

**RESOLUTION NO. 2022-17**

**RESOLUTION TO AUTHORIZE THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FOREST GROVE AND CLEAN WATER SERVICES FOR CONSTRUCTION OF MAIN STREET AND 23RD AVENUE INFLOW AND INFILTRATION REHABILITATION PROJECT**

**WHEREAS**, City desires to enter into Intergovernmental Agreement (Exhibit A) with the Clean Water Services for the for Construction of Main Street and 23rd Avenue Inflow and Infiltration Rehabilitation Project; and

**WHEREAS**, Inflow and Infiltration projects have proven to reduce the amount of rainfall that enters the sewage treatment system by millions of gallon, thereby avoiding costly expansion to sewage treatment facilities; and

**WHEREAS**, Clean Water Services will deliver this project.

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

Section 1. The City Council of the City of Forest Grove hereby approves the Agreement between the City of Forest Grove and Clean Water Services as stated in the Agreement and subject to the conditions of this Agreement (Exhibit A)

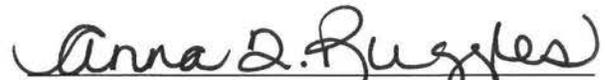
Section 2. The City Manager is hereby authorized to endorse the Agreement (Exhibit A) on behalf of the City of Forest Grove.

Section 3. That the City of Forest Grove is prepared to comply with obligations as specified in the Agreement.

Section 4. That the City of Forest Grove is prepared to contribute funding as specified in the Agreement.

Section 5. This resolution is effective immediately upon its enactment by the City Council.

**PRESENTED AND PASSED** this 21<sup>st</sup> day of March, 2022.

  
\_\_\_\_\_  
Anna D. Ruggles, City Recorder

**APPROVED** by the Mayor this 21<sup>st</sup> day of March, 2022.

  
\_\_\_\_\_  
Peter B. Truax, Mayor

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN CITY OF FOREST GROVE AND  
CLEAN WATER SERVICES FOR CONSTRUCTION OF  
MAIN STREET AND 23RD AVENUE INFLOW AND  
INFILTRATION REHABILITATION PROJECT NO. 7049**

This Agreement, dated April 1, 2022, 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 is undertaking the Main Street and 23rd Avenue Inflow and Infiltration Rehabilitation Project No. 7049 (Project) located in the City to reduce inflow and infiltration into the sanitary sewer system to 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 2,300 linear feet of 8-inch concrete and clay sanitary sewer pipe via pipe bursting, lining, and new construction and rehabilitating/replacing approximately 12 manholes and 73 service lateral connections. The Project is located in the vicinity of Main Street between 26th Avenue and 21st Avenue and on D Street between Pacific Avenue and 19th Avenue.

**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 Kyle Kirwan 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 Exhibit B with interest added at the Oregon Bond Index AA Rating hereby set at 1.15%. 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.
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**

DocuSigned by:  
*Diane Taniguchi Dennis*  
 By: \_\_\_\_\_  
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 Chief Executive Officer or Designee

DocuSigned by:  
*Jesse VanderZanden*  
 By: \_\_\_\_\_  
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 City Manager or Designee

