

RESOLUTION NO. 25-2005

A RESOLUTION OF THE CITY COUNCIL, MILWAUKIE OREGON, AUTHORIZING THE MAYOR TO EXECUTE THE INTERGOVERNMENTAL AGREEMENT/JOINT FUNDING FOR WATERSHED ACTIVITIES IN THE CLACKAMAS BASIN.

WHEREAS, the City purchases water from Clackamas River Water; and

WHEREAS, by virtue of the said purchase the City has an interest in effective management of the Clackamas River Basin.

Now, therefore, the City Council resolves

Section 1. That the Mayor be authorized to execute the Intergovernmental Agreement/Joint Funding for Watershed Activities in the Clackamas River Basin.

Section 2. This Resolution takes effect upon its adoption.

Introduced and adopted by the City Council on June 7, 2005.

This resolution is effective on 06/07/05.

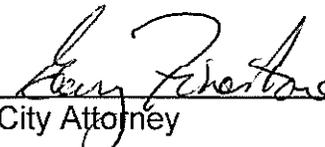

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew, Corrigan & ~~Bachrach~~, LLP



Pat DuVal, City Recorder



City Attorney

INTERGOVERNMENTAL AGREEMENT
JOINT FUNDING FOR WATERSHED ACTIVITIES
IN THE CLACKAMAS RIVER BASIN

This Intergovernmental Agreement is made this ___ day of _____, 2005, by and among the Cities of Estacada, Lake Oswego, and Milwaukie, all municipal corporations, Clackamas River Water (CRW), a domestic water supply district organized under ORS Ch. 264, South Fork Water Board (SFWB) and the North Clackamas County Water Commission (NCCWC) (Oak Lodge Water District and Sunrise Water Authority), each an intergovernmental entity organized under ORS Ch. 190, Sunrise Water Authority (SWA), a water authority organized under ORS 450, collectively referred to as Water Providers, and Clackamas County Service District #1, a county service district organized under ORS Chapter 451 that is administered by Water Environment Services (WES), all of which use and have an interest in the quality of the water resources from the Clackamas River, .

Recitals

The Water Providers and Water Environment Services (WES) agree upon the following recitals:

WHEREAS, the signatories to this Agreement each represent they have authority to enter into this Agreement pursuant to their respective Charters, Principal Acts or Agreements; and

WHEREAS, the signatories to this Agreement recognize the most cost effective and efficient public water service to the citizens of the Clackamas Basin and adjacent areas will occur through cooperative planning and development of water supply from the Clackamas Basin; and

WHEREAS, effective watershed management requires the cooperative management and financial participation by all area local governments and Water Providers; and

WHEREAS, the need for greater knowledge of the Clackamas River and its tributaries is needed for long-term management of the Basin; and

Whereas, The United States Geological Survey (USGS), WES, and the Water Providers have determined that monitoring, assessment, research studies, and support of the Clackamas River would further provide meaningful data for the management of the Basin; and

WHEREAS, the signatories to this Agreement recognize that the existing requirements and long term objective of the Water Providers and WES requires a phased-in program meeting the mutual objectives of all citizens and local governments.

WHEREAS, the Water Providers and WES have agreed to enter into an intergovernmental agreement pursuant to ORS 190.003 – 190.110, which authorizes units of

local government to enter into such agreements, to jointly fund a portion of the matching funds needed for the USGS, Clackamas River Basin Council, and other local agencies that conduct water quality improvement studies and to fund other projects as noted herein.

NOW, THEREFORE, the parties agree as follows:

1.1 WATERSHED ACTIVITY COORDINATION. The parties hereto agree to coordinate watershed activities including source water protection programs, water quality and quantity monitoring, and water quality studies.

1.2 SCOPE OF WORK. The Water Providers and WES agree in concept to the Scope of Work proposed for the next five years as presented in Exhibit 1. The Scope of Work may be reviewed, revised, and approved by the parties on, but not limited to, an annual basis coincident with the annual budget setting schedule described in Section 1.6.

