

## INTERGOVERNMENTAL AGREEMENT

### RELATING TO PROVISION OF WATER SERVICE TO THE THIMBLE CREEK CONCEPT AREA OF THE CITY OF OREGON CITY

THIS AGREEMENT is made and entered into by and between CLACKAMAS RIVER WATER ("CRW"), a domestic water supply district created pursuant to ORS Chapter 264, and the CITY OF OREGON CITY ("City"), an Oregon municipal corporation. CRW and the City are hereinafter referred to as the "Parties."

#### RECITALS:

- A. The City and CRW each operate separate public water systems for domestic purposes to the residents in their respective service areas. The Parties acknowledge that they have the authority to execute this intergovernmental cooperative agreement pursuant to ORS 190.003 to 190.030.
- B. CRW and the City desire to provide water service in an orderly, efficient, non-duplicative manner and as provided for within the City's adopted Water Distribution Master Plan (WMP), and CRW's adopted Water System Master Plan.
- C. The owner and developer (the "Owner/Developer") of certain real property within the City (the "Development") intends to seek development approval for the property. The Development is within the CRW district boundaries and also is within the Oregon City city limits and Oregon City Urban Growth Boundary. CRW has existing infrastructure, system pressure and capacity to serve portions of the Development. As of the date of this Agreement, the City does not have the system pressure needed to serve the Development.
- D. The City's current 2012 WMP, as amended in 2021, is the City's guiding document for the planning of the City's water distribution system to meet both existing and future projected water demands and provides recommendations for a Capital Improvement Program (CIP) for future water infrastructure improvements.
- E. The City's recommended CIP includes water system improvements that will provide expanded service to the city's upper system above 475 feet, including portions of the City's Thimble Creek (Beavercreek Road) Concept Area, as shown on Exhibit A (the "Area"). The Development is within the Area.
- F. The City received voter approval in November 2021 to take on debt to support its water system improvements.
- G. The City has received federal grants and a WIFIA loan to fund design and construction of water infrastructure that will improve the existing water service and provide for water service to the Area. Said loan closed on July 20, 2023, and improvements are anticipated to be completed by 2027 year end.
- H. CRW and the City anticipate that CRW, through the term of this Agreement, will have

system capacity to provide interim water service to development within a portion of the Area in accordance with Section 6 (Flow Rates), listed hereinafter. The location and manner of connection from CRW's system to City infrastructure in the Area will be established in a Memorandum of Understanding approved by the City's City Manager and CRW's General Manager (the "MOU").

- I. This Agreement sets forth the intention of the Parties regarding CRW's provision of interim water service to the City in order to allow the City to serve development in the Area.
- J. The Parties will coordinate agency review and oversight of the third-party design and construction of the Owner/Developer required infrastructure necessary to accomplish the purposes of this Agreement as provided in the MOU.

NOW, THEREFORE, the premises being in general as stated in the foregoing recital, IT IS AGREED by and between the Parties hereto as follows:

- 1. **EFFECTIVE DATE:** This Agreement shall take effect on \_\_\_\_\_, 2023, and shall remain in effect until the earlier of December 31, 2028, or the date on which the City is able to serve the Area through a connection to the City's water system. The term of this Agreement may be extended by mutual written agreement of the parties, which shall be requested by City in writing no later than 180 days prior to the expiration of the term.
- 2. **COORDINATION:** The Parties hereby establish a cooperative approach to managing activities related to the provision of water to the Area, including infrastructure and capital planning, building and construction permitting, construction plan review, and final construction and acceptance. Without limitation:
  - a. CRW is responsible for approval and coordination with the City and Owner/Developer on construction and connection requirements associated with providing water service from CRW's water system to the Development.
  - b. All costs associated with a connection to CRW's water system to serve the Development, including without limitation design review and inspection fees, will be paid by City and in accordance with CRW adopted payment policies.
  - c. The City shall require Owner/Developer to construct the intertie (the "Intertie") and appurtenances as further identified in the MOU at Owner/Developer's cost.
  - d. Upon complete construction by the Owner/Developer, and acceptance of the Intertie by the City and CRW, CRW shall own, operate, and maintain the Intertie and associated appurtenances, and the City shall own, operate, and maintain the water transmission main beyond the Intertie.
  - e. The City is responsible for the collection and administration of Oregon City Water System Development Charges and South Fork Water Board System Development

Charges generated in the Development.