Date: April 1, 2022  
 \_\_\_\_\_

Date: March 31, 2022  
 \_\_\_\_\_

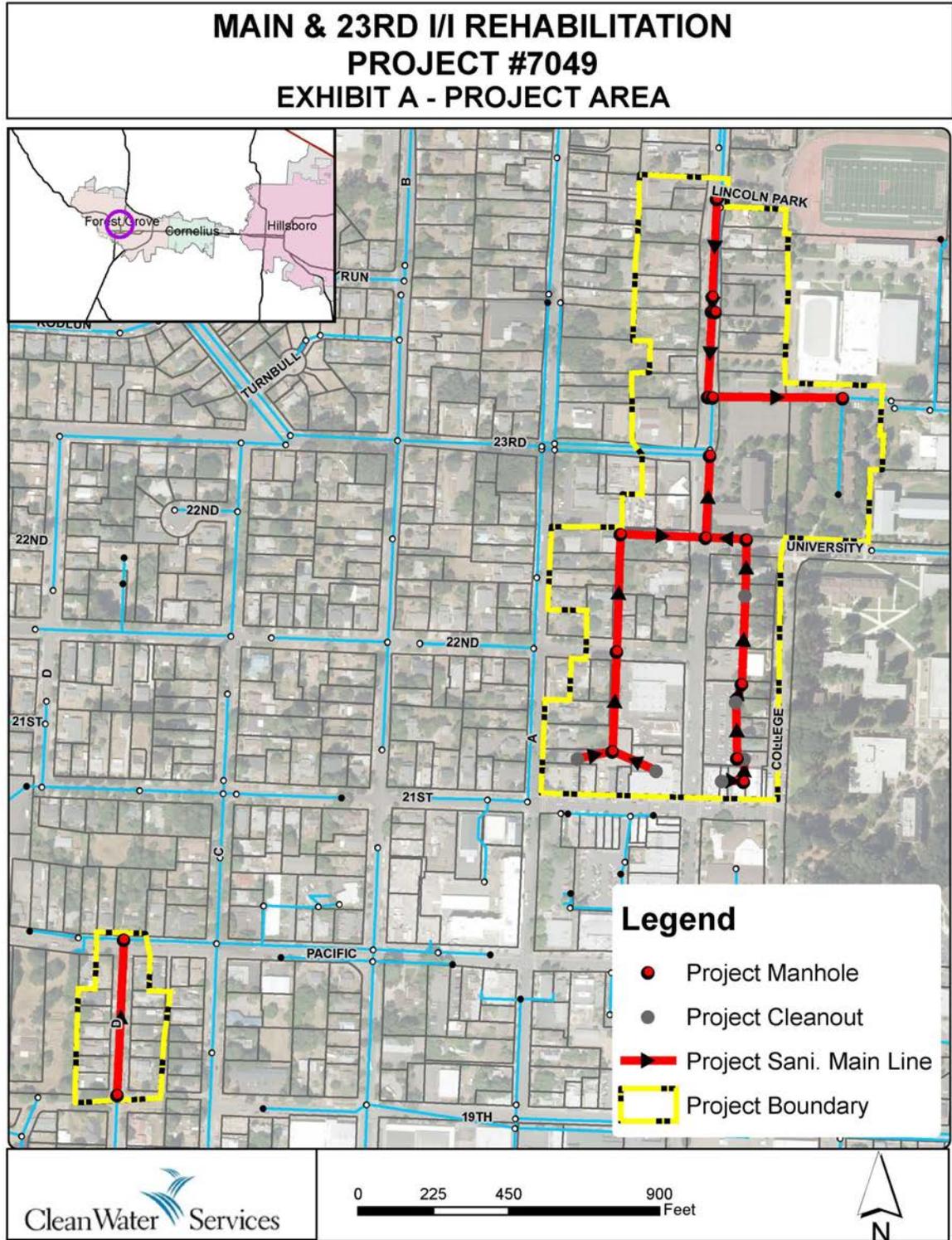
**APPROVED AS TO FORM**

**APPROVED AS TO FORM**

DocuSigned by:  
*Gerald Linder*  
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 District Counsel

DocuSigned by:  
*Ashley Driscoll*  
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 City Counsel

## Exhibit A Project Location Map



**EXHIBIT B**  
**LIST OF STANDARD OBLIGATIONS**

<b>Task</b>	<b>Not Applicable</b>
<b><u>Managing Partner shall:</u></b>	
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 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 Project Costs. The Project Costs include 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 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"/>
<b><u>Infiltration and Inflow Abatement projects</u></b>	
Obtain written permission from each property owner to inspect their sanitary sewer lateral and to line or replace it if deficient.	<input type="checkbox"/>

