



Home of the Tualatin River National Wildlife Refuge

RESOLUTION 2019-067

AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF TUALATIN REGARDING THE GALBREATH SANITARY EXTENSION

WHEREAS, an area of the City of Sherwood in the vicinity of SW Galbreath Drive cannot be adequately served by the City's existing sanitary sewer infrastructure, but could be served by connecting into nearby Tualatin sanitary sewer infrastructure; and

WHEREAS, staff from Sherwood and Tualatin have developed an Intergovernmental Agreement (IGA) that would allow for this connection to be made; and

WHEREAS, it appears to City Council that this IGA is the most efficient way to provide sanitary sewer services to the affected areas, and that approval of the IGA is in the best interest of the City.

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

Section 1. The City Manager is hereby authorized to execute an IGA in a form substantially similar to the attached Exhibit 1.


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

Duly passed by the City Council this 20th of August, 2019.



Tim Rosener, Council President

Attest:



Sylvia Murphy, MMC, City Recorder

INTERGOVERNMENTAL AGREEMENT
BETWEEN CITY OF SHERWOOD AND CITY OF TUALATIN
REGARDING GALBREATH SANITARY EXTENSION

This AGREEMENT is entered into as of the date last set forth below by and between the City of Sherwood, an Oregon municipal corporation (Sherwood), and the City of Tualatin, an Oregon municipal corporation (Tualatin).

I. RECITALS

- A. Sherwood and Tualatin are authorized to provide services to properties within their boundaries.
- B. Sherwood and Tualatin have the authority to enter into this Agreement pursuant to ORS 190.003.
- C. The parties have existing agreements regarding provision of sanitary sewer services relating to the service areas that are the subject of this Agreement.
- D. In establishing this Agreement, Sherwood and Tualatin have considered the financial and operational capacities of each entity, physical factors, and the economic and engineering options for provision of sanitary sewer urban services.
- E. Sherwood and Tualatin have determined that this Agreement provides for a continuation of an adequate level of sanitary sewer services to the areas served by each.
- F. Sherwood and Tualatin have further determined that this Agreement is the most efficient means of providing sanitary sewer services to the area that is the subject of this Agreement.
- G. The area that will receive sanitary sewer services under this Agreement includes areas within each of the parties' respective boundaries. Each of those areas will receive such services via facilities owned, operated, and maintained by the party within whose boundaries they are located, as well as via facilities owned, operated, and maintained by the other party. As such, this Agreement provides a mutual benefit to each of the parties. The parties have determined that this mutual benefit is sufficient consideration and that it is not necessary or appropriate for the parties to exchange any further consideration in connection with this Agreement.

II. DEFINITIONS

- A. Industrial Waste means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industrial or manufacturing business, or from the development or recovery of natural resources. For the purposes of this agreement, Industrial Waste shall also include any substance regulated under 33 USC Sec. 1317, together with regulations adopted there under.
- B. Operation and Maintenance means the regular performance of work required to assure continued functioning of the sanitary sewerage system and corrective measures taken to repair facilities to keep them in operating condition, and in

compliance with the requirements of applicable laws, regulations, and permits.

- C. Rates and Charges are defined in the Clean Water Services (CWS) "Rates and Charges" Resolution and Order No. 19-19 (R&O), as amended. The following terms, when used in this Agreement, shall be as defined in the R&O:
1. Sanitary Sewer Service Charge
 2. Sanitary System Development Charge ("SDC", also called "Connection Charge")
- D. Sanitary Sewerage System means any combination of sewer treatment plant, pumping or lift facilities, sewer pipe, force mains, laterals, manholes, side sewers, laboratory facilities and equipment, and any other facilities for the collection, conveyance, treatment and disposal of sanitary sewage comprising the total publicly-owned sanitary sewerage system within CWS jurisdiction, to which storm, surface and ground waters are not intentionally admitted.

III. GENERAL TERMS

- A. Provision of Services – Responsibilities for provision of services covered by this Agreement shall be based on the Service Area Map attached to this agreement as Exhibit A.
1. Description of Service Area Map

Exhibit A shows the following:
 - a. The area that is the subject of this Agreement (the "Service Area").
 - b. The areas served by the City of Sherwood within the Service Area.
 - c. The areas served by the City of Tualatin within the Service Area.
 - d. The areas served by CWS within the Service Area.
 - e. The existing public sanitary sewer system in the Service Area, and the jurisdiction responsible for operation and maintenance of each line segment.
 - f. The additional sanitary sewer system components to be constructed pursuant to this Agreement and the agency or person responsible for their construction.
 - g. The potential boundary of the area that could be serviced by the additional sanitary sewer system components described in subsection (f) above.
 2. Sewage Treatment and Pumping responsibilities

