

RESOLUTION NO. 55-2010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ACCEPTING A SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS WITH CLACKAMAS COUNTY SERVICE DISTRICT NO. 1

WHEREAS, for the past few years the City and Clackamas County Service District No. 1 (CCSD#1) engaged in discussions, negotiations, and mediation toward resolving disputes regarding an agreement for wastewater treatment services; and

WHEREAS, the City and CCSD#1 entered into a settlement agreement on February 18, 2010 that provided for mediation and arbitration of certain disputed issues and other terms; and

WHEREAS, following mediation the parties began to prepare for arbitration but reached agreement on certain terms; and

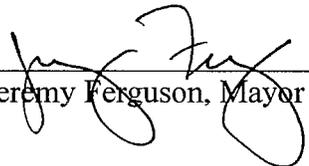
WHEREAS, the City and CCSD#1 have agreed to resolve certain outstanding disputes in accordance to the terms of a Settlement Agreement and Release of Claims, attached as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED that the City Council, City of Milwaukie, State of Oregon:

Section 1. Accepts the terms of the Settlement Agreement and Release of Claims between the City and CCSD#1 as shown in Exhibit A.

Section 2. Delegates to the Mayor authority to sign the Agreement on behalf of the City.

Section 3. This resolution is effective immediately upon passage.



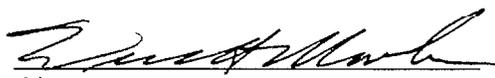
Jeremy Ferguson, Mayor

ATTEST: *Passed by Council
on June 15, 2010*

Pat Duval

Pat Duval, City Recorder

APPROVED AS TO FORM:
Jordan Schrader Ramis PC



City Attorney

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into as of the 15th day of June, 2010 (the "Effective Date") by and between the Clackamas County Service District No. 1 (the "District") and the City of Milwaukie, Oregon (the "City") (the District and the City are collectively referred to as the "Parties" and individually as a "Party").

RECITALS

WHEREAS, the District and the City were parties to an agreement for wastewater treatment service dated November 25, 1970, which agreement was extended and modified several times (the original agreement and all extensions and modifications are referred to herein as the "1970 Contract");

WHEREAS, the District terminated the 1970 Contract as of July 31, 2009;

WHEREAS, the Parties have had a disagreement regarding amounts owed under the 1970 Contract;

WHEREAS, the District has continued to provide wastewater treatment service to the City following termination of the 1970 Contract and the Parties have had a disagreement regarding the rates to be paid by the City for such service;

WHEREAS, the Parties entered an agreement as of February 18, 2010, entitled "Settlement Agreement," providing for the mediation and arbitration of certain disputed issues and other terms (the "Settlement Agreement");

WHEREAS, the Parties have engaged in mediation and have begun to prepare for arbitration, and have had other communications to resolve the disputes between them, and have

reached agreement on terms to resolve their disputes as set forth in this Agreement;

NOW, THEREFORE, it is agreed by and between the District and the City to resolve outstanding disputes on the following terms and conditions.

AGREEMENT

1. The City shall pay the District the sum of Six Hundred and Fifty Thousand Dollars (\$650,000.00) as payment in full of all amounts due under the 1970 Contract.

2. The City shall pay the District the following rates for wastewater treatment service ("Service"): for the period August 1, 2009 through June 30, 2010 ("FY 2010"), \$20.00 per Equivalent Dwelling Unit ("EDU") per month; for the period July 1, 2010 through June 30, 2011 ("FY 2011"), \$23.00 per EDU per month; and for the period July 1, 2011 through June 30, 2012 ("FY 2012"), \$26.00 per EDU per month. Payments for FY 2010 are further addressed in section 3 below. Payments for FY 2011 are further addressed in section 4 below. Payments for FY 2012 are further addressed in sections 5 and 6 below.

3. For FY 2010, the City will pay the District for Service on the agreed-upon basis that 8,870 EDU's of the City's wastewater are treated by the District. For the 11 months in FY 2010, the City will pay the District the total amount of \$1,951,400.00 for Service. The City has already paid the District the total sum of \$1,180,000.00 for Service for FY 2010 through April 30, 2010. The City will pay the District the additional sum of \$771,400.00 for FY 2010 (comprised of the additional sum of \$416,600.00 for past Service through the month of April 2010 plus \$354,800.00 for Service currently or to be provided during May and June 2010).

4. For FY 2011, the City will pay the District on the agreed-upon basis that 8,870 EDU's of the City's wastewater are treated by the District. The City will pay the District the sum

of \$204,010.00 per month for Service during FY 2011. The District will send the City an invoice for such monthly amounts by the seventh day of the calendar month in which Service is being provided, and the City will pay those invoices within 20 days of the date of receipt.

