

RESOLUTION NO. 5317-17

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF TUALATIN AND CLEAN WATER SERVICES.

WHEREAS, the City of Tualatin and Clean Water Services (CWS) entered into an Intergovernmental Agreement (IGA) on January 4, 2005 (and subsequently amended on June 9, 2008) for the operation of sanitary sewer and surface water facilities; and

WHEREAS, the IGA allows the agreement to be amended upon approval of the governing bodies of both parties; and

WHEREAS, the form of the attached amendment to the IGA was approved by the Clean Water Services Board of Directors on March 17, 2017; and

WHEREAS, the Clean Water Services Board of Directors authorized the CWS General Manager to finalize and sign the final amendment upon City Council approval;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

**Section 1.** The City Manager is authorized to execute the Amendment to Intergovernmental Agreement Between City of Tualatin and Clean Water Services, which is set forth in Exhibit A and is incorporated by reference.

**Section 2.** This resolution is effective upon adoption.

INTRODUCED AND ADOPTED this 12<sup>th</sup> day of June, 2017.

CITY OF TUALATIN OREGON

BY  \_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM

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

ATTEST  
BY  \_\_\_\_\_  
City Recorder

AMENDMENT TO INTERGOVERNMENTAL  
AGREEMENT BETWEEN CITY OF CITY OF TUALATIN  
AND CLEAN WATER SERVICES

THIS AMENDMENT is made and entered into as of the 12th day of June, 2017 between the City of Tualatin, a municipal corporation of the State of Oregon, hereinafter referred to as "City," and Clean Water Services, a municipal corporation and county service district, hereinafter referred to as "District".

WHEREAS City and District entered into an Intergovernmental agreement (IGA) on January 4, 2005 (and subsequently amended on June 9, 2008) for the operation of sanitary sewer and surface water facilities; and

WHEREAS the IGA allows the agreement to be amended upon approval of the governing bodies of both parties; and

WHEREAS Oregon cities have home rule authority to assess Rights of Way (ROW) Fees on utilities. Rights of way fees are assessed to account for the use of the City's ROW for the delivery and conveyance of utility services, including sanitary sewer and surface water services; and

WHEREAS the City and the District agree that is in the best interest of both parties to strive for adequate funding for both the District and Local sanitary sewer and surface water programs; and

WHEREAS this agreement resolves issues related to the procedures for collection and payment of City ROW Fees on District established sanitary sewer and stormwater charges; and

WHEREAS District bills certain industrial customers directly and City has the responsibility for billing all other customers; and

WHEREAS District uses a resolution and order to establish rates ("Resolution") as provided in the IGA; and

WHEREAS the City has or may enact ROW Fee ordinances, and the District has requested the City for this Amendment to the IGA to provide for administrative and procedural governance surrounding the implementation, collection, and payment of a City ROW fee; and

WHEREAS in order to avoid any disputes regarding the administration of ROW Fees, the City and District have agreed to this IGA Amendment to reflect the parties' agreement regarding administrative matters related to ROW Fees.

NOW, THEREFORE, the parties agree, effective as of June 12, 2017, as follows:

1. Definition of Terms. Wherever the following terms are used in this amendment they shall have the following meaning unless otherwise specifically indicated by the context in which they appear.
  - a. ROW Fee is defined to include the following: Franchise Fees, Right of Way Fees, Right of Way Usage fees, Privilege Tax, or any other interchangeable term for a City imposed charge for the use of the Rights of Way in the City.
2. City's Home Rule Authority. The District recognizes the City's home rule authority to impose fees for use of City Rights of Way (ROW), separate from permit fees, to enable the conveyance and provision of services. Nothing in this Amendment shall be construed as a limitation on the District's or City's authority relative to matters outside the subject matter of this amendment. The Parties will administer ROW fees in the manner specified herein.
3. Amendment Intent. Notwithstanding any provision to the contrary in the IGA, City ROW Fee ordinance, or District Resolution, this amendment is intended to represent the City and District's agreement regarding the rate setting, implementation and remittance of ROW Fees. Nothing in this Amendment shall modify any provisions of the existing IGA except to the extent necessary to provide for the rate setting, implementation, and remittance of ROW Fees as provided herein.
4. Rate Setting.
  - a. The existing Resolution provides for District-wide rate and a Local rate for base and use charges. The Resolution will be amended to include a new rate category called City ROW Fee as set forth in Exhibit C.
  - b. The City ROW Fee is calculated on the District-Wide rate for monthly residential and commercial service charges.
  - c. The City ROW Fee is calculated on the District-Wide rate of the industrial monthly volume services charges.
  - d. The City ROW Fee will be implemented upon notice by the City and the fee is between 0 and 5% on the District-wide rate
  - e. For purposes of calculating the ROW Fees due to the City, ROW Fees are applied to gross District-wide service charge revenue collected, exclusive of the ROW Fees, for residential and commercial customers located in the City.
  - f. For purposes of calculating the ROW Fees to be remitted to the City, ROW Fees are applied to gross District-wide volume service charge revenue, exclusive of the ROW Fees, collected for industrial customers located in the City.
  - g. These provisions are to ensure that the District receives its full allocation of District-wide monthly service charges and that the City receives the ROW Fee calculated on the District rates.



by the IGA. District is not required to furnish a certificate of insurance, if that is a requirement of the City ROW fee ordinance.

