

RESOLUTION NO. 63-2010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ESTABLISHING AUTHORITY TO ENTER INTO AN AGREEMENT WITH CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 (DISTRICT) REGARDING CONSTRUCTION COSTS AND FUTURE OWNERSHIP AND MAINTENANCE OF TWO SANITARY SEWER LINES THAT ARE ELEMENTS OF THE NE SEWER EXTENSION PROJECT.

**WHEREAS**, The City and the District have worked together on design of two sanitary sewer projects, those two projects being adjacent to each other and immediately northeast of the City ; and

**WHEREAS**, Two lines, one running parallel to Johnson Creek Boulevard and the other running within Westfork Avenue, are necessary to the proper functioning of both projects; and

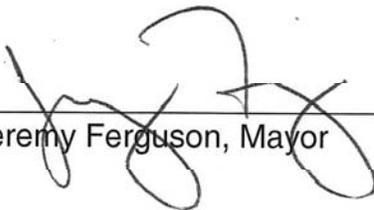
**WHEREAS**, There are substantial efficiencies in cost and effort to be achieved by the two utilities both making use of these lines; and

**WHEREAS**, It is necessary to come to agreement regarding the future ownership of these two lines, their maintenance, and the method by which the relative financial contributions to the cost of construction;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Milwaukie, Oregon, authorizes the Mayor to execute the Intergovernmental Agreement attached hereto as Exhibit A.

Introduced and adopted by the City Council on July 20, 2010.

This resolution is effective on July 21, 2010.

  
\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

  
\_\_\_\_\_  
Pat DuVal, City Recorder

  
\_\_\_\_\_  
City Attorney



7/1/2010

## INTERGOVERNMENTAL AGREEMENT

Between

**CLACKAMAS COUNTY SERVICE DISTRICT NO. 1  
and  
THE CITY OF MILWAUKIE, OREGON**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made this \_\_\_ day of \_\_\_\_\_, 2010, by and between the Clackamas County Service District No. 1, a county service district ("CCSD#1") and the City of Milwaukie, a political subdivision of the State of Oregon ("City").

### RECITALS

WHEREAS, City is a general purpose government organized pursuant to the laws of this state; and

WHEREAS, CCSD#1 is a limited purpose county service district organized pursuant to ORS Chapter 451 to provide sewage treatment, collection, and storm water services; and

WHEREAS, pursuant to ORS Chapter 451 the Board of County Commissioners ("BCC") is the governing body of CCSD#1; and

WHEREAS, CCSD#1 and the City have each designed a sewer system in their designated service areas within the North Clackamas Revitalization Area, a county urban renewal district ("NRCA"); and

WHEREAS, the parties' sewer systems have been or will be designed by the same engineering services consultant through separate agreements, and construction services will be bid separately; and

WHEREAS, the parties' respective designs have made use of two shared lines to minimize total construction costs in the interests of customers of both utilities; and

WHEREAS, CCSD#1's design assumes the use of a 12-inch sanitary sewer trunk line designed to collect sanitary flows southerly and easterly of SE Linwood and Johnson Creek Blvd and to carry District flow in a westerly direction approximately 1,600 feet to its connection with the City of Portland's Lents Trunk as shown on Exhibit A; hereinafter referred to as the "Johnson Creek Trunk Line"; and

WHEREAS, the City has designed a sanitary sewer collection system that utilizes the Johnson Creek Trunk Line to collect and convey flows from City customers along this same general alignment to a connection with the City of Portland's Lents Trunk as shown on Exhibit A; and

WHEREAS, an 8-inch main approximately 1,700 feet in length in SE Westfork Avenue between SE 58<sup>th</sup> Avenue and the connection to the City of Portland's Lents Trunk in Johnson Creek

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Blvd., hereinafter referred to as the "Westfork Avenue Sewer Main," has been designed and will be constructed by CCSD #1 to serve both CCSD#1 and City customers as shown in Exhibit A;

