



RESOLUTION 2020-011

AUTHORIZING THE CITY MANAGER TO ENTER INTO AN IGA WITH CLEAN WATER SERVICES FOR CONSTRUCTION OF THE ROCK CREEK SANITARY SEWER UPGRADE PHASE I PROJECT

WHEREAS, the City of Sherwood has an existing IGA (approved by Resolution 2008-044) with Clean Water Services (CWS) which identifies specific responsibilities of each jurisdictional agency for the operation, maintenance and management of the public sanitary sewer system within the city limits; and

WHEREAS, under the CWS district-wide program listing, sanitary sewer lines 12-inch in diameter and larger become eligible for district funding for repairs, replacement and upsizing of sanitary sewer lines that are identified in the City and CWS master plans; and

WHEREAS, the Rock Creek Sanitary Sewer Upgrade Phase 1 project is listed in the City's Sanitary Sewer Master Plan (SSMP) as project number 4, which included capacity and conditions issues and recommended upsizing from the existing 18-inch diameter to a 24-inch diameter pipe; and

WHEREAS, the SSMP classified the Rock Creek Sanitary Sewer Upgrade Phase 1 project as a near term project (within 5-years); and

WHEREAS, the Washington County Department of Land Use and Transportation (WACO DLUT) reconstruction of Tualatin-Sherwood Road to a 5-lane arterial, and Willamette Water Supply Program (WWSP) construction of a 66-inch waterline within the Tualatin-Sherwood Road right-of-way are scheduled to commence in FY2020-21; and

WHEREAS, the Tonquin Employment Area (TEA) is experiencing immediate development growth pressures, where the sanitary sewer service is provided for by the Rock Creek sanitary sewer trunk line; and

WHEREAS, the City has undertaken design and plans for construction of the Rock Creek Sanitary Sewer Upgrade Phase 1 project in FY2019-20, in order to have the sanitary sewer line installed prior to construction of the WACO DLUT and WWSP projects in order to avoid underground and construction conflicts, and to be able to provide appropriate service to TEA development; and

WHEREAS, the existing IGA with CWS, as amended in Resolution 2008-044, specifically allows the use of CWS Regional Funds for the reconstruction and upsizing of the Rock Creek Sanitary Sewer Upgrade Phase 1 project; and

WHEREAS, the existing IGA with CWS, as amended in Resolution 2008-044, identifies that the proposed Rock Creek Sanitary Sewer Upgrade Phase 1 project is eligible at 100% District funding; and

WHEREAS, the proposed IGA with CWS (see attached Exhibit A) provides the financial support to complete the needed construction; and

WHEREAS, the City Council recognizes the need and urgency of constructing the Rock Creek Sanitary Sewer Upgrade Phase 1 project, coordinating with WACO DLUT and WWSP capital improvement projects, and the public sanitary sewer service needs of proposed private site development within the TEA; and

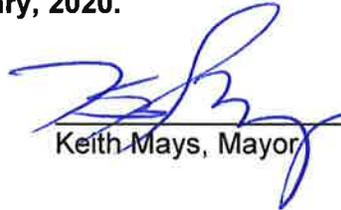
WHEREAS, the use of CWS Regional Funds at 100% of the estimated project costs is a benefit to the City.

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

Section 1. The City Manager is hereby authorized to execute an intergovernmental agreement with Clean Water Services in a form substantially similar to the attached Exhibit A and to take such other action as may be necessary to finalize and approve said agreement.

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

Duly passed by the City Council this 18th of February, 2020.


Keith Mays, Mayor

Attest:


Sylvia Murphy, MMC, City Recorder

EXHIBIT A
**INTERGOVERNMENTAL AGREEMENT
BETWEEN CITY OF SHERWOOD AND
CLEAN WATER SERVICES FOR
CONSTRUCTION OF ROCK CREEK SANITARY UPGRADE PHASE 1**

This Agreement, dated _____, _____, is between CLEAN WATER SERVICES (District) a county service district organized under ORS Chapter 451 and the CITY OF SHERWOOD (City) a municipal corporation of the State of Oregon, collectively referred to as Parties or individually as Party.

A. RECITALS

ORS 190.003 - 190.110 encourages intergovernmental cooperation and authorizes the Parties to enter into this Agreement for the performance of any or all functions and activities that a Party to the Agreement is authorized to perform.

