

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CITY OF TIGARD AND CLEAN WATER SERVICES
FOR MODIFICATIONS TO SOUTHWEST 85TH AVENUE WITHIN THE
DURHAM ADVANCED WASTEWATER FACILITY PLAN DISTRICT**

This Agreement, dated _____, 2015, is between Clean Water Services (District) and the City of Tigard (City).

A. RECITALS

WHEREAS, 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; and

WHEREAS, District and City collaborate on projects that involve wastewater treatment, stormwater and erosion control, and general civil engineering projects in an effort to improve water quality in the Tualatin Basin; and

WHEREAS, District and City entered into an Intergovernmental Agreement dated January 25, 2005 (2005 IGA) that articulates the procedures for working together on projects; and

WHEREAS, District and City entered into an Intergovernmental Agreement dated June 12, 2012 where District and City agreed to work together to establish a City Plan District associated with the Durham Advanced Wastewater Treatment Facility (Durham Facility); and

WHEREAS, District and City worked together to establish the Durham Facility Plan District pursuant to Chapter 18.650 of City's Development Code (Plan District); and

WHEREAS, District and City desire to enhance security and public safety within and in the vicinity of the Durham Facility; and

WHEREAS, District and City wish to maintain and improve safety of pedestrian and bicycle access to Cook Park via SW 85th Avenue and the existing Cook Park pathway; and

WHEREAS, District is in the process of designing the Durham Facility Phase 5B2 plant improvements project that will require construction of utilities across SW 85th Avenue within the Plan District; and

WHEREAS, District and City wish to work cooperatively in modifying the southern portion of SW 85th Avenue within the Plan District to restrict vehicular access to achieve

the goals of increased Durham Facility security and safety of District staff and the general public;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

B. PROJECT DESCRIPTION AND BACKGROUND

The Durham Facility Phase 5B2 Project (Project) will primarily include hydraulic and odor control improvements for the treatment facility. The Project impacts SW 85th Avenue in that there will be significant pipeline crossings of the street that will require the street to be torn up at times and not accessible. During the preliminary planning for this Project District and City Planning and Engineering staff met several times to discuss the upcoming Project. During these meetings District and City Engineering staff developed a concept to address the concerns of Durham Facility security and safety for both the general public and District employees. The general concept is to limit vehicular traffic on that portion of SW 85th Avenue located within the Plan District and that bisects the treatment facilities within the Operations Subdistrict as shown in Map 18.650.A of City's Development Code. The concept also includes traffic calming and redirection at the point where access will be restricted through the use of a cul-de-sac type terminus of regular vehicle traffic while maintaining pedestrian and bicycle access along SW 85th Avenue and the Cook Park path. Finally, the Project will result in access improvements off of SW 85th Avenue to the RV dump station that the Durham Facility provides for the community. The concept is generally depicted in Exhibit A.

C. DISTRICT OBLIGATIONS

District will construct its Project to include modifying SW 85th Avenue within City's right-of-way, by completing the following activities:

1. Design and construct the Project.
2. Provide, for City review, progress submittals of the design at the 60 percent, 90 percent, and final bidding document production milestones for the Project.
3. Provide a design that allows continued pedestrian and bicycle access from the new vehicular traffic terminus (new cul-de-sac) to the existing Cook Park path that includes the following features (generally as shown in Exhibit A): a) a planted median in section 1 of the modified street, and b) a reduced section of planted median in section 2 of the modified street that will allow convenient District access to the Facility's existing Headworks building.
4. Commit to providing similar planted median in section 3 of the street (Exhibit A) at a future time that is convenient to District and is in conjunction with future Durham Facility construction projects that would impact this section of street.

5. Coordinate with City on the design details of the new offset cul-de-sac that will be the terminus of regular vehicular traffic, including any appropriate traffic calming features and appropriate signage and barricading.
6. Cooperate with City and Tualatin Valley Fire & Rescue (TVF&R) to ensure that TVF&R emergency access is maintained to the existing Waverly Drive emergency access road.
7. Acknowledge City's existing SW 85th Avenue right-of-way and that City may, upon two years' notice, require District, at the District's sole cost, to return this section of street to its current configuration (see D.5 below). District will provide City any additional Right of Way needed as a result of the new cul-de-sac.
8. Maintain the section of street south of the new cul-de-sac in a manner acceptable to City.
9. District's Project manager shall be Randy Naef, Principal Engineer, or as assigned.

D. CITY OBLIGATIONS

City will:

1. Review and provide input into the 60% and 90% design submittals within 10 working days of receipt, unless otherwise discussed, and consider the Project a Public Facilities Improvement.
2. Provide design assistance including meeting with District's designer during the design phase regarding the design details of the new cul-de-sac, and associated street closure, traffic calming, signage and barricading design details.
3. Allow District the following restricted access provisions during construction of its Project: a) total closure of the portion of SW 85th Avenue within the Plan District during a two-week period for construction of the pipelines that cross the street, and b) allow continuous access for only pedestrian and bicycle for all other times with the exception of sporadic closures during the workday necessitated by construction or for public safety reasons. No restriction of pedestrian or bicycle access will be allowed during special occasions such as the Tigard Balloon Festival as directed by City.
4. Cooperate with District and TVF&R in determining TVF&R's emergency access requirements to the existing Waverly Drive emergency access road.
5. Make a finding that the proposal is in the public interest prior to directing the District to return this section of SW 85th Avenue back to its pre-modified condition.

6. Give the District two years' notice prior to requiring the District, at the District's sole cost, to return this section of street to its current configuration (see D.5 above)
7. City's project manager shall be Kim McMillan, Assistant City Engineer, or as assigned.

E. COMPENSATION

The Project as outlined above will be funded by the District. Standard permit and plan review fees, as specified in the 2005 IGA Section 3.C.8, will apply.

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 the Agreement is terminated as provided herein.
3. 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.
4. 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.

5. 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 prior to award of a construction contract, with the termination being effective in 30 days. The obligations contained in sections C.7, D.5 and D.6 shall survive the termination or expiration of this Agreement.
6. Resolution of Disputes. If any dispute out of this Agreement cannot be resolved by the project managers from each party, the Mayor and Clean Water Service's General Manager will attempt to resolve the issue. If the Mayor and Clean Water Service'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.
7. 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.
8. 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. In addition to the obligations contained in section F.5, all provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this Agreement for any cause.
9. 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 and 2) the Tigard City Council.

10. 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 TIGARD, OREGON

By: _____
Bill Gaffi, General Manager

By: _____
Marty Wine, City Manager

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

District Counsel

Tigard Attorney