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<b>Task</b>	<b>Not Applicable</b>
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"/>
<b><u>Financial Partner shall:</u></b>	
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 50 percent of the Project Costs plus 1.15 percent interest.	<input type="checkbox"/>
Pay invoice submitted by Managing Partner for actual Project Costs incurred plus interest. Payments shall be made by equal semi-annual payments over a ten year period.	<input type="checkbox"/>
Pay a total not to exceed of \$1,074,000.00 of the project cost. In no event will the Financial Partner pay more than this amount plus 1.15 percent interest.	<input type="checkbox"/>
Assist Managing Partner in communicating with the property owners and Project stakeholders.	<input type="checkbox"/>
Other: (please describe) _____	<input checked="" type="checkbox"/>



*A place where families and businesses thrive.*

<i>CITY RECORDER USE ONLY:</i>	
AGENDA ITEM #:	<u>F. 1.</u>
MEETING DATE:	<u>03/21/2022</u>
FINAL ACTION:	<u>RESO 2022-17</u>

**CITY COUNCIL STAFF REPORT**

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**TO:** *City Council*

**FROM:** *Jesse VanderZanden, City Manager*

**PROJECT TEAM:** *Paul Downey, Assistant City Manager/Finance Director  
Greg Robertson, Director of Public Works  
Rich Blackmun, Engineering Manager*

**MEETING DATE:** *March 21, 2022*

**SUBJECT TITLE:** *Staff Report and Resolution to Authorize the City Manager to Execute an Intergovernmental Agreement between the City of Forest Grove and Clean Water Services for Construction of Main Street and 23rd Avenue Inflow and Infiltration Rehabilitation Project*

**ACTION REQUESTED:**

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

*X all that apply*

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**ISSUE STATEMENT:**

Consider resolution authorizing the City Manager to execute an Intergovernmental Agreement between the City of Forest Grove and Clean Water Services for Construction of Main Street and 23rd Avenue Inflow and Infiltration Rehabilitation project. This proposed resolution, if enacted by the Forest Grove City Council, would take effect immediately.

**BACKGROUND:**

The City’s sewer system has historically experienced high inflow events during moderate rain events. In order to reduce inflows to ensure adequate development and growth capacity exists at the Forest Grove Advanced Wastewater Recovery Facility (AWWRF) adjacent to the Fern Hill Wetlands, Clean Water Service (CWS) has identified up to three different projects to rehabilitate the Forest Grove sanitary sewer collection system. The objective of these rehabilitation projects is to reduce rainfall derived inflow and infiltration (RDII) into the Forest Grove sanitary sewer collection system so an expansion of the secondary clarifiers at the Forest Grove AWWRF is not required. The Main Street and 23rd Avenue Rehabilitation project is the second of the three rehabilitation project. The 19th Avenue and Maple Street rehabilitation project, which was the first rehabilitation project, achieved a reduction of RDII of over 3.3 million gallons per day which is over 50% of the overall flow reduction objective. CWS will complete a post-project analysis of the Main Street and 23rd Avenue Rehabilitation project to quantify the reduction in peak flows and to determine if the

first two rehabilitation projects have achieved the desired peak flow reduction of 6 million gallons per day.

**FISCAL IMPACT:**

Approximately \$1.2 Million and will be financed over a period of ten years. This project will be paid with sewer SDC or sewer funds and the annual debt payment of approximately \$135,000 will be budgeted each year of the debt repayment.

**STAFF RECOMMENDATION:**

Staff recommends the City Council approve the attached resolution authorizing the City Manager to execute the Intergovernmental Agreement between the City of Forest Grove and Clean Water Services for Construction of the Main Street and 23rd Avenue Inflow and Infiltration Rehabilitation.

**ATTACHMENT(s):**

(1) Resolution

**INTERGOVERNMENTAL AGREEMENT  
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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.
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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: \_\_\_\_\_