City intends to undertake the Rock Creek Sanitary Trunk Upgrade Phase 1 (Project) to provide sufficient hydraulic capacity in the sewer system. This Project has been endorsed by the Capital Improvement Program Prioritization Committee.

NOW, THEREFORE, the parties agree as follows:

B. PROJECT DESCRIPTION

The Project consists of replacing approximately 1,095 linear feet of existing 18-inch diameter sanitary trunk line with a 24-inch diameter trunk line, commencing at the Clean Water Services Manhole 829081, located approximately 26 feet south of the southern property line of Tax Lot 25129A000100 and ending at a Manhole 807073 located east of an existing storm drainage pond and approximately 445 feet west of the Century Drive right-of-way. This alignment runs across Tualatin-Sherwood Road right-of-way, through private property within existing easements, and through designated wetlands and vegetated corridors. See attached Exhibit A for the Project location.

The capital assets resulting from the completion of this Project shall be recognized in the financial statements of the District at 100 percent of the final cost. District will have responsibility, care and control of the newly constructed assets and will be responsible for ongoing maintenance, in accordance with the 2005 operating agreement and all subsequent amendments between District and City.

C. DEFINITIONS

1. Capital Improvement Program Prioritization Committee – This Committee has been established by District and the Member Cities of Beaverton, Cornelius, Forest Grove, Hillsboro, Tigard, Tualatin, and Sherwood.

2. Financial Partner – City or District will assume this role, primarily for the purpose of funding a portion of the Project.
3. Managing Partner – City or District will assume this role, primarily for the purpose of administering the Project.

D. DISTRICT OBLIGATIONS

District is the Financial Partner and shall perform all Tasks identified for the Financial Partner in the List of Standard Obligations, attached as Exhibit B unless the Task is checked “Not Applicable”. District shall assign Linda Hulme as District’s Project Manager.

E. CITY OBLIGATIONS

City is the Managing Partner and shall perform all services identified for the Managing Partner in Exhibit B unless the Task is checked “Not Applicable”. City shall assign Bob Galati as City’s Project Manager.

F. GENERAL TERMS

1. Laws and Regulations. City and District agree to abide by all applicable laws and regulations.
2. Term of this Agreement. This Agreement is effective from the date the last party signs it and shall remain in effect until the Project is complete as indicated in writing by the Parties and the Parties’ obligations have been fully performed or this Agreement is terminated as provided herein.
3. Amendment of Agreement. City and District may amend this Agreement from time to time, by mutual written agreement.
 - A. Proposed changes of scope during the Project implementation must be reviewed and endorsed by an affirmative vote of the Capital Improvement Program Prioritization Committee. Changes necessitated by conditions discovered during design or construction, but consistent with the original scope of the Project, may be approved by the Managing Partner without further approval.
 - B. The construction contract amount of the Project may be increased by up to 20% of the original contract amount for construction costs without re-negotiating the Agreement, provided the increase shall not exceed the not-to-exceed amount in Exhibit B.
4. Termination. This Agreement may be terminated immediately by mutual written agreement of the Parties, or by either of the Parties notifying the other in writing prior to

award of a construction contract, with the termination being effective 30 days from receipt of notice.

5. Integration. This document constitutes the entire agreement between the Parties on the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every kind on the subject. No course of dealing between the Parties and no usage of trade shall be relevant to supplement any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement and no waiver by a Party of any right under this Agreement shall prejudice the waiving Party's exercise of the right in the future.
6. Indemnification. Within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the Parties shall indemnify and defend the other and their officers, employees, agents, and representatives from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent or other legally culpable acts or omissions of the indemnitor, its employees, agents, contractors or representatives.
7. Resolution of Disputes. If any dispute out of this Agreement cannot be resolved by the project managers from each Party, the City Manager and District's Chief Executive Officer will attempt to resolve the issue. If the City Manager and District's Chief Executive Officer are not able to resolve the dispute, the Parties will submit the matter to mediation, each Party paying its own costs and sharing equally in common costs, prior to litigation.
8. Interpretation of Agreement.
 - A. This Agreement shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provision.
 - B. The paragraph headings in this Agreement are for ease of reference only and shall not be used in construing or interpreting this Agreement.
9. Severability/Survival. If any of the provisions in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this Agreement for any cause.
10. Approval Required. This Agreement and all amendments, modifications or waivers of any portion thereof shall not be effective until approved by 1) District's Chief Executive Officer or the Chief Executive Officer's designee and when required by applicable District rules, District's Board of Directors and 2) City. Proposed changes of scope must also be approved by affirmative vote of the Capital Improvement Program Prioritization Committee.

