

RESOLUTION NO. 5248-15

RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN INTERGOVERNMENTAL AGREEMENT WITH CLEAN WATER SERVICES FOR IMPLEMENTATION OF THE EROSION CONTROL INSPECTION PROGRAM

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, to optimize City staff resources and implementation of the Erosion Control Inspection Program (Program), the City would like Clean Water Services (District) to administer the Program within City jurisdiction; and

WHEREAS, this agreement authorizes the District to continue to assume primary responsibility for managing the Program as defined in District Resolution and Order 07-20 Design and Construction Standards, as amended from time to time, and NPDES storm water permits relating to construction activities, including timely inspection of properties to determine compliance with erosion control rules and regulations, enforcement to correct violations, and review of erosion plan revisions; and

WHEREAS, this agreement obligates the City to collect erosion control fees, review the erosion control plans submitted with the development or building proposal, issue erosion control permits, and promptly forward approved plans and permits to Clean Water Services for approval;

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

Section 1. The City Manager is hereby authorized to execute the Intergovernmental Agreement with the District as shown on Exhibit A (attached hereto) and incorporated by reference.

Section 2. This resolution is effective upon adoption by City Council.

Adopted by the City Council this 14th Day of December, 2015.

CITY OF TUALATIN, OREGON

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

APPROVED AS TO FORM

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

ATTEST:

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

INTERGOVERNMENTAL AGREEMENT FOR  
EROSION CONTROL INSPECTION

THIS AGREEMENT dated effective \_\_\_\_\_, is between CLEAN WATER SERVICES (District) and CITY OF TUALATIN (City), pursuant to the authority granted in ORS Chapter 451.

RECITALS

1. 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.
2. The parties previously entered into an Intergovernmental Agreement dated January 4, 2005 as amended.
3. To optimize City staff resources and implementation of the Erosion Control Inspection Program (Program), City would like the District to administer the Program within City jurisdiction.

AGREEMENT

A. DISTRICT OBLIGATIONS

District agrees to:

1. Continue to assume primary responsibility for managing the Program as defined in District Resolution and Order 07-20 Design and Construction Standards, as amended from time to time, and NPDES stormwater permits relating to construction activities. This shall include timely inspection of properties to determine compliance with erosion control rules and regulations, enforcement to correct violations, and review of erosion plan revisions. District will make all reasonable attempts to complete the erosion control plan reviews within 10 business days, not including the public comment period, after receiving them from the City.
2. District will provide a written summary of work accomplished monthly within the City through this Agreement. The report will be delivered to the City no later than the 20<sup>th</sup> of each month showing performance for the preceding month.
3. District will invoice the City through this Agreement. The invoice will be delivered to the City no later than the 20<sup>th</sup> of each month.

B. CITY OBLIGATIONS

City agrees to:

1. Collect erosion control fees, review the erosion control plans submitted with the development or building proposal, issue erosion control permits, and promptly forward approved plans and permits to District.
2. Withhold approval of all "foundation" building inspections until receiving District's written approval of the erosion control techniques being in place.

**Sent for Signatures**  
By: Jeff F. / Eng.

3. Cooperate with District in its enforcement efforts. This Agreement does not limit City's ability to pursue enforcement actions independent of District. In addition, City may continue enforcement actions already under way as of the date of this Agreement.
4. Promptly inform District of any erosion control violations City becomes aware of.
5. Provide a list of active Erosion Control permits that have been issued as of the date of this Agreement.
6. City will pay District 100 percent of the actual costs District incurs to provide the services in Section A of the Agreement within 30 days of District's invoice for those costs, provided, however, that if City notifies District in writing of a disputed charge within 5 business days after the invoice date or by the 25<sup>th</sup> of the month, whichever is earlier, City is not obligated to pay the disputed charge until the dispute is resolved between the parties. City's failure to notify District of a disputed charge within this timeframe shall operate as a waiver of City's right to dispute the charge. These costs may include but are not limited to:
  - a. Inspector staff
  - b. Permit technician
  - c. Program Management
  - d. Vehicle usage
  - e. Other exceptional costs with prior approval from the City

#### C. 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 will take effect July 1, 2015 and will automatically renew annually for a period of ten years. The Agreement may be terminated upon written notice by either party prior to February 1 of any year with the termination being effective the following July 1.
3. Amendment of Agreement. City and District may amend this Agreement from time to time, by mutual written agreement.
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. 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 other 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.



6. Resolution of Disputes. If any dispute out of this Agreement cannot be resolved by the project managers from each party, the City and District's General Manager will attempt to resolve the issue. If the City 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. If 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 construing 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.
  
9. 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 TUALATIN

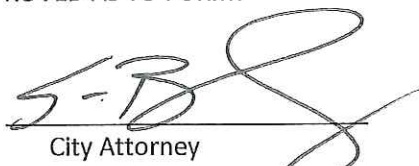
By: \_\_\_\_\_  
 General Manager

By:   
 City Manager

APPROVED AS TO FORM

APPROVED AS TO FORM:

\_\_\_\_\_  
 District Counsel

By:   
 City Attorney

Sent for Signatures  
 By: \_\_\_\_\_

COPY