

Draft

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CITY OF BEAVERTON, CITY OF TIGARD, AND
CLEAN WATER SERVICES TO CONSTRUCT PHASE 1 OF
THE SCHOLLS FERRY TRUNK SEWER EXTENSION**

This Agreement, dated _____, 2013, is between CLEAN WATER SERVICES (District), a county service district organized under ORS Chapter 451, the CITY OF BEAVERTON (Beaverton), an Oregon Municipality, and the CITY OF TIGARD (Tigard), 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, Tigard, and Beaverton intend to undertake the Scholls Ferry Trunk Sewer Extension Project (Project) to extend gravity sewer from Barrows Road westward along Scholls Ferry Road to the intersection of Roy Rogers Road. This Project has been endorsed by the Capital Improvement Program Prioritization Committee. The Project will be constructed in three phases. This Intergovernmental Agreement covers Phase 1 only. Subsequent phases will be documented under separate Intergovernmental Agreements.

NOW, THEREFORE, the parties agree as follows:

B. PROJECT DESCRIPTION

The Phase 1 sanitary sewer improvement consists of constructing approximately 1,792 linear feet of 21-inch diameter sanitary sewer, 565 linear feet of small diameter sanitary sewer (8-inch to 12-inch), 17 manholes and appurtenances on Scholls Ferry Road from Roy Rogers Road to a point 610 feet west of the west curblineline of the Barrows Road Roundabout (Phase 1). Beaverton will design Phase 1. Phase 1 will be constructed by a contractor selected by Washington County LUT (County) to widen Scholls Ferry Road. The County will administer the construction of Phase 1 as part of its Scholls Ferry widening Project from SW Roy Rogers Road to SW Teal Boulevard (Road Project). See Exhibit A attached hereto for the Phase 1 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. **Beaverton Phase 1 Planning and Design Cost** – Beaverton labor and benefit costs and consultant costs paid by Beaverton associated with services outlined in Section E.1-6.
3. **Phase 1 21-inch Sewer Cost** – 100% of the construction and non-construction costs for the 21-inch sewer main, appurtenances, and manholes on the 21-inch mainline for Phase 1

1 paid by District to County pursuant to the Intergovernmental Agreement between District and County dated _____, 2013 (County IGA) and covers County's cost for construction and non-construction services such as survey, Phase 1 construction management and administrative costs.

4. **Beaverton Phase 1 Sewer Cost** – construction and non-construction costs for any 6-inch to 12-inch sewer mains, laterals, appurtenances, and manholes extending northward from the 21-inch sewer main and all manhole adjustments for Phase 1 paid by District to County pursuant to the County IGA.
5. **Tigard Phase 1 Sewer Cost** - construction and non-construction costs for any 6-inch to 12-inch sewer mains, laterals, appurtenances, and manholes extending southward from the 21-inch sewer main paid by District to County pursuant to the County IGA in Phase 1.

D. DISTRICT OBLIGATIONS

District shall:

1. Provide direction to Beaverton regarding the size of the sewer trunkline and the location of the west terminus for future connection.
2. Review the plans and specifications provided by Beaverton for Phase 1 and provide comments to Beaverton within ten working days of receiving them.
3. Enter into a separate Intergovernmental Agreement with County to administer construction of the Phase 1 improvements.
4. Pay County for construction and non-construction costs as required in the County IGA.
5. Have the right to approve or reject a Beaverton employee selected to serve as District's Project Manager for Phase 1.
6. Have the right to review, approve or reject any proposed design change or Extra Work as defined in the County IGA, or other change to Phase 1.
7. Have the right to provide a list of items to be completed prior to final acceptance of Phase 1.
8. Invoice Beaverton for 16.3% of the Phase 1 21-inch Sewer Cost and 100% of the Beaverton Phase 1 Sewer Cost less 67.4% of the Beaverton Phase 1 Planning and Design Cost upon completion of Phase 1.
9. Invoice Tigard for 16.3% of the Phase 1 21-inch Sewer Cost and 100% of the Tigard Sewer Cost for Phase 1 upon completion of Phase 1.
10. Provide written evidence to Beaverton and Tigard that funds are allocated for the District's share of Phase 1 before construction begins.