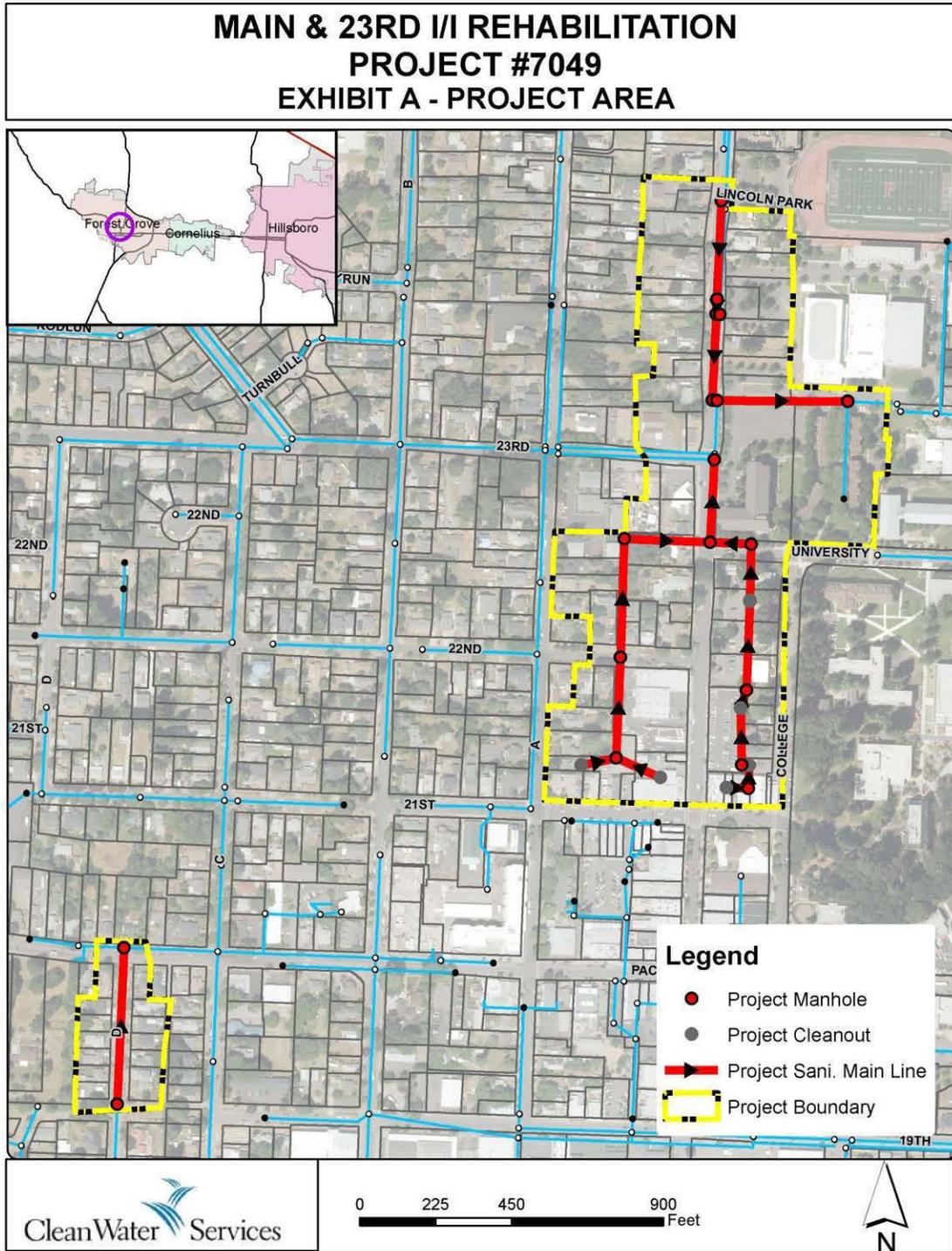
APPROVED AS TO FORM

APPROVED AS TO FORM

\_\_\_\_\_  
District Counsel

\_\_\_\_\_  
City Counsel

# Exhibit A Project Location Map



**EXHIBIT B  
LIST OF STANDARD OBLIGATIONS**

<b>Task</b>	<b>Not Applicable</b>
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Waive any land use or permit fees (except plumbing inspection fees) for work related to the Project.	<input type="checkbox"/>
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Obtain written permission from each property owner to inspect their sanitary sewer lateral and to line or replace it if deficient.	<input type="checkbox"/>

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<b>Task</b>	<b>Not Applicable</b>
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