1.3 ADVISORY COMMITTEE. The parties agree to form an Advisory Committee that will meet on a monthly basis to discuss the Scope of Work, Status of Projects, and any New Projects proposed. The Advisory Committee will serve as the decision making body for the joint funding for watershed related projects. The Advisory Committee will be made up of the General Managers or designated Staff to represent each agency including City of Estacada, City of Milwaukie, City of Lake Oswego, Clackamas River Water, North Clackamas County Water Commission, South Fork Water Board, Sunrise Water Authority, and Water Environment Services. Each paying agency has one vote for recommending approval of the annual work plan and budget, additional projects, and contract amendments to its respective governing body.

1.4 TECHNICAL ADVISORY COMMITTEE. The Advisory Committee may authorize the formation of a Technical Advisory Committee and designate a Project Manager to manage the hydrodynamic model, technical studies, monitoring efforts, and project proposals. The Technical Advisory Committee will consist of Staff from each agency to make recommendations to the Advisory Committee and review and analyze project implementation, project findings, and other watershed or water quality data. The Project Manager shall be responsible for the facilitation of the Advisory and Technical Advisory Committee Meetings, approve invoices for projects, and will report updates and summarize information for the Advisory Committee. The Project Manager shall be responsible for day-to-day project management and administration of the approved annual work plan and budget.

1.5 FISCAL AGENT. The North Clackamas County Water Commission will serve as the Fiscal Agent and is authorized by the Water Providers to sign contracts approved by the Advisory Committee.

1.5.1 By execution hereto, the Water Providers hereto authorize North Clackamas County Water Commission NCCWC to become the paying agent for the parties. NCCWC as fiscal agent, hereby accepts its fiduciary responsibility to act in a responsible and impartial manner for the benefit of the parties to this agreement. The initial term of the agreement shall be for July 1, 2005 through June 30, 2010, and NCCWC shall make all payments to the USGS required under a series of Joint Funding Agreements that coincide with the Cost Allocation Matrix and Water Exchange Grid as shown in Exhibit 2. The Water Providers acknowledge and agree that NCCWC is acting as the agent of this agreement but that all are benefited thereby.

1.5.2 NCCWC shall invoice each party at quarterly intervals coinciding with work-in-progress invoicing from the USGS and the additional projects outlined in the Appropriations of the Parties and Reimbursement of to the NCCWC as presented in Exhibit 2 and in the Cost Allocation Matrix as presented in Exhibit 3. Payments shall be made to North Clackamas County Water Commission at 14496 SE River Road, Milwaukie, OR 97267-1199. Any amount unpaid after thirty (30) days shall accrue interest at the rate of nine percent (9%) per annum until paid.

1.6 ANNUAL BUDGET. The Advisory Committee agrees to begin drafting the annual budget by December 1st of the preceding fiscal year and to annually approve the budget by April 1st. The Project and Allocation Matrix and Five Year Projected Budget for FY 2005-2010 is presented as Exhibit 4. The Budget is currently based on raw water treated or distributed to a wholesale customer during the previous year from each Water Provider's water treatment plant intake as presented in the Cost Allocation Matrix and the Water Exchange Grid in Exhibit 3. The Water Exchange Grid is used to calculate water treated and distributed to another party in this agreement, where the party that used the water within their service boundary would pay the costs associated with that consumption. Water Environment Services, will contribute a fixed amount for the operation and maintenance of the monitoring stations on the main stem Clackamas River. At WES's discretion, WES may also contribute additional fixed funds based on specific approved projects. Water Providers will be responsible for the costs of the remaining projects approved on an annual basis.

1.7 NEW MEMBERS. The parties agree that other local government entities may join this Agreement by execution of a Joinder Agreement whereby all terms and conditions of this agreement shall be binding upon the joining entity and costs shall be shared proportionately as if that entity had joined originally. The parties agree that action of the governing bodies of the current signatory entities shall not be required; the General Manager or City Manager shall be authorized to consent to Joinder.

1.8 TERM. The term of this agreement shall be for July 1, 2005 through June 30, 2010.

1.9 WITHDRAWAL FROM JOINT FUNDING AGREEMENT. Any party to this agreement may notify the Advisory Committee that the party will withdraw their participation in the Joint Funding Agreement for Watershed Activities by April 1st from said agreement for the following fiscal year (90 days prior to actual withdrawal coinciding with the beginning of each fiscal year). Any invoices from approved projects in progress that fall within the quarter of actual withdrawal will need to be paid by the party prior to withdrawal. Upon notice of withdrawal from a party, the Advisory Committee may redistribute the joint funding to the remaining parties and recommend approval of the annual work plan and budget to its respective governing body.

