

RESOLUTION NO. 2019-46

**RESOLUTION AUTHORIZING CITY MANAGER TO EXECUTE AN
INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FOREST GROVE
AND CLEAN WATER SERVICES FOR CONSTRUCTION OF
19TH AVENUE AND MAPLE STREET INFLOW AND INFILTRATION
REHABILITATION PROJECT NO. 6962**

WHEREAS, Oregon Revised Statutes(ORS) 190.010 authorizes agencies to enter into intergovernmental agreements (IGA) for the performance of any or all functions and activities that a party to the agreement has the authority to perform; and

WHEREAS, Clean Water Services has proposed and project to reduce inflow and infiltration (I&I) of surface water into the sewer pipes around 19th Avenue and Maple Street; and

WHEREAS, the City and CWS have agreed to pay split the total costs on a 50/50 basis: and

WHEREAS, CWS has proposed an IGA for the proposed project and City staff is recommending approval of the IGA.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE
AS FOLLOWS:**

Section 1. The City Council hereby approves the Intergovernmental Agreement (Exhibit A) between the City of Forest Grove and Clean Water Services for Inflow and Infiltration Project No. 6962.

Section 2. The City Manager is authorized to execute the Intergovernmental Agreement on behalf of the City.

Section 3. This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 12th day of August, 2019.



Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 12th day of August, 2019.



Peter B. Truax, Mayor

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CITY OF FOREST GROVE AND
CLEAN WATER SERVICES FOR CONSTRUCTION OF
19TH AVENUE AND MAPLE STREET INFLOW AND
INFILTRATION REHABILITATION PROJECT NO. 6962**

This Agreement, dated _____, _____, is between Clean Water Services (District) a county service district organized under ORS Chapter 451 and the City of Forest Grove (City) an Oregon Municipality.

A. RECITALS

ORS 190.003 - 190.110 encourages intergovernmental cooperation and authorizes local governments to delegate to each other authority to perform their respective functions as necessary.

District undertook the 19th Avenue and Maple Street Inflow and Infiltration Rehabilitation Project No. 6962 (Project) located in the City to reduce inflow and infiltration into the sanitary sewer system which may reduce or delay required capacity driven capital improvement projects. 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 rehabilitating approximately 10,100 linear feet of 10-inch, 8-inch and 6-inch concrete sanitary sewer pipe and replacing 135 sewer laterals and 39 manholes located in the vicinity of Pacific Avenue between Laurel Street and Oak Street in the City. See attached Exhibit A for the Project location.

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 Managing Partner and shall perform all Tasks identified on Exhibit B for the Managing Partner, the List of Standard Obligations, attached hereto unless the Task is checked “Not Applicable”. District shall assign Andy Braun as District’s Project Manager.

E. CITY OBLIGATIONS

1. City is the Financial Partner and shall perform all services identified on Exhibit B for the Financial Partner unless the Task is checked “Not Applicable”. City shall assign Richard Blackmun as City’s Project Manager.
2. City shall make equal semi-annual payments to the District commencing thirty days from the date District accepts construction of the Project as final. The payments shall be in accordance with a ten year amortization schedule reflecting the principal payment identified in Exhibit B with interest added at the Oregon Bond Index AA Rating hereby set at 2.07%. District shall provide the City with an amortization schedule. City may pay remaining principal plus any accrued interest at any time without penalty.

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 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 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% without re-negotiating the Agreement, provided the increase shall not exceed the not to exceed amount contained 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 in 30 days.

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. Attorney Fees. If any dispute arises concerning the interpretation or enforcement of this Agreement or any issues related to the U.S. Bankruptcy Code (whether or not such issues relate to the terms of this Agreement), the prevailing party in any such dispute shall be entitled to recover all of its attorney fees, paralegal fees, costs, disbursements and other expenses from the non prevailing party, including without limitation those arising before and at any trial, arbitration, bankruptcy, or other proceeding and in any appeal.
8. 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. In the event the dispute is not resolved in mediation, the parties will submit the matter to arbitration. The decision of the arbitrator shall be final, binding and conclusive upon the parties and subject to appeal only as otherwise provided in Oregon law.
9. 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 contained in this Agreement are for ease of reference only and shall not be used in construing or interpreting this Agreement.
10. Severability/Survival. If any of the provisions contained 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.

11. 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 the Capital Improvement Program Prioritization Committee.

