

**COUNCIL RESOLUTION No. 19-2022**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH CLACKAMAS COUNTY WATER ENVIRONMENT SERVICES FOR THE REGIONAL INFLOW AND INFILTRATION REDUCTION GRANT PROGRAM.**

WHEREAS the city maintains a sanitary sewer collection system; and

WHEREAS Clackamas County Water Environment Services (WES) provides wastewater treatment services to the city; and

WHEREAS WES has identified inflow and infiltration (I&I) reduction as an immediate priority; and


WHEREAS WES wishes to establish a cost sharing program related to I&I reduction projects and agrees to reimburse 33% of actual costs incurred by the city in the completion of work arising out of qualified proposals; and

WHEREAS this results in significant cost savings to the city for completion of capital projects related to I&I reduction.

**Now, Therefore, be it Resolved** by the City Council of the City of Milwaukie, Oregon, that the city manager or their designee is authorized to sign the intergovernmental agreement with WES for regional I&I reduction.

Introduced and adopted by the City Council on **March 1, 2022**.

This resolution is effective immediately.



Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:



Scott S. Stauffer, City Recorder



Justin D. Gericke, City Attorney

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN WATER ENVIRONMENT SERVICES  
AND PARTNER CITIES FOR  
REGIONAL INFLOW AND INFILTRATION REDUCTION**

THIS REGIONAL INFLOW AND INFILTRATION REDUCTION AGREEMENT (this “**Agreement**”) is entered into between Water Environment Services (“**District**”), an intergovernmental entity formed pursuant to ORS Chapter 190, and those Cities (defined below) that execute this Agreement (collectively, the “**Partners**” or individually “**Partner**”). The District and the Partners are collectively referred to as the “**Parties**” and each a “**Party**.”

**RECITALS**

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

The District provides sanitary sewer treatment to over 190,000 people in Clackamas County. This service area includes the City of Gladstone, the City of Happy Valley, the City of Johnson City, the City of Milwaukie, the City of Oregon City, and the City of West Linn, all Oregon municipal corporations (collectively the “**Cities**” and each a “**City**”). There are thousands of miles of underground pipes that convey sewage from homes and businesses in Partner jurisdictions to the District’s regional wastewater treatment facilities. Some of those pipes allow clean groundwater to enter the system during the winter, through a process called “infiltration.” In other cases, there are accidental or illicit connections such as downspouts or street drains that allow rain water to enter the sanitary sewer system, through a process called “inflow.” Together, this additional water is called infiltration and inflow, or by its’ industry shorthand “**I/I**.”

Analysis shows that the amount of I/I entering into District’s system is higher than industry norms. This surge of water during wet weather events is approaching the maximum peak flow capacities of the District’s Tri-City and Kellogg Creek water resource reclamation facilities and that of portions of the regional collection system. Excessive I/I can result in higher-than-needed costs to the District’s and Partner’s ratepayers, given that under the Clean Water Act, a treatment provider must convey and treat every drop of water that arrives at a treatment facility as wastewater. This additional treatment capacity and effort for cleaning what is essentially rainwater or groundwater is inefficient and expensive. It can also require upsizing of buried infrastructure at significant cost.

To most effectively reduce excessive I/I, a regional I/I program is needed to manage peak flows in the wastewater collection and treatment systems in the most cost-effective manner. The program is the implementation of the recommended capital improvement program outlined in the Sanitary Sewer Master Plan for Water Environment Services (“**SSMP**”) (Jacobs, 2019). The SSMP identified reduction targets throughout the regional system, not just that portion of the collection system directly managed by the District. All Partner systems were included in the review, except for the City of Johnson City’s collection system; however, leadership for the city has been engaged on this topic.

The SSMP identified 19 sub-basins as priority investment areas (“**Target Areas**”), further described in Exhibit A (“**Technical Memos**”), due to the high rate of I/I present, the

cost of conveying the peak flow downstream, and ultimately the cost of treating it. These Target Areas are located throughout the regional wastewater network, in both District-owned and Partner-owned collection systems.

The SSMP found the most cost-effective alternative for all parties was a sixty-five percent (65%) I/I reduction in the Target Areas by 2040. Removal of 65% in Target Areas over the time period study of 2020-2040 is considered ambitious within the industry and will take a significant amount of investment to reach. However, this yields to lowest cost for ratepayers, resulting in a net savings for the regional system of approximately \$120 million in avoided capital and operational expenditures during the next 20 years, with the cost savings growing larger in the outer years. In order to achieve the lowest cost solution for District ratepayers, a collective effort from all Partners is required to implement this regional I/I reduction.

In 2019, this recommendation was presented to the Technical Advisory Team (“TAT”), made up of District engineers, Partner public works directors, and Partner engineers, which broadly agreed that a focus on 65% level of I/I removal in Target Areas, balanced with other necessary improvements in the collection and plant treatment systems, is the most cost-effective regional solution to managing peak flows. The Water Environment Services Advisory Committee (“**District Advisory Committee**”) agreed that these targets should be the baseline for the regional discussion in 2019.

