



## CITY OF MILWAUKIE

*"Dogwood City of the West"*

### Resolution No. 04-2015

**A resolution of the City Council of the City of Milwaukie, Oregon, approving an Intergovernmental Agreement with Clackamas River Water allowing the City to perform joint billing of utility services provided to joint accounts.**

**WHEREAS**, the City and Clackamas River Water (CRW) provide and bill utility service to some of the same customer base; and

**WHEREAS**, the City has had some difficulty collecting utility charges on properties also served by CRW without the City's control of the water billing; and

**WHEREAS**, consolidating the billing function should also provide efficiencies in City and CRW operations, ultimately saving rate payer funds; and

**WHEREAS**, the parties now desire to enter into this agreement to coordinate the utility billing functions with the City's performance of the utility billing services for both entities; and

**WHEREAS**, the City and CRW have authority to enter into such an agreement pursuant to ORS Chapter 190.

**Now, Therefore, be it Resolved** as follows:

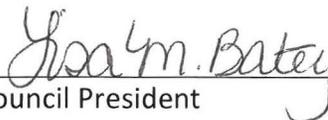
Section 1: The City Council of the City of Milwaukie agrees to the terms of an Intergovernmental Agreement with CRW where Milwaukie will perform joint billing of utility services provided to joint accounts.

Section 2: The expiration date for the original term of the agreement is January 31, 2025.

Section 3: The City Manager is authorized to sign the agreement on behalf of the City of Milwaukie.

Introduced and adopted by the City Council on January 20, 2015.

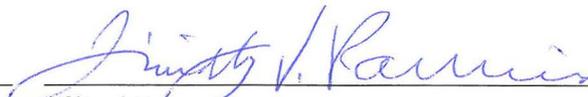
This resolution is effective on immediately.

  
\_\_\_\_\_  
Council President

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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

## INTERGOVERNMENTAL AGREEMENT FOR JOINT BILLING

This Agreement is dated \_\_\_\_\_, and is between the CITY of Milwaukie (CITY), an Oregon municipal corporation organized under Oregon law, and Clackamas River Water (CRW), a domestic water supply district organized under ORS Chapter 264.

### RECITALS

1. CITY and CRW provide utility services and bill utility charges to some of the same customer base; CITY providing wastewater, stormwater and streets maintenance and CRW providing water services.

2. Consolidating the billing function of the two organizations will recognize efficiencies in CITY and CRW operations, saving utility rate payer funds and avoiding duplication of effort on the behalf of staff.

3. In 1998 and as amended in 2008, the CITY and CRW signed an Agreement for water supply allowing for the long-term purchase of water by CITY from CRW with the option for the CITY to elect to provide customer billing, customer service activities and meter reading.

4. CITY has had some difficulty recovering utility service payments from customers when the enforcement mechanism of disconnecting water is not available and granting the CITY this power should increase CITY collections.

5. The parties now desire to enter into this Agreement to coordinate the utility billing functions with CITY's performance of utility billing services for both entities, including the provision of customer service and meter reading. The consolidated billing services would apply to cover properties where CITY provides wastewater and surface water management (SWM) and street maintenance services and CRW provides water service.

6. CITY and CRW have authority to enter into such an agreement pursuant to ORS Chapter 190.

### 1. TERM OF THE AGREEMENT

The initial term of this Agreement shall be for a period of (10) years commencing on January 31, 2015 and ending on January 31, 2025, unless either party gives written notice, as listed in Section 4 below.

### 2. INDEMNITY/HOLD HARMLESS

To the extent permitted by the Constitution and laws of the State of Oregon applicable to units of local government and subject to their monetary limits of ORS 30.260 to 30.300, each party agrees to indemnify and hold harmless the other, the other's elected officials, officers, employees, agents and representatives from and against all claims, demands, penalties and causes of action of any kind or character relating to this agreement, including the cost of defense thereof, including attorney fees arising in favor of any person on account of personal injury, death, or damage to property and arising

out of or resulting from the negligence of the indemnitor, the indemnitor's employees, agents, contractors or representatives.