12. 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 FOREST GROVE, OREGON

By: _____
Chief Executive Officer or Designee

By: _____
City Manager or Designee

Date: _____

Date: August 12, 2019

APPROVED AS TO FORM

District Counsel

Exhibit A Project Location Map

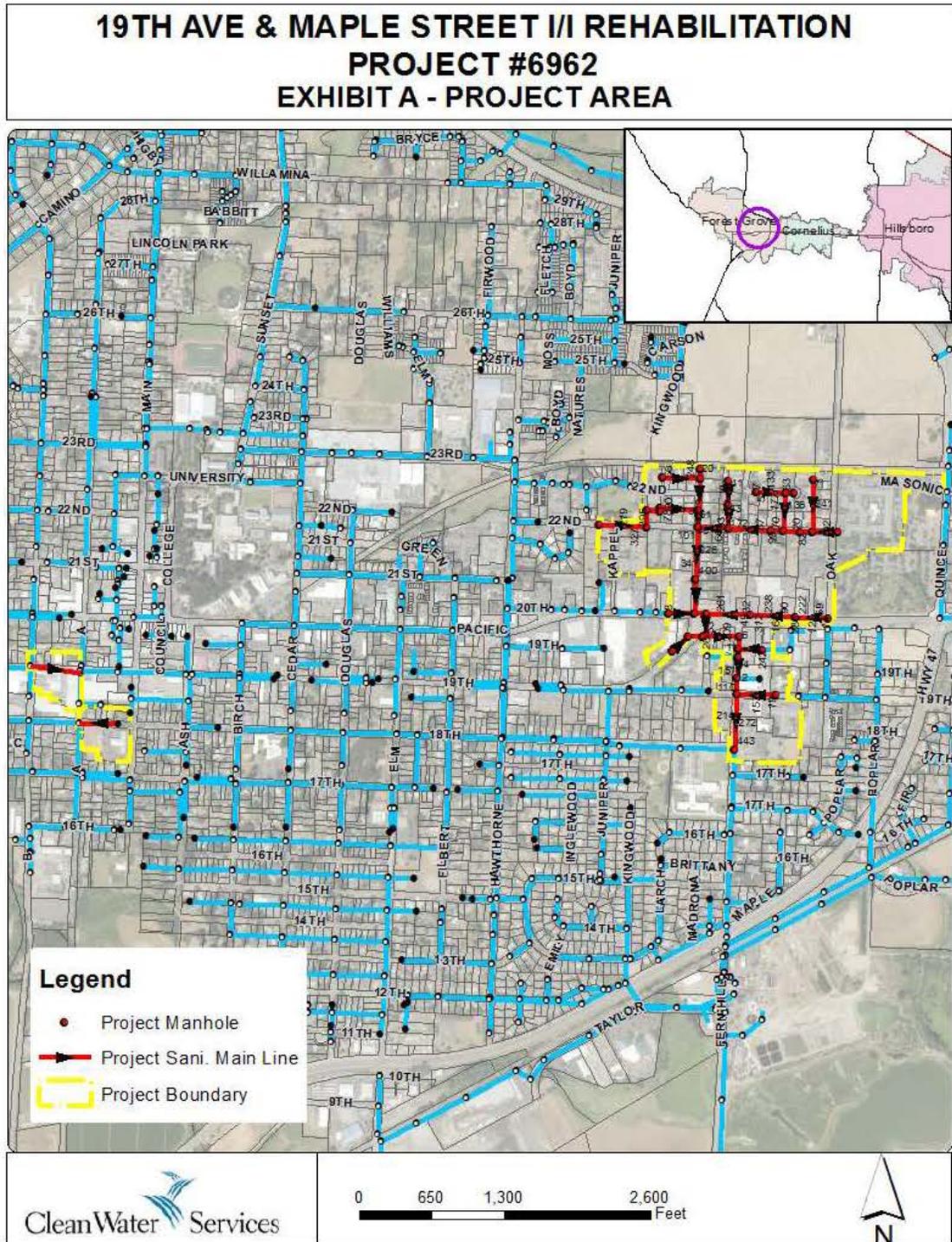


EXHIBIT B
LIST OF STANDARD OBLIGATIONS

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 checked="" 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 upon completion of the Project.	<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 50 percent of the following costs for the Project: administration, easements, field inspection, design, construction and construction administration (Project Costs).	<input 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 checked="" 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 \$0 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 type="checkbox"/>
Establish whether each property has a cleanout at the structure. If no cleanout exists, Managing Partner will install one.	<input 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 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 checked="" type="checkbox"/>
Have the right to approve the final acceptance of the Project after construction.	<input type="checkbox"/>
Pay Managing Partner 50 percent of the Project Costs.	<input type="checkbox"/>
Pay invoice submitted by Managing Partner for actual costs incurred. Payments shall be made by equal semi-annual payments over a ten year period.	<input type="checkbox"/>
Pay a total not to exceed of \$1,247,500 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"/>



A place where families and businesses thrive.