11. Choice of Law/Venue. This Agreement and all rights, obligations and disputes arising out of the Agreement shall be governed by Oregon law. All disputes and litigation arising out of this Agreement shall be decided by the state courts in Oregon. Venue for all disputes and litigation shall be in Washington County, Oregon.

CLEAN WATER SERVICES

CITY OF SHERWOOD, OREGON

By: _____
Chief Executive Officer or Designee

By: _____
City Mayor or Designee

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

District Counsel

City Attorney

Exhibit A Project Location Map

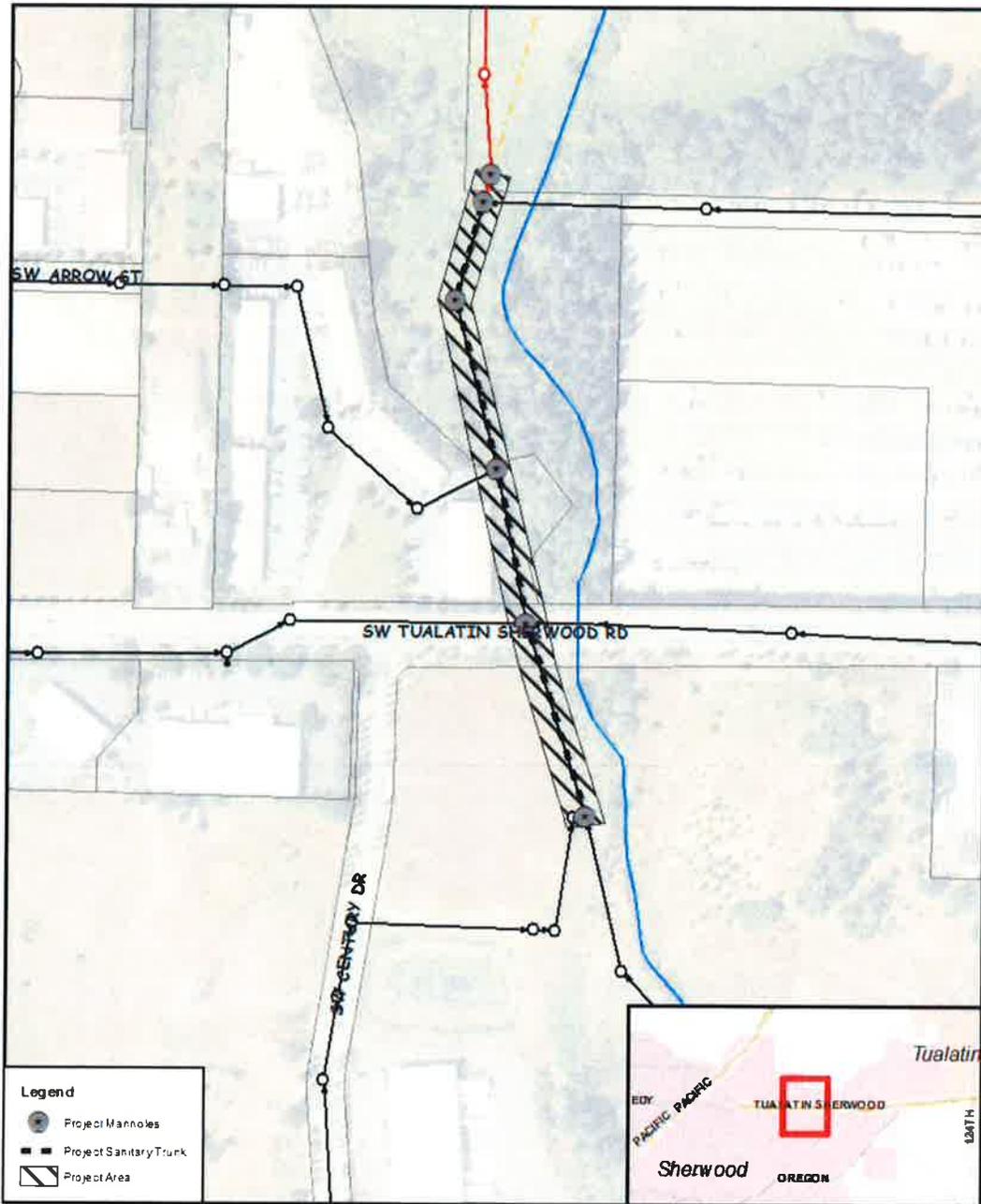


Exhibit A - Rock Creek Sanitary Upgrade Phase 1
City of Sherwood

Washington County, Oregon

1 inch = 200 feet

**EXHIBIT B
LIST OF STANDARD OBLIGATIONS**

Task	Not Applicable
<u>Managing Partner shall:</u>	
Provide Financial Partner at least ten days to review the plans and specifications for the Project and incorporate Financial Partner's comments into the plans.	<input type="checkbox"/>
Provide any required notice and communicate with the neighborhood and property owners within the Project limits. Respond to public calls arising from work being completed under this Agreement.	<input type="checkbox"/>
Prepare and submit invoices of the Project costs to Financial Partner monthly.	<input type="checkbox"/>
Make all required payments to the construction contractor.	<input type="checkbox"/>
Prepare and submit a Project summary of completed tasks to Financial Partner with each invoice.	<input type="checkbox"/>
Prepare all contracts and bid documents, advertise for bids, and select a construction contractor for the Project.	<input type="checkbox"/>
Construct the Project and provide construction inspection and management services for the Project.	<input type="checkbox"/>
If requested, hold progress meetings with Financial Partner during the field investigation and design phases of the Project. Financial Partner may review options and provide input on the Project.	<input type="checkbox"/>
Pay _ percent of the following costs for the Project: administration, easements, field inspection, design, construction and construction administration (Project Costs).	<input checked="" type="checkbox"/>