CITY OF TUALATIN

CLEAN WATER SERVICES

By:



By:

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City Manager

General Manager

Attest:

APPROVED AS TO FORM

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City Recorder

District Counsel



City Attorney

EXHIBIT A - SAMPLE CITY REMITTANCE FORM

**CLEAN WATER SERVICES  
MONTHLY REPORT OF CITY SEWER & STORM RECEIPTS & REMITTANCES  
FY 2016-17**

CITY: \_\_\_\_\_

MONTH: \_\_\_\_\_

BILLING PERIOD: \_\_\_\_\_

**SEWER SVCS ALLOCATION:**

District Rate (\$22.94 + \$1.52)	24.46	83.567%
City Rate (\$4.51 + \$0.30)	4.81	16.433%
ROW Fee	0.00	0.000%
	<u>\$29.27</u>	<u>100.000%</u>

**Sewer Service Fees Collected (100%)**

		<u>1,000,000.00</u>
Local Portion (City Retains)	16.433%	\$ 164,332.08
District-wide Portion (To CWS)	83.567%	

**Remittance to  
CWS**

**A \$ 835,667.92**

**CWS Use**

#101.000.0000.40120.0000.0000

**STORM SVCS ALLOCATION:**

District Allocation (25%)	1.94	25.032%
Local Allocation (75%)	5.81	74.968%
ROW Fee	0.00	0.000%
	<u>\$ 7.75</u>	<u>100.000%</u>

**Surface Water Management (\$7.75 per ESU)**

Service Fees Collected (100%)		<u>100,000.00</u>
Local Portion (City Retains)	74.968%	\$ 74,967.74
District-wide Portion (To CWS)	25.032%	

**B \$ 25,032.26**

#201.000.0000.40120.0000.0000

**Sanitary Sewer SDC Charges (\$5,300 per EDU):**

**Reimbursement Portion of Sanitary SDCs (\$3,242.96 per EDU)**

District-wide Portion (To CWS) 61.187%

**C \$ -**

#107.000.0000.41020.0000.0000

**Improvement Portion of Sanitary SDCs (\$2,057.04 per EDU)**

Local Portion (City Retains) 3.983%

\$ -

**D \$ -**

#107.000.0000.41210.0000.0000

District-wide Portion (To CWS) 34.830%

**Adjustments or Corrections**  
(please provide explanation)

**E**

**Erosion Control Fees Collected**

**F**

#201.000.0000.40290.0000.0000

**Total Remittance to CWS (Sum of A through G)**

**\$ 860,700.18**

Sewer Permit Numbers Issued

# \_\_\_\_\_ thru # \_\_\_\_\_

Number of Connection Permits Issued (in EDU's)

Total number of EDU's Served (period end)

SWM Permit Numbers Issued

# \_\_\_\_\_ thru # \_\_\_\_\_

Number of SWM Connection Permits Issued (in ESU's)

Total number of ESU's Served (period end)

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**CLEAN WATER SERVICES  
MONTHLY REPORT OF DISTRICT INDUSTRIAL SEWER RECEIPTS & REMITTANCES  
FY 2016-17**

CITY: \_\_\_\_\_

MONTH: \_\_\_\_\_

BILLING PERIOD: \_\_\_\_\_

**SEWER SVCS ALLOCATION:**

District Rate (\$22.94 + \$1.52)	24.46	83.567%
Local - Unincorporated Wash Co. Rate (\$4.51 + \$0.30)	4.81	16.433%
City Rate	0.00	0.000%
City ROW Fee	0.00	0.000%
	<b>\$29.27</b>	<b>100.000%</b>

**Sewer Service Fees Collected (100%)**

		<u>1,000,000.00</u>	
District-wide Portion (CWS Retains)	83.567%	\$ 835,667.92	
City Portion (To City)	16.433%	\$ 164,332.08	
City ROW Fee (To City)	0.000%	\$ -	

Remittance to  
CITY

A \$ 164,332.08

<u>CWS Use</u>
#101.000.0000.40140.0000.0000

**APPENDIX B**

**DISTRICT RATES AND CHARGES TO CITIES**

**For the Cities of Forest Grove, Cornelius, Hillsboro, Beaverton, Tigard, Tualatin, Sherwood  
Sanitary Sewer Fee & Charge  
Service Charge**

Monthly Sanitary Sewer Charges per DU

	District Rate		City Right of Way Fee (0 to 5%)		Total \$
	Variable	Fixed	Variable	Fixed	
Base	N/A	\$22.94	N/A	\$0.00 to 1.15	\$22.94 to 24.09
Use	\$1.52/ccf avg winter water usage	N/A	\$0.00 to 0.08/ccf avg winter water usage	N/A	\$1.52 to 1.60/ccf avg winter water usage

**Storm and Surface Water Fee and Charge**

**Service Charge**

Monthly Storm and Surface Water Service Charges per DU

	District Rate	City Right of Way Fee (0 to 5%)	Total \$
Base	\$1.94	\$0.00 to 0.10	\$1.94 to 2.04

**Rates and charges for the cities of Banks, Durham, Gaston, King City and North Plains will be collected and allocated according to the individual intergovernmental Agreements.**



EXHIBIT D

BILLING NOTIFICATION LANGUAGE—RESIDENTIAL AND COMMERCIAL CUSTOMERS:

Effective \_\_\_\_\_, 2017, the Sanitary Sewer and Stormwater bill includes a new rate calculated to include a \_\_\_% City of \_\_\_\_\_ Rights of Way Fee.

BILLING NOTIFICATION LANGUAGE—INDUSTRIAL CUSTOMERS:

Effective \_\_\_\_\_, 2017 the Sanitary Sewer and Stormwater bill includes a new rate calculated to include a \_\_\_% City of \_\_\_\_\_ Rights of Way Fee. The fee is calculated as \_\_\_ percent of Sanitary Sewer volume charge and Stormwater fee and is identified on your bill as “City of \_\_\_\_\_ Rights of Way Fee”. CWS will collect and remit the money to \_\_\_\_\_ [name of City].