AG-1080

CITY RECORDER USE ONLY:	
AGENDA ITEM #:	13. & 14.
MEETING DATE:	08/12/2019
FINAL ACTION:	Reso 2019-45 Reso 2019-47

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

MEETING DATE: *August 12, 2019*

PROJECT TEAM: *Paul Downey, Administrative Services Director
Gregory Robertson, Public Works Director*

SUBJECT TITLE: *Two IGAs with CWS for I&I Project*

ACTION REQUESTED:	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Order	<input checked="" type="checkbox"/> X	<input type="checkbox"/> Resolution	<input type="checkbox"/> Motion	<input type="checkbox"/> Informational
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X all that apply

ISSUE STATEMENT: The City has agreed to participate with Clean Water Services on the first of up to three Inflow and Infiltration (I&I) projects. The projects are designed to replace sewer pipes and laterals in areas of the City where significant amount of surface water (inflow) and/or groundwater (infiltration) is getting into the sewer system. There are two intergovernmental agreements (IGA) related to the project. The first IGA is the agreement for the first project. The second IGA concerns the split of the Sewer System Development Charges (SDC) between the City and CWS. Staff has prepared resolutions approving both IGAs and authorizing the City Manager to execute the agreements. The IGAs are substantially complete but minor language edits may be incorporated in the final version.

BACKGROUND: I&I projects are designed to reduce the amount of surface water and groundwater getting into the sewer system so CWS does not have to increase the size of treatment plants just to treat rain and other water intrusions into the sewer system. CWS has identified three areas in the City where I&I projects are needed. CWS is proposing to do each area separately and will evaluate how much inflow and infiltration is reduced by each project. If the first two projects reduce I&I to an acceptable level, CWS will propose not doing the third project. A map of the first project area is attached. The total estimated cost of the first project is \$2,495,000 with the City responsible to pay for 50% of the final project costs.

The City has insufficient funds to pay for the projects up front without significantly depleting reserves in the Sewer and Sewer SDC Funds. CWS has agreed to pay all of the costs of the first project up front and then the City will pay CWS back for the City's share of the project costs over a ten-year period with semi-annual payments with interest at 2.07%. This arrangement is similar to the last I&I project in 2008. Similar financing arrangements will be made for the other planned I&I projects. The City will use Sewer SDC funds to pay the debt service on the first project. Future debt service payments on any subsequent projects will have to be paid from the Sewer Fund.

Currently, CWS retains 80% and the City retains 20% of the current Sewer SDC collected and the City is responsible for funding sewer line projects under 24 inches in diameter. In all of the other cities in the CWS service area, CWS retains 96% and the cities retain 4% of the Sewer SDC with CWS being responsible for funding sewer line projects greater than 12 inches.

There are two IGAs for Council consideration. The first IGA is for the first project and discusses the obligations of CWS and the City. The IGA states the City will pay a total not-to-exceed \$1,247,500 for the project and will pay its 50% share of the final project costs to CWS by equal semi-annual payments over a ten-year period. The second IGA states the current 80/20 split of Sewer SDC collected will remain unchanged through June 30, 2023.

FISCAL IMPACT: Between current Fund Balance and ongoing revenues, the Sewer SDC Fund will have the resources to pay the debt service on the first project over the next ten years and still have funds for smaller projects such as upsizing sewer lines if needed when development occurs. If one or both of the next two potential I&I projects occur, the debt service payments will have to come out of Sewer Fund so the debt service payments will be from sewer rates. Future sewer rates may be impacted if the future projects occur.

STAFF RECOMMENDATION: Staff recommends City Council approve the IGAs and authorize the City Manager to execute the agreements.

ATTACHMENT(s): Resolutions Approving IGAs with Clean Water Services; Map of Project Area; IGA for the Project; and IGA for Sewer SDC Revenue Split