



Gregory L. Geist
Director

September 27, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between
The City of Happy Valley and Water Environment Services for:
Establishment and Administration of Reimbursement Districts

Purpose/Outcome	Approval of an intergovernmental agreement to allow for the establishment and administration of sewer reimbursement districts within WES' service area in the City of Happy Valley.
Dollar Amount and Fiscal Impact	WES agrees to not impose a Collection Sewer Charge on properties that connect to sewer infrastructure with established reimbursement districts in Happy Valley. The impact of this foregone revenue will depend on whether or not properties connect to sewers with established reimbursement districts. WES collected an average of \$325,000 annually in Collection Sewer Charge revenue over last three fiscal years, so the estimated impact will be a portion of that annual revenue.
Funding Source	WES Sanitary Operating Fund.
Duration	The IGA will terminate upon the date a revised set of WES Rules establishing procedures for forming reimbursement districts and reimbursement costs go into effect – estimated June 2019.
Previous Board Action/Review	Discussed at County Administrator Issues/Updates on September 4, 2018
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This supports the WES Strategic Plan that customers will continue to benefit from a well-managed utility. 2. This project supports the County Strategic Plan to build public trust through good government.
Contact Person	Ron Wierenga, WES Environmental Services Manager, 503-742-4581 Chris Storey, WES Assistant Director, 503-742-4543.

BACKGROUND:

WES approves sanitary and storm sewer system plans for development projects within WES' boundaries that are within the City of Happy Valley ("City"). Due to the nature of sewer infrastructure, there are times when a development project requires extension of sewer lines beyond the immediate area required for the development, and properties not owned by those developers receive the benefit of an existing sewer line. Developers with projects in the City have asked for the ability to establish reimbursement districts to recover some of the cost of extending sewer that benefits nearby properties, as well as the property for which it was intended.

The City of Happy Valley Municipal Code (“HVMC”) provides a mechanism to establish reimbursement districts, under HVMC Chapter 3.08, for the developing party to share the project costs with other benefitted parties. The cost sharing does not happen immediately; a reimbursement district must be formed, and properties only become subject to the charge if they connect to the infrastructure. Currently, the HVMC authorizes the establishment of reimbursement districts for sewer improvement; however, the WES Rules and Regulations (“Rules”) do not. WES is currently in the process of revising and updating its Rules that, pending Board approval, will include appropriate language for the establishment and administration of reimbursement districts within the WES service area. The projected completion of these Rules is June 2019.

Because there are parties within the City that are interested in the creation of a reimbursement district before the updated WES Rules are to be completed, the City and WES desire to cooperate to implement any reimbursement districts for sanitary sewer and stormwater improvements per HVMC Chapter 3.08 until WES Rules have been amended to allow the creations of such districts. The attached proposed IGA lays out the responsibilities of the City and WES to create and administer reimbursement districts in the interim.

The IGA allows the city to establish reimbursement districts for WES-owned sewer infrastructure with the caveats that 1) the City process will end when WES adopts new rules that allow for WES reimbursement districts, and 2) the subject development has to comport with WES rules and not be unfair to the future property connections. WES also agrees not impose a Collection Sewer Charge on properties that connect to sewer infrastructure with established reimbursement districts in the City. The impact of this foregone revenue will depend on the formation of reimbursement districts and also on whether or not properties connect. WES collected an average of \$325,000 annually in Collection Sewer Charge revenue over last three fiscal years. The estimated impact is a portion of that annual revenue.

The Happy Valley City Council discussed the issue at a work session on August 21, 2018, and approved Resolution 18-50 on September 18, 2018 authorizing the city manager to sign the IGA between the City and WES in regard to future reimbursement districts. The City also approved Ordinance No. 540 amending HVMC Chapter 3.08 to authorize formation of reimbursement districts for public improvements that are the sole property of a service district and not the City.

RECOMMENDATION:

Staff respectfully recommends approval that the Board of County Commissioners, acting as the governing body of Water Environment Services, approve the intergovernmental agreement between the City of Happy Valley and Water Environment Services for Establishment and Administration of Reimbursement Districts, and delegate authority to the Director of Water Environment Services to execute the agreement.

Sincerely,



Greg Geist
Director, Water Environment Services

INTERGOVERNMENTAL AGREEMENT

Between Water Environment Services and the City of Happy Valley, Oregon

This intergovernmental agreement (“Agreement”) is entered into as of the ____ day of _____, 2018 by and between Water Environment Services (“WES”), a municipal partnership organized pursuant to the laws of the State of Oregon, and the City of Happy Valley, Oregon, an Oregon municipal corporation (“City”). This Agreement is authorized pursuant to ORS 190.110 and becomes effective upon full execution by the parties.

