# CITY OF MILWAUKIE
# CITY COUNCIL REGULAR SESSION
# DECEMBER 4, 2012

## CALL TO ORDER

**Mayor Ferguson** called the 2139th meeting of the Milwaukie City Council to order at 7:13 p.m. in the City Hall Council Chambers.

Present: Council President Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff present: City Manager Bill Monahan, City Attorney Tim Ramis, City Recorder Pat DuVal, Finance Director Casey Camors, Public Works Operations Director Gary Parkin

## PLEDGE OF ALLEGIANCE

## PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

### Christmas Ships Parade Weeks Proclamation

**Mayor Ferguson** read a proclamation naming December 7, 2012 through December 21, 2012 as Christmas Ships Parade Weeks in the City of Milwaukie and encouraged citizens to greet the ships and their owners as they arrived in Milwaukie.

## CONSENT AGENDA

**It was moved by Councilor Hedges and seconded by Council President Chaimov to adopt the consent agenda as presented.**

A. **City Council Minutes of November 6, 2012, Work Session;**
B. **Resolution 59-2012: A Resolution of the City Council of the City of Milwaukie, Oregon, Providing Notice of Changes to the December 18, 2012 Meeting Times;**
C. **Resolution 60-2012: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Sine Adams to the Milwaukie Planning Commission; and**
D. **OLCC Application for Breakside Brewery, 5821 SE International Way, a new outlet and second location.**

**Motion passed with the following vote: Councilors Loomis, Miller, Chaimov, and Hedges and Mayor Ferguson voting "aye." [5:0]**

## AUDIENCE PARTICIPATION

**Mr. Monahan** reported on the previous meeting's audience participation comments. Les Poole commented on the Milwaukie Elks Lodge and the Land Use Board of Appeals (LUBA) appeal. Ed Parecki had requested that the money he paid for the public records request regarding certificates of occupancy be refunded and that his questions be more fully addressed. Mr. Monahan reported that Mr. Parecki's refund would be in the December 7 check run and that Ms. DuVal would contact him about the records request.

**Mr. Parecki** said the information provided by Mr. Monahan was accurate.

**Robert Smith**, Milwaukie, requested a variance or exception to the half-street improvements required before he could occupy his new home. He was a little behind in doing the concrete work because of the weather.

**Mayor Ferguson** recommended Mr. Smith work with Mr. Monahan and make a recommendation to the City Council.

**PUBLIC HEARING**

None scheduled.

**OTHER BUSINESS**

**A. Wastewater Treatment Agreement with Clackamas County – Resolution**

**Mayor Ferguson** reviewed talks with Clackamas County Service District #1 (CCSD1). The agreement had been expired for a number of years, and in the past year the negotiating teams met and identified several key issues to resolve. The draft agreement before the City Council represented a year's work, and it was endorsed by the RiverHealth Advisory Board and Milwaukie Citizens Utility Advisory Board (CUAB). Clackamas County will contribute 10% of the City's costs for all wastewater conveyance infrastructure projects designed to reduce infiltration and inflow (I&I) into the sewer system. Further, the District will provide $1 million for odor control at the site and put aside $1 per equivalent dwelling unit (EDU) into a Good Neighbor Fund to mitigate impacts to the surrounding area. The agreement called for the formation of a good neighbor group made up of Milwaukie residents to work with Water Environment Services (WES), and WES staff would regularly attend Historic Milwaukie and Island Station Neighborhood meetings. Mayor Ferguson recommended that the City Council approve the resolution and move forward with the agreement. He appreciated the hard work done by negotiating team members County Commissioner Paul Savas, County Counsel Chris Storey, and City Attorney Harlan Jones.

**It was moved by Council President Chaimov and seconded by Councilor Loomis to adopt the resolution approving an intergovernmental agreement with Clackamas County Service District No. 1 and authorizing the Mayor to sign the agreement. Motion passed with the following vote: Councilors Loomis, Miller, Chaimov and Hedges and Mayor Ferguson voting "aye." [5:0]**

**RESOLUTION 61-2012:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 AND AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT.**

**Councilor Loomis** said this agreement was many years in coming and thanked Mayor Ferguson and Commissioner Savas for working together to resolve the issues.

**B. Establish Wastewater Rates**

**Mayor Ferguson** said rather than taking action at this meeting, the City Council will hear public comments at the December 18, 2012, regular session at 5:30 p.m.

**Ms. Camors** and **Mr. Parkin** provided the staff report in which the City Council was requested to review the progress of the wastewater rate study and the recommendation of the Citizens Utility Advisory Board (CUAB) on a rate to adopt. In June the City Council directed that staff move forward with an expert rate consultant and use the CUAB in an advisory capacity to design a rate structure that provided funds adequate to fund treatment as well as City maintenance and operations. Additionally, the City Council adopted an interim rate increase of 30% to fund treatment costs through the end of December. The CUAB had played a significant role in this process.

**Fletcher Davis**, StepWise Utility Advisors, reviewed the findings. His firm was engaged to look at the impacts to the sewer fund both in the long and short terms and to advise the City's rates on best industry practices. The goals of the study were to recover the full costs the City incurred to provide wastewater service to all of its customers, produce a fair and equitable assignment of the costs of wastewater treatment charges assessed, and to allow the City to separate its costs from the CCSD1 costs on customer's bills. He reviewed the three steps involved in setting equitable rates: the financial plan, cost of service, and rate design. He noted it had been about 7 years since the City had thoroughly reviewed its rates. In 2013, treatment costs were approximately 70% and were a major driver of the finance plan leading to a $680,000 capital expense in 2015. Even in the past couple of years revenues had not matched costs, and there was a shortfall. He reviewed the impacts of no new rate increases over time. The 30% interim rate adopted earlier this year was found to be inadequate, so an additional 10% increase was recommended January 2013, 9% in July 2014, and a 4.5% increase at the beginning of each subsequent fiscal year to 2017. The goal was to collect $6.2 million in 2013.

**Mr. Davis** discussed how cost of service was determined for each customer classification. About 75% of the utility customers were residential and 25% commercial, food service, and heavy and light industrial. The wastewater volume charge was $5.89 per 100 cubic feet (ccf) for residential and $7.63 per ccf for commercial. There was a fixed charge of $11.93 per customer per month. Low income customers were charged 50% of residential charges. The proposed rates will have three components, the CCSD1 charge, the billing and administrative charge to recover all administrative costs associated with managing the sewer utility, and the infrastructure charge to recover all costs associated with maintaining the sewer collection system.

The CUAB recommended the proposed rate structure to be equitable between classes, least impactful to customers, administratively feasible, and closely in line with the CCSD1 rate structure. To pay CCSD1 for treatment, the City needed to recover $4 million, and the CUAB reviewed four alternatives. The Board chose the third alternative which was to allocate specifically to residential and commercial customers. Residential customers would pay $26.10 per EDU per month, and low income was $13.05 per EDU per month. Commercial customers would pay $56.75 per EDU per month where one EDU equaled 10 ccf. The City needed to recover $610,000 annually for billing and administration charges which worked out to $7.65 per month per customer and $3.83 for low income customers. To recover maintenance of infrastructure costs, the City needed to recover $1.85 million annually which would be a volume based charge of $2.46 per ccf per month. Mr. Davis reviewed the average bill impacts by customer class. Based on projections, about 32% of the residential customers would see a decrease in their bills, 42% a $0 to $10 increase, and 25% an increase of more than $10.

The City Council appreciated this clear and informative presentation.

**Beth Kelland** and **Vincent Alvarez**, CUAB chair and vice chair respectively, felt this was the most equitable approach when it was determined the 30% increase implemented earlier would not cover the CCSD1 treatment costs.

Mayor Ferguson and the Councilors expressed their appreciation to the CUAB for its hard work and thoughtful recommendation.

The City Council would hear public comment on the proposed rate structure at the December 18 regular session.

C. Council Reports

**Mayor Ferguson** and Councilors reported on meetings they had attended on behalf of the City and announced upcoming events.

**ADJOURNMENT**

**It was moved by Council President Chaimov and seconded by Councilor Miller to adjourn the meeting. Motion passed with the following vote: Councilors Loomis, Miller, Chaimov, and Hedges and Mayor Ferguson voting "aye." [5:0]**

**Mayor Ferguson** adjourned the regular session at 8:31 p.m.

Respectfully submitted,

Pat DuVal

Pat DuVal, Recorder

# REGULAR SESSION

Date: 12/4/2012

I wish to address City Council on Agenda Item # N/A

ASK A FAVOR OR (LESS THAN 5 MINUTES)
VARIANCE OR EXCEPTION

Name: ROBERT L. SMITH

Organization: N/A

Address: [redacted]

Phone: [redacted]

E-mail: [redacted]

◯ Speaking in support ◯ Speaking in opposition

⊘ Providing neutral comments / or asking questions of clarification

Comments:

ABOUT "OK TO OCCUPY" & CONSTRUCTING PUBLIC IMPROVEMENTS DURING THIS RAINY WEATHER SEASON.

