

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between the City of Oregon City, the South Fork Water Board, the Clackamas River Water District, the Sunrise Water Authority and the Clackamas Regional Water Supply Commission.

I. RECITALS

WHEREAS, the City of Oregon City (City) is a municipal corporation that provides water to many of its residents through the South Fork Water Board (SFWB), which operates as an ORS 190 Intergovernmental agency owned in equal shares by and providing water for the City and the City of West Linn.

WHEREAS, Clackamas River Water District (CRW) is a domestic water supply district organized under ORS chapter 264 that provides water service to areas both within the City and contiguous to but outside the City.

WHEREAS, the Sunrise Water Authority (SWA) is a water authority organized under ORS 450.650 to 450.700 that provides domestic water service to areas outside and not contiguous to the City.

WHEREAS, when the City annexes new territory, the City may withdraw the territory from affected special districts under ORS 222.520 to 222.580.

WHEREAS, under ORS 450.987, the City may annex territory that is within the boundary of and served by a water authority but may not withdraw the improvements used to provide water service.

WHEREAS, on November 14, 2013, CRW approved Ordinance 03-2013 which authorized CRW to enter into an agreement under ORS chapter 190 (190 Agreement) with SWA to form and operate the Clackamas Regional Water Supply Commission (CRWSC) to oversee the supply of domestic water services to the combined territories of CRW and SWA.

WHEREAS, on November 20, 2013, SWA approved resolution 2013-02 that similarly authorized SWA to enter into the 190 Agreement with CRW to form and operate the CRWSC to oversee the supply of domestic water services to the combined territories of CRW and SWA.

WHEREAS, CRW Ordinance 03-2013 states that one of the purposes of the 190 Agreement is to "provide boundary protection not currently available to CRW."

WHEREAS, Section 8.3 of the 190 Agreement requires CRW and SWA to jointly defend the "legal service boundaries of the CRWSC, exclusive of any such areas residing within the urban growth boundaries of adjacent cities or boundaries of other governmental entities for which mutual service agreements have been established."

WHEREAS, the City and SFWB were concerned that the purpose statement in Ordinance 03-2013 and the provisions in Section 8.3 of the 190 Agreement signified an attempt to provide CRW with the same protection against the withdrawal of territory enjoyed by SWA under ORS 450.987, and that such a result would constitute a material harm to the interests of the City and SFWB.

WHEREAS, based on this and other concerns, on December 4, 2013, the City and SFWB appealed Ordinance 2013-03 and Resolution 2013-02 to the Land Use Board of Appeals (LUBA).

WHEREAS, on January 15, 2014, and again on March 12, 2014, the parties met through their representatives to discuss the LUBA appeals and to attempt to reach a settlement agreement.

WHEREAS, at the January 15 meeting, CRW and SWA stated that neither organization intended the 190 Agreement or the CRWSC to limit in any way the City's ability to withdraw territory from CRW upon annexation into the City of territory that is within and served by CRW and that the 190 Agreement does not in any way operate to limit such City authority. The parties further agreed that any authority the City has to withdraw territory or infrastructure under ORS 222.510 to 222.580 is not related to or in any way dependent on the location of the Metro Urban Growth Boundary (UGB) or CRW's legal boundary. The parties further agreed that the reference to "boundary protection" in Ordinance 03-1023 and the language in Section 8.3 of the 190 Agreement was intended to refer to the protection of CRW assets, not service area under ORS 222.510 to 222.580, subject to the equitable division of such assets under ORS 222.540. Finally, at the March 12 meeting, the parties agreed to a settlement concept as described in this Agreement.

WHEREAS, in return for CRW's and SWA's agreement, as stated above, that the City retains full authority under ORS 222.510 to 222.580 to withdraw territory from CRW upon annexation of the territory into the City, the City and SFWB agree to withdrawal of the appeals currently pending before LUBA.

Now, therefore, based on the foregoing recitals, the mutual promises and obligations set forth herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows.

II. AGREEMENT

A. Within 10 days of the effective date of this Agreement, the City and SFWB will dismiss the appeals that have been filed with the Land Use Board of Appeals regarding the adoption of the 190 Agreement. In particular, the following two appeals will be dismissed:

City/SFWB v. Sunrise Water Authority, LUBA No. 2013-117, and
City/SFWB v. Clackamas River Water, LUBA No. 2013-118

B. The parties agree that neither CRW's Ordinance 03-2013, SWA's Resolution 2013-02, or the 190 Agreement itself are intended to alter the applicability of ORS 222.520 to 222.580 to CRW specifically, or to alter the legal rights, status, power or limitations of any party with respect to those and other statutes generally. The parties agree that the annexation and withdrawal statutes in place at the time of any future annexation or withdrawal will apply to any annexation or withdrawal the City initiates. The parties understand and agree that when CRW adopted Ordinance No. 03-2013 which approved the 190 Agreement, the reference in the recitals regarding "boundary protection not currently available to CRW" was intended to provide adequate consideration for CRW assets in any area withdrawn, not protection for CRW's legal boundary.