- f. The City shall require the Owner/Developer to obtain all necessary permits and governmental approvals for constructing the said infrastructure, including applicable permits from Clackamas County for construction of any infrastructure within Beaver Creek Road public right-of-way, the coordination with CRW for CRW's technical plan approval(s), permitting approvals, and construction inspections as applicable for the Intertie, and all necessary permits and approvals from the City.
  - g. The City shall provide timely notice to CRW, and furnish materials for review, when the City receives submittals for design phase and final construction plans and building application(s) for the said infrastructure, being the Intertie, appurtenances, and related water main.
  - h. The City shall require the Owner/Developer to provide relevant developer submittals, including without limitation submittals related to Intertie materials and schedules, to CRW for review/concurrence, as applicable.
  - i. The City shall provide timely notice to CRW, including the opportunity to attend water system design, preconstruction, or construction meetings with Owner/Developer.
  - j. The City shall provide CRW at least thirty (30) days' advance written notice of the day it will begin serving the Development through a connection to the City's water system.
  - k. If the City and CRW agree the Intertie should be decommissioned, all costs for the decommissioning, abandonment, and removal of a relevant connection to CRW's water system shall be paid by the City at the time the connection is no longer necessary to effectuate this Agreement. The City's agreement that the Intertie should be decommissioned shall not be unreasonably withheld. The obligations in this paragraph will survive the expiration of this Agreement.
  - l. The City shall initiate withdrawal of the Development property from the CRW district pursuant to ORS 222.524 no later than six (6) months after it begins providing water to the Development through a connection to the City's water system.
  - m. All provisions in this Section 2 relating to the Owner/Developer and the Development shall apply to any other owner/developer and development provided water within the Area pursuant to this Agreement, including the use of a memorandum of understanding to determine the manner and location of the connection between the Parties' water systems.
3. **SUPPLY OF WATER:** During the term of this Agreement and pursuant to its terms and conditions, CRW agrees to wheel to and provide a supply of potable water to the City in the amount necessary to allow the City to serve the Area with sufficient water as defined in Section 6.

4. **LIMITATION OF SUPPLY:** The Parties understand and agree that CRW anticipates a supply of water sufficient to furnish the City with water service at the Intertie and allow the City to serve a portion of the Area based on the flow rates described in Section 6 of this Agreement. For purposes of this Agreement, water provided to the City by CRW is considered to be available from CRW's Beaver Creek Pressure Zone. In the event CRW is unable to furnish a sufficient supply of water to the City during the term of this Agreement, CRW shall give reasonable notice to the City and it is agreed that CRW shall not be held liable on account of any such inability or related curtailment. The City may, at its discretion, obtain and use water from the City's distribution system maintained by the City or from other sources at any time during the term of this Agreement, with reasonable notice to CRW.
5. **SERVICE REDUCTION:** CRW agrees to exercise reasonable diligence and foresight to repair and replace its distribution system to maintain water volume, pressure and flows, as CRW is currently able to provide. The estimated normal flow rates and emergency fire flow rate are described in Section 6 below. If a general emergency or water shortage requires restriction on the delivery of water, then general restrictions placed upon deliveries to the City shall be determined per CRW's current *Water Management and Conservation Plan*.
6. **FLOW RATES:** The following estimated increased flow rates are based on the flow rates CRW currently is able to provide pursuant to its water system hydraulic model, including any limitations, and shall be deemed to be sufficient for the purposes of this Agreement:
  - Estimated Average Daily Demand (ADD) gallons per minute = 40
  - Estimated Maximum Daily Demand (MDD) gallons per minute = 110
  - Fire Flow Requirement = 1,500 gpm @ 20 psi
7. **RATES AND CHARGES:** The City shall be billed monthly for the water sold under this Agreement, and payment shall be made within 30 days of billing.
  - a. The wholesale rate paid for water passing through the Intertie shall be based on the rate charged to CRW by South Fork Water Board (SFWB) plus CRW O&M Rate of \$1.236 per ccf established on January 1, 2023. The portion of the wholesale rate based on the rate charged to CRW by SFWB will be adjusted the month following any adjustment to the SFWB rate. The O&M Rate will be adjusted annually effective on January 1 based on the ENR CCI for Seattle for the prior September.
  - b. The City shall pay CRW a charge of \$1,000 per initial service connection within the Area while this Agreement is in effect, due and payable within sixty (60) days after a customer is connected to water service for the first time. To facilitate this charge, the City will provide CRW with a quarterly report identifying all customers connected to water service for the first time.
  - c. The charge set out in Paragraph 7(b) of this Agreement shall increase to \$1,750 per initial service connection beginning five (5) years following the effective date of this

Agreement. By way of clarification, this Paragraph 7(c) will not become effective unless the Agreement is extended by mutual agreement of the parties as provided in Section 1 of this Agreement.

8. **TIMELINE:**

The Parties agree to develop a timeline for each of the respective construction obligations outlined in this Agreement that is mutually agreeable to all Parties. It is anticipated that the Development's projected phased development and water demand will begin in the summer of 2025.

The City has received grants and loans to fund design and construction of water infrastructure that will improve the existing water service and provide for water service to the Area. Oregon City's water system improvements are anticipated to be completed in 2027.