Date: 12/4/12 ✓

I wish to address City Council on Agenda Item #

_____

Name: ED PARLECKI
Organization: _____
Address: _____
Phone: _____
E-mail: _____

( ) Speaking in support ( ) Speaking in opposition

(X) Providing neutral comments / or asking questions of clarification

Comments:

_____

_____

_____

_____

FAX (503) 653-2444 ATTN. PAT

CITY OF MILWAUKIE, ~~Untitled~~

EXHIBIT
TA#3 12/4/12 RS

Dear mayor and councilers, (a pre-address)

My name is robert l. smith and hope to address you tonight about obtaining a variance or exception

to rule of, "ok to occupy", my newly finished residence located at 5840 s.e. morris st.. The rule being I

must finish the required public improvements(curbs, gutters, etc) plus a 20' x 20' hammerhead turn-

around. I am the owner-builder and plan to reside and retire here. I have been developing this property

since july of 2010, obtaining permits in nov. of 2010, pretty much by myself. I have the certified and

stamped improvement plans, paid for the right-of-way permit, purchased an assurety bond for the

guaranteed construction and have a bid to do the work by a local contractor(but not until possibly february

at the earliest), this plus now is the worst time, weather wise, to do such a project and my wife is dying to

move in after all this time. I will notarize a statement saying i will complete this public improvement in a

in a timely manner, say within 6 months, surely sooner weather and contractor permiting.....or?.

thank you,

robert l. smith

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# FACSIMILE TRANSMITTAL SHEET

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COMPANY:

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TOTAL NO. OF PAGES INCLUDING COVER: 2

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StepWise Utility Advisors

# Wastewater Rate Study Findings for The City of Milwaukie

EXHIBIT
TABLES
12/4/12 PS

City Council Meeting
December 4, 2012

# Introduction to StepWise Utility Advisors (MWH Global)

- Fletcher Davis
  - Utility Financial Planning & Rate Structure Expert

Specializing in:

- Utility financial planning
- Cost-of-Service analysis
- Economic analysis
- Bond issuance support
- Development & Impact fee analysis and calculation

# Goals of the Wastewater Study

- Recover the full costs the City incurs to provide wastewater service to all of its customers
- Produce a fair and equitable assignment of the costs of wastewater treatment charges assessed by CCSD #1
- Allow the City to separate the City's costs from the CCSD#1 costs on customers' bills

# Rate Study Process

Step 1 (Finance Plan)

How much does City need to fund its wastewater service?

Step 2 (Cost of Service)

What is the total cost-of-service to provide wastewater service to each customer classification?

Step 3 (Rate Design)

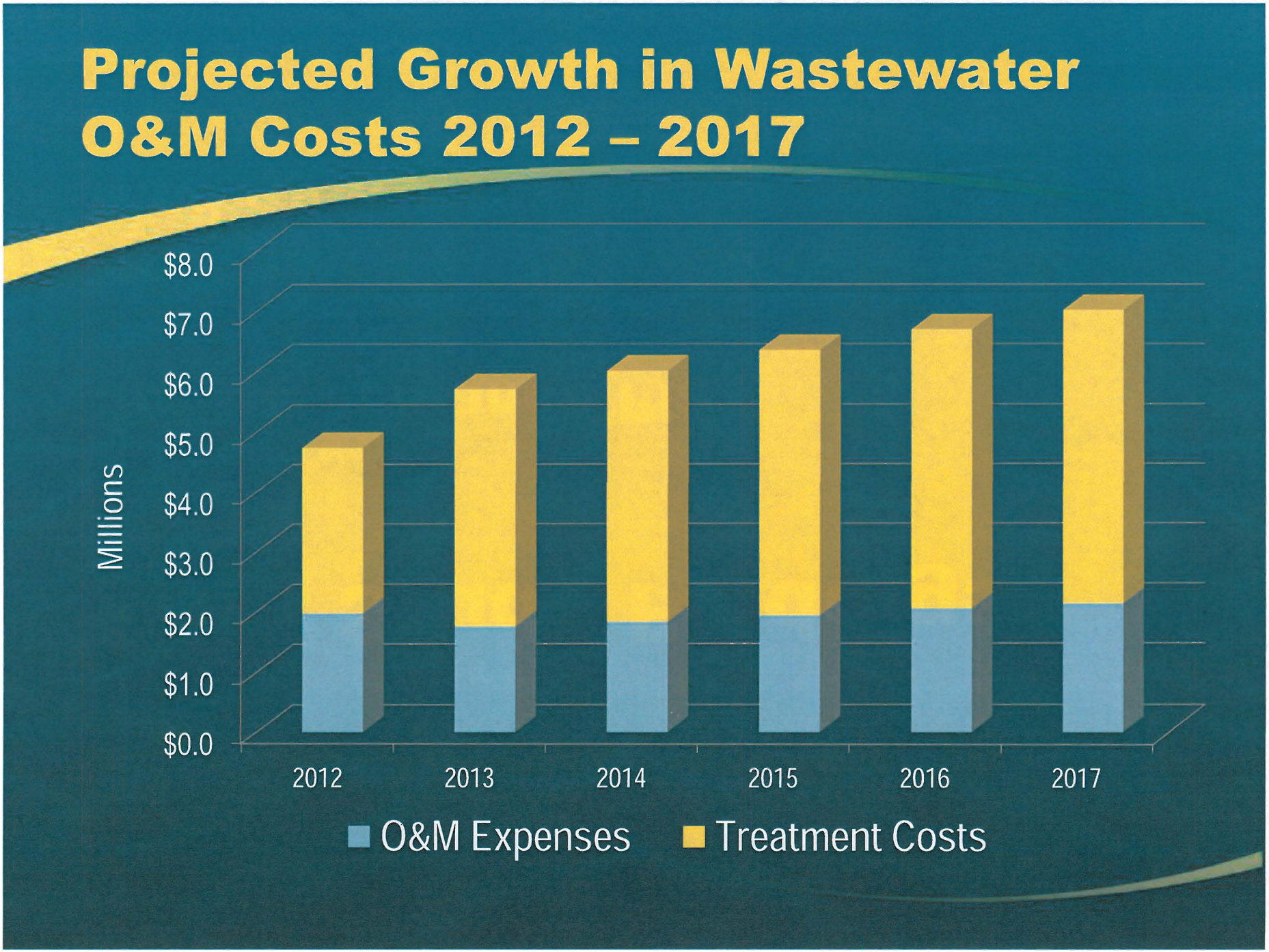
**What rate should each customer classification pay to cover its cost of service?**