WHEREAS, each Party has a separate wholesale sewer service Agreement with the City of Portland for the purpose of providing recovery of Portland's cost of constructing, maintaining and operating facilities for the transportation and treatment of sewage discharged from properties with CCSD#1 and the City; and

WHEREAS, both parties derive value from the existence of these lines; and

WHEREAS, each party's share of joint costs will be allocated to the benefited properties when the projects are completed, by CCSD#1 through the formation of an Assessment District and by the City through formation of a Reimbursement District, respectively; and

WHEREAS, the City's Urban Growth Management Agreement calls for the City to be the lead provider of urban services within Dual Interest Area "A", Exhibit B, which includes all of the properties on the south side of Westfork Ave and those properties immediately to the south of the Johnson Creek Trunk Line; and

WHEREAS, CCSD#1 desires to maintain both lines due to the proportionately larger District flows that will pass through these lines; and

WHEREAS, the City is willing to transfer ownership of these two lines and related easements to CCSD#1 in return for a binding commitment that allows the City unimpeded access, at no additional cost, to the use of these same lines for their useful life and agreement that CCSD#1 shall maintain the lines; and

WHEREAS, the parties have the authority to enter into this Agreement pursuant to ORS 190.030, and being fully advised;

NOW, THEREFORE, the parties hereto agree as follows:

## **Section 1. Joint Construction**

**1.1 Johnson Creek Trunk Line.** The City has designed and agrees to construct the Johnson Creek Trunk Line westerly from SE Linwood Avenue to the Lents Trunk connection and invoice CCSD#1 for its proportionate share of the cost of construction, including pipe and all related appurtenances, utility relocations, and surface restoration and easements. Due to the additional length of this line necessary to serve CCSD#1, which is not necessary to serve City customers, CCSD#1's proportionate share of the total cost of this trunk line in place, without the service laterals, is estimated to be 56.25%, and Milwaukie's proportionate share of total cost of this trunk line is estimated to be 43.75%. Upon inspection and acceptance by CCSD#1 and payment by CCSD #1 for its share of the cost as calculated, ownership of the line and related easements shall be transferred to CCSD#1 for operation and maintenance. The City will provide CCSD#1 with copies of as-built drawings for the trunk line when construction is completed.

**1.2 Westfork Avenue Sewer Main.** CCSD#1 agrees to design and construct the 8-inch main and service laterals of the Westfork Avenue Sewer Main and invoice City for its

proportionate share of the cost of construction, including the pipe and all related appurtenances, surface restoration, and the cost of providing one service lateral to each property to be eventually served by the City. City's share shall be calculated by taking the total cost of this common section of sewer main in place without the service laterals and dividing it in half; then adding to this number the cost of the laterals for City customers. The sewer main shall be owned, operated and maintained by CCSD#1 after completion. CCSD#1 will provide the City with copies of as-built service connection drawings for the common section of sewer main when construction is completed.

**1.3 Reconciliation.** The party responsible for construction of either line shall provide preliminary proportionate share calculations for its project no later than September 1, 2010 with documentation of all related costs. Costs shall be based on the most recently available information, which may include the engineer's estimate, bid prices, or actual construction costs. Costs incurred to serve customers of both utilities shall be divided evenly. Costs necessary to serve only one set of customers shall be paid by the respective service provider. CCSD#1 and the City will meet to review documentation and reconcile the cost of both Projects. Whichever partner owes the greater amount to the other shall pay the difference between the required contributions of both partners.

**1.4 Rights of Use.** City customers shall have the right to connect to both the **Johnson Creek Trunk Line and Westfork Avenue Sewer Main (collectively, the "Lines")** constructed under this Agreement without any special financial obligation to the CCSD#1 due to CCSD#1's ownership of the Lines. City and CCSD#1 shall each have the right to transmit flows collected elsewhere through the Lines without making compensation to the other Party. City's right to use the Line shall be described in an easement or license that is acceptable to the city's and district's attorneys and recorded in Clackamas County. CCSD#1 shall not act as the provider of retail sewer services within Dual Interest Area "A" without prior written permission of City. CCSD#1 shall require any customers within Dual Interest Area "A" to connect as City customers. These rights of use shall run with the life of the Lines.

