

RESOLUTION NO. 5342-21

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH CLEAN WATER SERVICES FOR CONSTRUCTION OF THE MARTINAZZI SANITARY SEWER TRUNK LINE UPSIZING PROJECT

WHEREAS, Clean Water Services is a county service district formed under Oregon Revised Statutes Chapter 451;

WHEREAS, the City of Tualatin is an Oregon municipal corporation;

WHEREAS, ORS 190 authorizes Tualatin and Clean Water Services to enter into an intergovernmental agreement (IGA) and to delegate to each other authority to perform their respective functions as necessary;

WHEREAS, the Martinazzi sanitary sewer trunk line requires upsizing and the project is endorsed by the Capital Improvement Program Prioritization Committee, which is made up of representatives from Clean Water Services and the partner agencies;

WHEREAS, the City intends to construct the project and Clean Water Services intends to finance the project; and

WHEREAS, the IGA is in the public interest as the IGA provides the most efficient way to construct the project.

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 an Intergovernmental Agreement with Clean Water Services for the Martinazzi Sanitary Sewer Trunk Line Upsizing Project, which is attached as Exhibit 1, and incorporated by reference.

**Section 2.** The City Manager is authorized to make administrative modifications to the Intergovernmental Agreement to fully implement its intent.

**Section 3.** This resolution is effective upon adoption.

Adopted by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF TUALATIN, OREGON

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

APPROVED AS TO FORM

ATTEST:

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

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

# Exhibit 1

## Resolution No. 5342-21

### INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF TUALATIN AND CLEAN WATER SERVICES FOR CONSTRUCTION OF MARTINAZZI SANITARY SEWER UPSIZING PHASE 1

This Agreement, dated \_\_\_\_\_, \_\_\_\_\_, is between Clean Water Services (District) a county service district organized under ORS Chapter 451 and the City of Tualatin (City) an Oregon Municipality.

#### A. RECITALS

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.

City intends to undertake the Martinazzi Sanitary Sewer Upsizing Phase 1 (Project) to provide sufficient hydraulic capacity in the sewer system. This Project has been endorsed by the Capital Improvement Program Prioritization Committee.

NOW, THEREFORE, the parties agree as follows:

#### B. PROJECT DESCRIPTION

The Project consists of replacing approximately 1,257 linear feet of 12-inch diameter sanitary sewer line with 15-inch diameter sewer line at two locations on the Martinazzi Sanitary Sewer Trunk. The first location replaces approximately 453 linear feet of sanitary sewer located at the intersection of Martinazzi Avenue and Blake Street and crossing through residential lots to Makah Court, commencing at Clean Water Services Manhole 22122 and ending at Manhole 22125. The second location replaces approximately 804 linear feet of sanitary sewer located at the intersection of Martinazzi Avenue and Chelen Street and north to Seminole Trail commencing at Clean Water Services Manhole 22108 and ending at Manhole 22111. See attached Exhibit A for the Project location.

The capital assets resulting from the completion of this Project shall be recognized in the financial statements of the City at 100 percent of the final cost. City will have responsibility, care and control of the newly constructed assets and will be responsible for ongoing maintenance, in accordance with the 2005 operating agreement and all subsequent amendments between District and City.

#### C. DEFINITIONS

1. Capital Improvement Program Prioritization Committee – This Committee has been established by District and the Member Cities of Beaverton, Cornelius, Forest Grove, Hillsboro, Tigard, Tualatin, and Sherwood.

2. Financial Partner –City or District will assume this role, primarily for the purpose of funding a portion of the Project.
3. Managing Partner –City or District will assume this role, primarily for the purpose of administering the Project.

#### **D. DISTRICT OBLIGATIONS**

District is the Financial Partner and shall perform all Tasks identified on Exhibit B for the Financial Partner, the List of Standard Obligations, attached hereto unless the Task is checked “Not Applicable”. District shall assign Linda Hulme as District’s Project Manager.

#### **E. CITY OBLIGATIONS**

City is the Managing Partner and shall perform all services identified on Exhibit B for the Managing Partner unless the Task is checked “Not Applicable”. City shall assign Mike McCarthy as City’s Project Manager.

#### **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 this Agreement is terminated as provided herein.
3. Amendment of Agreement. City and District may amend this Agreement from time to time, by mutual written agreement.
  - A. Proposed changes of scope during the Project implementation must be reviewed and endorsed by the Capital Improvement Program Prioritization Committee. Changes necessitated by conditions discovered during design or construction, but consistent with the original scope of the Project, may be approved by the Managing Partner without further approval.
  - B. The construction contract amount of the Project may be increased by up to 20% without re-negotiating the Agreement, provided the increase shall not exceed the not to exceed amount contained in Exhibit B.
4. Termination. This Agreement may be terminated immediately by mutual written agreement of the 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.
5. 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.