# Rate Study Findings

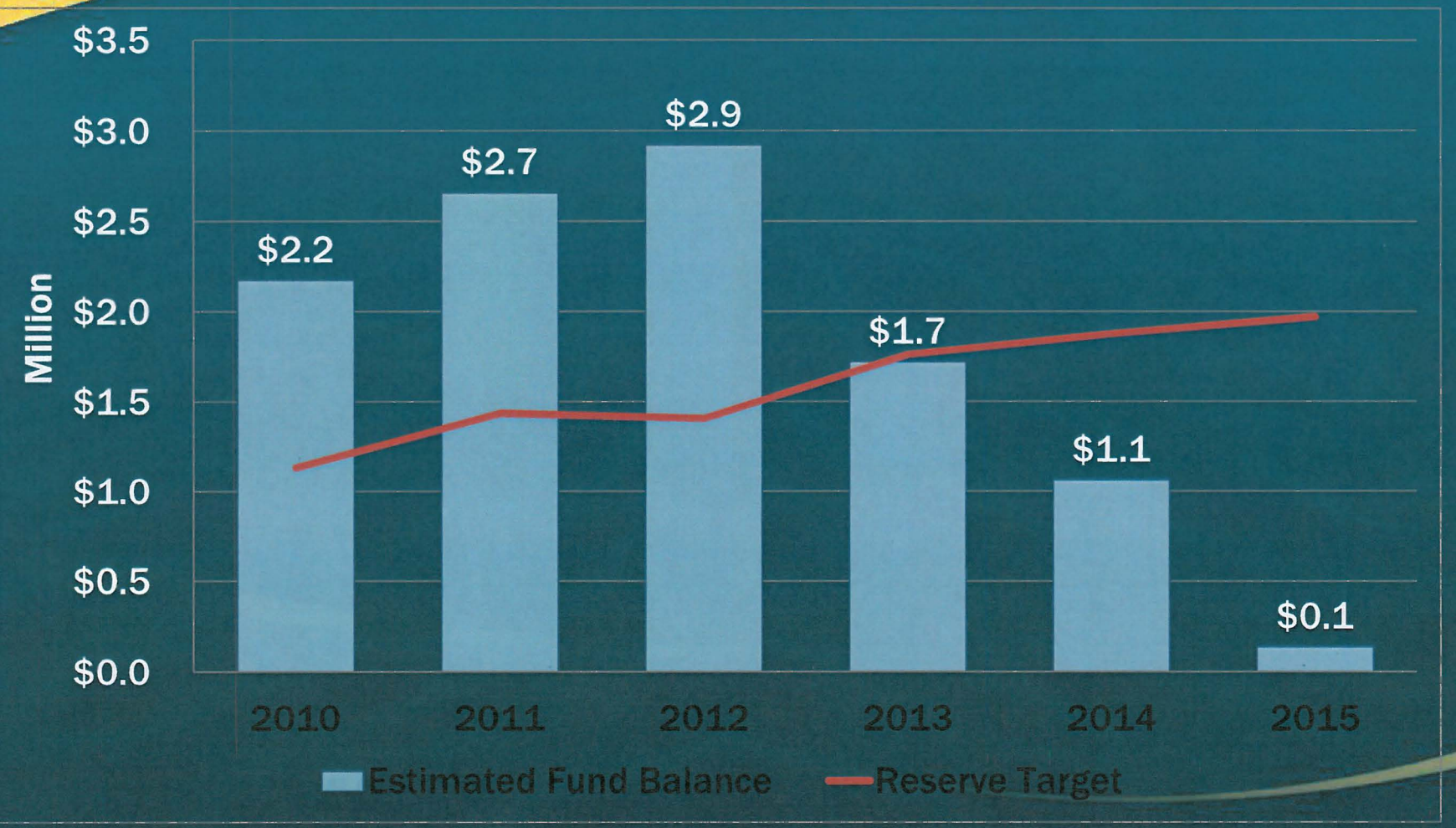
## Step 1 – Finance Plan

## How much does the City need to fund its wastewater service?

# Projected Growth in Wastewater O&M Costs 2012 – 2017



# Cash Reserves – No New Rate Increases



# Projected Growth in City's Wastewater Revenue Requirements 2012 - 2017

# Rate Study Findings

## Step 2 – Cost of Service

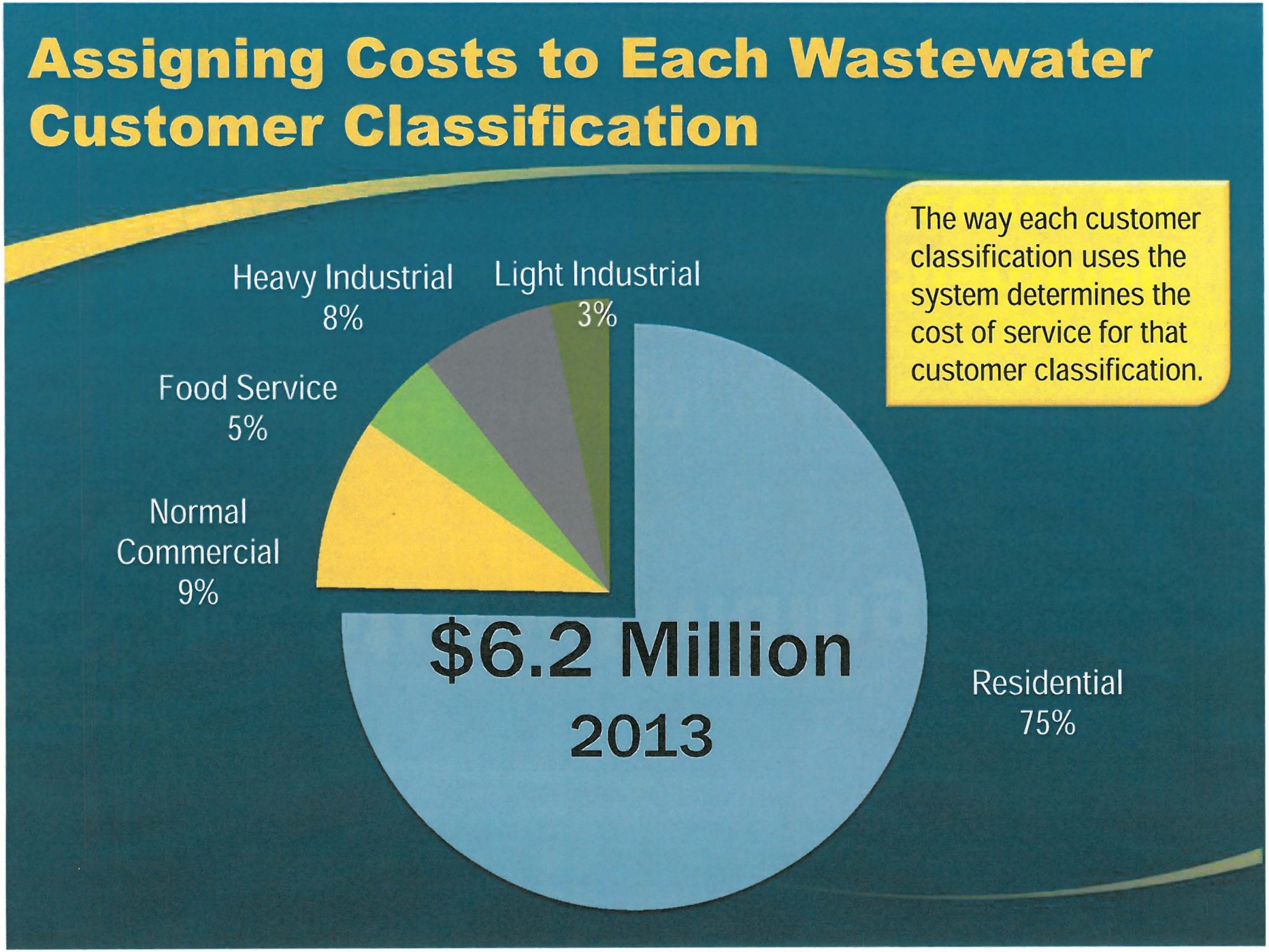
**What is the total cost to deliver wastewater service to each customer classification?**

# What Determines Wastewater System Cost-of-Service for Each Customer Classification?

- Wastewater Flows
- Strength of Flows (mg/L)
  - Bio Oxygen Demand
  - Suspended Solids
- Number of Customers

The way each customer classification uses the system determines the cost of service for that customer classification.

# Assigning Costs to Each Wastewater Customer Classification




The way each customer classification uses the system determines the cost of service for that customer classification.

# Rate Study Findings

## Step 3 – Rate Design

**What is the rate that each customer classification should pay to cover its cost-of-service for wastewater?**

# Existing Wastewater Rate Structure

## Wastewater Volume Charge:

- Residential = $5.89 per 100 cubic feet (CCF)
- Commercial = $7.63 per CCF

## Fixed Charge:

- $11.93 per customer per month

## Low Income :

- 50% of Residential Charges

# Proposed Rates Will Have Three Components



- Clackamas County Service District #1 Charge
  - To recover all treatment charges from CCSD#1
- Billing and Administrative Charge
  - To recover all administrative costs associated with managing the sewer utility
- Infrastructure Charge
  - To recover all costs associated with maintaining the sewer collection system

# CUAB Recommendations



The Citizens Utility Advisory Board recommends the proposed rate structure to be:

- Equitable between classes
- Least impactful to customers
- Most administratively feasible
- The most closely in line with the CCSD#1 rate structure

# CCSD#1 Charge Alternatives



- Needs to recover $4 Million.
- CUAB Reviewed 4 Alternatives:
  - Allocate more costs to high strength surcharge (HSS) customers
  - Allocate specifically to new customer classifications
  - Allocate specifically to Residential and Commercial
  - Allocate evenly across the City

# Proposed CCSD#1 Charge



- Residential Customers
  - $26.10 per EDU per Month
  - Low Income is $13.05 per EDU per Month
- Commercial Customers
  - $56.75 per EDU per Month
  - Commercial EDUs are based on monthly billed water
  - 1 EDU equals 10 CCF

# Billing and Administration Charge



- Needs to recover $610,000
- Based on the number of customers

- There's only one Alternative:
  - $7.65 per month per customer
  - $3.83 for low income customers

# Infrastructure Charge



- Needs to recover $1.85 million.
- Can be based on volume or EDU
- Volume Based Charge
  - $2.46 per CCF per Month
- EDU Based Charge
  - $12.48 per RESIDENTIAL EDU per Month
  - $24.81 per COMMERCIAL EDU per Month