E. BEAVERTON OBLIGATIONS

Beaverton shall:

1. Select, contract with and pay consultants to perform a geotechnical investigation, utility locates and environmental assessment for use in designing and obtaining permits for Phase 1. The design plans shall use the County Roadway Survey and design plans as the base document.
2. Provide all planning, design, specifications, permits and inspection for Phase 1.
3. Provide timely reviews and comments on County design documents and timely response to other Phase 1 information requests.
4. Provide Tigard and District at least ten days to review plans and specifications for Phase 1 at 70% and 90% completion, and incorporate review comments into the plans.
5. Provide technical consultation to County during construction as needed.
6. Appoint a Beaverton employee acceptable to District to serve as the District's project manager for Phase 1 and coordinate with County during construction.
7. Obtain District's consent before taking any of the following actions for Phase 1: a) authorizing any design changes, b) approving any change orders, c) authorizing use of contingency line items, or d) resolving any disagreement, dispute, delay or claim.
8. Provide District and Tigard documents that establish the Beaverton Phase 1 Planning and Design Cost.
9. Provide timely responses to bidders' questions about Phase 1. If necessary, provide District and County with an addendum no later than five business days prior to the bid opening for Phase 1.
10. Provide construction inspection of Phase 1 bid items including review and approval of shop drawings, submittals, and onsite inspection to determine compliance with the contract documents. Coordinate onsite inspections of Phase 1 bid items through County's lead inspector. Beaverton's inspector shall be onsite and responsible for enforcing all applicable specifications during all Phase 1 work, including but not limited to night work, accommodations for public traffic and work zone traffic control in coordination with the County's lead inspector. Beaverton shall provide Phase 1 daily reports, erosion reports, field directives, pay notes and quantities to County in a timely manner in County-provided format and coordinate with the County's lead inspector.
11. Provide District written notice that Phase 1 is complete and obtain District's approval for final acceptance of Phase 1 prior to making recommendations to County regarding releasing bonds, or issuing final payment to the contractor.
12. Provide District as-built construction drawings for Phase 1 within 60 days after the Road Project is deemed complete and acceptable to District. The as-built drawings shall be provided in camera-ready hardcopy, 11 x 17 inches with a CD in both pdf and AutoCAD digital format.
13. Coordinate and participate with District on any disagreements, disputes, delays or claims related to or as a result of Phase 1.

14. Pay District 16.3% of the Phase 1 21-inch Sewer Cost and 100% of the Beaverton Phase 1 Sewer Cost less 67.4% of the Beaverton Phase 1 Planning and Design Cost, not to exceed \$325,000 for Beaverton's portion of Phase 1 as defined in this Agreement, within 30 days of approving the invoice. The invoice shall include full progress payment amounts, including typical construction retainage.
15. Invoice Tigard for 16.3% of the Beaverton Phase 1 Planning and Design Cost upon completion of Phase 1 of the Project.
16. Provide written evidence to District and Tigard that funds are allocated for Beaverton's share of Phase 1 before construction begins.
17. Inform the Phase 1 construction contractor in writing of District's right to withhold final acceptance.

F. TIGARD OBLIGATIONS

Tigard shall:

1. Review the plans and specifications provided by Beaverton for Phase 1 and provide comments to Beaverton within ten working days of receiving them.
2. Pay District, 16.3% of the Phase 1 21-inch Sewer Cost and 100% of the Tigard Sewer Cost for Phase 1 as defined in this Agreement, not to exceed \$325,000, within 30 days of approving the invoice. The invoice shall include full progress payment amounts, including typical construction retainage.
3. Pay Beaverton, 16.3% of the Beaverton Phase 1 Planning and Design Cost, not to exceed \$32,600 for Tigard's portion of Phase 1 as defined in this Agreement, within 30 days of approving the invoice.
4. Provide written evidence to District and Beaverton that funds are allocated for Tigard's share of Phase 1 before construction begins.

G. GENERAL TERMS

1. Laws and Regulations. Beaverton, Tigard and District agree to abide by all applicable laws and regulations including their own purchasing rules.
2. Term of this Agreement. This Agreement is effective from the date the last party signs it and shall remain in effect until Phase 1 of the Project is complete and the parties' obligations have been fully performed or this Agreement is terminated as provided herein.
3. Amendment of Agreement. Beaverton, Tigard 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 Phase I of the Project, must be approved by District.

- B. During the duration of the Washington County construction contract, all parties to this Agreement will act reasonably and cooperatively to make decisions in a timely fashion to avoid contract change orders/ delay claims and added County Administrative charges.
4. Termination. This Agreement may be terminated immediately by mutual written agreement of the parties, or by any of the parties notifying the others 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 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. Resolution of Disputes. If any dispute out of this Agreement cannot be resolved by the project managers from each party, the Beaverton Mayor, Tigard City Manager and District's General Manager will attempt to resolve the issue. If the Beaverton and Tigard Mayors 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.
 8. 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.

9. 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.

10. 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 2) Beaverton, and 3) Tigard. Proposed changes of scope must also be approved by the Capital Improvement Program Prioritization Committee.

11. 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 BEAVERTON, OREGON

By: _____
 General Manager or Designee

By: _____
 Mayor or Designee

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

 District Counsel

 City Counsel

CITY OF TIGARD

By: _____
 City Manager or Designee

APPROVED AS TO FORM

 City Counsel

**Exhibit A
Project Location Map**