2.0 DISPUTE RESOLUTION. If a dispute arises between the parties regarding breach of this Agreement or interpretation of any term of this Agreement, 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 Manager or other persons designated by each of the disputing parties will negotiate on behalf of the entity they represent. The nature of the dispute shall be reduced to writing and shall be presented to each Manager who shall then meet 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 their respective Boards which 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 their respective Boards.

Step Three: (Arbitration)

If the parties are unsuccessful at Steps One and Two, the dispute shall be resolved by binding arbitration proceedings. The parties shall follow the same process described in Step 2 for the selection of arbitrators. Upon breach of this agreement, the nondefaulting parties shall be entitled to all legal or equitable remedies available at law, including injunction, declaratory judgment, specific

performance or termination. The prevailing party shall be entitled to its reasonable attorney's fees as may be awarded by the arbitrator.

2.1 ATTORNEYS FEES. The parties agree that if any disputes arise out of this agreement, the prevailing party shall be entitled to such reasonable attorney's fees and costs as may be awarded by the arbitrator or any appeal therefrom.

2.2 NOTICES. Notices shall be deemed sufficient if deposited in the United States first class mail, postage prepaid to the following addresses:

City of Estacada
Attention: Randall Ealy, City Manager
City of Estacada
P.O. Box 958
Estacada, Oregon 97023

**North Clackamas County Water
Commission**
Attention: Dan Bradley, General Manager
14496 SE River Road
Milwaukie, Oregon 97267

City of Lake Oswego
Attention: Douglas Schmitz, City Manager
P.O. Box 369
Lake Oswego, Oregon 97034

South Fork Water Board
Attention: John Collins, General Manager
15962 South Hunter Avenue
Oregon City, Oregon 97045

City of Milwaukie
Attention: Mike Swanson, City Manager
10722 SE Main
Milwaukie, Oregon 97222

Sunrise Water Authority
Attention: John Thomas, General Manager
10602 SE 129th Avenue
Portland, Oregon 97236

Clackamas River Water
Attention: Roger Hulbert, General Manager
16770 SE 82nd Drive, Suite 100
P.O. Box 2439
Clackamas, Oregon 97015

Water Environment Services
Attention: R. Kent Squires, Director
Water Environment Services
9101 SE Sunnybrook Blvd. #441
Clackamas, OR 97015

SIGNATURES ON FOLLOWING PAGE

CLACKAMAS RIVER WATER PROVIDERS

CITY OF ESTACADA

By: _____
Robert Austin, Mayor

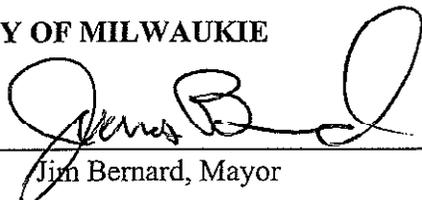
By: _____
City Recorder

CITY OF LAKE OSWEGO

By: _____
Judie Hammerstad, Mayor

By: _____
Robyn Christie, City Recorder

CITY OF MILWAUKIE

By:  _____
Jim Bernard, Mayor

By: _____
City Recorder

CLACKAMAS COUNTY SERVICE DISTRICT #1

By: _____
Chair, Board of Clackamas County Commissioners, Governing Body

NORTH CLACKAMAS COUNTY WATER COMMISSION

By: _____
Ron Blake, Chair

SOUTH FORK WATER BOARD

By: _____
Norman King, Chair

SUNRISE WATER AUTHORITY

By: _____
Robert Frentress, Chair

By: _____
Ron Blake, Secretary

CLACKAMAS RIVER WATER

By: _____
Art Landis, President

By: _____
Gary R. Kerr, Secretary

EXHIBIT 1
Clackamas River Water Providers
Watershed Interests and Scope of Work
2005-2010

Scope of Work:

1. Overall Interests
 - a. Water Quality Improvements
 - b. Source Water Protection
 - c. Water Availability
 - d. Water Rights – Existing and Future
 - e. TMDL Impacts
 - f. Emergency Response
 - g. Watershed Education and Outreach