# Proposed Wastewater Rate Structure

## CCSD #1 Treatment Charge :

- $26.10 per Residential EDU per month
- $56.75 per Commercial EDU per month

## Billing and Administration Charge:

- $7.65 per customer per month

## Infrastructure Charge:

- $2.46 per CCF per Month

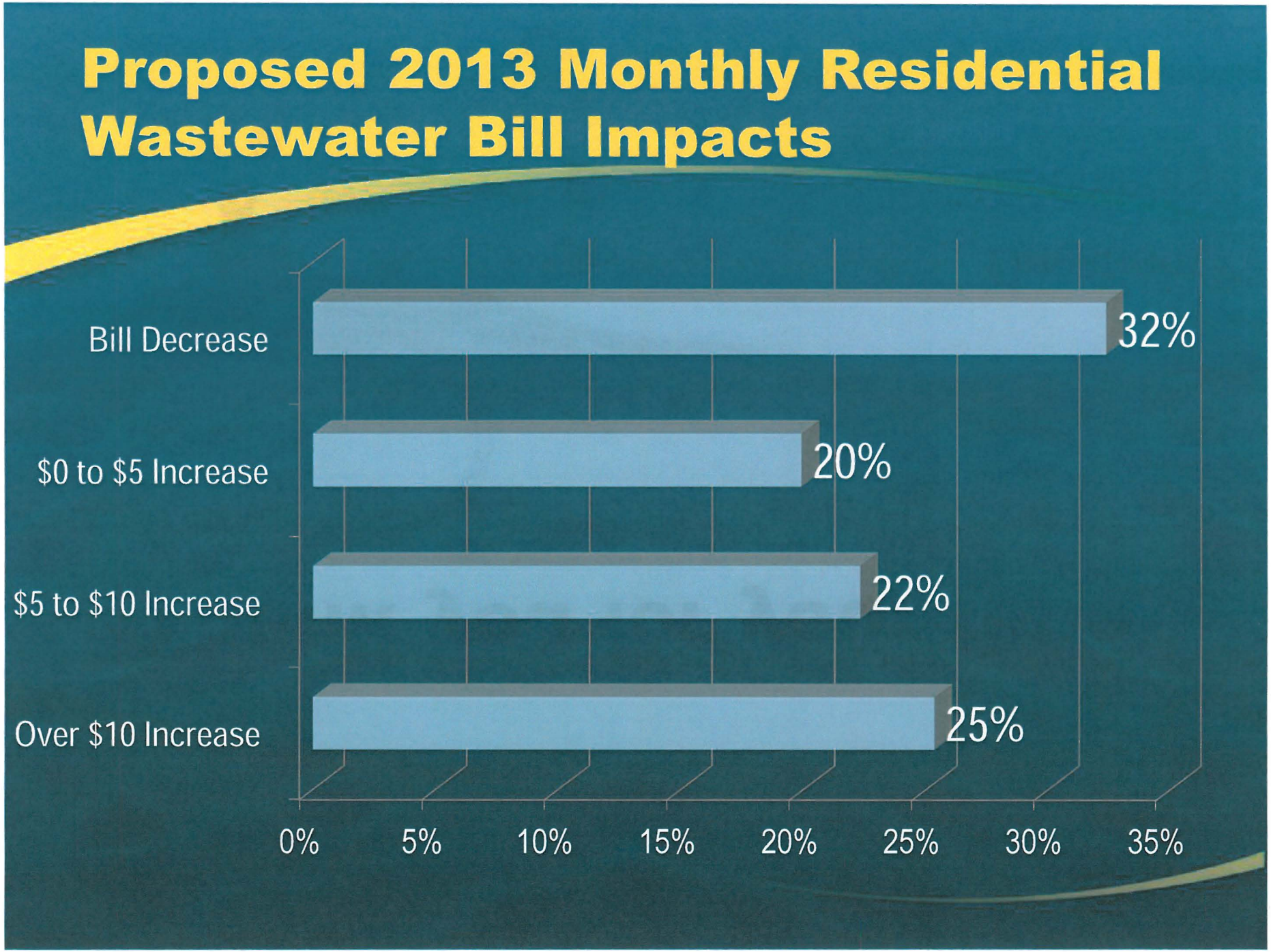
# Average Bill Impacts by Customer Class

| Customer Class | Average Volume | Interim Rate | Proposed Rate | Increase / (Decrease) |
|---|---|---|---|---|
| Single Family Residential | 5 CCF | $41.38 | $46.05 | $4.67 |
| Normal Commercial | 25 CCF | $202.68 | $211.03 | $8.35 |
| Food Service | 45 CCF | $355.28 | $373.73 | $18.45 |
| Heavy Industrial | 200 CCF | $1,537.93 | $1,634.65 | $96.72 |
| Light Industrial | 65 CCF | $469.73 | $495.75 | $26.02 |

# Detailed Residential Bill Impact

| CCF | Interim Rate | Proposed Rate | Increase / (Decrease) |
|---|---|---|---|
| 0 | $11.93 | $33.75 | $21.82 |
| 1 | $17.82 | $36.21 | $18.39 |
| 2 | $23.71 | $38.67 | $14.96 |
| 3 | $29.60 | $41.13 | $11.53 |
| 4 | $35.49 | $43.59 | $8.10 |
| **5** | **$41.38** | **$46.05** | **$4.67** |
| 6 | $47.27 | $48.51 | $1.24 |
| 7 | $53.16 | $50.97 | ($2.19) |
| 8 | $59.05 | $53.43 | ($5.62) |
| 9 | $64.94 | $55.89 | ($9.05) |
| 10 | $70.83 | $58.35 | ($12.48) |

# Proposed 2013 Monthly Residential Wastewater Bill Impacts



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# Thank you for your time

Questions?

Comments?

REVISED

# AGENDA

## MILWAUKIE CITY COUNCIL
## REGULAR SESSION

## DECEMBER 4, 2012

**MILWAUKIE CITY HALL** **2139TH MEETING**
10722 SE Main Street

**REGULAR SESSION – 7:00 p.m.**

**1. CALL TO ORDER** **Page No.**
**Pledge of Allegiance**

**2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**


**A. Christmas Ships Parade Weeks Proclamation 2**


**3. CONSENT AGENDA** *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*


**A. City Council Minutes of November 6, 2012 Work Session 4**
**B. Changes to December 18, 2012 City Council Meeting Schedule – Resolution 7**
**C. Appoint Sine Adams to Planning Commission – Resolution 9**
**D. OLCC Application for Breakside Brewery, 5821 SE International Way – new outlet, second location 10**


**4. AUDIENCE PARTICIPATION** *(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)*

**5. PUBLIC HEARING (Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)**

**A. None scheduled**

**6. OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

| | | |
|---|---|---|
| **A.** | **Wastewater Treatment Agreement with Clackamas County Service District #1 (CCSD1) – Resolution**<br>**Introduced by Mayor Ferguson** | **12** |
| **B.** | **Establish Wastewater Rates – Resolution**<br>**Staff: Finance Director Casey Camors & Operations Director Gary Parkin** | **35** |
| **C.** | **Council Reports** | |

**7. INFORMATION**

**8. ADJOURNMENT**

**Public Information**

- **Executive Session**: The Milwaukie City Council may meet in executive session immediately following adjournment of the regular session pursuant to ORS 192.660(2).
- All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

# 2.

# PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

# *PROCLAMATION*

***WHEREAS,*** commencing December 7, 2012 and ending on December 21, 2012, with a special performance in Camas, Washington, on December 1, 2012, the Christmas Ship Parade will be sailing the Columbia and Willamette Rivers, and;

***WHEREAS,*** 2012 marks the fifty-eighth year that the annual Christmas Ship Parade has made its voyages part of the Portland Metro area's annual holiday tradition; and

***WHEREAS,*** the Columbia and Willamette River Christmas Ship Fleets average between fifty-five and sixty boats; and

***WHEREAS,*** the boat owners who participate are volunteers who donate their time, resources, and money to continue this holiday tradition enjoyed by generations of families; and

***WHEREAS,*** the Willamette Fleet will visit the City of Milwaukie on December 12, December 14, December 17, December 19, and December 21, 2012; and

***WHEREAS,*** the unique characteristics of the Milwaukie riverfront permit those wishing to view the Christmas Ship Fleet to enjoy unparalleled sights and sounds of the boats; and

***WHEREAS,*** the response by those viewing the ships at the Milwaukie riverfront is heard and appreciated by the volunteers who give of their time and resources; and

***WHEREAS,*** the City of Milwaukie is deeply honored to serve as a destination for the Christmas Ships Parade and expresses its appreciation to the volunteers who continue this tradition year after year.

***NOW, THEREFORE,*** I, Jeremy Ferguson, proclaim December 7, 2012 through December 21, 2012 as

**CHRISTMAS SHIPS PARADE WEEKS**

in the City of Milwaukie and encourage citizens to greet the ships and their owners as they arrive each night at the Milwaukie Boat Ramp and to experience this very special holiday tradition so enjoyed by generations of families.