6. 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.
7. Attorney Fees. If any dispute arises concerning the interpretation or enforcement of this Agreement or any issues related to the U.S. Bankruptcy Code (whether or not such issues relate to the terms of this Agreement), the prevailing party in any such dispute shall be entitled to recover all of its attorney fees, paralegal fees, costs, disbursements and other expenses from the non prevailing party, including without limitation those arising before and at any trial, arbitration, bankruptcy, or other proceeding and in any appeal.
8. Resolution of Disputes. If any dispute out of this Agreement cannot be resolved by the project managers from each party, the City Manager and District's Chief Executive Officer will attempt to resolve the issue. If the City Manager and District's Chief Executive Officer 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.
9. 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.
10. 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. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this Agreement for any cause.
11. Approval Required. This Agreement and all amendments, modifications or waivers of any portion thereof shall not be effective until approved by 1) District's Chief Executive Officer or the Chief Executive Officer's designee and when required by applicable

District rules, District's Board of Directors and 2) City. Proposed changes of scope must also be approved by the Capital Improvement Program Prioritization Committee.

- 12. 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.
- 13. Electronic Signature. This Agreement may be executed in several counterparts, each of which will be an original, all of which will constitute one and the same instrument. An electronic signature will be considered an original. The individuals signing this Agreement certify that they are authorized to execute this Agreement on behalf of the City and District respectively.