From the effective date of this Agreement, CRW, SWA and CRWSC agree that they will not challenge the authority of the City to withdraw territory from CRW or CRWSC under ORS 222.510 to 222.580 upon or following annexation to the City. Notwithstanding the foregoing, nothing in this Agreement limits CRW, SWA or CRWSC from opposing annexation or withdrawal on grounds other than the City's authority to withdraw territory under ORS 222.510 to 222.580, including, but not limited to, any procedural grounds.

C. All parties understand that the nature of providing water services requires long-term investments that require a degree of certainty to ensure that those investments provide an adequate return to the party that makes the investment. Therefore, the parties agree that upon annexation and withdrawal of territory in the future, the parties will comply with the process in ORS 222.540 regarding the division of assets in the withdrawn territory. Within the next two years, the Parties will reach an agreement regarding a methodology to determine the value of CRW assets for which CRW will be compensated upon withdrawal.

D. The parties agree that the description of the CRWSC "legal service boundaries" in Section 8.3 of the 190 Agreement does not limit the authority or ability of the City to withdraw territory from CRW or CRWSC under ORS 222.510 to 222.580 upon or following annexation of the territory into the City and for SFWB to serve such areas. Notwithstanding the foregoing, the City and CRW may mutually agree in writing that CRW will serve other areas of the City in the future even though those areas may be outside CRW's and CRWSC's legal service boundaries.

E. This Agreement is not intended to prevent, nor does it prevent, the parties, or any number of them, from entering into other agreements for any subject, including the provision of water or transfer of assets.

III. TERMS AND CONDITIONS

A. **Effective Date.** This Agreement shall become effective upon the execution and delivery of this Agreement by each of the other parties. As each party is a public entity, the parties recognize that this Agreement requires approval by the duly constituted governing body of each party.

B. Cooperation. All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms of this Agreement, including authorizing the withdrawal of territory from CRW or CRWSC by the City.

C. Binding Effect. To the extent allowed by law, this Agreement shall be binding upon and inure to the benefit of the heirs, representatives, successors and assigns of each of the parties hereto, however they may be constituted.

D. Amendment. No waiver, consent, modification, amendment, or other change of terms of this Agreement shall bind any party unless in writing and signed by all parties.

E. Counterparts; Facsimile Execution. This Agreement may be executed in counterparts, each of which, when taken together, shall constitute fully executed originals. Facsimile or e mail signatures shall operate as original signatures with respect to this Agreement.

F. Dispute Resolution. In the event of a dispute arising out of the interpretation or performance of this Agreement, the parties shall attempt in good faith to resolve all disputes promptly by mediation. If mediation fails to resolve the dispute, any legal action between the parties regarding the terms of this Agreement shall be brought in Clackamas County Circuit Court.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CLACKAMAS RIVER WATER DISTRICT By: <u>[Signature]</u> Title: <u>President</u> Date: <u>5/12</u> , 2014	CITY OF OREGON CITY By: _____ Title: _____ Date: _____, 2014
CLACKAMAS REGIONAL WATER SUPPLY COMMISSION By: <u>[Signature]</u> Title: <u>PRESIDENT</u> Date: <u>5/12</u> , 2014	SOUTH FORK WATER BOARD By: _____ Title: _____ Date: _____, 2014
SUNRISE WATER AUTHORITY By: <u>Ronald L. Blake</u> Title: <u>Vice Chair</u> Date: <u>5-22-14</u> , 2014	

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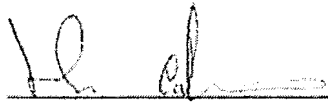
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CLACKAMAS RIVER WATER DISTRICT By: _____ Title: _____ Date: _____, 2014	CITY OF OREGON CITY By: _____ Title: _____ Date: _____, 2014
CLACKAMAS REGIONAL WATER SUPPLY COMMISSION By: _____ Title: _____ Date: _____, 2014	SOUTH FORK WATER BOARD By:  Title: <u>General Manager</u> Date: <u>05-22</u> , 2014
SUNRISE WATER AUTHORITY By: _____ Title: _____ Date: _____, 2014	

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CLACKAMAS RIVER WATER DISTRICT By: _____ Title: _____ Date: _____, 2014	CITY OF OREGON CITY By: <u>David W. Frashy</u> Title: <u>City Manager</u> Date: <u>5-22-14</u> , 2014
CLACKAMAS REGIONAL WATER SUPPLY COMMISSION By: _____ Title: _____ Date: _____, 2014	SOUTH FORK WATER BOARD By: _____ Title: _____ Date: _____, 2014
SUNRISE WATER AUTHORITY By: _____ Title: _____ Date: _____, 2014	