**IN WITNESS WHEREOF,** I hereunto set my hand this

4th Day of December, 2012

_____

Jeremy Ferguson, Mayor

# 3.
# CONSENT AGENDA

**MINUTES**

**MILWAUKIE CITY COUNCIL WORK SESSION**

**NOVEMBER 6, 2012**

**Mayor Ferguson** called the work session to order at 5 p.m. in the City Hall Conference Room.

Council Present: Council President Chaimov, Councilors Dave Hedges, Mike Miller, and Joe Loomis

Staff Present: City Manager Bill Monahan, Assistant to the City Manager Teri Bankhead, City Recorder Pat DuVal, Community Services Director JoAnn Herrigel, Program Coordinator Beth Ragel, Planning Director Steve Butler, Community Development Director Kenny Asher, and Civil Engineer Jason Rice

## City Manager's Report

**Mr. Monahan** reviewed the evening's agendas and discussed the process for reporting back on audience participation questions and comments. The Land Use Board of Appeals (LUBA) appeal record was filed, and he had not seen any challenges. The brief would be due on November 16, and TriMet would have 21 days to file its brief. He discussed upcoming agenda items that included wastewater rates and public area requirements (PAR) code changes. Council goal setting was scheduled for December 5 from 11 a.m. to 3 p.m. at the Public Safety Building.

**Mayor Ferguson** discussed the Volunteer of the Year Award, and **Ms. Bankhead** outlined the program. The Council members concurred with the suggestions and added some ideas of their own.

**Mr. Monahan** announced Code Enforcement staff had moved to the Public Safety Building, and Ms. Herrigel would move to the Johnson Creek Facility tomorrow. He briefly discussed the Portland Milwaukie Light Rail (PMLR) project temporary easement language and the previously signed permit of entry for Kronberg Park.

## Community Development and Planning Active Projects

**Mr. Asher** discussed the light rail station building prospectus. Staff was reviewing the Kellogg for Coho draft Habitat Development Agreement from Wildlands. The New Century Players were reviewing the lease agreement for the Bertman House.

**Ms. Herrigel** briefed the City Council on the status of the grant application with the Oregon State Marine Board. Water Environment Services (WES) requested more information and hired Kittelson and Associates to look at the Riverfront Park access matter. She announced the opening of Riverfront Park Phase 1, Klein Point, was scheduled for December 1. Her new job title was Director of Parks and Sustainability.

**Mr. Rice** provided an update on the potential citywide sidewalk improvement program and discussed the types of sidewalks. He distributed maps of potential projects that would enhance connectivity in the neighborhoods as assessed by the Engineering Department. That program would cost approximately $37.5 million. Most of those projects had been prioritized in a public process.

**Council President Chaimov** advised that staff talk to the neighborhoods.

Referring to the map, **Councilor Miller** asked why there was a space before Freeman Rd.

**Mr. Rice** replied he was working with the Oregon Department of Transportation (ODOT) to extend Safe Routes to School from Weedman to Freeman.

The Engineering Department planned to apply for a State Transportation Improvement Grant (STIP), and Mr. Rice presented the top two options for Council consideration. Option A was the Harrison Street Sidewalk Improvements to King Road Sidewalks from McLoughlin Boulevard to Linwood Avenue. This project offered partnership opportunities with TriMet and Clackamas County and addressed the increased ridership in this corridor anticipated from light rail. It would help solve the problem of a lack of pedestrian crossings and would rebuild non-compliant sidewalks and ramps. The project was estimated to cost $6 million, and the match was 10%. Milwaukie could partner with other local agencies and use funds in lieu of construction in the Linwood, Lewelling, Hector Campbell, Ardenwald and Historic Milwaukie Neighborhoods. Other funding might come from Walk Safely Milwaukie and a gas tax for bike and pedestrian elements. Efforts were being consolidated for a holistic, multimodal approach put forth as a team of local partners.

Option B was Stanley Avenue Sidewalks from Monroe Street to Railroad Avenue. The project cost was $1.75 million also with a 10% match. In this case, funding sources would not include local partners like TriMet and Clackamas County. It was identified in the Transportation System Plan (TSP) as high priority bike and pedestrian connections, and it was a main walking route for Linwood Elementary. In response to a question from Council President Chaimov, Mr. Rice said Option A would help the City Council meet its goal of a more walkable community.

**Council President Chaimov** announced a potential conflict of interest as he was a Clackamas Community College Board member.

**Mr. Asher** felt option A had a chance of being awarded based on the scope and partnership as well as meeting City Council goals.

**Mayor Ferguson** felt that TriMet should be reminded how it would benefit as Option A addressed about 50 TriMet bus stops and provided riders a greater level of safety.

**Councilor Hedges** would not support an option that took Walk Safely Milwaukie Program Funds.

**Councilor Miller** was not opposed but was concerned about the source of the match. He supported the program as long as it did not take away from Safe Routes to Schools.

**Mr. Rice** added this was a very competitive process, and he wanted to make Milwaukie's application as attractive as possible.

**Milwaukie Poetry Series Annual Report**

**Tom Hogan**, Milwaukie Poetry Series Chair, updated the City Council on the recently completed and highly successful 5th Season of the Poetry Series. Other events included a presence at First Fridays, numerous open mics, writing workshops, Poetry Picnic, and William Stafford Birthday celebration. The 6th Season was off to a very good start and included a reading on November 14 by Ursula LeGuin at the Milwaukie High School Black Box Theater. He thanked everyone profusely including the Library Board, City Council, library staff, and Poetry Committee members.

**Public and Government Access Service Options**

**Ms. Herrigel** reported she had received only one response from Willamette Falls Media Center (WFMC) to the request for proposals she issued on October 12 and sought guidance from the City Council on how to proceed. She discussed coverage for City Council and Planning Commission meetings. The group discussed public access studio usage.

**Councilor Hedges** felt WFMC could provide the service but lacked the necessary funding. He understood about 19 people from Milwaukie used the studio.

**Councilor Loomis** would be interested at looking at other options.

**Council President Chaimov** thought it would be a good idea to have a fallback position and agreed with Councilor Loomis's suggestion to identify additional resources.

**Councilor Miller** thought the City should continue but also consider a fallback position.

**Ms. Herrigel** summarized her contacts with other cities and how they handled similar situations.

**Mural Program**

**Ms. Ragel** sought guidance on moving forward with the Mural Arts Program. The City Attorney would provide his input on mural programs. A number of businesses and entities were interested in installing murals, and she explained to two-track review and permitting program. One was objective and administered by the Planning Department, and the other was discretionary, provided a grant, and was administered by the Milwaukie Arts Committee liaison. She briefly discussed the Portland and Beaverton programs. The grant program might take low to moderate staff time. She felt some great artists would be attracted if there were grants available.

**Mr. Monahan** added that funds had not been budgeted, but, if directed, staff would look for seed money.

**Councilor Hedges** noted that one program offered some control, but the artist could revert to the other program where there was no real control over content.

**Mayor Ferguson** suggested the program include City water towers.

**Ms. Ragel** would take this information to the Planning Commission for additional community outreach.

**Mayor Ferguson** announced the RiverHealth Advisory Board (RHAB) requested that he and Commissioner Savas present information on the wastewater treatment agreement and Riverfront Park access proposal at its November 28 meeting. The group discussed the role of the Board.

**Mayor Ferguson** announced the City Council would meet in executive session immediately following adjournment of the work session pursuant to ORS 192.660(2)(h) to consult with legal counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

**Mayor Ferguson** adjourned the work session at 6:38 p.m.

Respectfully submitted,

_____

Pat DuVal, Recorder

Agenda Item: 3.B.

Meeting Date: December 4, 2012

## COUNCIL AGENDA ITEM SUMMARY

**Issue/Agenda Title:** Shall the Milwaukie City Council change the meeting schedule for December 18, 2012, to accommodate a reception recognizing Council President Greg Chaimov and Councilor Joe Loomis for their service to the community?

**Prepared By:** Pat DuVal, City Recorder

**City Manager Approval:**

**Reviewed by City Manager:**

### ISSUES BEFORE THE COUNCIL

Milwaukie Municipal Code (MMC) Chapter 2.04.070 states:

> "Regular meetings shall be held on the first and third Tuesday of each month at 6:00 p.m. in the Council chambers at City Hall, 10722 SE Main. Regular meetings may be held at a different time and place by giving appropriate notice at least twenty-four (24) hours in advance. Two (2) regular meetings shall be held each month. (Ord. 1840 § 1, 1998: Ord. 1480 § 3(A), 1981)"

December 18, 2012, will be the final meeting for Council President Greg Chaimov and Councilor Joe Loomis after many years of service to the community on the Milwaukie City Council. Mayor Ferguson and Councilors Hedges and Miller wish to honor these achievements and provide an opportunity for the public to express its thanks by hosting a reception in their honor. In order to accommodate the event, it is being proposed that the December 18, 2012, work session begin at 5 p.m. in Council Chambers and that the regular session begin at 5:30 p.m. in the Council Chambers. The purpose of the proposed resolution is to notify the public of the changes in advance.

