

**FIRST AMENDMENT
TO INTERGOVERNMENTAL AGREEMENT
BETWEEN CITY OF TIGARD AND
CLEAN WATER SERVICES FOR THE
DESIGN, PERMITTING, AND CONSTRUCTION OF
THE DERRY DELL GRAVITY SEWER REPLACEMENT**

This Amendment, dated effective _____, 2013, is between CLEAN WATER SERVICES (District), a County Service District organized under ORS Chapter 451, and the CITY OF TIGARD (City), an Oregon Municipality and amends the parties' Intergovernmental Agreement for the Design, Permitting, and Construction of the Derry Dell Gravity Sewer Replacement dated April 3, 2012 (Agreement).

A. RECITALS

1. City and District previously entered into the Agreement to collaborate on the design, permitting, and construction of the Derry Dell Gravity Sewer Replacement (Original Project). The Original Project includes designing and constructing approximately 1,200 feet of new sanitary sewer, removing or abandoning 1,800 feet of existing sanitary sewer, and realigning a 700-foot reach of Derry Dell Creek.
2. In the best interests of permitting, design, construction, and to minimize adverse impacts on adjacent properties and costs, the parties now wish to amend the Original Project to include: (i) replacing two existing 36-inch diameter CMP culverts crossing SW Walnut Street with 108 linear feet of 8-foot by 9-foot reinforced concrete box culvert, (ii) installing 240 feet of 8-inch water line, (iii) widening approximately 275 feet of the SW Walnut Street road prism to its ultimate width, and (iv) installing 795 feet of paved trail and boardwalk and associated appurtenances (collectively, Enhanced Work).
3. The parties also wish to amend the Agreement to clarify each party's responsibility for the Enhanced Work, Communication Plan, and to further clarify the allocation of mitigation credit generated from the Original Project.
4. City and District agree that it is in the best interest of the public and both parties to postpone the construction due to the design of the Enhanced Work, National Marine Fisheries Service consultation, In-Water Work Period limitations, winter erosion control issues, public inconvenience, and to provide appropriate project review periods. The bidding period will be postponed until after January 2014 with a new substantial completion target of October 31, 2014.

NOW, THEREFORE, the parties agree as follows:

B. TERMS AND CONDITIONS

The Agreement is amended to add the following:

I. ENHANCED WORK

City shall:

1. Provide all designs, permits, and temporary construction easements necessary to construct the Enhanced Work.
2. Provide lead inspection and any necessary construction testing. City shall be responsible for warranty inspection of Enhanced Work during the project warranty period.
3. Grant sanitary sewer easement(s) to District for the 21-inch sanitary sewer line. City shall retain all property rights in the easement area but agrees not to construct any permanent structures or consent to any construction activities on or near the sanitary sewer line which might in any fashion unearth, undermine, or damage the sanitary sewer line without written consent from District.
4. Within five business days of bid opening, reimburse District the 'bid' amount of the construction costs associated with the Enhanced Work. Upon acceptance reimburse District the final construction costs of the Enhanced Work and any change orders for the Enhanced Work less the amount paid at the time of the bid opening. City has the right to direct District to reject all Enhanced Work bids if not acceptable to City at its sole discretion.
5. By December 31, 2014, Reimburse District for the cost to design and install planting materials to meet the Vegetated Corridor Enhancement requirement associated with Enhanced Work.
6. Reimburse District for construction contract administration efforts. This amount shall be equal to 5% of the total construction cost of the Enhanced Work and installation of Vegetated Corridor plant material associated with Enhanced Work, including any approved change orders. This amount shall be calculated no later than 30 days after the substantial completion date, as determined by the District.
7. By September 30, 2014, Reimburse District for all costs associated with ESA Vigil-Agrimis, Inc. (ESA) providing additional project management, survey, and structural engineering services for the Enhanced Work. City's reimbursement to District for ESA's work shall not exceed \$31,980.

District shall:

1. Amend the Service Provider Letter and planting plan to include the Enhanced Work.
2. Design and install planting materials to meet Vegetated Corridor Enhancement requirements associated with Enhanced Work.

3. Administer the bid process and award the construction contract.
4. Perform construction contract administration for all contracts issued by the District for the Work.
5. Assist the City with construction inspection of the Enhanced Work and warranty inspection.
6. Invoice City no later than 30 days after the substantial completion date.

II. COMMUNICATION PLAN

1. City shall take the lead in handling all public involvement related to planning and constructing the Original Project and Enhanced Work.
2. District shall assist City with communicating to the public about the project and attend planned events for public involvement related to planning and constructing the Original Project and Enhanced Work.
3. District shall reimburse City a percentage of the cost for Sally Murdoch Media Relations to prepare a Communication Plan. District's reimbursement percentage shall be equal to the Original Project construction cost (sewer and creek relocation) divided by the overall construction cost of the Original Project and Enhanced Work. District's reimbursement to City for the Communication Plan shall not exceed \$5,000.
4. City will invoice the District no later than 30 days after the substantial completion date.

III. VEGETATIVE CORRIDOR, STREAM MITIGATION AND WETLAND MITIGATION CREDIT ALLOCATION

The parties agree to the following allocation of vegetative corridor mitigation credit, wetland mitigation credit, and stream mitigation credit:

1. The Original Project created 26,073 square feet of vegetative corridor mitigation credit. This credit shall be divided equally between City and District. Each party shall receive 13,036.5 square feet of vegetative corridor mitigation credit.
2. City's planned park area, south of SW Johnson Street, created 3,518 square feet of vegetative corridor mitigation credit. This credit shall be considered credit associated with the Enhanced Work and belongs to City.
3. District shall use its vegetative corridor mitigation credit to mitigate impact associated with the Original Project. District's impact is 1,073 square feet which will leave District with 11,963.5 square feet of credit for other uses.
4. City shall use its vegetative corridor mitigation credit from the Original Project and Enhanced Work to mitigate impact associated with the Enhanced Work. City's impact is 7,554 square feet which will leave City with 9,000.5 square feet of credit for other uses.

5. The Original Project created 22,377 square feet of wetland mitigation credit. This credit shall be divided equally between City and District. Each party shall receive 11,188.5 square feet of wetland mitigation credit.
6. There is no net wetland impact associated with the Original Project, therefore mitigation will not be required which will leave District with 11,188.5 square feet of wetland mitigation credit for other uses.
7. The Oregon Department of State Lands and US Army Corps of Engineers approved City to use its wetland mitigation credit to mitigate wetland impacts associated with the Enhanced Work. City's wetland impact is 6,751 square feet which will leave City with 4,437.5 square feet of wetland mitigation credit for other uses.
8. The Original Project created 266 Linear Feet of stream mitigation credit. This credit shall be divided equally between City and District. Each party shall receive 133 linear feet of stream mitigation credit.
9. In the event that City requires more credits than allocated, City shall have the right to purchase credit from District at direct cost (the actual cost to establish the credits which shall include all construction and maintenance costs) or at the rate of \$3.93 per square foot for vegetative corridor mitigation credit and \$4.09 per square foot for wetland mitigation credit, whichever is lower.
10. Each party in its sole discretion shall be able to use its share of wetland mitigation credits for future projects within its jurisdiction in compliance with federal, state and local regulations.

C. EFFECT OF AMENDMENT

Except as amended herein, the Agreement shall remain in full force and effect.

CLEAN WATER SERVICES

CITY OF TIGARD, OREGON

By: _____
General Manager or Designee

By: _____
City Manager or Designee

APPROVED AS TO FORM

APPROVED AS TO FORM

District Counsel

City Counsel