5. For FY 2012, the number of EDU's of the City's wastewater treated by the District will be determined by an independent audit that will be conducted during FY 2011, commencing no later than September 1, 2010. The Parties will mutually agree on a single, independent auditor, who will be a person knowledgeable about the wastewater industry in Oregon and the use and quantification of EDU's to determine the amount of wastewater treated. The costs of this audit will be shared equally between the Parties. The Parties will make available all records and information reasonably requested by the auditor. The auditor shall issue a determination no later than February 28, 2011. The decision of the auditor shall be final and binding on the Parties, and shall not be subject to challenge, including appeal or judicial review, in any manner. In the event the Parties are unable to agree on the auditor by November 1, 2010, the Parties agree that the Circuit Court of the State of Oregon for the County of Clackamas shall have jurisdiction to appoint an auditor with the qualifications set forth above. The definition of EDU to be applied by the auditor shall be that definition determined by the auditor to be appropriate. The parties may advocate to the auditor about what definition is appropriate, but the auditor shall determine a definition based on the auditor's independent, professional judgment.

6. For FY 2012, the monthly charge for Service to the City will be the product of the number of EDU's established by the independent audit times the rate of \$26.00 per EDU. The District will send the City an invoice for such monthly amounts by the seventh day of the calendar month in which Service is being provided, and the City will pay those invoices within

20 days of the date of receipt.

7. Payment for the amounts described in sections 1 and 3 above, for a total of \$1,421,400.00, is due within 30 days after the Effective Date of this Agreement.

8. The Parties agree that the proceedings to date satisfy and discharge the Parties' obligations in the Settlement Agreement with respect to mediation and arbitration of the Outstanding Issues (as that term is defined in the Settlement Agreement). The Parties also agree that the other terms of the Settlement Agreement shall remain in full force and effect.

9. Effective as of the Effective Date, the District and the City release each other from any and all claims, demands, actions, suits, causes of action, damages, and liabilities of any nature whatsoever (including costs, expenses, and attorneys' fees), whether known or unknown, suspected or unsuspected, asserted or unasserted, in law or equity, statutory or common law, that each Party ever had, now has, or hereafter can, shall, or may have against the other Party, arising from or relating to: (a) amounts owed for Service for all time periods through July 31, 2009, including all amounts claimed under the 1970 Contract; (b) termination of the 1970 Contract; and/or (c) the rate and amounts to be paid by the City for Service for the time period from August 1, 2009 through June 30, 2012. Each of the Parties hereby acknowledges that it may hereafter discover facts other than or different from those that it knows or believes to be true with respect to the subject matter of the released claims, but each of the Parties hereby expressly agrees that it has fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim within the scope of the release, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Notwithstanding the terms of the

release set forth above, neither Party releases any claim arising out of this Agreement.

10. The City agrees that the rules and requirements of the District regarding illegal or inappropriate discharges into the sewer system and industrial pretreatment requirements, as previously incorporated by the City's municipal code, previous agreement, or otherwise, shall continue in full force and effect during the term hereof in order to ensure the continued safe and efficient operation of the wastewater treatment system serving both Parties.

11. The undersigned representatives of the Parties covenant and represent that each such representative is fully authorized to enter into and to execute this Agreement on behalf of the Party represented.

12. The Parties expressly agree that this Agreement and its contents, and any and all statements, negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing, or of the truth of any of the claims or allegations made in connection with the proceedings agreed to in the Settlement Agreement, which are expressly denied.

13. None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties hereto have contributed substantially and materially to the preparation of this Agreement.

14. All terms of this Agreement shall be governed by and interpreted according to

Oregon law without regard to its choice of law or conflict of laws principles.

15. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and any successors in interest to such Parties; provided, however, that no assignment by any Party hereto shall operate to relieve such Party of its obligations hereunder.

16. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Facsimile or photocopies of signatures shall be considered as valid, original signatures.

17. This Agreement constitutes the sole and entire agreement among the Parties with respect to the subject matter hereof and no representations, warranties, inducements, promises, or agreements (oral or otherwise) not embodied herein shall be binding upon the Parties. Any and all prior discussions, negotiations, agreements, commitments and understandings relating thereto, are superseded hereby and merged herein. The provisions of this Agreement (including any time periods specified herein) may be modified or waived only by written agreement of the Parties. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof and, notwithstanding such failure, no Party shall be released from any obligation under this Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the date first herein above written.

CLACKAMAS COUNTY SERVICE DISTRICT NO. 1

By: _____
Name:
Title:

THE CITY OF MILWAUKIE, OREGON

By: _____
Name: *Jeremy Ferguson*
Title: *Mayor*