In an effort to implement the program recommended in the SSMP and by the advisory committee, the District and the Partners desire to establish a pilot program to determine the long-term feasibility of the District providing funding to Partners in support of projects that will help achieve the collective goal of reducing I/I by 65% in the Target Areas (“**Regional I/I Reimbursement Program**” or the “**Program**”). Beyond just this Program, it is the District’s desire that this be the first step towards establishing a more collaborative relationship with the Partners moving forward to address I/I and other regional issues using common studies, common approaches and common solutions.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

#### **TERMS**

1. **Term.** The Agreement shall be effective between the District and any individual Partner upon execution by the District and Partner (“**Effective Date**”). After District execution, a City may sign on to the Agreement at a later date by executing the signature page below. A lack of execution by one City shall not impact the validity of the Agreement as to any other Partner. The Agreement shall expire on June 30, 2026. It is the intent of the Parties to evaluate the effectiveness of the Program and, if significant progress is being made towards the goal of 65% I/I reduction in Target Areas, continue this approach. The term of this Agreement may be extended by the Parties in five (5) year increments upon a writing signed by all Parties.
2. **Cost Sharing.** The District agrees to reimburse thirty-three percent (33%) of the actual costs incurred by a Partner in the completion of work arising out of a Qualified Proposal that has received an Approval Letter (both defined below) (“**Reimbursement Contribution**”) from revenues received through the collective wholesale sewer rate. The amount the District is contributing reflects the mutual savings to ratepayers with



respect to wholesale sewer expenditures through regional collective action. Note that these contributions are intended to supplement, not replace, collection system service charges already being charged by District or Partners.

### 3. **Program Proposal Process.**

- A. Qualified Proposals. Partners will identify qualified proposal projects to submit for review. A “**Qualified Proposal**” means a project proposal that meets the base threshold of being designed for I/I reduction purposes and occurring within the Target Areas. A Qualified Proposal should include a project description, project area/boundary, flow-metering data if available (I/I rates), rehabilitation method (if applicable), project statistics (i.e. number of manholes, linear feet of pipe or number of laterals to be rehabilitated), construction schedule, and anticipated I/I flow reduction. Potential eligible projects may include, but are not limited to, flow-metering studies, consulting services to analyze flow-metering results, I/I source identification, rehabilitation design or construction, post-construction flow monitoring, etc.
- B. Approval of Qualified Proposals. Each Partner will bring forward their proposed projects for approval by the TAT. The TAT will review the proposal and determine if it satisfies the elements of a Qualified Proposal identified in Section A above. If the TAT members approve, by majority vote of those present, a proposal as being an eligible Qualified Proposal, the Partner will be provided with a letter of approval in a form substantially similar to Exhibit B (“**Approval Letter**”).
- C. Annual Notification of Proposals. Each Partner agrees to submit an annual list summarizing the potential Qualified Proposals planned for the following year, including their estimated cost, to the District no later than February 1<sup>st</sup> of each year, in order to provide the District with sufficient time to budget appropriately for the upcoming fiscal year. Failure to provide the notice will not automatically prevent funding of a Qualified Proposal, but such funding may be delayed by a fiscal year. Notwithstanding the above, upon execution of the Agreement by a Partner, the Partner may immediately submit Qualified Proposals for the current fiscal year.
- D. Annual Reports. Each Partner receiving funding pursuant to this Agreement will provide an annual report out to the District Advisory Committee, indicating the projects completed with the funding provided and their anticipated or actual reduction of I/I in the impacted Target Area. The Partners may elect to provide the report at the end of each fiscal year or calendar year.
- E. TAT Membership. The Parties acknowledge that thus far the TAT has been an informal advisory group of technical experts meeting to share knowledge and collaborate on infrastructure strategy, and that a more formalized procedure will be needed to allow the TAT to effectuate the purposes of this Agreement. Therefore, bylaws will be drafted creating, amongst other provisions, a voting procedure with each of the District and Partners having a single vote for the purposes of approving a Qualified Proposal.

4. **Reimbursement.** In order to receive the Reimbursement Contribution, the Partners agree to submit a single invoice after the completion of the work performed related to their Qualified Proposal, with a copy of their Approval Letter from the TAT included.

Invoices shall describe the work performed with particularity, by whom it was performed, and shall itemize and explain the expenses for which reimbursement is claimed, noting the elements of the project correlated with I/I reduction. Reimbursement Contribution payments shall be made by the District to the Partner within forty-five (45) days of receipt of an invoice that complies with the requirements of this section. The District is not obligated to pay any amount in excess of the Reimbursement Contribution amount identified above.

**5. Representations and Warranties.**

A. Party Representations and Warranties. Each Party represents and warrants to the other Parties that it has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of the Party enforceable in accordance with its terms.