2. Means to Accomplish Interests
 - a. Continuous Monitoring and Water Quality Sampling
 1. Main Stem Continuous
 - a. Flow and Discharge
 - b. Water Quality
 2. Sub-Basins Continuous Monitoring and Grab Samples
 - a. Large Sub-basins Continuous Flow
 - b. Water Quality Monitoring as Needed
 3. *Giardia* and *Cryptosporidium* Sampling – Bimonthly

 - b. Dynamic Model
 1. Quantity and Quality
 2. Establish Database of Existing Data
 3. Input Continuous Data
 4. Continuous Management of Model by Staff
 5. Training

 - c. Potential Water Quality Studies
 1. Pesticides
 2. Nutrients/Algal Blooms
 3. DBP's/Carbon Study
 4. Temperature

- d. First Response Station
 - 1. Location
 - 2. Management
 - 3. Parameters
 - 4. Limitations
- e. Joint Water Curtailment Plan Update
- f. Source Water Protection Plan
- g. Joint Watershed Education Events

EXHIBIT 2

APPROPRIATIONS OF THE PARTIES AND REIMBURSEMENT OF NCCWC

Each Water Provider agrees to reimburse NCCWC for its proportionate share, as depicted on Exhibit 3, Cost Distribution Matrix and Water Exchange Grid, and Exhibit 4, Project and Allocation Matrix and the Approved Annual Budget, both, attached hereto and incorporated by reference. These matrices will be revised and updated annually to reflect changing projects and cost allocations subject to annual approval by the Water Providers and then revised to reflect available funds.

Water Environment Services will contribute a fixed amount for the operation and maintenance of the monitoring stations on the main stem Clackamas River. At WES's discretion, WES may also contribute additional fixed funds based on specific approved projects. Water Providers will be responsible for the costs of the remaining projects listed approved on an annual basis.

The Water Provider parties also agree to participate in the development of a scope of work for the hydrodynamic model, pesticide study, monitoring stations, *Giardia* and *Cryptosporidium* samplings, water quality studies, approved projects that result in water quality improvements, and have determined the benefits of providing matching funds for these various projects listed in the Scope of Work (Exhibit 1).

1. The Scope of Work includes the following projects, but may be amended by the Advisory Committee (See Exhibit 1). The projects include a Hydrodynamic Model for analyzing the quantity and quality of water available in the Clackamas River below River Mill Dam, one period of pesticide sampling and preparing a report on the data conducted by USGS, data gathering and analysis of the Clackamas River Basin, an additional monitoring station at Barton Bridge measuring discharge and water quality, and additional monitoring stations in the tributaries below River Mill Dam measuring discharge and water quality.
2. The Water Providers will provide Staff for the management and technical assistance of the Joint Funding and Administration, Hydrodynamic Model, Technical Advisory Committee, and Fiscal Agent. Each staff member will track their time during the first fiscal year (July 1, 2005 to June 30, 2006) of the agreement to determine potential for reimbursement recommended for approval by the Advisory Committee.
3. Share in the costs of operating and maintaining monitoring stations at the Carter Bridge and below River Mill Dam on the Clackamas River.
4. Share in the costs for raw water sampling and analysis for the presence of *Giardia* and *Cryptosporidium*.
5. Share in the costs of installation and maintaining a river flow gage and water quality data logger at Barton Bridge.

6. Share in the costs of installation and maintaining river flow gages and water quality data loggers in the three major tributaries below River Mill Dam (Deep Creek, Clear Creek, and Eagle Creek).
7. Share in the costs for Watershed Projects and Activities in the Clackamas River Basin approved on an annual basis by the Advisory Committee.
8. Share in the costs for joint activities related to watershed, water quality, and conservation education and public outreach in the Clackamas River Basin.
9. Costs are not to exceed the levels outlined in Exhibit 3, for each Water Provider party over the fiscal years 2005-2010. If costs do vary from the levels outlined in Exhibit 3 and Exhibit 4, an amendment to the Cost Allocation Matrix, Water Exchange Grid, or the 5 Year Projected Budget will be distributed to each party for approval.

