

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN CITY OF PORTLAND AND  
CLEAN WATER SERVICES FOR CONSTRUCTION OF  
WOODS CREEK STORMWATER FACILITIES**

This Agreement, dated \_\_\_\_\_, is between CLEAN WATER SERVICES (District), a county service district organized under ORS Chapter 451, and the CITY OF PORTLAND (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.

District intends to construct stormwater quality treatment facilities to capture and treat pollutants and sediments in stormwater runoff before they are discharged from outfalls to a tributary to Woods Creek (Project). This Project has been endorsed by the Capital Improvement Program Prioritization Committee and is intended to allow City to comply with the Mutual Agreement and Final Order in Case No. WQ/M-NWR-2017-163, dated July 3, 2018, attached hereto as Exhibit B.

NOW, THEREFORE, the parties agree as follows:

**B. PROJECT DESCRIPTION**

The Project consists of the construction of stormwater quality treatment facilities as more fully described in Exhibits C and D.

**C. DEFINITIONS**

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

## **D. DISTRICT OBLIGATIONS**

District is the Managing Partner and shall perform all Tasks identified on Exhibit A for the Financial Partner, the List of Standard Obligations, attached hereto unless the Task is checked "Not Applicable". District shall assign Jadene Stensland as District's Project Manager.

## **E. CITY OBLIGATIONS**

City is the Financial Partner and shall perform all services identified on Exhibit A for the Managing Partner unless the Task is checked "Not Applicable". City shall assign Matthew Criblez 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 C.
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 undersigned individuals will attempt to resolve the issue. If the undersigned individuals 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 General Manager or the General Manager'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.

**CLEAN WATER SERVICES**

**CITY OF PORTLAND, OREGON**

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

By: \_\_\_\_\_  
Michael Jordan, Director, Bureau of  
Environmental Services

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

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

APPROVED AS TO FORM

APPROVED AS TO FORM

APPROVED AS TO FORM

  
CITY ATTORNEY

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

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



**EXHIBIT A**  
**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 checked="" 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 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 checked="" type="checkbox"/>
Construct the Project in accordance with Exhibits B, C, and D to this Agreement 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 checked="" type="checkbox"/>
Pay _____ percent of the following costs for the Project: administration, easements, field inspection, design, construction and construction administration (Project Costs).	<input checked="" 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	<input checked="" type="checkbox"/>

**EXHIBIT A**  
**LIST OF STANDARD OBLIGATIONS**

<b>Task</b>	<b>Not Applicable</b>
shall include \$ _____ from City's existing sewer fund balances.	
<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 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 checked="" type="checkbox"/>
Have the right to approve the final acceptance of the Project after construction.	<input type="checkbox"/>
Pay Managing Partner _____ percent of the Project Costs.	<input checked="" 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 \$73,325.00 toward the cost of the Project (see Exhibit C, Engineering Cost Estimate.)	<input type="checkbox"/>
Assist Managing Partner in communicating with the property owners and Project stakeholders.	<input type="checkbox"/>
Other: (please describe) _____	<input type="checkbox"/>

JUL 11 2018

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION City Attorney's Office  
OF THE STATE OF OREGON

IN THE MATTER OF )  
CITY OF PORTLAND, ) MUTUAL AGREEMENT  
Respondent. ) AND FINAL ORDER  
CASE NO. WQ/M-NWR-2017-163

WHEREAS:

On January 31, 2018, the Department of Environmental Quality (DEQ) issued Notice of Civil Penalty Assessment and Order No. WQ/M-NWR-2017-163 (Notice) to Respondent. DEQ assessed a \$55,200 civil penalty against Respondent for violations alleged in the Notice.

I. AGREEMENT

Respondent and DEQ hereby agree that:

1. Pursuant to OAR 340-012-0030(19) and OAR 340-012-0145(2), the violations alleged in the Notice will be treated as prior significant actions in the event a future violation occurs.
2. Respondent agrees to waive any and all rights and objections Respondent may have to the form, content, manner of service and timeliness of the Notice; to a contested case hearing and judicial review of the Notice; and to service of a copy of this Mutual Agreement and Order (MAO), which shall be effective when signed by DEQ.
3. This MAO is not intended to limit, in any way, DEQ's right to proceed against Respondent in any forum for any past or future violations not expressly settled herein.
4. Respondent agrees that this MAO shall be binding on Respondent and its respective successors, agents, and assigns. The undersigned representative of Respondent certifies that he or she is fully authorized to execute and bind Respondent to this MAO.
5. In accordance with DEQ's Internal Management Directive on Supplemental Environmental Projects (SEPs), DEQ agrees to mitigate the \$55,200 civil penalty to \$11,040 on the condition Respondent satisfactorily completes the SEP proposal, as set forth in Attachment A and incorporated by reference, by November 1, 2019. Respondent must submit a detailed budget and

1 design for DEQ approval prior to construction of the SEP. Respondent will be deemed to have  
2 completed the SEP when DEQ approves the budget and design, and DEQ receives a report  
3 documenting the Respondent has expended a minimum of \$44,160 on the SEP and construction has  
4 been completed per the approved design.