### STAFF RECOMMENDATION

Staff recommends that the starting times for the December 18, 2012, City Council sessions be adjusted to accommodate the recognition event.

### OTHER ALTERNATIVES CONSIDERED

1. Do not change the schedule; or
2. Select an alternate schedule

### CITY COUNCIL GOALS

N/A

### ATTACHMENT LIST

Proposed resolution

**RESOLUTION NO. _____**

**A RESOLUTION OF CITY COUNCIL OF THE CITY OFMILWAUKIE, OREGON, PROVIDING NOTICE OF CHANGES TO THE DECEMBER 18, 2012 MEETING TIMES**

**WHEREAS**, the City Council has determined it appropriate to change the December 18, 20012, work session and regular session meeting times in order to facilitate a community recognition event for Council President Greg Chaimov and Councilor Joe Loomis whose terms expire at the end of December; and

**WHEREAS**, Municipal Code Chapter 2.04.070 states that the City Council must provide notice of any changes to its regularly scheduled meeting times and locations;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of Milwaukie, Oregon:

Section 1: The December 18, 2012 City Council work session will be called to order at 5:00 p.m. in the City Hall Council Chambers.

Section 2: The December 18, 2012 City Council regular session will be called to order at 5:30 p.m. in the City Hall Council Chambers.

Section 3: The City Recorder is directed to provide notice of meetings as required by law.

Section 4: This resolution is effective upon adoption.

Introduced and adopted by the City Council on December 4, 2012.

_____
Jeremy Ferguson, Mayor

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:
Jordan Ramis PC

_____
City Attorney

**RESOLUTION NO. _____**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING SINE ADAMS TO THE MILWAUKIE PLANNING COMMISSION.**

**WHEREAS,** a vacancy exists on the Milwaukie Planning Commission; and

**WHEREAS,** Milwaukie Charter Section 26 provides that, "the mayor, with the consent of the council, shall appoint the various committees provided for under the rules of the council or otherwise and fill all vacancies in committees of the council from that body," and

**WHEREAS**, Sine Adams has served as an alternate and possesses the necessary qualifications to serve on the Milwaukie Planning Commission.

**Now, therefore, the City of Milwaukie, Oregon resolves as follows:**

SECTION 1: That Sine Adams is appointed to the Milwaukie Planning Commission.

SECTION 2: That her term of appointment shall commence January 1, 2013 and shall expire on March 31, 2016.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on **December 4, 2012**.

_____
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

_____
Pat DuVal, City Recorder

_____
City Attorney

Milwaukie Police Department

**To:** Mayor Ferguson and Milwaukie City Council

**Through: Bill Monahan, City Manager**

**From:** Bob Jordan, Chief of Police

**Date:** November 26, 2012

**Subject:** **O.L.C.C. Application – Breakside Brewery – 5821 SE International Way**

**Action Requested:**

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Breakside Brewery - 5821 SE International Way.

**Background:**

We have conducted a background investigation and find no reason to deny the request for liquor license.

POLICE DEPARTMENT
3200 SE Harrison Street
Milwaukie, Oregon 97222
P) 503 786 7400 / F) 503 786 7426
www.cityofmilwaukie.org

# 6.
# OTHER BUSINESS

Agenda Item: 6.A.
Meeting Date:

## COUNCIL AGENDA ITEM SUMMARY

**Issue/Agenda Title:** Wastewater Treatment with Clackamas County Service District #1 (CCSD#1)

**Prepared By: Bill Monahan, City Manager**
**Reviewed by City Manager:** November 27, 2012

### ISSUE BEFORE THE COUNCIL
Shall the city Council approve an intergovernmental agreement with CCSD#1 for the provision of wastewater treatment services.

### STAFF RECOMMENDATION
Staff recommends that the city Council approve the agreement authorizing Mayor Jeremy Ferguson to sign on behalf of the City.

### KEY FACTS & INFORMATION SUMMARY
The City of Milwaukie has been a wholesale customer of CCSD#1 since 1970 and has received treatment services from CCSD#1 since 1972. Treatment services are performed at the Kellogg Creek Water Pollution Control Plant located in the City. Over the past 40 years, the City and CCSD#1 modified the terms of the treatment agreement several times. Since 2008, the City and CCSD#1 were engaged in discussions about a proposed new rate collection methodology and related issues. Discussions were not successful until the past year when negotiating teams met and identified several key issues for resolution. The draft agreement before the City Council represents the terms of agreement negotiated during the past year. The Clackamas County Board of Commissioners is scheduled to vote on adopting the agreement at its meeting of December 6, 2012.

### OTHER ALTERNATIVES CONSIDERED
During the course of discussions, other terms of agreement were discussed.

### CITY COUNCIL GOALS
A 2012 City Council Goal is to “Complete a fair wastewater agreement with Clackamas County Service District #1 and make the Kellogg Plant a good neighbor.”

### ATTACHMENT LIST
Intergovernmental Agreement between Clackamas County Service District No. 1 and the City of Milwaukie for the provision of wastewater treatment services.

**FISCAL NOTES**

The  agreement calls for new treatment costs that will be charged to rate payers within the city's utility fees for wastewater services.

**To:** **Mayor and City Council**

**From:** **Bill Monahan, City Manager**

**Subject:** **Wastewater Treatment with Clackamas County Service District #1 (CCSD#1)**

**Date:** **November 27, 2012**

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**ACTION REQUESTED**

Approve an intergovernmental agreement with CCSD#1 for the provision of wastewater treatment services.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

November 3, 1969 – The basic agreement between the City and CCSD#1 established the terms under which the City could utilize a wastewater treatment plant constructed and operated by CCSD#1.

November 25, 1970 – The agreement obligated the CCSD#1 to construct an operate the Kellogg Creek Water Pollution Control Plant. The agreement established the payment obligation of the city of Milwaukie to pay for service and to contribute to pay toward construction of the plant.

1978 – 1987 – The basic agreement was amended several times.

1989- 2008 – Additional agreements were reached regarding payment terms and discussions took place concerning issues related to regionalized wastewater treatment services. Eventually, CCSD#1 determined that the Kellogg Plant would remain in place.

2008 – The City was sent a draft document for an intergovernmental agreement that proposed a rate collection methodology and proposed management and coordination processes.

2008 - Present - Discussions were not successful until the past year when negotiating teams met and identified several key issues for resolution.

2011 – 2012 – A negotiating team from the City and CCSD#1 met and developed draft terms for an agreement.

**BACKGROUND**
The City of Milwaukie has been a wholesale customer of CCSD#1 since 1970 and has received treatment services from CCSD#1 since 1972. Treatment services are performed at the Kellogg Creek Water Pollution Control Plant located in the City. Over the past 40 years, the City and CCSD#1 modified the terms of the treatment agreement several times. Since 2008, the City and CCSD#1 were engaged in discussions about a proposed new rate collection methodology and related issues. Discussions were not successful until the past year when negotiating teams met and identified several key issues for resolution. The draft agreement before the City Council represents the terms of agreement negotiated during the past year.

The terms of the proposed agreement define the services provided by CCSD#1, establish a wholesale rate on a per-EDU basis with the initial year rate set at $30.21, provide for the methodology to modify the rate, and specify the reporting obligations of the City.

The agreement also establishes that there will be a system development charge for treatment facilities that will be charged by the City for new connections to the wastewater system. Other provisions obligate CCSD#1 and the City to take steps toward system management and coordination to optimize treatment and environmental benefits. The parties agree to work cooperatively to contribute toward the cost of wastewater conveyance infrastructure projects designed to reduce inflow and infiltration. In addition, CCSD#1 will establish a district fund for the duration of the agreement and deposit monthly the equivalent of $1 per EDU of the city's connections into a Good Neighbor Fund. The Fund shall be used by the City to mitigate the impact of the Kellogg Plant on the surrounding neighborhoods. CCSD#1 will also contribute $1 million as seed funding to the Good Neighbor Fund for initial odor control improvements at or around the Kellogg Plant, to be used in a manner determined by the City.

The term of the agreement is through June 30, 2037.

The Milwaukie Citizens Utility Advisor Board has reviewed the financial terms of the agreement and will vote on November 29, 2012 on a recommendation on the rate structure. Clackamas County Board of Commissioners is scheduled to vote on adopting the agreement at its meeting of December 6, 2012.

**CONCURRENCE**
The staff concur that the terms of the agreement are appropriate to resolve the issue and establish long term wholesale rates.

**FISCAL IMPACT**
The increased cost of treatment service is included in proposed rates for wastewater services.

**WORK LOAD IMPACTS**
The City Finance and Operations staff will carry out the terms of the agreement within normal operations.