Require all contractors to include Financial Partner as an additional insured on insurance coverage required for construction work performed in completing the Project.	<input type="checkbox"/>
Take the lead in coordinating public involvement related to the Project.	<input type="checkbox"/>
Waive any land use or permit fees (except plumbing inspection fees) for work related to the Project.	<input type="checkbox"/>
City currently has sewer fund balances, including a sewer development charge (SDC) balance. City has been allowed to retain these balances to "spend down" on sewer-related projects within the City, regardless of funding responsibilities. Funding for the Project shall include \$ _____ from City's existing sewer fund balances.	<input checked="" type="checkbox"/>

**EXHIBIT B
LIST OF STANDARD OBLIGATIONS**

Task	Not Applicable
<u>Infiltration and Inflow Abatement projects</u>	
Obtain written permission from each property owner to inspect their sanitary sewer lateral and to line or replace it if deficient.	<input checked="" type="checkbox"/>
Establish whether each property has a cleanout at the structure. If no cleanout exists, Managing Partner will install one.	<input checked="" type="checkbox"/>
Inspect and evaluate each sanitary sewer lateral and main with a television camera. Managing Partner will line or replace all deficient sewer laterals and mains.	<input checked="" type="checkbox"/>
Other: (please describe) _____	<input checked="" type="checkbox"/>
<u>Financial Partner shall:</u>	
Review the plans and specifications for the Project and provide Managing Partner with written comments and/or approval within 10 days of receiving them.	<input type="checkbox"/>
Have the right to approve the final acceptance of the Project after construction.	<input type="checkbox"/>
Pay Managing Partner 100 percent of the Project Costs.	<input type="checkbox"/>
Pay invoices submitted by Managing Partner for actual costs incurred within 30 days of approving the invoice. The invoice shall include full progress payment amounts, including typical construction retainage.	<input type="checkbox"/>
Pay a total not to exceed of \$2,842,000 toward the cost of the Project.	<input type="checkbox"/>
Assist Managing Partner in communicating with the property owners and Project stakeholders.	<input checked="" type="checkbox"/>
Other: (please describe)	<input checked="" type="checkbox"/>