5 II. FINAL ORDER

6 The Environmental Quality Commission hereby enters a final order:

7 1. Imposing upon Respondent a total civil penalty of \$55,200, subject to mitigation to  
8 \$11,040, in accordance with Section I, Paragraph 5, above. The balance of the civil penalty not  
9 subject to mitigation through the SEP, 11,040, is due when Respondent submits this MAO to DEQ  
10 for final execution.

11 2. Requiring Respondent to comply with the provisions of Section I, Paragraph 5  
12 above; otherwise, the remaining civil penalty \$44,160 is due and owing to DEQ on November 1,  
13 2019.

14 CITY OF PORTLAND

15 Date

6/21/18

16 Signature

17 MICHAEL JORDAN

18 Name (print)

19 DIRECTOR, BES

20 Title (print)

21 DEPARTMENT OF ENVIRONMENTAL QUALITY and  
22 ENVIRONMENTAL QUALITY COMMISSION

23 Date

7/3/18

24 Sarah G. Wheeler, Acting Manager

25 Office of Compliance and Enforcement

26 on behalf of DEQ pursuant to OAR 340-012-0170

27 on behalf of the EQC pursuant to OAR 340-011-0505





## **Supplemental Environmental Project Application**

Oregon Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah St., Suite 600  
Portland OR 97232

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Case Name and No. WQ/M-NWR-2017-163

**Project Contact:** Amanda Haney, Permit Compliance Manager  
City of Portland BES, 6543 N Burlington Ave, Portland, OR 97203  
amanda.haney@portlandoregon.gov / 503-823-7230

**Type of Project (choose one):**

- ☐ **Pollution Prevention** – preventing waste or pollution at the source, by conserving energy or natural resources, or by making process changes (such as chemical substitutions) or by making a process more efficient so that less waste is created for a given amount of product.
- ☒ **Pollution Reduction** – reducing the amount and/or danger presented by some form of pollution, often by providing better treatment and disposal of the pollutant.
- ☐ **Public Health Protection**- an example is the medical examination of residents in a community to determine if anyone has experienced any health problems because of the violations at issue.
- ☐ **Environmental Restoration and Protection** –improving the condition of the land, air or water in the area damaged by the violation. For example, restoring a wetland or planting trees along a riparian zone to reduce erosion and provide shade for improved water quality.
- ☐ **Emergency Planning and Preparedness** – providing assistance to a responsible state or local emergency response or planning entity. Such assistance may include the purchase of computers and/or software, communication systems, chemical emission detection and inactivation equipment, HAZMAT equipment or training.
- ☐ **Assessments and Audits** to determine if the Respondent is causing any other pollution problems or can run its operation better to avoid future violations.

☐ **Environmental Compliance Promotion**- providing training or technical support to other members of the regulated community to achieve, or go beyond, compliance with applicable environmental requirements.

☐ **Other Projects** that have environmental merit but do not fit within the categories listed above.

**Who is conducting the project?** (i.e. Respondent or third party entity such as a watershed council or other nonprofit organization) Clean Water Services and City of Beaverton

**Location where project will take place:** See Attached Map

**Project description (Please attach an extra sheet of paper, if necessary):** The project would provide stormwater quality treatment for several outfalls into the tributary of Woods Creek that was affected by the July release. The potential outfalls that would be analyzed are shown by the yellow areas on the attached map. Priority would be placed on providing treatment for the 30 acres that outfall from Multnomah Blvd, which is the highest traffic area. The facilities built with the project would be public facilities maintained by Clean Water Services (the District) or City of Beaverton under the District's Performance Standards and could include water quality manholes and/or swales.

**What environmental benefits are expected?** The proposed facilities would be designed to capture and treat pollutants and sediments in stormwater runoff, prior to discharge to the tributary to Wood's Creek. The proposed project would provide long-term water quality benefits and improvements to an area that was previously untreated and was impacted by the July release.

**How will you measure/assess the benefits?** Because they would be public facilities, the proposed water quality manholes or swales would be inspected and maintained on a regular schedule. Benefits to water quality would be assessed as part of the District's monitoring program.

