

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CITY OF TIGARD AND
CLEAN WATER SERVICES TO CONSTRUCT
HIGHWAY 99W MEDIAN STORMWATER QUALITY FACILITIES
PROJECT NO. 6588**

This Agreement, dated _____, 2014 is between CLEAN WATER SERVICES (District) a county service district organized under ORS Chapter 451 and the CITY OF TIGARD (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 intends to undertake the Highway 99W Median Stormwater Quality Facilities Project No. 6588 (Project) to retrofit and construct stormwater quality swales in the median of Highway 99W. This Project has been endorsed by the Capital Improvement Program Prioritization Committee.

NOW, THEREFORE, the parties agree as follows:

B. PROJECT DESCRIPTION

The Project is a collaboration between the cities of Tigard and King City, ODOT and District, to retrofit and construct 4 stormwater treatment swales in the median of Highway 99W. The Project will provide treatment for 1.75 miles of ODOT Highway and 45 acres of commercial and residential property. See Exhibit A attached hereto 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 for the Managing Partner identified in the List of Standard Obligations, attached hereto as Exhibit B, unless the Task is checked “Not Applicable”. District shall assign Richard D. Boyle, P.E. as District’s Project Manager.

E. CITY OBLIGATIONS

City is the Financial Partner and shall perform all Tasks for the Financial Partner identified in Exhibit B unless the Task is checked “Not Applicable.” City shall assign Kim McMillan, P.E. 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 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 amending 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 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.
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 General Manager or the General Manager'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 TIGARD, OREGON

By: _____
General Manager or Designee

By: _____
City Manager or Designee

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

District Counsel

City Counsel

Exhibit A Project Location Map

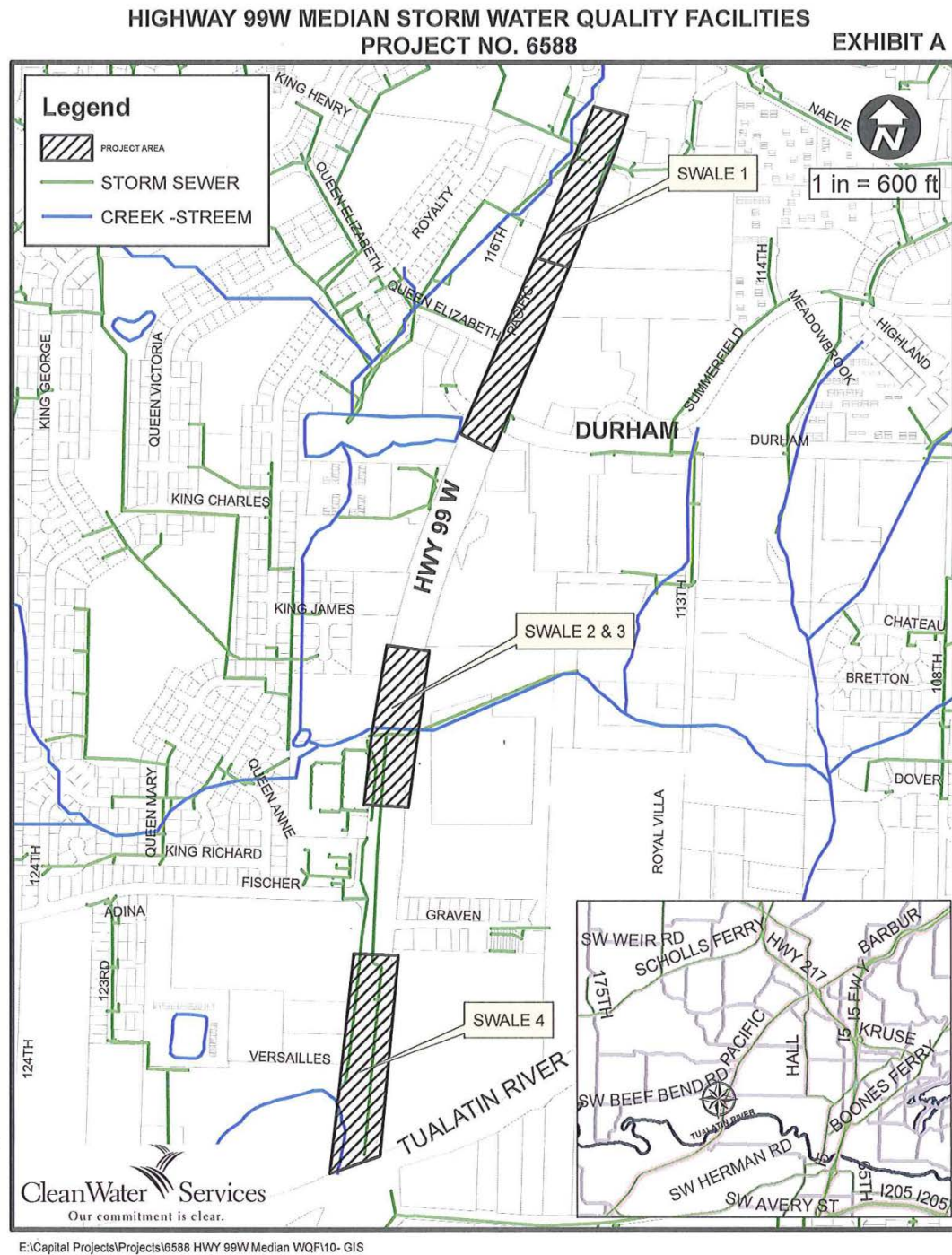


EXHIBIT B
LIST OF STANDARD OBLIGATIONS

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.	☒
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.	☐
Prepare and submit invoices of the Project costs to Financial Partner _____. (Insert the applicable timing requirement e.g. "quarterly" or "upon completion of the Project".)	☒
Make all required payments to the construction contractor.	☐
Prepare and submit a Project summary of completed tasks to Financial Partner with each invoice.	☒
Prepare all contracts and bid documents, advertise for bids, and select a construction contractor for the Project.	☐
Construct the Project and provide construction inspection and management services for the Project.	☐
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.	☒
Pay _____ percent of the following costs for the Project: administration, easements, field inspection, design, construction and construction administration (Project Costs).	☒
Require all contractors to include Financial Partner as an additional insured on insurance coverage required for construction work performed in completing the Project.	☒
Take the lead in coordinating public involvement related to the Project.	☒
Waive any land use or permit fees (except plumbing inspection fees) for work related to the Project.	☒
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.	☒

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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.	☒
Establish whether each property has a cleanout at the structure. If no cleanout exists, Managing Partner will install one.	☒
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.	☒
Other: District will maintain the facilities described in this Agreement pursuant to an agreement with the Oregon Department of Transportation.	☐
<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.	☒
Have the right to approve the final acceptance of the Project after construction.	☒
Pay Managing Partner _____ percent of the Project Costs.	☒
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.	☒
Pay a total not to exceed of \$62,850 toward the cost of the Project prior to December 31, 2014.	☐
Assist Managing Partner in communicating with the property owners and Project stakeholders.	☒