**1.5 Future Reconstruction.** The City and CCSD#1 shall meet and negotiate in good faith to establish a fair and reasonable basis to apportion costs for any future replacement of the Lines. Upgrades required due to regulatory requirements shall be treated in the same manner as future replacement costs. Upgrades necessary due to the need for increased capacity in either line shall be the responsibility of the party causing greater demand on the lines beyond that estimated by the construction plans. Before a future capital investment is made to either line for which a party may seek cost sharing, unless an emergency situation exists, the parties shall meet to discuss and reach agreement on the need, general approach, cost, and cost-share basis prior to capital investments in either line.

**Section 2. Term.** This Agreement shall have an initial term from the date of signing hereof until completion of the Projects and full payment as required in Section 1.3 above. Sections 1.4 and 1.5 shall have a term equal to the functional life of the Lines.

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### **Section 3. Termination**

**3.1 Termination of Agreement.** Either party may terminate this Agreement as it pertains to cost sharing of construction of facilities that benefit both parties upon thirty (30) days written notice for any reason. Any costs incurred by either Party because of work done for the benefit of the other Party up through the date of termination shall remain the full obligation of the benefited Party, and full payment for such amounts shall be due in full 30 days after the date of termination.

**3.2 No termination of service.** Once construction is complete and ownership of the Johnson Creek Trunk Line has been transferred, CCSD#1 shall not terminate or impede the City's use of the lines to convey the City's flow to Portland's Lents Trunk, even if this Agreement is terminated.

### **Section 4. Amendment**

The terms of this Agreement may be amended by mutual agreement of the parties. Any amendment shall be in writing and shall refer specifically to this Agreement and shall be valid only when executed by the governing bodies of the parties, and attached hereto.

### **Section 5. Severability**

In the event any of the provisions of this Agreement shall be held to be invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties hereto.

### **Section 6. Notice**

Any notice herein required or permitted to be given shall be in writing and shall be effective when actually received and may be given by hand delivery or by the United States mail, First Class, postage pre-paid, addressed to the parties as follows:

**If to City:**

City of Milwaukie  
ATTENTION: Engineering Director  
6101 SE Johnson Creek Blvd  
Milwaukie, OR 97206

**If to CCSD#1**

Clackamas County Service District No. 1  
c/o Water Environment Services  
ATTENTION: Kathy Frasier  
150 Beaver Creek Road, 4<sup>th</sup> Floor  
Oregon City, OR 97045

Changes to the above shall be by notice to the other in the manner provided in this paragraph.

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**Section 10. Dispute Resolution**

The parties shall first attempt to resolve the dispute by negotiation between the City Manager for the City and the Director of the CCSD#1 followed by submission of the dispute to binding arbitration pursuant to the rules of the American Arbitration Association.

**Section 11. Nonwaiver**

Failure by any party, at any time, to require performance by the other party of any provision hereof shall in no way affect such party's rights to enforce the same, nor shall any waiver by any party or parties of the breach hereof be held to be a waiver of the succeeding breach or a waiver of this clause.

**Section 12. Binding Effect**

The covenants, conditions, and terms of this Agreement shall extend to and be binding upon, and inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have set their hands as of the date and year hereinabove written.