### 3. INSURANCE

Each party shall maintain the following insurance coverage and minimum limits and shall name the other party as an additional insured:

- 3.1.1. Worker's Compensation and Statutory Employers Liability in the amounts required by law.
- 3.1.2. Comprehensive General Liability - \$3,000,000 combined single limit per occurrence and a \$3,000,000 General Annual Aggregate;
- 3.1.3. Automobile Liability- \$2,000,000 combined single limit per occurrence and a \$2,000,000 Aggregate.
- 3.1.4. Each party shall have the right to establish a self-insurance program or a fully self-funded program in accordance with state law.

### 4. TERMINATION

This Agreement may be terminated for convenience by either party upon six (6) months' written notice. This Agreement may also be terminated by either party at any time upon the other party's default for failure to perform or comply with a material term of this Agreement and its failure to cure or diligently commence cure of the breach within thirty (30) business days of the receipt of written notice of breach. If this Agreement is terminated, either for convenience or for breach, CITY shall transfer all CRW billing and account information to CRW within 30 days of being notified of the appropriate data file format. CITY and CRW will each pay half of the CITY's actual costs in preparation and transfer of information to CRW upon termination.

### 5. FINAL AGREEMENT/BINDING EFFECT

This document contains all of the terms and conditions of the parties' agreement and supersedes all previous and contemporaneous agreements or understandings, whether oral or written. Any waiver or modification of the terms of this Agreement must be in writing. This Agreement shall be construed so that the singular shall include the plural and the plural shall include the singular. This Agreement shall be binding upon the parties, their successors and assigns.

### 6. SEVERABILITY/SURVIVAL

If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired unless severance of any provision constitutes a material change in the consideration passing to either party, in which case the Agreement shall be deemed to be terminated. Any provisions concerning the limitation of liability or indemnity shall survive the termination of this Agreement for any cause.

## 7. INTERPRETATION OF AGREEMENT

All provisions of this Agreement have been negotiated at arm's length. This Agreement shall not be construed for or against either party by reason of the authorship or alleged authorship of any provision.

## 8. RELATIONSHIP OF PARTIES

No provision of this Agreement shall be construed to create a partnership, joint venture or employer-employee relationship. CITY is the agent of CRW for water service utility billing purposes only. No employee of CRW shall be considered to be an employee of CITY and no employee of CITY shall be considered to be an employee of CRW.

## 9. PROJECT MANAGERS

The Project Managers designated to carry out the purposes of this Agreement are the Chief Financial Officer of CRW and the Finance Director of the CITY, or their designees. Either party may change its Project Manager by providing written notice of the change to the other party.

## 10. STANDARD OF CARE

Services performed under this Agreement shall be performed in compliance with applicable law and in a manner consistent with the Standard of Care CITY employs for providing services to CITY customers. Either party has a right to audit the records of the other at reasonable times and upon reasonable notice. Each party shall carry out its money handling obligations and responsibilities under this contract in a manner consistent with generally accepted practices for units of local government in Oregon.

## 11. CONTRACTS

CITY may use contractors where CITY determines it convenient, feasible and efficient to do so as circumstances require. CITY has sole authority to select contractors and manage the contracts entered but shall consult with CRW prior to the selection of any contractors.

## 12. APPROVAL REQUIRED

This Agreement and all amendments to the written terms of this Agreement shall not be effective until approved by both the CRW Board of Commissioners and the CITY Council. Amendments related to costs of goods purchased or for services may be approved by CRW's Chief Financial Officer and the CITY's Finance Director if the cost is within the authority allowed by applicable purchasing rules and/or ordinances of the approving party.

## 13. DEFINITIONS

13.1. Account Set-Up - Account set-up refers to preparation of account information and entry of that information into CITY's database.

13.2. Customer or User – Any person, firm, or corporation paying for or using wastewater, stormwater, or street maintenance services.

13.3. Joint Accounts – Customers that are within CITY limits and CITY wastewater, stormwater and street maintenance service customers that also receive water service from CRW are known as Joint Accounts. However, if the parties agree to separately bill for the services they are providing—i.e. the CITY bills wastewater, stormwater and street maintenance services and CRW bills water service—the accounts are CITY wastewater, stormwater and street maintenance only accounts and CRW water only accounts.