9. **RESPONSIBILITIES CONCERNING CONNECTION AND METER(S):** CRW

agrees that if an Intertie meter is required by the MOU, said meter shall be checked and its accuracy certified annually by a qualified meter technician at the expense of CRW. Should the meter at any time fail to accurately measure the water passing through said meter, the charge for such water delivered during the time the meter is not properly functioning shall be based on an estimate by CRW that considers records for City usage for the period out of service. The City will provide CRW with customer water use information for the period the meter was not functioning. CRW agrees to notify the City prior to repairing the meter and to repair the meter expeditiously. The City or its agents shall contact CRW for access to the metering vault, as needed. CRW and the City further agree that any new system interconnection, or replacements of existing system interconnections, shall require the prior approval of CRW and the City. This obligation will survive the expiration of this agreement until a time when an Intertie meter is no longer needed.

10. **LIMITATIONS ON LIABILITY:** No liability on behalf of the CRW or its officers, directors, employees or agents shall arise from any curtailment or interruption of service consistent with the terms of this Agreement. The City agrees to defend, indemnify and hold CRW harmless for claims brought by or through the City's customers for damage of any nature resulting from such curtailment or interruption of service except for claims attributable to negligence by CRW or the deliberate action by CRW contrary to the terms of this Agreement.

11. **MAINTENANCE:** CRW shall own, operate, maintain, repair and replace all water system facilities necessary to furnish water to the Intertie. CRW shall impose no charges other than established pursuant to Section 7.

12. **AMENDMENT PROVISION:** The terms of this Agreement may be amended or supplemented by a mutual agreement of the Parties. Any amendments or supplements shall be in writing, shall refer specifically to this Agreement, and shall be executed by the Parties.

13. **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. Within thirty (30) days following receipt of written notice regarding a dispute, the Parties shall assign a representative to participate in good faith negotiations for a period not to exceed sixty (60) days.
- a. If after the sixty (60) day period of negotiation (or a period not to exceed ninety (90) days following the original date of receipt of notice regarding the dispute), 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 thirty (30) days (or a period not to exceed one hundred twenty (120) days following the original date of receipt of notice regarding the dispute) and proceed accordingly.
  - b. After exhaustion of the preceding processes, either Party may initiate litigation in the Circuit Court of the State of Oregon for Clackamas County. Moreover, each Party 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 steps by mutual consent.
  - c. The Parties agree that the service and commodity provided by CRW pursuant to this Agreement is a special contract service and is not provided by CRW as a common utility service.
14. **OTHER NECESSARY ACTS:** The Parties shall execute and deliver to each other all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
15. **SEVERABILITY:** If one or more of the provisions contained in this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall continue in full force and effect.
16. **NOTICES:** Any notice herein required or permitted to be given shall be given in writing, shall be effective when actually received, and may be given by hand delivery or by United States mail, first class postage prepaid, addressed to the Parties as follows:

**Clackamas River Water:**  
General Manager  
Clackamas River Water  
PO Box 2439  
Clackamas, OR 97015

**Oregon City:**  
City Manager  
City of Oregon  
City 625 Center Street  
Oregon City, OR 97045

These addresses may be changed by written notice to the other Party.

17. **NO THIRD-PARTY BENEFICIARIES:** The Parties to this Agreement are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons.
18. **NONWAIVER:** Failure by any Party at any time to require performance by the other Party of any of the provisions of this Agreement shall in no way affect such Party's rights hereunder to enforce the same, nor shall any waiver by either Party of the breach of this Agreement be held to be a waiver of any succeeding breach or a waiver of this non-waiver clause.
19. **APPLICABLE LAW:** The Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.
20. **COMPLIANCE WITH LAWS:** In connection with their activities under this Agreement, both Parties shall comply with all federal, state, and local laws, comprehensive plans and ordinances applicable to this Agreement, or any work performed pursuant to this Agreement.
21. **INDEMNIFICATION:** To the maximum extent permitted by law and subject to the limitations of the Constitution and laws of the State of Oregon regarding units of local government, the Parties shall hold harmless, defend, and indemnify each other, its governing bodies, officers and employees, from any claims for damages to property or injury to persons or for any penalties or fines, which may be occasioned in whole or in part by the indemnitor's negligent performance or negligent failure to perform under this Agreement.
22. **ASSIGNMENT:** Neither Party may assign this Agreement, in whole or in part, or any right or obligation hereunder, without written approval of the other Party, which shall not be unreasonably withheld.
23. **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 of the Parties hereto.
  - a. The City and CRW represent that the person signing this Agreement on each Party's behalf is duly authorized to bind it to the terms of this Agreement.
  - b. Successors and Assigns. All the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the Parties hereto and their respective legal representatives, successors and assigns.
24. **COUNTERPARTS:** This Agreement may be executed in several counterparts, all of which taken together constitute the Agreement and is binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

IN WITNESS WHEREOF, the Parties have set their hands and affixed their seals as of the date and year herein above written.

The Board of Commissioners of Clackamas River Water has acted in this matter and the Agreement is approved by its Board on the \_\_\_ day of \_\_\_\_\_, 2023.

The City of Oregon City has adopted the Agreement by its City Commission on the \_\_ day of \_\_\_\_\_, 2023.

CLACKAMAS RIVER WATER

CITY OF OREGON CITY

ATTEST

ATTEST

APPROVED AS TO FORM

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