**CITY OF MILWAUKIE**, a political  
subdivision of the State of Oregon

**CLACKAMAS COUNTY SERVICE  
DISTRICT NO. 1**, a County service district

By: 

By: \_\_\_\_\_  
Chair

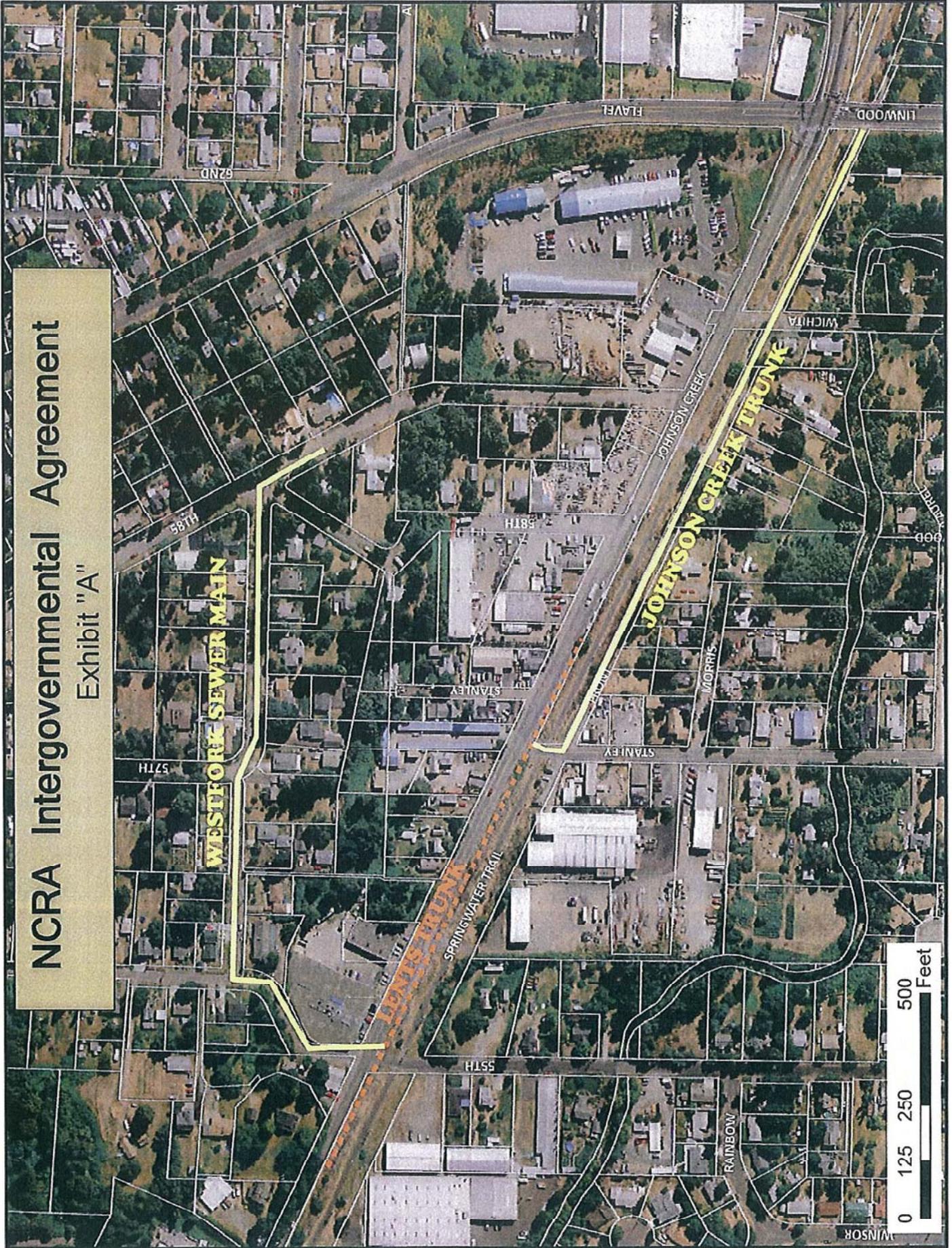
Date: July 20, 2010

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



# NCRA Intergovernmental Agreement

Exhibit "A"





# City of Milwaukee and Dual Interest Area "A"



**Legend**

-  Bodies of Water
-  Dual Interest Area A