**CLEAN WATER SERVICES**

**CITY OF TUALATIN, OREGON**

By: \_\_\_\_\_  
Chief Executive Officer or Designee

By: \_\_\_\_\_  
City Manager or Designee

Date: \_\_\_\_\_

Date: \_\_\_\_\_

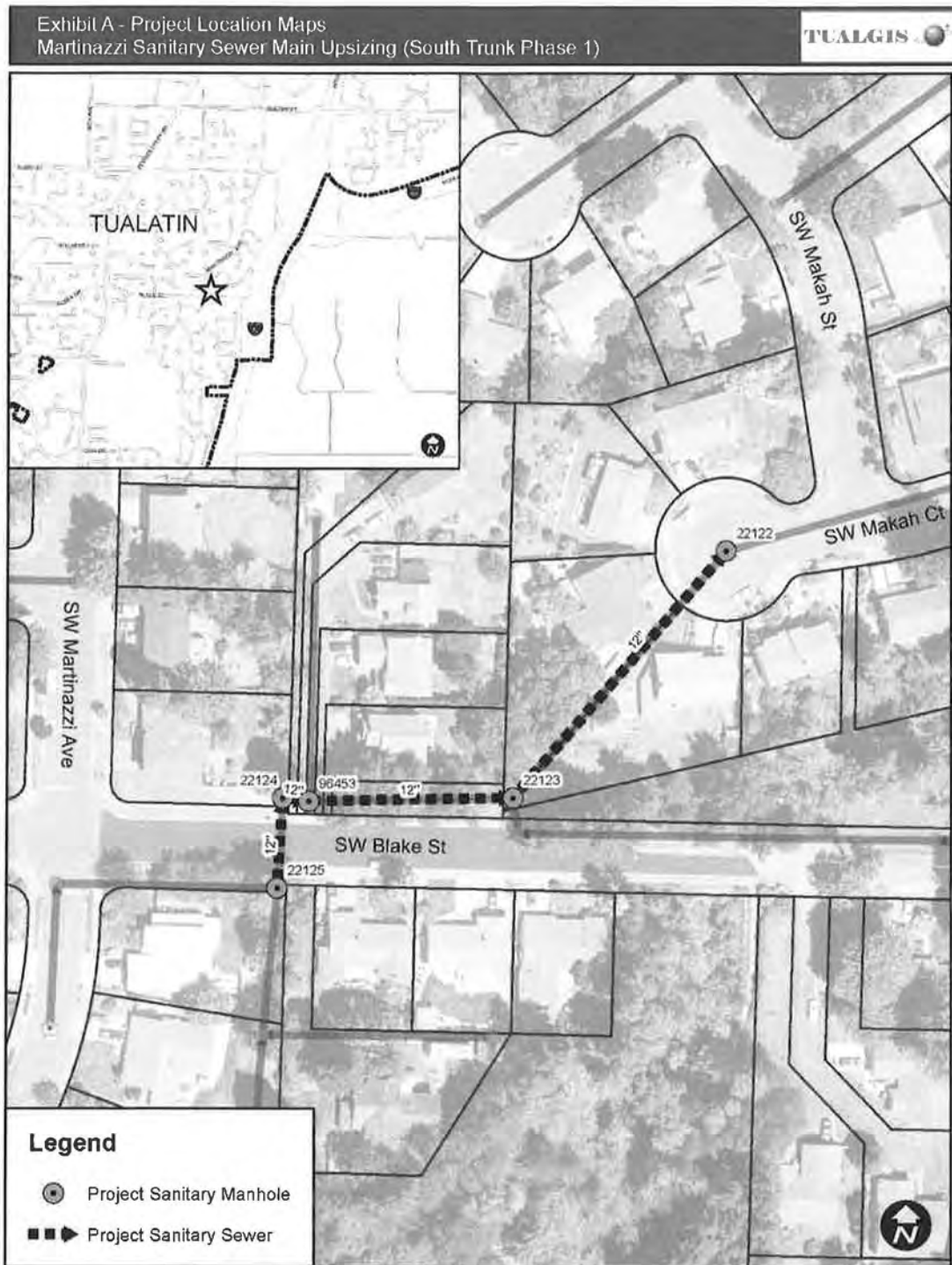
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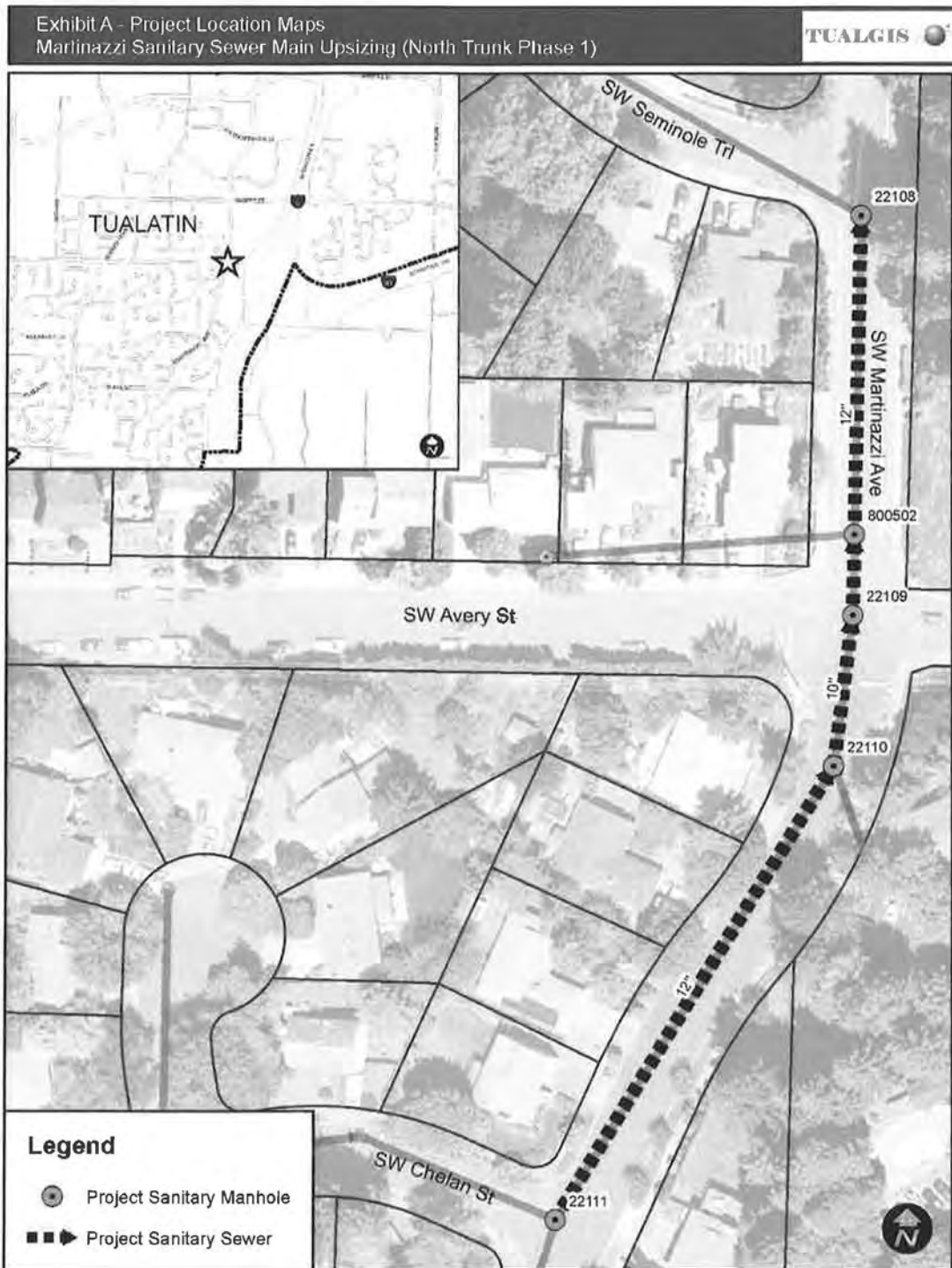
APPROVED AS TO FORM

