



CITY OF MILWAUKIE

"Dogwood City of the West"

Resolution No. 68-2015

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT TO PROVIDE APPARATUS AND VEHICLE MAINTENANCE SERVICES FOR CLACKAMAS RIVER WATER AND SUNRISE WATER AUTHORITY UNTIL JUNE 30, 2020.

WHEREAS, The City initiated fleet maintenance services for Clackamas River Water (CRW) beginning in January 2010 with a five year agreement; and

WHEREAS, The City initiated fleet maintenance services for Sunrise Water Authority (SWA) beginning in March 2012 with a one year agreement that was renewed in 2013 with a three year term; and

WHEREAS, The past three years of supporting CRW and SWA have proven to be beneficial such that all parties support a continuance of the relationship; and

Now, Therefore, be it Resolved that City council approves renewal of a joint Intergovernmental Agreement with Clackamas River Water and Sunrise Water Authority to continue providing vehicle maintenance work by the City until June 30, 2020 and granting the City Manager approval to sign the Agreement.

Introduced and adopted by the City Council on June 16, 2015.

This resolution is effective on June 16, 2015.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

RECORD COPY**INTERGOVERNMENTAL AGREEMENT FOR
APPARATUS AND VEHICLE MAINTENANCE**

THIS AGREEMENT authorized by ORS 190.010 is made this ___ day of June 2015, by and between the CITY OF MILWAUKIE, an Oregon municipal corporation hereinafter referred to as "CITY," ; Sunrise Water Authority, an Oregon municipal corporation, hereinafter referred to as "AUTHORITY," and Clackamas River Water, an Oregon municipal corporation, herein after referred to as "DISTRICT." The promises and agreements of each are in consideration of the promises and agreements of the other.

The parties agree as follows:

1. Term. The term of this Agreement is one (5) year, beginning on the 1st day of July 2015, ending on the 30th day of June 2020.

2. Scope of Services.

A. The CITY agrees to provide apparatus and vehicle maintenance services ("Service or "Services") to the AUTHORITY and DISTRICT. The following apply to this scope of Services.

2.A.1.1. "Service(s)" means the provision of apparatus and vehicle maintenance, requested by AUTHORITY and or DISTRICT, or required as reasonable measures of preventative maintenance, performed for the purpose of keeping vehicles and apparatus in an operable condition that is consistent with the purpose of the vehicle or apparatus.

2.A.1.2. Service does not include

- (a) efforts to maintain vehicles or apparatus in operable condition past the point of determining that operable condition cannot be restored using reasonable efforts under the circumstances;
- (b) efforts to maintain vehicles or apparatus for purposes that the object was not manufactured to perform

B. The scope of services is further defined in the Appendix, incorporated by reference into this Agreement.

3. Compensation. The AUTHORITY and DISTRICT agree to pay the CITY based on billings provided by the CITY according to the following terms:

A. The cost to provide service shall be based on an hourly rate. For the first year of this agreement, the rate shall be \$75.00 for regular hours and \$110.00 per hour for overtime hours and \$145.00 per hour for double time. For years two through five of the Agreement, the rates will be the regular rate adopted by the City Council on the CITY's Master Fees Schedule. The rate for overtime hours will be 140% the rate for regular hours and the rate for double time hours will be 180% the rate for

regular hours. Double time and call backs are a minimum of two hours of double time.

- B. The actual costs of parts, plus 15% to reflect administrative costs of this agreement.
- C. The AUTHORITY and DISTRICT are responsible for paying the applicable cost of service provided by mechanics and other CITY public works personnel assigned to service AUTHORITY and DISTRICT apparatus and vehicles. The CITY will calculate the cost of this service and bill the AUTHORITY or DISTRICT, as applicable, for the service.
- D. The AUTHORITY and DISTRICT intend to appropriate funds during the term of this Agreement sufficient to provide the payments required to be made to the CITY during this Agreement.
- E. The CITY shall invoice the AUTHORITY and DISTRICT on a monthly basis for service provided during the prior month. The AUTHORITY and DISTRICT shall make payment for services within fifteen (15) calendar days of receipt of invoice.
- F. It is understood and agreed by the parties that no board member, officer, or other representative of the AUTHORITY or DISTRICT shall be individually liable for any payments due to the CITY.
- G. None of the provisions of this Agreement shall be construed to create in the AUTHORITY or DISTRICT any right, interest, or ownership in any real or personal property of the CITY used for the performance of this Agreement.

