

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN CITY OF BEAVERTON, CITY OF TIGARD, AND  
CLEAN WATER SERVICES TO CONSTRUCT  
THE BARROWS ROAD SEWER UPSIZING PROJECT  
(PROJECT NO. 6791)**

This Agreement, dated \_\_\_\_\_, 2015, is between CLEAN WATER SERVICES (District), a county service district organized under ORS Chapter 451, the CITY OF BEAVERTON (Beaverton), an Oregon municipal corporation, and the CITY OF TIGARD (Tigard), an Oregon municipal corporation.

**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 Barrows Road Sewer Upsizing Project 6791 (Project) to replace the existing 8-inch gravity sewer with a new 24-inch gravity sewer and install street lighting. This Project has been endorsed by the Capital Improvement Program Prioritization Committee.

NOW, THEREFORE, the parties agree as follows:

**B. PROJECT DESCRIPTION**

The sewer portion of the Project consists of constructing approximately 1,650 linear feet of 24-inch diameter sanitary sewer and manholes, as needed, from the eastern terminus of an existing 24-inch sewer pipe in SW Barrows Road at SW Merganser Lane to a manhole approximately 1,600 feet eastward on SW Barrows Road at SW 154<sup>th</sup> Ave, and connecting to the existing sewer line, believed to be 18 inches, near CWS Manhole No. 16660, all as shown on Exhibit A, attached hereto.

The street lighting portion of the Project consists of installing two new street lights, including lights, poles and bases, junction boxes, conduit and wiring, near the intersection of SW Barrows Road and SW 154<sup>th</sup> Ave.

Beaverton will design and permit the Project. District will select the construction contractor, inspect, and administer the construction contract for the Project.

**C. DEFINITIONS**

1. **Beaverton Planning and Design Cost** – Beaverton labor and benefit costs and consultant costs paid by Beaverton associated with the services outlined in Section E, excluding street lighting design costs.

2. **Capital Improvement Program Prioritization Committee** – The committee established by District and the member cities of Beaverton, Cornelius, Forest Grove, Hillsboro, Tigard, Tualatin, and Sherwood to identify and prioritize sanitary and storm system improvement projects throughout District’s service area.
3. **Retaining Wall and Fence Cost** – Includes the cost of all design work, all line items, bid schedules, restoration work, change orders, any associated restoration work, design, overhead, bidding, inspection and project administration that can be accurately allocated to the chainlink fence and concrete segmental retaining wall, and the prorated share of all general construction line items (mobilization, work-zone traffic control, erosion control), as described in the Project Description for retaining wall and fence work, and any other costs associated with bidding and installing or modifying the retaining wall and fence.
4. **Sewer Cost** – Includes public bidding costs, cost of all line items, bid schedules, change orders, any associated restoration work, overhead, inspection, project administration, and any other costs associated with bidding and installing or modifying the new sanitary sewer line.
5. **Street Lighting Cost** – Includes the cost of all design work, all line items, bid schedules, restoration work, change orders, any associated restoration work, design, overhead, bidding, inspection and project administration that can be accurately allocated to the street lighting, and the prorated share of all general construction line items (mobilization, work-zone traffic control, erosion control), as described in the Project Description for street lighting work, and any other costs associated with bidding and installing or modifying the street lighting.

#### **D. DISTRICT OBLIGATIONS**

District shall:

1. Appoint Bradley Crement or another employee acceptable to Beaverton as District’s project manager.
2. Provide direction to Beaverton on the anticipated capacity requirements of sewer lines larger than 12 inches in diameter.
3. Review plans and specifications provided by Beaverton and, within ten days of receipt, provide comments to Beaverton.
4. Provide written evidence to Beaverton and Tigard that funds for District’s share are available prior to bidding for the fiscal year in which payment is due.
5. Prepare bid documents utilizing design drawings and specifications supplied by Beaverton, advertise for bids, respond to bidder questions, including issuance of necessary addenda, and select a contractor to construct the Project.
6. Provide timely response to contractor’s Project information requests.

7. Require all contractors to include Beaverton and Tigard as additional insureds on insurance coverage required for construction work performed in completing the Project.
8. Administer construction of the Project and pay contractor all contract costs.
9. Construct the Project and provide construction, inspection, and management services for the Project.
10. Consult with and inform Beaverton and Tigard on proposed changes to the Project, such as design changes, field directives, change orders, or use of the contingency line items, as well as updates regarding the resolution of any disagreement, dispute, delay or claim.
11. Provide construction inspection of the Project bid items, including review and approval of shop drawings, submittals, and onsite inspection, to determine compliance with the contract documents. District's inspector shall be onsite as much as possible when the contractor is working on the Project. The inspector will be responsible for enforcing all applicable specifications during the Project work, including, but not limited to, night work and weekend work, and accommodations for public and work zone traffic.
12. Obtain Beaverton's approval for any proposed street lighting design or other changes to the street lighting work. Obtain Beaverton's consent before taking any of the following actions for the street lighting work: a) authorizing any design changes, b) approving any change orders, or c) authorizing use of contingency line items.
13. Obtain Beaverton's approval for any proposed retaining wall or fence design or other changes to the retaining wall and fence work. Obtain Beaverton's consent before taking any of the following actions for the retaining wall and fence work: a) authorizing any design changes, b) approving any change orders, or c) authorizing use of contingency line items.
14. Provide final acceptance of the Project, following Beaverton's inspection and approval of its portion of the work.
15. Provide Beaverton as-built mark-ups from contractor and inspector for all underground work within 10 days of final acceptance of the Project.
16. Assist Beaverton with any required notice, public involvement, or communication with the neighborhood and property owners within the Project limits. Respond to public calls arising from work being completed for the Project.
17. Track Sewer Cost, Retaining Wall and Fence Cost, and Street Lighting Cost separately.
18. Provide documentation of the Sewer Cost, Retaining Wall and Fence Cost, and Street Lighting Cost to Beaverton and Tigard prior to invoicing.
19. Upon final acceptance of the Project, invoice Beaverton 7.8% of the Sewer Cost, 100% of the Retaining Wall and Fence Cost, and 100% of the Street Lighting Cost, less 84.4% of the Beaverton Planning and Design Cost, upon final acceptance of the Project unless the result is negative. If the result is negative, pay Beaverton 84.4% of the Beaverton Planning and Design Cost less 7.8% of the Sewer Cost, 100% of the Retaining Wall and Fence Cost, and 100% of the Street Lighting Cost, not to exceed \$40,000.
20. Invoice Tigard 7.8% of the Sewer Cost upon final acceptance of the Project.

