

**COOPERATIVE INTERGOVERNMENTAL AGREEMENT**

THIS AGREEMENT is made and entered into by and between CLACKAMAS RIVER WATER, a domestic water supply district created pursuant to ORS Chapter 264 ("CRW") and the CITY OF OREGON CITY, an Oregon municipal corporation ("City").

**WITNESSETH:**

**RECITALS.**

WHEREAS, the City and CRW operate municipal water systems and are engaged in the supply of water service for domestic purposes to the residents in its respective jurisdictions; and

WHEREAS, the parties and customers will derive mutual benefit from the joint construction and operation of these pipelines in the form of water quantity and pressure from such joint usage of pipelines as well as efficiencies in construction; and

WHEREAS, the parties share a common boundary or other service areas, and the parties intend this Agreement to fix present and future water service delivery boundaries and designate providers of water service in conformance with ORS 195.060 through 195.085, and that this Agreement shall be adopted and submitted for acknowledgement as part of the City's next periodic review of its Comprehensive Plan and Land Use Regulations; and

WHEREAS, in negotiating this Agreement, the parties have considered the factors of ORS 195.070, and that this Agreement will assure continuance of an appropriate and adequate level of water service; and

WHEREAS, the parties desire to designate service providers within the South End Road area and deliver water service in an orderly, efficient, non-duplicative manner as provided for within the City's public facility plan and CRW's master plan; and

WHEREAS, the parties have identified several water pipelines located in the South End Road area which are presently located within CRW boundaries and within the Urban Growth Management Boundary (UGMB); and

WHEREAS, the parties desire to jointly fund several South End-area water line connections and the construction of a water transmission line on S. South End Road from the current master meter location near McLoughlin School to Navaho Lane/Impala Lane area to avoid redundant construction of new water pipelines; and

WHEREAS, once the facilities are jointly constructed, this agreement will provide a means for the joint usage, ultimate transfer of jurisdiction, and maintenance responsibility of these lines to City in those areas noted herein; and

WHEREAS, the parties are also desirous of entering a rate setting methodology establishing a water rate for residents served by these lines; and

WHEREAS, the parties acknowledge that they have the authority to execute this

intergovernmental cooperative agreement pursuant to ORS 190.003 to 190.030; and

WHEREAS, the parties represent that the persons signing this agreement on each party's behalf are duly authorized to bind it to the terms of this agreement.

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

1. **Effective Date.** This agreement shall be effective when the last party enters into the same and shall be effective for a period of twenty years from that date. The parties shall review the terms of this agreement every five years and, unless one of the parties requests amendment or termination of this agreement 90 days prior to the expiration of that five year period, the agreement shall remain in full force and effect for an additional five year period, but, in the aggregate, no more than twenty years. If a party requests amendment or termination, the parties shall use the dispute resolution process provided by section 9 herein to resolve any disputes, including those related to division of assets or territory, provided that the non-requesting party shall be deemed the party charged with the default under Step Three of section 9. Any action by Metro or other authority with jurisdiction over matters affecting this Agreement shall trigger a review of the Agreement by the parties. No such actions, however, shall affect this Agreement unless it is so amended by mutual written consent of the parties.

2. **Identification of Joint Usage Lines.** The parties agree that the following water lines shall be jointly funded, connected, and used by the parties pursuant to the terms of this section and this agreement.

a. **South End Road:** Approximately 4,000-foot ductile iron water transmission line in South End Road as further described in Section 3. Includes appropriate 8-inch tees and gate valves at connecting streets and individual service reconnects by both parties on existing 12-inch line and new line. The amount of work to be completed for this line under this agreement may be decreased based on future development requirements to loop water lines in South End Road. Development would only be responsible for a basic 8-inch water line. As a minimum, the parties to this agreement must fund for oversizing the water line and the cross street connections and reconnects.

b. **Salmonberry Drive:** Appropriate connection at the east end of street as described in Section 3.

c. **Maywood Street:** Appropriate connection at the north end of street as described in Section 3.

d. **Finnigan's Way:** City shall connect new development off Parrish Road to CRW water line in Finnigan's Way and CRW shall approve connection details and activate the connection at the appropriate time.

e. **Longstanding Court:** CRW shall install a new 8-inch connection in the existing City 12-inch line in South End Road and connect this service subject to City connection detail approval.

f. **Rose Road:** CRW shall install a new 8-inch connection in the existing

City 12-inch line in South End Road and connect this service subject to City connection detail approval.