**What is the total projected cost of the project?** Explain. (Qualifying costs are all reasonable costs of executing the SEP and may include costs of preparing the SEP proposal, costs of materials and services, wages paid to employees (appropriate to the work), and wages and proportional overhead for employees of a third party executing the project. Qualifying costs do not include entertainment or refreshment costs related to the SEP.)

A detailed cost estimate will be provided during design and is dependent on the type of stormwater facility constructed. Typical water quality manholes cost approximately \$15,000 each.

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**What is the timeframe for the project (most projects are completed within one year)?**  
Include milestones and final completion date. Clean Water Services would place the project in its Capital Improvement Plan for analysis and design in FY19 and construction in Summer 2019 (FY20). A detailed construction schedule would be provided in the design phase. A final report will be submitted upon completion of the project.

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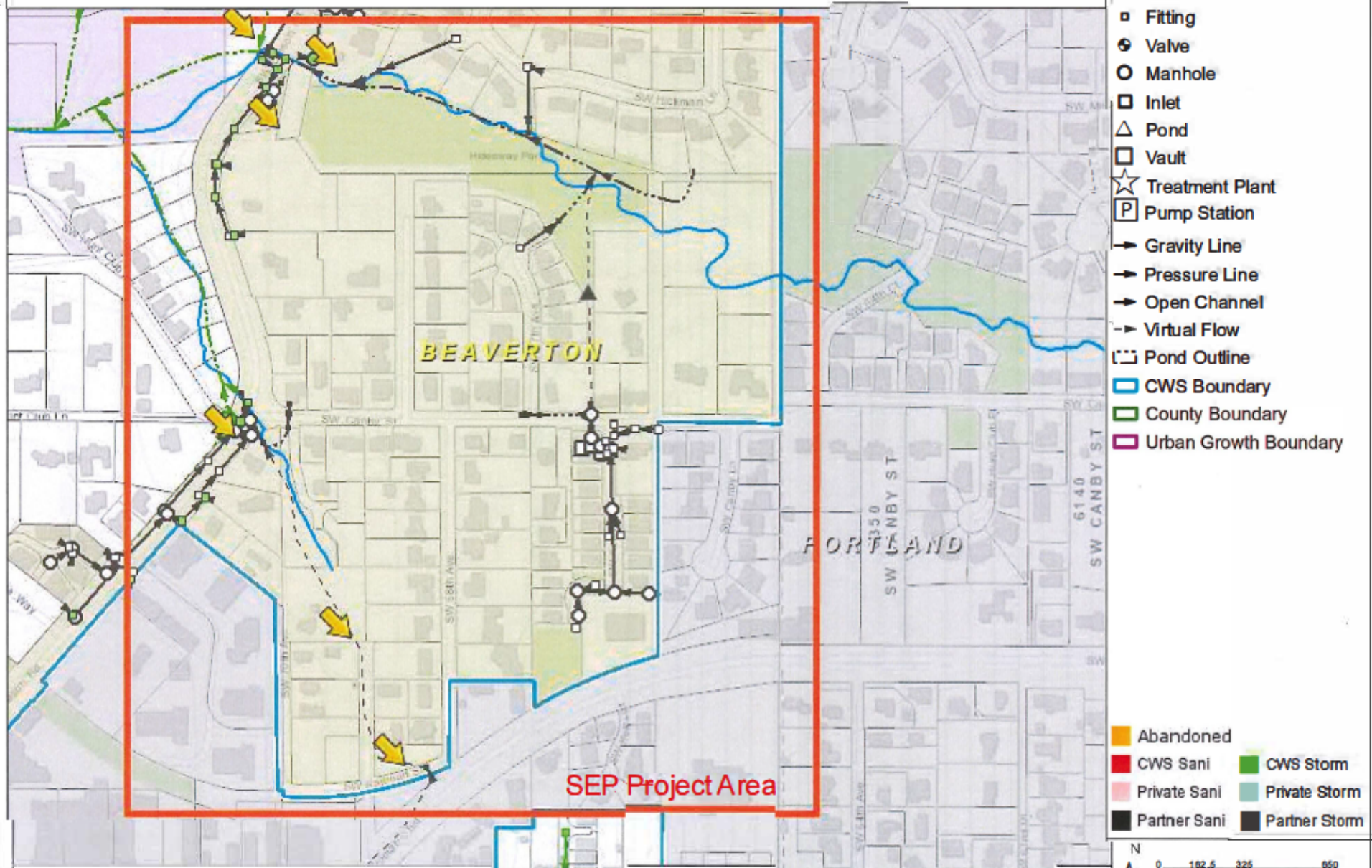
Date : 3/30/2018

