

RESOLUTION NO. 2021-08

RESOLUTION AUTHORIZING CITY MANAGER TO ENDORSE AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN CITY OF FOREST GROVE AND CLEAN WATER SERVICES FOR ALLOCATION OF SANITARY SEWER SYSTEM DEVELOPMENT CHARGES

WHEREAS, City of Forest Grove (City) and Clean Water Services (District) have authority to enter into contracts for the cooperative operation of service facilities under ORS 451.560 and ORS Chapter 190; and

WHEREAS, the District's Rates and Charges, Appendix B, allows for a change in the sanitary sewer System Development Charges (SDC) allocation between the District and City through an IGA; and

WHEREAS, City and District entered into an IGA dated September 17, 2019, for construction of the 19th Avenue and Maple Street Inflow & Infiltration Rehabilitation Project (No. 6962), which requires the City to reimburse the District for 50 percent of the project costs; and

WHEREAS, the City agreed to reimburse the District for the project over a 10-year period if the sanitary sewer SDC remained at the current allocation of the City retaining 20% of the SDC collected; and

WHEREAS, the District has agreed to retain the current allocation through June 30, 2031.

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

Section 1. The City Council hereby approves the Intergovernmental Agreement between the City and the District for the allocation of sanitary sewer SDC through June 30, 2031 (Exhibit A).

Section 2. The City Manager is authorized to endorse the agreement on behalf of the City.

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

PRESENTED AND PASSED this 25th day of January, 2021.



Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 25th day of January, 2021.



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 effective July 1, 2020, 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 dated September 17, 2019, for construction of the 19th Avenue and Maple Street Inflow & Infiltration Rehabilitation Project (No. 6962), which requires the City to reimburse the District for 50 percent of the project costs;

WHEREAS, the District's Rates and Charges, Appendix B allows for a change in the sanitary sewer System Development Charges (SDC) 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 sanitary sewer system development charges (SDCs) collected within the City.

1. City owes the District for costs incurred to construction projects located within the City.
2. This Agreement allows City to retain the Local Portion of the SDC in the amount of 20 percent 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 Equivalent Dwelling Unit 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 percent 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 of the current approved Operating IGA.

D. DISTRICT OBLIGATIONS

For each SDC collected in City, CWS shall:

1. 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. The terms of this Agreement are effective from July 1, 2020, to June 30, 2031, 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

APPROVED AS TO FORM

District Counsel

City Counsel



A place where families and businesses thrive.

<i>CITY RECORDER USE ONLY:</i>	
AGENDA ITEM #:	8.
MEETING DATE:	01/25/2021
FINAL ACTION:	RESO 2021-08

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

MEETING DATE: *January 25, 2021*

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

SUBJECT TITLE: *Sewer SDC Allocation IGA*

ACTION REQUESTED:

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

ISSUE STATEMENT: Clean Water Services (CWS) and the City agreed to construct the 19th Avenue and Maple Street Inflow & Infiltration (I/I) Rehabilitation Project (No. 6962). The City is required to reimburse CWS for 50% of I/I project costs. The City agreed to the project if the City could repay CWS over a ten-year period and the current Sanitary Sewer System Development Charge (SDC) was left at the current percentage allocation over the ten-year period. CWS has prepared an intergovernmental agreement (IGA) for Council consideration to retain the current SDC allocation through June 30, 2031.

BACKGROUND: Inflow and Infiltration is the extraneous stormwater and groundwater that enters the sanitary sewer, especially during the winter rains. Inflow is stormwater from yards, roofs and footing drains or from cross-connections with storm drains and downspouts or manhole covers. Infiltration is groundwater that enters sewer pipes and manholes through holes, breaks, pipe joints and connections.

Investing in I/I reduction is important to CWS because it cost-effectively eliminates the extraneous flows and controls the peak flows to preserve pipeline conveyance and treatment capacity. It helps avoid costly conveyance and treatment capacity investments triggered by essentially clean water mixing with sewage. CWS's watershed-based regulatory compliance permit requires CWS to proactively control and reduce I/I so that sanitary sewer overflows resulting from I/I are reduced.

CWS and the City currently allocate Sewer SDC collected in the City whereby CWS receives 80% of the SDC revenue and the City retains 20% of the SDC revenue. For all other cities in the County, CWS receives 96% of the SDC revenue and the city retains 4% of the SDC revenue. The allocation used to be 80/20 for all cities. When CWS made the change for the other cities, Forest Grove did not agree to the change as the City was paying debt service on another I/I project and could not afford to make the debt service payments if the allocation percentage was changed. In

order to not change the SDC allocation, CWS and the City also agreed that the City would keep responsibility for funding sewer line projects under 24 inches. For other cities, CWS changed the funding responsibility so CWS now funds sewer line projects over 12 inches. The pipe size funding differential has not been an issue for Forest Grove. The proposed IGA would keep the 80/20 allocation and the City's responsibility for sewer line projects under 24 inches in place through June 30, 2031.

CWS needed to do the construction of the 19th Avenue and Maple Street (I/I) Rehabilitation Project in Forest Grove to help manage treatment capacity at its Forest Grove Water Resource Recovery Facility before the City was prepared to pay to replace the pipelines. Costs for I/I projects are shared equally by CWS and the affected cities based on intergovernmental Agreements (IGAs). The total cost of this project was \$2,032,973.10 so the City's share of the project is \$1,016,486.55. The City agreed to do this project if the City could pay back the cost of the project over 10 years. The City needs to be able to fund these over time to match cash flow generated by development through SDC and the local rate base if SDC funds are insufficient to pay the debt service.

The City has worked with CWS on previous I/I projects to pay the City's share of I/I project costs over time with financing agreements. As with previous projects, the City will pay for its share of this project with a 10-year loan agreement. The City will make semiannual principal and interest payments (rate of 2.07%) of \$56,527.63 to the District on this note except for the final payment in July 2030, of \$43,716.53. The City will use funds from the City's Sewer SDC Fund to repay the loan to the extent possible. If necessary in future years, the Sewer Fund may have to make some of the loan payments.

FISCAL IMPACT: The debt service payments have been included in projections for the use of Sewer SDC Funds which should be able to service most of the debt. Other projects, including other I/I projects, will come up which will also require use of the Sewer SDC Funds. The plan is to use Sewer SDC Funds for as long as possible and then, if necessary, begin using Sewer Funds to pay the debt service. The use of Sewer SDC Funds is preferable for I/I projects are they are capital projects.

STAFF RECOMMENDATION: Staff recommends the City Council approve the attached resolution adopting the allocation of SDC between the City and CWS.

ATTACHMENT(s): Resolution Authorizing City Manager to Endorse an Intergovernmental Agreement (IGA) Between the City Of Forest Grove and Clean Water Services for Allocation of System Development Charges