Subject to any rules or directives of any federal, state, regional or local authority having jurisdiction, Tualatin shall accept and convey sewage originating from the Service Area and entering into Tualatin's system.
 3. Operation and Maintenance responsibilities
 - a. Tualatin will remain responsible for operation and maintenance of the "City of Tualatin Existing Sanitary Sewer System" as depicted in Exhibit A.
 - b. Sherwood will own and be responsible for operation and maintenance of the "Proposed City of Sherwood Extension of Public Sanitary Sewer System" and the "Proposed Developer Extension of Public Sanitary Sewer" as depicted in Exhibit A. In the event the relocation of either the "Proposed City of Sherwood Extension of Public Sanitary Sewer

System” or the “Proposed Developer Extension of Public Sanitary Sewer” depicted in Exhibit A becomes necessary, Sherwood will be responsible for such relocation. Nothing in this subsection prevents Sherwood from holding a third party responsible for such relocation.

4. Billing and Payment for Sewage Treatment Services

Each party will continue to perform all billing for sanitary sewer service charges for the portions of the Service Area within its respective boundaries, including for those properties served by the additional sanitary sewer system components to be constructed pursuant to this Agreement, and retain and/or distribute the payments received as may be required by applicable law and any other existing or subsequent agreements.

5. System Development Charges

Each party shall collect and retain any and all sanitary sewer system development charges relating to developments within its boundaries, subject only to applicable law and any other existing or subsequent agreements.

6. Industrial Waste

Each party shall implement measures to monitor and reduce the introduction of Industrial Wastes into the sanitary sewer system.

B. Extension of Services

Properties within each party’s boundaries may be permitted to connect to the sanitary sewer systems in the Service Area, including the additional sanitary sewer system components to be constructed pursuant to this Agreement, subject to all applicable laws, rules, or directives of the respective city and all applicable laws, rules, or directives of any federal, state, or regional authority having jurisdiction.

C. Term, Termination, and Modification of Agreement

1. This Agreement shall remain in effect in perpetuity, unless terminated pursuant to this section.
2. Either party may terminate this agreement for default by the other party after providing written notice of said default and providing a reasonable opportunity to cure, which shall not be less than ninety (90) calendar days.
3. The parties may terminate this agreement at any time, with any effective date, upon written agreement of the parties.
4. This agreement may only be modified by a written amendment executed by the parties.

D. Indemnity

Subject to the limitations of the Oregon Tort Claims Act, ORS 30.260 et seq., each

party shall defend, indemnify and hold harmless the other party, its governing body, officers, employees, agents and representatives from and against all claims, demands, penalties and causes of action of any kind or character, including attorney's fees, on account of personal injury, death or damage to property sustained resulting from the indemnifying party's acts or omissions relating to this Agreement.

E. Severability

In the event that any provision of this Agreement shall be held to be impossible, invalid, or unenforceable, the remaining provisions shall be valid and binding upon the parties hereto.

F. Waiver

Failure by a party to enforce any provision of this Agreement shall not be construed by that party or the other party as a waiver of a subsequent breach of the same provision.

G. Assignment

This Agreement shall not be assigned by either of the parties without first obtaining the written consent of the other. Any attempted assignment in violation of this provision shall be void.

H. Dispute Resolution

Any dispute arising under this Agreement shall be subject to the following dispute resolution process:

1. Informal negotiations between the parties.
2. If the dispute is not resolved under step 1, either party may, by written notice to the other party, request mediation. The parties will thereafter cooperate in good faith to select a mediator within fourteen (14) days of such request. In the event the parties cannot agree on a mediator, the parties will ask any circuit court judge to appoint a mediator. Mediation shall be scheduled within fourteen (14) days after selection of the mediator, or as soon as possible, based on availability. The parties will share the mediation costs equally.
3. If the dispute is not resolved under step 2, then the parties may agree to binding arbitration under such terms as the parties may agree. If the parties do not agree to arbitrate, then either party may seek legal relief through the Circuit Court of Washington County, or U.S. District Court if jurisdiction is available.

Each Party shall bear its own legal fees and expert witness costs in Dispute Resolution.

I. Notices

Any notice required to be provided under this Agreement shall be made by personal service, in which case they are effective on the date of service, or by certified mail, in

which case they are effective on the date of delivery, or if delivery is refused, upon the date of delivery refusal. A party may alter the person and address designated for receipt of notices under this Agreement by written notice to the other party. Until so altered, notices shall be provided to:

For Sherwood:
Josh Soper, City Attorney
City of Sherwood
22560 SW Pine St.
Sherwood, OR 97140

For Tualatin:
Sean Brady, City Attorney
City of Tualatin
18880 SW Martinazzi Ave.
Tualatin, OR 97062

CITY OF TUALATIN

CITY OF SHERWOOD

Sherilyn Lombos, City Manager

Joseph Gall, City Manager

Dated: _____

Dated: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

Sean Brady, Tualatin City Attorney

Josh Soper, Sherwood City Attorney