g. **Beutel Road:** CRW shall install and connect 8-inch tee in new South End Road transmission line subject to City connection detail approval.

h. **Parrish Road:** CRW shall install 8-inch tee in new South End Road transmission line. CRW shall make connection to 8-inch line in Parrish Road if City has provided for said line by way of development. Alternatively, the parties may agree in writing to other types of connection details when the Parrish Road line is developed to South End Road.

i. **Parkland Court:** CRW shall install and connect 8-inch tee in new South End Road transmission line subject to City connection detail approval.

j. **South End Court:** CRW shall install and connect 8-inch tee in new South End Road transmission line subject to City connection detail approval.

k. **Forest Ridge Lane:** CRW shall install and connect 8-inch tee in new South End Road transmission line subject to City connection detail approval.

l. **Proposed Merchant Meadows Subdivision Development Loop Line:** City shall provide for connection to Forest Ridge Lane subject to CRW approval of connection details in the event of future development of 3-1 E 12BA, Tax Lot 1800. CRW shall activate the connection if the future development of Tax Lot 1800 is completed. CRW shall activate the connection promptly in that event.

m. **Impala Lane:** CRW shall install and connect 8-inch tee in new South End Road transmission line subject to City connection detail approval.

n. **Navaho Way:** CRW shall install and connect 8-inch tee in new South End Road transmission line subject to City connection detail approval.

o. The following lines are also joint usage lines and do not require any connections:

- 1) Columbine Court
- 2) Elizabeth Court
- 3) Sunnyridge Court
- 4) Allen Court
- 5) Shamrock Lane
- 6) Turquoise Way
- 7) Deer Lane

The City, at its own cost, may extend and interconnect from the aforesaid water

lines to allow City extension of water lines to adjacent areas. If the extension of the City lines constitutes an extraterritorial water line extension beyond then existent City Limits, CRW reserves its right to object to such extraterritorial extension on a case by case basis.

Where connection detail approval by either party is mentioned in this agreement, it includes the installation of required valves.

3. **Joint Construction of Connections and Transmission Line.** CRW and City shall jointly and equally fund the cost of making two connections of existing City and CRW water lines to be completed by CRW as part of the South End line construction effort as mentioned in Section 2b and 2c of this agreement. The parties shall also jointly and equally fund the construction of the ductile iron water transmission line, subject to pipe diameter determination, along S. South End Road and connections as outlined in Section 2a of this agreement. The transmission line is approximately 4,000 feet from McLoughlin School to the southerly terminus. CRW and the City shall jointly agree upon the final southerly terminus of this new transmission line between Impala Lane and the UGMB.

CRW will be responsible for the engineering, construction, and construction management of the transmission line and shall serve as the primary contracting public agency. CRW and the City shall jointly prepare and review, design and construction documents prior to bid. The City shall be invited to project meetings and shall be given progress reports by CRW with opportunity for comment. Change orders that increase the City's share by more than \$10,000 per change or \$50,000 aggregate must be approved by the City prior to authorization by CRW. CRW shall transmit any other progress payment information if requested. Payment shall be due within 30 days of invoice. At the completion of the project, CRW shall provide a final project accounting to ensure that the financial allocations set forth in this agreement are met with respect to final project construction costs. All performance and payment bonds and guarantees shall be for the benefit of CRW and the City. City and CRW shall each be responsible for one-half (1/2) of all costs associated with the engineering, construction, construction management, and other appropriate administrative fees of the aforesaid connections and the transmission line. CRW will bill City on a monthly basis for the City's share of these costs. Once this transmission line is placed in service, CRW shall abandon the existing CRW line in South End Road in place. CRW will use its best efforts to construct this transmission line during calendar year 2000.

4. **Master Meter.** The work provided for in this Agreement includes the installation of one master meter station located as shown on Figure 1, attached hereto and incorporated by reference.

a. **Meter Operation and Maintenance Costs.** The parties shall jointly share installation, operation, and maintenance costs for the master meter in even proportions. CRW will exercise best efforts in designing and constructing the master meter station during calendar year 2000. The City will perform operation and maintenance of the master meter station and shall account for costs on an annual basis.

b. **Meter Station Ownership.** The City shall be the owner of the master meter station proposed in this Agreement.

c. **Meter Reading and Billing.** The City shall be responsible for meter

reading, billing, and annual accounting. The meter shall be calibrated and inspected annually. CRW shall have the right to inspect and test the meter at its cost upon seven day's written notice to the City.

d. **Future Master Meter Relocations.** The Master Meter shall be sized, located, and installed to minimize the need for future relocations. In the event the master meter must be moved due to expanding or shifting service territories or as land is annexed, the meter may only be moved after seventy five (75%) of the area is annexed to the City.