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

\_\_\_\_\_  
City Counsel

## Exhibit A Project Location Map





**EXHIBIT B****LIST OF STANDARD OBLIGATIONS**

<b>Task</b>	<b>Not Applicable</b>
<b><u>Managing Partner shall:</u></b>	
Provide Financial Partner at least ten days to review the plans and specifications for the Project and incorporate Financial Partner's comments into the plans.	<input type="checkbox"/>
Provide any required notice and communicate with the neighborhood and property owners within the Project limits. Respond to public calls arising from work being completed under this Agreement.	<input type="checkbox"/>
Prepare and submit invoices of the Project costs to Financial Partner quarterly and upon completion of the Project.	<input type="checkbox"/>
Make all required payments to the construction contractor.	<input type="checkbox"/>
Prepare and submit a Project summary of completed tasks to Financial Partner with each invoice.	<input type="checkbox"/>
Prepare all contracts and bid documents, advertise for bids, and select a construction contractor for the Project.	<input type="checkbox"/>
Construct the Project and provide construction inspection and management services for the Project.	<input type="checkbox"/>
If requested, hold progress meetings with Financial Partner during the field investigation and design phases of the Project. Financial Partner may review options and provide input on the Project.	<input type="checkbox"/>
Pay 0 percent of the following costs for the Project: administration, easements, field inspection, design, construction and construction administration (Project Costs).	<input type="checkbox"/>
Require all contractors to include Financial Partner as an additional insured on insurance coverage required for construction work performed in completing the Project.	<input type="checkbox"/>
Take the lead in coordinating public involvement related to the Project.	<input type="checkbox"/>
Waive any land use or permit fees (except plumbing inspection fees) for work related to the Project.	<input type="checkbox"/>
City currently has sewer fund balances, including a sewer development charge (SDC) balance. City has been allowed to retain these balances to "spend down" on sewer-related projects within the City, regardless of funding responsibilities. Funding for the Project shall include \$ _____ from City's existing sewer fund balances.	<input checked="" type="checkbox"/>



**EXHIBIT B****LIST OF STANDARD OBLIGATIONS**

<b>Task</b>	<b>Not Applicable</b>
<b><u>Infiltration and Inflow Abatement projects</u></b>	
Obtain written permission from each property owner to inspect their sanitary sewer lateral and to line or replace it if deficient.	<input checked="" type="checkbox"/>
Establish whether each property has a cleanout at the structure. If no cleanout exists, Managing Partner will install one.	<input checked="" type="checkbox"/>
Inspect and evaluate each sanitary sewer lateral and main with a television camera. Managing Partner will line or replace all deficient sewer laterals and mains.	<input checked="" type="checkbox"/>
Other: (please describe) _____	<input checked="" type="checkbox"/>
<b><u>Financial Partner shall:</u></b>	
Review the plans and specifications for the Project and provide Managing Partner with written comments and/or approval within 10 days of receiving them.	<input type="checkbox"/>
Have the right to approve the final acceptance of the Project after construction.	<input type="checkbox"/>
Pay Managing Partner 100 percent of the Project Costs.	<input type="checkbox"/>
Pay invoices submitted by Managing Partner for actual costs incurred within 30 days of approving the invoice. The invoice shall include full progress payment amounts, including typical construction retainage.	<input type="checkbox"/>
Pay a total not to exceed of \$841,800.00 toward the cost of the Project.	<input type="checkbox"/>
Assist Managing Partner in communicating with the property owners and Project stakeholders.	<input checked="" type="checkbox"/>
Other: (please describe)	<input checked="" type="checkbox"/>