EXHIBIT 3
Cost Distribution Matrix and Water Exchange Grid

Water Provider Cost Distribution Matrix										
Proposed 5 Year Budget										
Partner Factor: 2004 MG Adjusted Raw Water Allocation										
	*Total	CRW	NCCWC	Sunrise	SFWB	LO	Est	Milw	WES	
	11,322.18	3,134.62	1,992.75	946.66	2,705.86	2,205.33	246.40	90.56	N/A	
Projected Annual Cost Distribution:										
Providers:										
Budget Fiscal Year:	CRW	NCCWC	Sunrise	SFWB	LO	Est	Milw	WES		
2005-2006	\$140,322	33,589	21,353	10,144	28,994	23,631	2,640	970	19,000	
2006-2007	\$142,422	36,339	23,483	11,156	31,886	25,988	2,904	1,067	9,000	
2007-2008	\$140,217	36,328	23,095	10,971	31,359	25,558	2,856	1,050	9,000	
2008-2009	\$140,217	36,328	23,095	10,971	31,359	25,558	2,856	1,050	9,000	
2009-2010	\$140,217	36,328	23,095	10,971	31,359	25,558	2,856	1,050	9,000	
5 Year Totals:	\$703,395	\$179,512	\$114,120	\$54,213	\$154,958	\$126,294	\$14,111	\$5,186	\$55,000	

Partner Factor Method: 2004 MG Adjusted Raw Water Allocation Exchange Grid

Wholesale Customers Providers	Gross Raw Water MG	NCCWC					SWA		CRW		Milwaukie		Adjusted *Total MG	% Total MG
CRW	3,616.00					(946.66)		555.84		(90.56)		3,134.62	28%	
NCCWC Sunrise Water	1,982.70	45.06					(35.01)					1,992.75	18%	
South Fork Lake Oswego	3,296.46							(545.54)				2,705.86	24%	
Estacada	2,205.33											2,205.33	19%	
Milwaukie	246.40									90.56		90.56	2%	
													1%	

Total MG Produced from January 1 thru December 31, 2004 **11,322.18** **100%**

EXHIBIT 4

Clackamas River Water Agencies 5 Year Project Budget Planning

FISCAL YEAR:	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010
Annual Projects:					
Sampling Study	\$ 50,000	\$ 25,000		\$ 30,000	\$ 30,000
Dynamic Model					
Model Training and Calibration	\$ 31,500	\$ 2,500	\$ 10,000	\$ 10,000	\$ 10,000
Installation of Tributaries		\$ 6,000			
Purchase of New Monitoring Equipment Barton			\$ 30,000		
Purchase of New Monitoring Equipment Deep, Eagle, and Clear CRBC Operational Support	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000
Water Quality Projects Groundwater Seepage Study		\$ 20,000 \$ 4,500	\$ 20,000	\$ 20,000	\$ 20,000
<i>Annual Projects Subtotal</i>	\$ 91,500	\$ 87,500	\$ 70,000	\$ 70,000	\$ 70,000
Continual Projects:					
Water Quality:					
River Mill	\$ 8,500	\$ 8,500	\$ 8,500	\$ 8,500	\$ 8,500
Oregon City	\$ 8,500	\$ 8,500	\$ 8,500	\$ 8,500	\$ 8,500
Carter Bridge	\$ 8,500	\$ 8,500	\$ 8,500	\$ 8,500	\$ 8,500
Barton Bridge			\$ 8,500	\$ 8,500	\$ 8,500
Streamflow OR City	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
Streamflow Barton			\$ 5,000	\$ 5,000	\$ 5,000
Carter Utility	\$ 540	\$ 540	\$ 540	\$ 540	\$ 540
Streamflow/WQ Utility	\$ 600	\$ 600	\$ 1,000	\$ 1,000	\$ 1,000
Replacement probes Solutions	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000
Operation and Maintenance:					
Eagle Creek		\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
Clear Creek		\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
Deep Creek		\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
Giardia/Crypto Monitoring	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000
Algal/Geosmin Monitoring			\$ 1,500	\$ 1,500	\$ 1,500
Education and Outreach	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500
<i>Continual Projects Subtotal</i>	\$ 42,140	\$ 48,140	\$ 63,540	\$ 63,540	\$ 63,540
Budget Subtotal	\$133,640	\$135,640	\$133,540	\$133,540	\$133,540
Contingency (5%)	\$ 6,682	\$ 6,782	\$ 6,677	\$ 6,677	\$ 6,677
Fiscal Year Totals	\$140,322	\$142,422	\$140,217	\$140,217	\$140,217