4. Operational Coordinating, Scheduling Protocol, and Supervision.

- A. The AUTHORITY and/or DISTRICT will provide a liaison to coordinate with the CITY's Fleet Supervisor. The Fleet Supervisor will ensure the day-to-day provision of high quality apparatus and fleet maintenance services that are approved by the CITY, the AUTHORITY, and the DISTRICT. The parties will attempt to resolve questions and disagreements at the liaison level. However, if the parties cannot resolve an issue in this manner then they will raise the issue with the CITY Public Works Director and the affected General Manager for resolution. In the event the parties cannot agree on a resolution to the issue, a mutually agreeable third-party mediator will be contacted. Such mediation shall not be binding but shall be the basis for the parties meeting to finalize agreement on operational and supervision issues.
- B. Each General Manager acknowledges that the CITY has a responsibility to provide priority service first to the CITY departments. Recognizing this, the CITY shall provide a reasonable estimate on a case-by-case basis of the time frame in which work can be completed so the AUTHORITY and DISTRICT can determine if alternative arrangements for service are needed to meet its needs.

5. Hold Harmless.

- A. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, the CITY shall hold harmless and indemnify the AUTHORITY and DISTRICT, its directors, employees, and volunteer agents against any and all claims, damages, losses, and expenses (including all attorney(s) fees and costs), arising out of, or resulting from, the CITY's performance of this Agreement where the loss or claim is attributable to the acts or omissions of the CITY.
- B. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, the AUTHORITY and DISTRICT shall hold harmless and indemnify the CITY, its councilors, employees, and volunteer agents against any and all claims, damages, losses, and expenses (including all attorney(s) fees and costs), arising out of, or resulting from, the AUTHORITIES or DISTRICTS performance of this Agreement where the loss or claim is attributable to the acts or omissions of the AUTHORITY or DISTRICT.
- C. The parties intend questions of property casualty, personal injury, theft loss, and other occurrences of casualty or loss stemming from acts undertaken by either party in furtherance of this agreement, shall be resolved by the mutual indemnity provisions of this section.

6. Termination. This Agreement may be terminated by either party as of the 1st day of May of any year during the term of this Agreement by giving written notice to the other party by January 1st of the current year.

7. Renewal. The AUTHORITY and DISTRICT agree to give three (3) months' notice to the CITY prior to the expiration of this Agreement if the AUTHORITY or DISTRICT intends to renegotiate the Agreement.

- A. If the AUTHORITY or DISTRICT notifies the CITY of its intent to renegotiate this Agreement, the parties agree that prior to the termination of this Agreement they will negotiate in good faith concerning renewal of this Agreement or the making of a new Agreement.
- B. If the AUTHORITY or DISTRICT notifies the CITY of its intent to renew or renegotiate this Agreement and renewal or successful renegotiation has not been completed before the end of this contract period, this Agreement shall be automatically extended for ninety (90) days to allow continuing negotiations. This Agreement may be extended further by mutual agreement for additional increments up to ninety (90) days each.

8. Discrimination. The parties agree not to discriminate on the basis of race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, or source of income in the performance of this Agreement.

9. Waiver of Breach. A waiver of any breach of any provision of this Agreement by either party shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

10. Applicable Laws. At all times during the term of this Agreement the AUTHORITY, DISTRICT, and CITY shall comply with all applicable laws, ordinances, rules, and regulations of the United States of America, the State of Oregon, including all agencies and subdivisions thereof.

11. General Provisions. Unless otherwise specifically prescribed in this Agreement, the following provisions shall govern its interpretation and construction:

- A. When not inconsistent with the context words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number.
- B. Time is of the essence of this Agreement. The Parties agree that neither one shall be relieved of its obligation to comply promptly with any provisions of this Agreement by any failure of the other party to enforce prompt compliance with any of its provisions.
- C. Unless otherwise specified in this Agreement, any action authorized or required to be taken by the CITY shall be taken by the CITY Manager or designee.
- D. Every duty and every act to be performed by either party imposes an obligation of good faith on the party to perform such.
- E. The CITY shall not install any part that will void the vehicle manufacturer's warranty.