**ALTERNATIVES**
Continue discussion on terms of agreement.

**ATTACHMENTS**
1. Intergovernmental Agreement between Clackamas County Service District No. 1 and the City of Milwaukie for the provision of wastewater treatment services.

INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
AND
THE CITY OF MILWAUKIE
FOR THE PROVISION
OF WASTEWATER TREATEMENT SERVICES

THIS INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION OF WASTEWATER TREATEMENT SERVICES (this "Agreement") is effective as of the 1st day of July, 2012 (the "Effective Date") by and between Clackamas County Service District No. 1, a county service district ("CCSD#1") and the City of Milwaukie, an Oregon municipality ("City"), each also individually referred to as "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS, the Parties are authorized to enter into agreements regarding the provision of services to their residents, customers and service areas pursuant to their respective charter or principal acts and ORS 190.010; and

WHEREAS, the Parties share a substantial common boundary and interlinked wastewater systems; and

WHEREAS, CCSD#1 has provided wastewater treatment services for City since 1972 and is desirous to continue its relationship with the City; and

WHEREAS, the City has used CCSD#1 as its sewer treatment provider since 1972 and is desirous to continue its relationship with CCSD#1; and

WHEREAS, CCSD#1 and City are currently parties to a Memorandum of Understanding entered into May 17, 2012 (the "MOU") which outlines the primary terms and conditions for this Agreement and implements certain financial terms regarding the provision of wastewater treatment and related services to City by CCSD#1; and

WHEREAS, CCSD#1 and City desire to implement fully the terms of the MOU and enter into a new agreement to reflect a Wholesale treatment rate structure based on a per-equivalent dwelling unit basis; and

WHEREAS, the Parties desire to provide for public health and safety, compliance with state and federal environmental laws, coordination of statutes, ordinances, and methods of implementation; and application of codes, implementation, and enforcement practices;

**NOW THEREFORE**, the Parties hereby agree as follows:

**SECTION 1. DEFINITIONS**

1.1 "BCC" means the Board of County Commissioners of Clackamas County, acting as the governing body of CCSD#1.

1.2 "CCSD#1" means the Clackamas County Service District No. 1 or its successor, as such entity's boundaries may be adjusted by annexation or other boundary actions from time to time.

1.3 "DEQ" means the Oregon State Department of Environmental Quality, or its successor.

1.4 "Domestic Sewage" means sanitary wastes normally collected from residential establishments, and shall include commercial and industrial wastes of similar strength to residential wastes or quality, and other commercial and/or industrial wastes that participate in an approved Industrial Pretreatment program in accordance with CCSD#1 and/or City requirements meeting DEQ and EPA guidelines. Domestic Sewage shall exclude ground water, storm water, drain water and industrial waste not pre-treated in accordance with CCSD#1 and/or City requirements meeting DEQ and EPA guidelines.

1.5 "EPA" means the United States Environmental Protection Agency, or its successor.

1.6 "Equivalent Dwelling Unit" or "EDU" is a unit of measure applied to a user of the sewage system as further defined in CCSD#1's rules. For the purposes of this Agreement, the same definition shall always apply to CCSD#1 and City at any one time, and the Parties shall consult with each other regarding any proposed change to the Rules.

1.7 "Flow" means that certain volume of wastewater as measured by gallons per day that is delivered to a wastewater treatment system.

1.8 "Force Majeure Event" means each and any of war, insurrection, terrorism, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the Parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that is not within reasonable control of the Party to be excused.

1.9 "I/I" means infiltration and inflow into a sewer system.

1.10 "Influent Points" means the points at which City's Internal System intersects CCSD No.1's Wholesale collection system.

1.11 "Industrial Pretreatment" means a program for qualified sewer users at the thresholds established in the Rules whereby the user is required to provide the appropriate level of pretreatment before discharging into the collection system of either Party for treatment by CCSD#1.

1.12 "Internal System" means all non-Wholesale sewer lines and other sewer facilities upstream from the Influent Points owned and operated by City.

1.13 "City" means the City of Milwaukie as such entity's boundaries may be adjusted by annexation or other boundary actions from time to time.

1.14 "NPDES Permit" means a National Pollutant Discharge Elimination System Permit granted to CCSD No.1, pursuant to the Federal Water Pollution Control Act, as amended.

1.15 "Parties" means CCSD#1 and City.

1.16 "Prior IGAs" means each and all of those certain intergovernmental agreements dated November 3, 1969 as subsequently amended or supplemented from time to time and all subsequent IGAs regarding similar subject matter, most recently on December 17, 2002.

1.17 "Prime Rate" means the interest rate banks charge to large corporations for short-term loans, as published in the Wall Street Journal or other similar publication.

1.18 "Retail" means the provision of collection and conveyance piping, maintenance of the same and direct billing and collection to residential households.

1.19 "Rules" means the Rules and Regulations of CCSD#1, as such may be amended from time to time.

1.20 "SDCs" means system development charges as established in ORS 223.297 through ORS 223.314 or successor statutes. For the purposes of this Agreement, the City shall only be obligated to contribute an amount equal to that portion of CCSD#1's SDCs relating to Wholesale treatment.

1.21 "Wholesale" means a systemic provision of wastewater treatment services via a wastewater treatment plant or other similar structure, excluding therefrom the general collection and conveyance system (e.g. piping and interceptors) necessary to deliver wastewater to a wastewater treatment plant. It may include certain interceptors established solely for the purpose of flow management between CCSD#1 treatment assets, such as the Intertie 1 and 2 pipelines, and Industrial Pretreatment programs.

For the purposes of this Agreement, terms used but not defined herein shall have the meaning ascribed to them in the Rules.

**SECTION 2. SERVICES PROVIDED BY CCSD#1**

2.1 Wastewater Treatment Service. CCSD#1 shall receive, transport, and treat Domestic Sewage discharged by City on a Wholesale per-EDU basis. CCSD#1 shall accept such delivery and treat the wastewater in a manner consistent with the requirements of the Clean Water Act and all applicable state laws for the term of this Agreement.

2.2 Operation, Replacement, and Maintenance of Facilities. CCSD#1 shall be responsible for the operation, replacement and maintenance of all applicable wastewater treatment facilities. Such facilities shall be operated, replaced and maintained in accordance with generally accepted industry standards, and the standards established by the EPA, DEQ, the Oregon Health Department and other federal, state and local agencies.

2.3 Designation of Service Provider. The Parties agree that City shall provide and be responsible for all aspects of its Internal System, the collection (retail) sanitary sewer service and surface water management service and all other acts necessary, customary, and incidental to providing retail sewer service and to deliver all appropriate wastewater to the conveyance and treatment system of CCSD#1. CCSD#1 agrees to be the designated service provider for sewer treatment for the City for the purposes of land use goals.

2.4 Land Use. City and CCSD#1 agree that CCSD#1 will suffer no negative impact, fiscal or otherwise, from Comprehensive Plan Amendment CPA-06-01 or Zoning Ordinance Amendment ZA-06-01. In particular, the proposed amendment to Zoning Code Section 19.321.3 A seeks to prohibit sewage treatment plants in all zones within the City, including Kellogg, with a fine for continued existence being levied beginning in December 2015. To the extent CCSD#1 experiences any fines resulting from any of the above provisions or other Comp Plan or Zoning changes with a substantially similar goal of compelling removal of Kellogg, then CCSD#1 shall charge City for the costs regarding the same, including attorney's fees spent in defense.

**SECTION 3. RATES**

3.1 Wholesale Rate. CCSD#1 shall assess a per-EDU wholesale rate to City equal to the Wholesale rate for in-district customers (the "Rate"). The Parties have agreed to a methodology to be utilized in calculating the Rate whereby the total costs of CCSD#1, including debt service, capital account requirements and other standard utility expenses are calculated, and then apportioned between Wholesale costs and Retail costs. CCSD#1 shall bill City monthly for the service based on a formula of the Rate multiplied by the number of EDUs served in City, and City shall remit payment within thirty (30) days. Late payments by City shall accrue an interest penalty of the Prime Rate annual rate, compounding monthly. Nothing contained herein shall be deemed a restriction or a limitation on City's ability to add such other charges to its customers as it deems appropriate. For the first year of this Agreement, City's Rate shall be $30.21.

3.2 Modification of Rate. As part of its normal ratemaking process for CCSD#1, the BCC shall have the opportunity to adjust the Rate based on all factors the BCC considers material for making such a decision, including requirements for the maintenance, operation, anticipated capital expenditures, administration, overhead, expansion of CCSD#1's sewer treatment system, principal and interest payments, and reserve requirements or other financial covenants on any outstanding debt instruments. City shall have a representative on the District Advisory Board and will be consulted regarding any proposed Rate changes, including the ability to offer comments to the BCC prior to any adjustment. Any change of the Wholesale Rate shall be the same for both City EDUs and CCSD#1 EDUs.