RECITALS

Whereas, the City has previously approved several residential subdivisions, planned unit developments and other residential development applications, and anticipates approving additional residential development applications in the future (collectively, the “Decisions”); and

Whereas, the Decisions typically require the installation of sanitary and stormwater sewer lines (“Sewer Improvements”) to serve the developments as well as other adjacent or nearby properties when those properties develop or when existing on-site sanitary disposal systems are replaced; and

Whereas, developers desire to establish reimbursement districts under Happy Valley Municipal Code Chapter 3.08, “Reimbursement Districts” (the “HVMC”) to recover a portion of the cost of the Sewer Improvements; and

Whereas, WES approves sanitary and storm sewer system plans for development projects within WES’s service area including areas in the City; and

Whereas, the City of Happy Valley Municipal Code (“HVMC”) authorizes the establishment of reimbursement districts for Sewer Improvements; and

Whereas, WES Rules and Regulations do not currently authorize the establishment of reimbursement districts; and

Whereas, the City and WES desire to cooperate to implement any reimbursement districts for Sewer Improvements per HVMC 3.08 until WES Rules have been amended to allow the creations of such districts; and

Whereas, this Agreement is intended to facilitate cooperation between the City and WES in the administration of Reimbursement Districts pursuant to the City code. during the period when no WES reimbursement district option is available.

NOW THEREFORE, WES and the City agree as follows:

1. Responsibilities of City.

- a) The City shall give written notice to WES when the City receives an application requesting formation of a reimbursement district for Sewer Improvements.
- b) The City shall provide WES with a copy of the City Council resolution that approves the formation of reimbursement district for Sewer Improvements, including a copy of the City Engineer's Report, and the Reimbursement Agreement. The City will also provide Geographic System Data for reimbursement district boundaries, if available.
- c) The City will provide to WES a pamphlet, brochure, or equivalent communication describing City-approved reimbursement districts, fees, and instructions for payment of fees that WES may provide to its customers.
- d) The City will collect reimbursement district payments and fees per the provisions of Chapter 3.08 of the HVMC and distribute to the applicable parties as required thereunder. agrees that upon WES adopting an ordinance or rule giving it the ability to establish reimbursement districts within the WES service area, City will not establish a City reimbursement district but rather will direct applications for a reimbursement district to WES. However, an application deemed complete (defined below) by the City at any time prior to the effective date of the WES ordinance shall be implemented under the HVMC and the terms of this Agreement.
- e) The City agrees that at such as WES amends its Rules and Regulations to authorize the establishment of reimbursement districts for Sewer Improvements with the WES service area, City will not establish a City reimbursement district for the same improvements but rather will direct applications for the reimbursement district to WES. However, as application approved by the City and WES prior to the effective date of the WES ordinance shall be implemented under this Agreement. WES shall provide the City with written notice of a final decision by WES amending its Rules and Regulations to authorize the formation of reimbursement districts.
- f) Throughout the course of this Agreement, an application for a reimbursement district shall be deemed "complete" by the City upon 1) the completion of the City Engineer's report, as outlined in HVMC Section 3.08.030, and 2) upon the confirmation by and from WES that the application meets the following requirements:
 - i) The project proposed in the application complies with all applicable WES Rules & Regulations;
 - ii) The City Engineer's analysis of whether the estimated cost of the public improvements, level of reimbursement, applicable interest rate, and the estimated advance financed reimbursement due from each property owner are reasonable; and
 - iii) The interest rate applicable to assessments financed over time is no greater than the current Consumer Price Index ("CPI") rate as of the date of the application submitted to

the City. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Consumer Price Index.

2. Responsibilities of WES.

- a) WES agrees to notify applicants for sewer service that their property is in a reimbursement district and subject to a reimbursement fee, and to hand out information provided by the City.
- b) If the applicable sanitary sewer infrastructure meets WES service requirements, WES agrees not to collect a Collection Sewer Charge, as described under District Rules and Regulations (Chapter 4, Section 4.4.1), for properties subject to a HVMC reimbursement district for sanitary sewer within the boundaries of the City.

3. **Indemnification.** Subject to the Oregon Tort Claims Act and the Oregon Constitution, each party agrees to indemnify, defend and hold harmless the other party, its officers, elected officials, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands attributable solely and exclusively to their own acts or omissions, including their officers, agents and employees, in performance of this Agreement.

4. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.

5. **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.

6. **Integration.** This Agreement contains the entire agreement between WES and the City regarding the City's formation and administration of sanitary sewer reimbursement districts within the boundaries of the City and supersedes all prior written or oral discussions or agreements regarding that subject.

7. **Amendments.** The WES and City may amend this Agreement at any time only by written amendment executed by the District and City.

8. Term of Agreement; Termination.

- A. Term. This Agreement shall continue in effect unless modified to include a shorter term or unless terminated as provided herein. If this Agreement is terminated by either Party during the effective period of any reimbursement district agreement entered into pursuant this Agreement,

the City will be responsible for administering such reimbursement district for the time that the district remains effective.

B. Termination for Convenience. Either Party may terminate this Agreement upon providing fifteen (15) day's written notice to the other Party.

9. **Waiver.** WES and City shall not be deemed to have waived any breach of this Agreement by the 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 be of the same nature as that waived.

10. **No Third-Party Beneficiaries.** WES and City are the only parties to the Agreement and are the only parties entitled to enforce its terms. Nothing in the 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.

[Signature Page Follows]

