

RESOLUTION NO. 2019-47

RESOLUTION AUTHORIZING CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FOREST GROVE AND CLEAN WATER SERVICES FOR ALLOCATION OF SANITARY SEWER SYSTEM DEVELOPMENT CHARGES

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 (CWS) charges a Sanitary Sewer System Development Charge (SDC) that is allocated between the Clean Water Services and the City that collects the SDC; and

WHEREAS, the City of Forest Grove's allocation is different than other cities' allocations: and

WHEREAS, CWS has proposed an IGA to formalize the allocation of Sewer SDC revenue between the City and CWS 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 to allocate the Sewer System Development Charges through June 30, 2023.

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 ALLOCATION OF
SANITARY SEWER SYSTEM DEVELOPMENT CHARGES**

This Agreement, dated _____, 2019, is between Clean Water Services (CWS/District), a county service district organized under ORS Chapter 451 and the City of Forest Grove (City), an Oregon Municipality.

A. RECITALS

WHEREAS ORS 190.003 - 190.110 encourages intergovernmental cooperation;
and

WHEREAS City and District have authority to enter into contracts for the cooperative operation of service facilities under ORS 451.560 and ORS Chapter 190; and

WHEREAS, City and District entered into an Intergovernmental Agreement (IGA) on January 4, 2005 (and subsequently amended it on June 10, 2005, July 1, 2008, and December 7, 2009) (collectively, Operating IGA) for the cooperative operation of sanitary sewer facilities;

WHEREAS, City and District entered into an IGA for construction of the 19th Avenue and Maple Street Inflow & Infiltration Rehab Project (#6962), which requires the City to reimburse the District for 50% of the project costs (not to exceed \$1,247,500);

WHEREAS, City and District are likely to enter into subsequent IGA's during the duration of this Agreement that will involve allocating sanitary sewer system development charges (SDC) between parties;

WHEREAS, the District's Rates & Charges, Appendix B allows for a change in the SDC Charges allocation between the District and City through an IGA;

NOW, THEREFORE, the parties agree as follows:

B. ALLOCATION OF SANITARY SEWER SYSTEM DEVELOPMENT CHARGES

The subject of this Agreement is the allocation of SDC's collected within the City.

1. City owes the District for costs incurred for construction projects located within the City and may incur additional costs it will owe the District for on other construction projects during the duration of this Agreement.

2. This Agreement allows City to retain the Local Portion of the SDC in the amount of 20% of the fee established by District's Board of Directors, unless this Agreement is terminated as provided herein.

C. CITY OBLIGATIONS

For each SDC collected in City, City shall:

1. Impose and collect a total SDC per EDU as established by District's Board of Directors in its annually adopted Rates and Charges.
2. Retain the City (or Local) Portion in the amount of 20% of the fee established by District's Board of Directors.
3. Remit to District the remaining portion of the SDC.
4. Additionally, City is responsible for funding sewer line projects under 24 inches in diameter. Such projects include repairs, replacements, reconstruction, rehabilitation, CIP construction and improvements, except Conveyance System Infiltration and Inflow (I&I) abatement projects. For Conveyance system I&I abatement projects, City is responsible for 50 percent of the funding, for mutually agreed-upon projects. This provision is consistent with Appendix A, approved for Fiscal Year 2010, of the Operating IGA.

D. DISTRICT OBLIGATIONS

For each SDC collected in City, CWS shall:

Determine the system development charge (SDC) for the sanitary sewerage system. In accordance with Section 4 of the Operating IGA, the District Board of Directors will certify the SDC.

E. GENERAL TERMS

1. Effective Date and Duration. The terms of this Agreement are effective from July 1, 2018 to June 30, 2023, unless both parties agree to terminate this Agreement as provided herein.
2. Laws and Regulations. City and District agree to abide by all applicable laws and regulations.
3. Amendment of Agreement. City and CWS may amend this Agreement from time to time, by mutual written agreement.
4. Termination. This Agreement may be terminated immediately by mutual written agreement of both parties, or by either of the parties notifying the other in writing, 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 others 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 County Manager and District's General Manager will attempt to resolve the issue. If the City Manager and District's General Manager 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.
10. 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 constructing or interpreting this Agreement.

11. 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.

12. 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 designee and City Administrator or the City Administrator's Designee and, when required by applicable District rules, District's Board of Directors and, when required by applicable City rules, City Council. Additionally, proposed changes of scope must be presented to the Capital Improvement Program Prioritization Committee for approval.

13. 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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first written above.

CLEAN WATER SERVICES

**CITY OF FOREST GROVE,
OREGON**

By: _____
Chief Executive Officer or Designee

By: _____
City Manager or Designee

APPROVED AS TO FORM

District Counsel



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