12. Notice. All notices, reports, or demands required to be given in writing under this Agreement shall be deemed to be given when delivered personally to the person designated below or when five (5) days have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid, or on the next business day if sent by express mail or overnight air courier to the party to which the notice is being given, as follows:

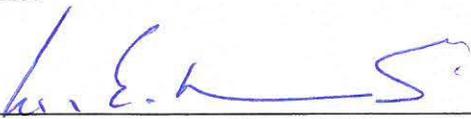
<u>For CITY:</u>	<u>For AUTHORITY:</u>	<u>For DISTRICT:</u>
William Monahan	Wade Hathorn	Lee E. Moore Sr.
City Manager	General Manager	General Manager
10722 SE Main	10602 SE 129th Ave	PO BOX 2439
Milwaukie OR 97222	Happy Valley OR 97086	Clackamas OR 97015

Such addresses may be changed by either party upon written notice to the other party given as provided in this section

13. Captions. The paragraph captions and headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

14. Time Computation. Where the performance or doing of any act, duty, matter, payment, or thing is required hereunder and the period of time or duration for the performance is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

CLACKAMAS RIVER WATER, a Water District

By: 
Lee E. Moore Sr., General Manager

Date: 7/14/15

SUNRISE WATER AUTHORITY, an Oregon Water Authority

By: 
Wade Hathhorn, General Manager

Date: 6/25/15

CITY OF MILWAUKIE, an Oregon Municipal Corporation

By: 
William Monahan, City Manager

Date: 6/17/15

Approved as to form:


Dan R. Oiser, City Attorney

Date: 6-16-15

APPENDIX

A. SERVICES. The CITY agrees to provide the following services on the following terms:

1. Provide the due dates for all preventative maintenance for the AUTHORITY and DISTRICT. An agreed upon checklist will be utilized.
2. Maintain small equipment, as requested.
3. Provide once a year safety checks on all AUTHORITY and DISTRICT vehicles, as requested.
4. Coordinate and schedule outside repairs and work.
5. Maintain a record and history of all AUTHORITY and DISTRICT vehicles and equipment serviced by the City.
6. Provide reports on labor, parts, and expenses, as requested.
7. Coordinate, schedule, and perform all D.E.Q. testing that is needed.
8. Research and obtain parts from vendors.
9. Perform other services of a similar nature that the AUTHORITY or DISTRICT may request or that circumstances may warrant the CITY to perform

B. STANDARDS. The Parties' relationship shall embody the following standards:

1. Prior approvals.
 - a. CITY will not perform work without prior approval of the AUTHORITY or DISTRICT as applicable.
 - b. All communication for prior approval of work must be delivered to AUTHORITY or DISTRICT and received by CITY in written (email) form prior to work being performed.
 - c. Requests for prior approval shall be accompanied by an estimate of required costs for parts and services. It is understood that estimates represent an opinion based on facts and circumstances reasonably knowable at the time the estimate is made, and that further work needs are, at times, learned after work starts. CITY agrees to advise AUTHORITY or DISTRICT if more than \$100 worth of parts or services are required above an estimate and AUTHORITY and DISTRICT agrees that CITY does not need approval of AUTHORITY or DISTRICT to complete a project where the cost exceeds the estimate by less than \$100.
 - d. When preparing estimates of the cost of the CITY providing this service, the CITY shall account for its cost associated with assigning mechanics and other personnel to tasks.

- e. Estimates shall include the anticipated time frame in which CITY believes the service can be completed.
2. "Parts" shall be accounted for under the following standards:
 - a. "Parts" are discrete pieces of the machinery of a vehicle or apparatus necessary for the device to function as intended. The parties anticipate that parts are procured from vendors in the business of supplying parts, or procured from the manufacturer of the apparatus being worked on.
 - b. "Parts" are not items such as towels, brooms, and electricity that stem more from the cost of doing business than from the cost of servicing AUTHORITY and DISTRICT vehicles and apparatus.
 - c. CITY shall keep a receipt of parts that are procured to service AUTHORITY and DISTRICT vehicles and apparatus under this agreement. However, where procurement acquires parts for CITY, AUTHORITY and DISTRICT vehicles or apparatus, it is sufficient for CITY to keep a copy of such a receipt with AUTHORITY and DISTRICT costs highlighted or otherwise identified.
 - d. CITY will procure parts for AUTHORITY and DISTRICT vehicles along the same parts quality and price standards under which CITY would procure parts for CITY vehicles.
 - e. The City will not procure or install any part that will void manufacturer warranties.
 3. CITY shall keep a written record of each act of maintenance or service that a CITY employee or agent performs on AUTHORITY and DISTRICT vehicles or apparatus. A record required to be produced under this section is adequate if it identifies:
 - a. The names of persons who provide services.
 - b. The time, date, and general description of the services provided.
 - c. The number of hours spent on work, listed per worker, plus the cost of each worker's time.
 - d. A list of the vehicle or apparatus parts required to perform the service, plus the cost of each such item.
 4. CITY shall provide AUTHORITY and DISTRICT with reports of vehicle maintenance and repairs, including costs of activities, upon request of the AUTHORITY or DISTRICT.