5. **Transfer of Jurisdiction and Operation and Maintenance Responsibility.** At such time as City annexes over seventy-five percent (75%) of the frontage on both sides of any of the water lines described in Section 2 of this agreement, jurisdiction, operation, and maintenance responsibility for the line shall be transferred from CRW to City. City shall notify CRW in writing of its intent to transfer jurisdiction of any line under this Section. CRW shall acknowledge the notification and cooperate with the City in completing any administrative transfer documents. Until such time, jurisdiction, operation, and maintenance responsibility will remain with CRW. In the event City extends its own water lines from the lines identified in Section 2, City shall be solely responsible for all operation and maintenance, and any connections to its own extended lines and shall receive all revenues therefrom.

After transfer of jurisdiction as described above, CRW may retain non-annexed properties as customers of CRW. On those properties that CRW retains, CRW is responsible for water services billing, meter reading, and collection. CRW will also retain all water service fees, related connection fees, system development fees and all miscellaneous water service fees, including water turn off and turn on fees and meter repair and replacement fees. The rights and responsibilities described above remain with CRW even though the responsibility for operation and maintenance has been transferred to the City. Upon annexation to the City, those properties retained by CRW will be transferred to the City and the City shall thereafter be responsible for water services billing, meter reading and collection and the City shall receive all water service fees, related connection fees, system development fees and all miscellaneous water service fees.

6. **Assumption of Bonded Debt Responsibility.** CRW shall retain bonded debt responsibility for all properties serviced by the aforesaid lines until those properties are annexed into City. When the properties are annexed into City, the City shall become responsible for the bonded debt obligation of the annexed property as provided for in ORS 222.520.

7. **Establishment of Volume Rate.** The volume rate consists of a wheeling rate portion and the South Fork wholesale rate portion.

a. **Wheeling Rate For Properties Connected To The Water Lines Identified In Section 2 Of This Agreement.** CRW shall pay to the City a wheeling rate of \$0.8932 per hundred cubic feet for water used by the properties connected to the water lines identified in Section 2 of this agreement until these properties are annexed to City. The rate will be effective until a jointly funded economic study is completed to determine an appropriate rate. If the study is not completed within one year of the effective date of this agreement, the parties will update the rate set forth above based on the factors set forth in subsection 7c below.

b. **Wheeling Rate For Properties Connected To The Water Lines**

**Identified In Section 2 Of This Agreement Where Jurisdiction, Operation, And Maintenance Responsibility Has Been Transferred To City.** CRW shall pay to the City a wheeling rate of \$1.0667 per hundred cubic feet of water used by properties connected to the water lines identified in Section 2 of this agreement when jurisdiction over the line serving the property has been transferred to the City under Section 5 of this agreement. The rate will be effective until a jointly funded economic study is completed to determine an appropriate rate. If the study is not completed within one year of the effective date of this agreement, the parties will update the rate set forth above based on the factors set forth in subsection 7c below.

c. **Volume Rate and Updates.** The two parties shall update the two wheeling rates in Section 7a and 7b every fifth year. This update is intended to account for variances in the number of customers within CRW served by the respective lines, metered usage, and variations of continuing costs and bonded indebtedness. Both parties agree to jointly fund an economic study update every five years. Between study updates, each year on the anniversary date of this agreement, the wheeling rate portion of the volume rate shall be increased by 75% of the Portland, Oregon Consumer Price Index based on the previous December 31 index. The South Fork wholesale portion of the volume rate will be adjusted annually to reflect the City's then current South Fork wholesale rate. CRW shall pay the City a volume water rate that includes the City's South Fork Water Board wholesale rate. City will then remit that portion of the volume rate directly to the South Fork Water Board.

8. **Amendment Provision.** The terms of this agreement may be amended or supplemented only by the mutual agreement of the parties. Any amendments or supplements must be in writing, refer to this agreement, and be executed by the parties.