13.4. New Account - A new account refers to a customer or responsible party for the water, wastewater, stormwater, and street maintenance services bill at a property which has been annexed into CITY or issued the appropriate water meter or wastewater service connection permits. CITY will assume billing responsibilities for CRW water customers when any of the following occur:

13.4.1. A property is annexed into CITY limits and water is provided by CRW,

13.4.2. A property is connected/connects to CITY wastewater where water is provided by CRW,  
or

13.4.3. A new CRW water connection is established, and the property is serviced by CITY wastewater, or part of CITY limits.

13.5. Person Responsible – Means the occupant, lessee, tenant, contract purchaser, owner, agent, or other person having possession of property, or if no person is in possession, then the person in control of the use of the property, or in control of the supervision of development on the property.

13.6. Utility Billing - Utility billing includes, but is not limited to, the creation and maintenance of account database for the joint accounts, billing appropriately calculated service charges for water, wastewater, stormwater, and street maintenance services, providing an appropriate billing statement to customer/users, accepting payments from customer/users, posting such payments to customer/user accounts, keeping records of receipts, taking appropriate action to collect delinquent charges and addressing general questions from customer/users about their joint account.

#### 14. DATABASE DEVELOPMENT AND MAINTENANCE

##### 14.1. Database Development and Maintenance

CITY will maintain the primary database of account information upon receipt of customer and location information from CRW. The joint accounts will be charged water, wastewater, stormwater, and street surface maintenance services (as applicable) using a billing statement form designed by CITY.

##### 14.2. Database Maintenance

It is the responsibility of both CITY and CRW to keep the database current. For joint accounts, once account information is entered into the CITY system, only CITY can make direct changes

to the joint account record. Only CITY can authorize and change the water account balance and other necessary account modifications or alterations such as account address, phone number or name and CRW authorized adjustments/modifications. CRW may request and authorize changes to the water service account balances but is not required to do so.

All account adjustments/modifications must be submitted to CITY no less than ten (10) business days prior to the next billing cycle in order for the information to be included in that billing period.

#### 14.3. New Account Set-Up

##### 14.3.1. Joint Accounts

CRW and CITY joint accounts will be billed to the person responsible for the water bill. The party responsible for a new joint account will notify CITY and request water, wastewater, stormwater, and street surface maintenance services. CITY may impose application fees or deposits on new accounts in accordance with CITY ordinances.

##### 14.3.2. New Connections

CITY and CRW will establish new joint accounts by matching new wastewater, and stormwater connections with the appropriate water meter information. CRW shall continue to be responsible for issuing new water meters. CITY shall continue to be responsible for issuing new wastewater, stormwater service connection permits. CRW shall determine appropriate fees for new water meters and collect the charge. CITY shall determine appropriate wastewater and stormwater connection permit fees and collect the charge(s).

CRW will provide sufficient information to CITY in a mutually agreed upon format and CITY will use that information to assist in establishing new joint accounts for user charge billing.

#### 14.4. Closing Accounts in the Database

##### 14.4.1. Closing Joint Accounts

It is the customer's responsibility to notify CITY of joint account termination. If CRW receives a request for termination of service for a joint account, it will refer the customer to CITY and CITY will make the required changes to the database. If CITY receives a request for termination of service it will enter the information into the database and process the customer request.

##### 14.4.2. Permanent Disconnections

If CITY is notified by the customer that a permanent disconnection is made, CITY will confirm with CRW that such permanent disconnection is valid. Upon validation CITY will make the required changes to the database.