Signature

Art Han



## SEP Project Area Map



Disclaimer: This product and its associated data is for informational purposes only and was derived from several databases. It was not prepared for, and is not suitable for, legal engineering or surveying purposes. Users of this information should review or consult the primary data and information sources to ensure accuracy. Clean Water Services cannot accept any responsibility for errors, omissions or positional accuracy. There are no warranties for this product. Mainline and service lateral locations are depicted using best available information but must be field verified and located before digging. Service laterals are marked in the field as "Unlocatable underground facilities" as defined in OAR 952-001-0010 (20). Easement data is not currently completed District-wide and should be used for general reference only. All sanitary or storm sewer data, with the exception of sanitary lines 24" and larger located within the city limits of Beaverton, Cornelius, Forest Grove, Hillsboro, Lake Oswego, Portland, Sherwood, Tigard or Tualatin, need to be verified by contacting the individual city. Notification of any errors would be appreciated. Clean Water Services, Development Services, 2550 SW Hillsboro Highway, Hillsboro, OR 97123, (503) 681-5100.



CWS Field Operation Construction - Limited Scope

**Engineering Cost Estimate**

**Woods Creek (69th Rd & Railroad Rd) Storm Improvement Project**

No.	Description	QTY	UNITS	UNIT PRICE QTY	AMOUNT
<b><u>General Requirements</u></b>					
	Traffic Control, Utility Location, Potholing & Conflicts (Assume 6 Holes & One Trip)	LS	1	5,200.00	5,200.00
	Miscellaneous Erosion Control - All Project Activities	LS	1	5,000.00	5,000.00
	Tree Protection & Removal	LS	1	0.00	0.00
<b><u>Infrastructure</u></b>					
	Clearing & Grubbing of Ditches, Include Hauling & Disposal	SF	5,000	1.09	5,450.00
	60" Dia WQMH Complete in Place	EA	1	10,000.00	10,000.00
	72" Dia FSMH Complete in Place	EA	1	12,000.00	12,000.00
	24" Dia PVC, C905 Culvert with Class 'B' Backfill (Railroad Rd)	LF	40	241.00	9,640.00
	24" Dia PVC, C905 Culvert with Class 'B' Backfill (SW 69th Ave)	LF	50	241.00	12,050.00
	12" Dia PVC C900 Culvert	LF	20	70.00	1,400.00
	Ex. Culvert Removal	EA	2	0.00	0.00
	Flow Diversion - All Methods	LS	1	500.00	500.00
	Outfall Improvements (Headwall, Dissipation Pads)	EA	2	500.00	1,000.00
<b><u>Street Restoration</u></b>					
	Asphalt Removal & Replacement Over Culvert, Complete in Place	SF	400	5.00	2,000.00
	Gravel Rd Removal & Replacement Over Culvert, Complete in Place	SF	300	0.00	0.00

Construction Cost Estimate	\$62,840.00
Additional Survey, Engineering & Permitting	\$10,485.00
Contingency (Includes Additional Gen Req & Env Protection)	\$0.00
<b>GRAND TOTAL</b>	<b>\$73,325.00</b>

## **EXHIBIT D**

### **City of Portland SEP – Water Quality Improvement Project**

**November 26, 2018**

**Description:** Provide water quality improvement in the headwaters of Woods Creek. The 29-acre drainage basin (Figure 1) collects stormwater from Multnomah Boulevard, Garden Home Road and the residential areas between these roads. The runoff discharges near the 69th Avenue and Railroad Street culvert near the City of Portland Fanno Creek Pump Station overflow location (Figure 2).

The project consists of numerous storm system improvements in the area depicted in Figure 2, including but not limited to:

**Primary Area (Yellow):**

- Outfall improvements to the Multnomah Boulevard culvert dissipation area and vegetation management
- 24-inch corrugated metal pipe (CMP) culvert replacement in Railroad Street
- Addition of a flow-splitter manhole (FSMH) and water quality manhole (WQMH) to treat stormwater
- Grading and vegetation management along Railroad Road and 69th Avenue right of way ditch to improve storm conveyance
- 24-inch CMP culvert replacement in 69th Avenue

**Schedule:**

Design and Permitting: Fall – Winter 2018

Construction: Spring - Summer 2019

Natural Resource Restoration: Summer 2020

**Costs:** Costs are estimated at \$73,325.00 and shown in Exhibit C: Engineering Cost.







E:\Capital Projects\Projects\6237 Stormwater Outfall Retrofit Program\Recent Potential WQF Projects\6237 69th & Railroad Beaverton\10 - GIS

## 69th & Railroad St Water Quality Improvement Project Beaverton - Oregon

Figure 2