9. **Dispute Resolution.**

a. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by any party to substantially perform any provision of this agreement shall constitute default. In the event of an alleged default or breach of any term or condition of this agreement, the party alleging such default or breach shall give the other party not less than 30 days notice in writing specifying the nature of the alleged default and the manner in which the default may be cured satisfactorily. During this 30-day period, neither party shall be considered in default for purposes of termination or instituting legal proceedings.

b. The parties shall first attempt to resolve the dispute by negotiation, followed by mediation, if negotiation fails to resolve the dispute.

**Step One: (Negotiation).** The City Manager and CRW General Manager, or other persons designated by each of the disputing parties will negotiate on behalf of the entities they represent. The Managers, or their representatives, shall then meet with each other and attempt to resolve the issue. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each Manager and ratified by the governing bodies that shall be binding upon the parties.

**Step Two: (Mediation).** If the dispute cannot be resolved within thirty (30) days at Step One, the parties shall submit the matter to non-binding mediation. The parties shall attempt to agree on a mediator. If they cannot agree, the parties shall request a list of five (5)

mediators from an entity or firm providing mediation services. The parties will attempt to mutually agree on a mediator from the list provided, but if they cannot agree, each party shall select one (1) name. The two selected shall select a third person. The dispute shall be heard by a panel of three (3) mediators and any common costs of mediation shall be borne equally by the parties who shall each bear their own costs and fees therefor. If the issue is resolved at this step, a written determination of such resolution shall be signed by each Manager and approved by the governing bodies.

**Step Three (Legal Action).** After exhaustion of the preceding processes, if the parties agree, any dispute or claim shall be settled by arbitration under the jurisdiction of the Circuit Court of the State of Oregon for Clackamas County pursuant to ORS Chapter 36 or by arbitration provided by the Department of Land Conservation and Development, at the election of the party charged with the default. In the absence of such an agreement, that same court shall have jurisdiction over any dispute.

10. **Applicable Law.** This agreement shall be construed and enforced in accordance with the laws of the State of Oregon.

11. **Attorneys' Fees.** In the event any legal action or proceeding is commenced to construe or enforce a provision of this Agreement, the losing party, as determined by the judge, shall pay the prevailing Party's reasonable attorneys' fees, paralegal fees, expert fees and costs as determined by the judge at trial, or upon any appeal, petition or arbitration, or any combination of the foregoing.

12. **Nonwaiver.** Failure by any party in time to require performance by any other party or parties of any of the provisions hereof shall in no way affect such party's rights to enforce the same, nor shall any waiver by any party or parties of any breach of this agreement be held to be a waiver of any succeeding breach or a waiver of this Agreement.

13. **Binding Effect.** The covenants, conditions, and terms of this agreement shall extend to, be binding upon, and inure to the benefit of any personal representatives, successors, and assigns of the parties hereto.

14. **Severability.** In case any one or more of the provisions contained in this agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall remain.

15. **Notices.** Any notice herein required or permitted to be given, shall be given in writing and shall be effective when actually received and may be given by hand delivery or by United States mail, first class postage prepaid, addressed to the parties as follows:

FOR OREGON CITY:

City of Oregon City

Attention: City Manager

320 Warner Milne Road

Oregon City, Oregon 97045

FOR CLACKAMAS RIVER WATER:

Clackamas River Water

Attention: General Manager

16770 SE 82nd Drive, Suite 100

P.O. Box 2439

Clackamas, Oregon 97015

IT IS SO AGREED:

FOR OREGON CITY by and through its  
officials:

By:

John F. Williams, Jr.  
John F. Williams, Jr., Mayor

By:

Paul E. Rogers  
Paul Rogers, President

Date:

Feb. 2, 2000

Date:

2-8-00

By:

Leilani Bronson-Crelly  
Leilani Bronson-Crelly, City Recorder

By:

Lowell Hanna  
Lowell Hanna, Secretary

Nancy Ide

STATE OF OREGON )

COUNTY OF CLACKAMAS ) ss

I, Leilani Bronson-Crelly, City recorder of the City of Oregon City do

hereby certify that the foregoing copy of the cooperative

Intergovernmental Agreement between

Clackamas River Water and the City of Oregon City,

has been by me compared with the original and that it is a  
correct transcript therefrom, and the whole of such original, as  
the name appears on file and of record in my office and in my  
care and custody. IN TESTIMONY WHEREOF I have hereunto  
set my hand this 3rd day of January, 20 00

Nancy Ide

City Recorder