## 15. PROVISION OF SERVICES

### 15.1. Services Provided by CITY

#### 15.1.1. Utility Billing

- 15.1.1.1. CITY will provide or cause to be provided all required services, labor, materials, equipment, hardware and software for joint account billing purposes. CITY will print (or provide in electronic format) the billing statements for the joint accounts on a billing statement form designed by the CITY. The billing statement form shall conform to the printing specifications of CITY and can be updated or changed as agreed upon by the parties without amending this agreement.
- 15.1.1.2. CITY will charge the rate for water provided by the CRW. When CRW rate changes occur, CRW will provide CITY the effective rates at least 30 days prior to the effective date for the new rate.
- 15.1.1.3. CITY will calculate the appropriate water, wastewater, stormwater, and street maintenance services charges in accordance with applicable ordinances, resolutions and orders of each entity. If an error is made in billing which affects more than 10 ratepayers, CITY shall promptly notify CRW and the two entities shall agree upon a process for corrective action and communication to affected parties.
- 15.1.1.4. CITY will calculate the applicable winter water average after March 20th for each joint account, based on standing criteria provided by CRW. CITY will provide agreed upon report(s) to CRW for review and edit by March 31st. Upon CRW acceptance, CITY will load the new winter water averages on Joint Accounts to be used in the calculation of water use charges prior to April 30th each year.
- 15.1.1.5. Whenever a scheduling conflict or unforeseen and unavoidable delay in performing its utility billing functions occurs, CITY will notify CRW and indicate when the processing of the bills for Joint Accounts will occur.
- 15.1.1.6. In the event one party should change its rates or add services, the party proposing the change is responsible for preparing necessary explanatory information to its customers. New charges imposed by CRW or by a third party governmental unit may be separately set forth, e.g., parks fee or CRW charges, depending on available billing statement space. Any additional programming charges would be billed on a time and materials basis to the party causing the change.
- 15.1.1.7. Customer accounts will be billed according to CITY's billing schedule.

#### 15.1.2. Mailing

- 15.1.2.1. CITY agrees to provide or cause to be provided all required services, labor, materials, equipment, hardware, and software for mailing or electronic billing of statements for Joint Accounts.
- 15.1.2.2. CITY may, at its sole discretion, use a contractor to perform any of the tasks listed above.
- 15.1.2.3. CRW may prepare a billing insert, consistent with CITY printing specifications, to Joint Account customers. CRW shall give CITY 30-days' notice of CRW's intent to distribute a billing insert and CRW's billing inserts shall be delivered to CITY or CITY's contractor as agreed to by the parties no less than ten (10) business days before the first day of the billing cycle in which the insert is intended to be distributed. If the proposed insert will result in additional postage costs, the party requesting the insert agrees to pay the full additional postage cost incurred due to the inclusion of the insert. Both parties shall have equal access to this method of communicating with customers.
- 15.1.2.4. CRW and CITY may also produce a joint newsletter to Joint Account customers which may be mailed in any billing cycle or in a separate mailing.

15.1.3. Distribution of Receipts

CITY shall distribute remittances from the Joint Accounts proportionally among the amounts owing for water, wastewater, stormwater, and street surface maintenance to the total balance owed. CITY may apply any CITY discount programs to CRW customers and applicable receipts remitted to CRW.

15.1.4. Banking

CITY's banking procedures and fund transfers to CRW shall be carried out in accordance with CITY internal practices and controls. CITY will process all customer payments in a timely manner. Further, CITY will transfer all such water service receipts to CRW in the manner and timeframe agreed upon by the parties. CITY will provide monthly notification to CRW of the transfer amount and receipts collected. CITY shall establish and implement procedures for remittance transfers to CRW on Joint Accounts customer payments later found to be charged back due to non-sufficient funds.

15.1.5. Designation of Pay Stations

CITY may establish other designated Pay Stations, in addition to CITY's main office, to accept payments on Joint Accounts.

15.2. Services Provided by CRW

In the performance by CITY of its obligations hereunder, the parties recognize and agree that CITY is relying upon timely and accurate information from CRW. To that end, CRW shall:

- 15.2.1. Take all reasonable steps to provide CITY with accurate account and billing information.
- 15.2.2. Designate contact persons to handle CRW Joint Account customer service and utility billing issues which are beyond the scope of services provided by CITY.
- 15.2.3. Provide CITY with rate information necessary for accurate calculation of appropriate water service charges consistent with CRW resolutions.
- 15.2.4. CRW is responsible for determining the number of EDU's that CITY will bill for CRW water services charges. Typically, these are properties connected to City wastewater, serviced by CRW water, and may or may not be within the CITY limits. If a new joint account is a single family residence (SFR), CITY will automatically populate the joint account to 1EDU. For commercial properties, a winter water average equal to the system average for that customer class will be used.

## 16. JOINT CUSTOMER DISPUTED CHARGES

CRW agrees that CITY will abide by CITY policy when handling disputed charges on Joint Accounts customer accounts and apply such policy as necessary. Should any disputed charge exceed 5% of the total billing for all Joint Accounts for the month in which the disputed charge occurred, CITY will discuss the disputed charge with CRW for input.