21. Require payment in full from Beaverton and Tigard prior to allowing Beaverton and Tigard to connect to the portion of the pipe from the manhole at SW 154th Ave west through SW Roy Rogers Road.

## **E. BEAVERTON OBLIGATIONS**

Beaverton shall:

1. Appoint Andrew Barrett or another employee acceptable to District, as Beaverton's project manager.
2. Select, contract with, and pay consultants to perform surveying, civil investigations, utility locates, potholing, environmental consultation, and other work as necessary for use in designing and obtaining permits for the Project.
3. Provide all necessary planning, design, special specifications, and permits for the Project.
4. Provide Tigard and District at least ten business days to review plans and specifications for the Project at 50%, 90%, and 100% completion, and incorporate their review comments into the plans.
5. Prior to bidding, provide written evidence to District and Tigard that funds for Beaverton's share are available for the fiscal year in which payment is due.
6. Assist District with providing timely responses to bidders' questions about the Project. If necessary, provide District with revised design drawings or exhibits no later than five business days prior to the bid opening, for issuance of addenda.
7. Review traffic control plans provided by contractor within ten days of receiving them and provide written comment. Provide written acceptance of traffic control plan.
8. Provide construction inspection of the Project roadway, pathway, trench backfill, and street lighting items (asphalt, base rock, retaining wall, chainlink fence, fill material above the pipe zone, and street light equipment), including review of and comment on shop drawings, submittals, and onsite inspection, to determine compliance with the contract documents. Beaverton's inspector shall be onsite as much as possible and responsible for enforcing all applicable specifications relating to roadway repairs, pathway construction, installation of retaining and fence, trench backfilling, and street lighting, including but not limited to night and weekend work.
9. Provide timely response to District for any proposed changes to the Project, such as design change, field directive, change order, or use of the contingency line item.
10. Provide District written notice accepting roadway repairs, pathway construction and street light installation within ten days of receiving notice from the District that Beaverton's portion of the Project work is complete.
11. Provide District as-built construction drawings for the Project within 60 days after Project acceptance. The as-built drawings shall be based upon contractor and inspector mark-ups and survey if needed. As-builts shall be provided in camera-ready hard copy, 11 x 17 inches, with a CD in both PDF and AutoCAD digital format.

12. Provide any required notice and communicate with the neighborhood and property owners within the Project limits. Take the lead in coordinating public involvement related to the Project.
13. Coordinate and participate with District to aid in resolving any disagreement, dispute, delay or claim related to, or as a result of, the Project.
14. Waive any land use or permit fees for work related to the Project.
15. Provide documentation of the Beaverton Planning and Design Cost to District and Tigard, prior to invoicing.
16. Upon being invoiced, pay District 7.8% of the Sewer Cost, not to exceed \$73,000, less 84.4% of Beaverton's Planning and Design Cost, plus 100% of the Retaining Wall and Fence Cost and 100% of the Street Lighting Cost, unless the result is negative. Payment, if required, shall be made within 30 days of approving the invoice.
17. Upon completion of the Project, invoice Tigard for 7.8% of Beaverton's Planning and Design Cost.

#### **F. TIGARD OBLIGATIONS**

Tigard shall:

1. Appoint Jeff Peck or another employee acceptable to District and Beaverton as Tigard's project manager.
2. Review plans and specifications provided by Beaverton for the Project and provide comments to Beaverton within ten working days of receiving them.
3. Provide written evidence to District and Beaverton that funds for Tigard's share are available prior to bidding for the fiscal year in which payment is due.
4. Waive any land use or permit fees for work related to the Project.
5. Provide timely response to District on any proposed changes to the Project such as design change, field directives, change orders, or the use of the contingency line item; provide timely responses regarding the resolution of any disagreement, dispute, delay or claim related to, or as a result of the Project.
6. Pay District 7.8% of the Sewer Cost as bid and modified during construction, not to exceed \$73,000, upon completion of the Project and within 30 days of approving the invoice.
7. Pay Beaverton 7.8% of Beaverton's Planning and Design Cost, not to exceed \$12,000, upon completion of the Project and within 30 days of approving the invoice.
8. Prior to bidding, provide written evidence to District and Beaverton that funds for Tigard's share are available for the fiscal year in which payment is due.

#### **G. GENERAL TERMS**

1. Laws and Regulations. Beaverton, Tigard, 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. 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 the Project, may be approved by District and Beaverton for the Project without further approval from the Capital Improvement Program Prioritization Committee.
  - B. The construction contract amount may be increased by up to 20% without amending this Agreement, provided the increase shall not exceed any not-to-exceed amount contained in this Agreement.
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 or errors 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 they 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's Mayor, and 3) the Tigard City Manager or the City Manager's designee. Proposed changes of scope to the Project 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 Attorney

**CITY OF TIGARD**

By: \_\_\_\_\_  
City Manager or Designee

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

Exhibit A  
Project Location Map