**6. Withdrawal; Termination.**

- A. Any Partner may withdraw from this Agreement at any point and for any reason upon thirty (30) days' written notice to the District. If one Party withdraws from this Agreement, such withdrawal shall not affect the Agreement with the remaining Partners.
- B. The District may terminate the Agreement with any individual Partner at any point and for any reason upon thirty (30) days' written notice. Any termination of the Agreement with an individual Partner shall not affect the Agreement as to the remaining Partners.
- C. Either the District or the Partners may terminate this Agreement in the event of a material breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- D. The District or the Partners shall not be deemed to have waived any breach of this Agreement by any other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- E. The District may terminate this entire Agreement with all Parties upon fifteen (15) days' written notice in the event the District fails to receive expenditure authority sufficient to allow the District, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the

work under this Agreement is prohibited or the District is prohibited from paying for such work from the planned funding source. The District agrees to provide a Reimbursement Contribution for all Qualified Proposals that receive an Approval Letter prior to the date of termination identified in the notice provided pursuant to this subsection.

- F. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

**7. Indemnification.**

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the District agrees to indemnify, save harmless and defend the Partners, and their officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts or omissions of the District or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the District has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, each Partner agrees to indemnify, save harmless and defend the District, Clackamas County and any other Partner, as well as each of their officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts or omissions of the Partner or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Partner has a right to control.

- 8. **Dispute Resolution.** In the event of a dispute arising out of this Agreement, the Parties involved in the dispute agree to meet with one another in a good faith attempt to resolve the dispute prior to taking any other action against another Party. In these discussions, city managers will represent the affected Partners and the District will be represented by its Director. If a dispute cannot be resolved through these discussions, then the Parties may seek relief from any available method.
- 9. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.
- 10. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the business address for the party thereof as published. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be



given when actually delivered. Each Party shall provide a separate written designation for notices relating to this Agreement, and any Party may change such Party's contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

## 11. **General Provisions.**

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Any claim between District and Partners that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by any Party of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Each Party, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** All Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by any Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by any other Party.
- D. **Access to Records.** Each Party shall retain, maintain, and keep accessible all records relevant to this Agreement ("**Records**") for a minimum of six (6) years, following Agreement termination or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Each Party shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, the Party's shall permit the District's or

another Party's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.

- E. **Work Product.** Reserved.
- F. **Hazard Communication.** Reserved.
- G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind any Party unless in writing and signed by all Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of any Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- L. **No Third-Party Beneficiary.** The Partners and the District are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as



intended beneficiaries of the terms of this Agreement. No contractors or agents of the Partners performing work on Qualifying Projects are considered intended beneficiaries for the purposes of this Agreement.

- M. **Assignment.** No Partner shall assign or transfer any of its interest in this Agreement by bankruptcy, operation of law or otherwise, without obtaining prior written approval from the District, which shall be granted or denied in the District's sole discretion.
- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 7, 8 and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), and (T) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Time is of the Essence.** With the ambitious goal of reducing I/I by 65% in Target Areas, the Parties are encouraged to act expeditiously in submitting and completing Qualified Proposal work.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither the Partners nor District shall be held responsible for delay or default caused by events outside of the Partners' or District's reasonable control including, but not limited to, fire, terrorism, epidemic, riot, acts of God, or war.
- T. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

*Signature Page Follows*

**IN WITNESS HEREOF**, the Parties have executed this Agreement by the date set forth opposite their names below.

**Water Environment Services**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

**City of Gladstone**

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**City of Happy Valley**

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**City of Johnson City**

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**City of Milwaukie**

  
\_\_\_\_\_

Authorized Signatory

*City Manager*  
\_\_\_\_\_

Title

*March 1, 2022*  
\_\_\_\_\_

Date

**City of Oregon City**

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**City of West Linn**

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**Exhibit A**  
Technical Memos

## Exhibit B

### Form Letter

[Insert Date]

[Insert Name]

[Insert Address]

RE: Regional I/I Reimbursement Program – [Insert Qualified Proposal Title or Description]

Dear \_\_\_\_\_,

Thank you for the submittal and presentation of your Qualified Proposal to the Technical Advisory Team (“TAT”).

This letter serves as notification that the TAT has approved your project for reimbursement as a part of the Regional I/I Reimbursement Program, in accordance with the terms of the IGA for Regional Inflow and Infiltration Coordination (“IGA”). The total amount of fund reimbursed will be determined in accordance with Section 2 of the IGA.

Please retain a copy of this letter in your records, as you will be required to provide it along with documentation of your expenses when you seek reimbursement from Water Environment Services once your project is complete.

On behalf of WES and all the cities participating in this I/I reduction effort, we appreciate your commitment to addressing this regional issue. Thank you!

Sincerely,

Chair,  
Technical Advisory Team