## 17. COLLECTION OF DELINQUENT ACCOUNTS

The Project Managers for CRW and CITY may mutually agree on policies and procedures for joint collection of delinquent final accounts. In the absence of such an agreement, the parties shall segregate the amounts owed based on the services rendered by each entity and each entity shall pursue the delinquent amounts separately.

## 18. COMPENSATION TO CITY FOR SERVICES

### 18.1. Payments to CITY

CITY shall invoice CRW monthly for its administration fee at a rate of five percent (5%) gross Joint Account water receipts. Such payment will cover billing administration to include costs incurred for meter reading, printing and stuffing, postage, billing statement stock, envelopes, lockbox and web payment services, armored car services, staff, equipment, hardware, overhead and other applicable services provided by any contractor. The administrative fee will be offset against CRW water charges collected and the difference will be remitted to CRW monthly.

### 18.2. Additional Services

CRW may request any additional services of CITY, including information technology requests, by making a written request to the CITY's Finance Director. Upon approval by CITY, such changes will be billed to CRW based on a time and materials basis.

### 18.3. Annual Compensation Adjustment

The scope of services under this Agreement and agreed administrative fees shall be reviewed on or before December 31st of each year starting in 2015. Operation and anticipated needs for the new fiscal year and adjustment of the terms of this Agreement, effective for the new fiscal year, shall be agreed upon by the two entities.

### 19. INTERAGENCY COMMUNICATIONS

CRW and CITY agree to meet periodically and may establish a joint oversight committee to address issues which may arise during the term of this Agreement. Additionally, CITY and CRW agree to share information which may assist the parties in accomplishing the tasks set out in this Agreement. CRW's Chief Financial Officer and CITY's Finance Director may provide for additional agreed upon procedures, protocols and understandings in order to carry out the terms of this Agreement and enhance communication between the two entities by written, signed memorandum.

### 20. SERVICE LEVEL AGREEMENT

The Project Managers of CRW and CITY may enter into a separate service level agreement to define expectations for service levels and to provide a mechanism for measuring and reporting on the attainment of those services levels. The service level agreement is not intended nor shall it substitute for this Agreement.

### 21. DISPUTE RESOLUTION

The Parties hereby agree that resolution of any and all disputes arising out of the terms of this Agreement or interpretation thereof shall follow a prescribed process beginning with negotiation and subsequently moving to mediation, provided the dispute remains unresolved. If a dispute arises between the parties regarding this Agreement, the parties shall follow the dispute resolution provisions below before legal proceedings can be commenced.

21.1. Written Notice. A written notice regarding the dispute (Dispute Notice) shall be sent to the other party. The notice shall describe the dispute in sufficient detail to enable the other party to meaningfully respond.

21.2. Negotiations. Within thirty (30) days following receipt of the Dispute Notice, the parties shall assign a representative to participate in good faith negotiations for a period not to exceed sixty (60) days after appointment of the representatives.

21.3. If, after the sixty (60) day period of negotiation (or a period not to exceed ninety (90) days following the receipt date of the Dispute Notice), the dispute(s) cannot be resolved, the parties agree to submit the matter to non-binding mediation. The parties shall attempt to agree on a mediator in a period not to exceed one hundred twenty (120) days following the receipt date of the Dispute Notice and proceed accordingly.

21.4. Litigation. If the parties cannot agree on a mediator with the allocated time, or if the mediator cannot resolve the dispute(s) within one hundred eighty (180) days following the

receipt date of the Dispute Notice, either of the parties may initiate litigation in the Circuit Court of the State of Oregon for Clackamas County and seek all available remedies. Moreover, each of the parties shall bear its own legal and expert witness fees at all stages of the dispute resolution process, including at trial or on any appeals. In addition, nothing shall prevent the parties from waiving any of the dispute resolution steps by mutual consent.

IN WITNESS WHEREOF, the parties have, pursuant to official action of their respective governing bodies, duly authorizing the same, caused their respective officers to execute this instrument on their behalf.

WHEREAS, all the aforementioned is hereby agreed upon by CITY and CRW and executed by the duly authorized signatures below:

DATED this 21st day of January, 2015.

CLACKAMAS RIVER WATER

CITY OF MILWAUKIE

\_\_\_\_\_  
President

  
\_\_\_\_\_  
City Manager

ATTESTED:

ATTESTED:

\_\_\_\_\_

  
\_\_\_\_\_  
Pat Duval, City Recorder