.000.0000.40120.0000.0000

**Sanitary Sewer SDC Charges (\$5,300 per EDU):**

**Reimbursement Portion of Sanitary SDCs (\$3,242.96 per EDU)**

|                                |         |  |
|--------------------------------|---------|--|
| District-wide Portion (To CWS) | 61.187% |  |
|--------------------------------|---------|--|

**C \$ -**

#107.000.0000.41020.0000.0000

**Improvement Portion of Sanitary SDCs (\$2,057.04 per EDU)**

|                                |         |      |
|--------------------------------|---------|------|
| Local Portion (City Retains)   | 3.983%  | \$ - |
| District-wide Portion (To CWS) | 34.830% |      |

**D \$ -**

#107.000.0000.41210.0000.0000

**Adjustments or Corrections**

(please provide explanation)

**E**

**Erosion Control Fees Collected**

**F**

#201.000.0000.40290.0000.0000

**Total Remittance to CWS (Sum of A through G)**

**\$ 860,700.18**

Sewer Permit Numbers Issued # \_\_\_\_\_ thru # \_\_\_\_\_  
 Number of Connection Permits Issued (in EDU's) \_\_\_\_\_  
 Total number of EDU's Served (period end) \_\_\_\_\_

SWM Permit Numbers Issued # \_\_\_\_\_ thru # \_\_\_\_\_  
 Number of SWM Connection Permits Issued (in ESU's) \_\_\_\_\_  
 Total number of ESU's Served (period end) \_\_\_\_\_

**CLEAN WATER SERVICES  
MONTHLY REPORT OF DISTRICT INDUSTRIAL SEWER RECEIPTS & REMITTANCES  
FY 2016-17**

**CITY:** \_\_\_\_\_  
**MONTH:** \_\_\_\_\_  
**BILLING PERIOD:** \_\_\_\_\_

**SEWER SVCS ALLOCATION:**

|  |                |                 |
|--|----------------|-----------------|
| District Rate (\$22.94 + \$1.52)                       | 24.46          | 83.567%         |
| Local - Unincorporated Wash Co. Rate (\$4.51 + \$0.30) | 4.81           | 16.433%         |
| City Rate  | 0.00           | 0.000%          |
| City ROW Fee   | 0.00           | 0.000%          |
|  | <b>\$29.27</b> | <b>100.000%</b> |

**Sewer Service Fees Collected (100%)**

|                                     |         |               |
|-------------------------------------|---------|---------------|
|                                     |         | 1,000,000.00  |
| District-wide Portion (CWS Retains) | 83.567% | \$ 835,667.92 |
| City Portion (To City)              | 16.433% | \$ 164,332.08 |
| City ROW Fee (To City)              | 0.000%  | \$ -          |

**Remittance to  
CITY**

**A \$ 164,332.08**

|                               |
|-------------------------------|
| <u>CWS Use</u>                |
| #101.000.0000.40140.0000.0000 |



**APPENDIX B**

**DISTRICT RATES AND CHARGES TO CITIES**

**For the Cities of Forest Grove, Cornelius, Hillsboro, Beaverton, Tigard, Tualatin, Sherwood  
Sanitary Sewer Fee & Charge**

**Service Charge**

Monthly Sanitary Sewer Charges per DU

|      | District Rate                     |         | City Right of Way Fee (0 to 5%)           |                | Total \$                                  |
|------|-----------------------------------|---------|---|----------------|---|
|      | Variable                          | Fixed   | Variable                                  | Fixed          |   |
| Base | N/A                               | \$22.94 | N/A                                       | \$0.00 to 1.15 | \$22.94 to 24.09                          |
| Use  | \$1.52/ccf avg winter water usage | N/A     | \$0.00 to 0.08/ccf avg winter water usage | N/A            | \$1.52 to 1.60/ccf avg winter water usage |

**Storm and Surface Water Fee and & Charge**

**Service Charge**

Monthly Storm and Surface Water Service Charges per DU

|      | District Rate | City Right of Way Fee (0 to 5%) | Total \$       |
|------|---------------|---------------------------------|----------------|
| Base | \$1.94        | \$0.00 to 0.10                  | \$1.94 to 2.04 |

**Rates and charges for the cities of Banks, Durham, Gaston, King City and North Plains will be collected and allocated according to the individual Intergovernmental Agreements.**

EXHIBIT D

BILLING NOTIFICATION LANGUAGE—RESIDENTIAL AND COMMERCIAL CUSTOMERS:

Effective \_\_\_\_\_, 2017, the Sanitary Sewer and Stormwater bill includes a new rate calculated to include a \_\_% City of \_\_\_\_\_ Rights of Way Fee.

BILLING NOTIFICATION LANGUAGE—INDUSTRIAL CUSTOMERS:

Effective \_\_\_\_\_, 2017 the Sanitary Sewer and Stormwater bill includes a new rate calculated to include a \_\_% City of \_\_\_\_\_ Rights of Way Fee. The fee is calculated as \_\_ percent of Sanitary Sewer volume charge and Stormwater fee and is identified on your bill as “City of \_\_\_\_\_ Rights of Way Fee”. CWS will collect and remit the money to \_\_\_\_\_ [name of City].