3.3 Reporting Requirements. The Parties agree that the audit performed by GEL Oregon, Inc., which counted City's EDUs as 10,939 is a true and accurate statement of connections as of the Effective Date of this Agreement. The City shall deliver to CCSD#1 a written report stating the current number of connections to the City system and noting new connections and any permanent disconnections on March 1 and September 1 of each year. The Parties shall work together using the Rules to establish the number of EDUs to be assigned to new connections within the City.

3.4 Records. City shall maintain records of new connections to its sewer system, and CCSD#1 may review such records as such time as may be reasonably requested.

3.5 System Development Charges. City agrees that it shall pay the equivalent of the Wholesale SDC for all new connections from the Effective Date of this Agreement. CCSD#1 agrees that there are no SDC amounts due and owing for connections existing prior to or as of the Effective Date. Payments for such new connections shall be tendered semi-annually with the report of new connections described in Section 3.3 above. The City has received CCSD#1's SDC ordinance and the Parties agree that the Wholesale SDC shall be calculated pursuant to such ordinance. CCSD#1 shall not make any changes to the ordinance that apply to the City without consulting with and receiving the City's consent regarding any such changes. CCSD#1 shall bring forth the capital plans described in the ordinance to the Riverhealth Advisory Committee or successor entity for review and discussion prior to adoption.

3.6 Books and Accounts. City shall keep full and complete books of accounts showing the number of connections to its sewerage system, the maintenance and operation costs incurred in connection with the collection and conveyance system, its efforts to reduce "I/I" and otherwise comply with Sections 4.2 and 4.3, and its response to emergency and non-emergency spills or additions to the sewerage system. The costs of keeping those books shall be considered an operational cost to City.

3.7 Obligation to Pay. City acknowledges that the rate structure for CCSD#1 will be calculated in reliance on expected revenue from the City for services provided, and that failure of the City to pay would result in a material financial hardship and potential covenant violations of CCSD#1's outstanding revenue obligations. City agrees that it shall

promptly pay its charges when due, and that failure to pay is a material breach of this Agreement.

**SECTION 4. SYSTEM MANAGEMENT AND COORDINATION**

4.1 Coordination of Systems. CCSD#1 and City shall coordinate the operations of the wastewater collection, conveyance and treatment systems to optimize treatment and environmental benefits. In the event of plant distress, flash floods, excess infiltration and inflow, illegal materials delivered to the treatment system, or other similar event, CCSD#1 shall coordinate with City regarding the possible diversion, backup, transfer or other management option for the handling of wastewater flow. To the extent necessary, in CCSD#1's judgment, to insure compliance with NPDES Permit requirements, CCSD#1 staff may direct City staff to take such actions as are appropriate to avoid violation of NPDES Permit requirements, including but not limited to diversions, restrictions, cleanup or blocking efforts, or any other action reasonably necessary to avoid risks to human health or safety, any environmental damage including collection system overflows, or damage to the wastewater treatment facility's ability to treat wastewater.

4.2 Treatment of Domestic Sewage Only. City acknowledges and agrees that CCSD#1 shall only be required to treat Domestic Sewage. CCSD#1 may reject all non-conforming forms of wastewater, and may refuse to transport and/or treat Domestic Sewage from those portions of City's sewage collection system that do not conform to DEQ, EPA, or CCSD#1 standards for Domestic Sewage.

4.3 Pretreatment Ordinances. City has previously implemented a pre-treatment program consistent with the Rules, called the "City Pretreatment Program" (the "Program"). After due consultation with City staff, CCSD#1 may require changes to the Program to remain consistent with requirements imposed by state or federal law, the Rules, or its current best management practices for the Industrial Pretreatment program, and may include, but is not limited to: developing procedures, forms and instructions; categorizing dischargers; records keeping; compliance tracking; establishment of annual limits; sampling, testing and monitoring; preparation of control documents; enforcement, including collection of fees, penalties, and other extraordinary charges; and preparation of permits. Nothing contained herein shall obligate City to undertake program requirements greater than those imposed by CCSD#1 within its boundaries. The fees to be charged for Industrial Pretreatment shall be set by mutual discussion of the Parties, but in no case lower than those charged to Industrial Pretreatment customers within CCSD#1.

4.4 Rules and Regulations. City shall assure that its sewerage ordinances are consistent with and at least as effective as CCSD#1's Rules. CCSD#1 will provide due notice and consult with City staff regarding any substantive changes that may impact current City ordinances, beyond any general discussion at the advisory committee level.

4.5 City Internal System. City shall operate and maintain its Internal System at its sole expense, including all of its facilities as required to deliver the wastewater to CCSD#1's system or facility. City shall observe generally accepted standards and

practices in the construction, operation, replacement and maintenance of its Internal System, with particular attention to the following: (i) minimizing entry in the sewerage system of groundwater and/or I/I; (ii) maintaining a favorable character and quality of Domestic Sewage in accordance with the standards set forth in Section 4.2 hereof; (iii) eliminating septicity and objectionable odors, entry of petroleum waste or other chemicals and/or wastes detrimental to sewer lines, pumping stations, wastewater treatment plants, and the waters of the State of Oregon; (iv) eliminating hazardous and toxic wastes; and (v) maintaining an efficient and economical utility operation while achieving optimum pollution and environmental control. Nothing contained herein shall obligate City to undertake particular Internal System activities unless otherwise directed by a third party regulatory agency such as DEQ.

4.6 Mutual Notification. The Parties agree to provide each other with written notice of any condition that may violate this Agreement or applicable laws, regulations, or permits. The discharge Party agrees to give verbal notice to the other Party immediately upon becoming aware of the violating discharge. A written report on the nature and amount of the violating discharge will be prepared and provided to the other Party within twenty-four (24) hours of the time the violating discharge is identified. If the Party does not correct such a condition within a reasonable time of written notice thereof, the offending Party shall pay any reasonable and necessary costs and expenses incurred by the other Party in connection with such condition. If either Party discharged in to the wastewater system any solids, liquids, gases, toxic substances, or other substance that is reasonably believed to cause or will cause damage to the system, or is creating a public nuisance or a hazard to life or property, that Party shall discontinue the discharge of such substances. Because substandard condition of Domestic Sewage may cause serious damage to the wastewater treatment facilities, both Parties shall comply with generally accepted standards regarding the composition of Domestic Sewage, and after compliance, will work together to allocate the cost associated with necessary corrective actions.

4.7 Allocation of Penalty. The Parties shall cooperate with each other to determine the source of possible violations of applicable law, regulations and permits (including applicable NPDES Permits). In the event CCSD#1 is fined or otherwise penalized by local, state, or federal agencies for failure to operate or maintain the wastewater treatment system in accordance with the requirements of the agencies, and it is demonstrated to CCSD#1's and City's reasonable satisfaction that such violation or failure is due, in whole or in part, to City's discharge of Domestic Sewage in violation of this Agreement, then City shall pay its commensurate share of the costs of such fines or penalties, including its share of the associated administrative, legal, and engineering costs incurred by CCSD#1 in connection with these fines or penalties, including responses to or appeals thereof within 60 days of receiving written notice thereof. In the event that CCSD#1 and City cannot agree hereunder with regard to responsibility or shares, they shall resolve the issue(s) as provided in Section 5.3 herein.

4.8 Services Provided by City.

4.8.1 **Sanitary Sewer**. In any area now or hereafter becoming part of City, City shall provide all collection sewer services, billing and collection, inspection, and the like with respect to the sewer collection system. City shall have sole ownership and responsibility to operate, maintain, repair and replace facilities or to permit, design and construct collection sewer facilities, subject to Section 4.5. City shall have sole discretion as to the methods of financing such facilities, provided City insures compliance with Section 3.7 hereof. If within any area hereafter becoming part of City collection facilities exist that were built by CCSD#1, CCSD#1 and City will agree upon the manner and amount of compensation to be paid to CCSD#1 as a result of the transfer of those facilities to City. If they are unable to agree, the issue will be resolved pursuant to Section 5.3 herein.

4.8.2 **Surface Water Management**. City shall be solely responsible for all aspects of surface water management within its boundaries and to comply with the obligation imposed on it pursuant to the NPDES Permit, its MS4 Permit, and other applicable laws and regulations.

4.9 Services Provided by CCSD#1.

4.9.1 **Sanitary Sewer**. In any area now or hereafter becoming part of CCSD#1, CCSD#1 shall have sole ownership and responsibility to operate, maintain, repair and replace facilities or to permit, design and construct collection, conveyance, or treatment sewer facilities. CCSD#1 shall have sole discretion as to the methods of financing such facilities, but shall consult with City through the District Advisory Committee regarding anticipated capital projects, financings, rates, and other issues as normally discussed pursuant to the Riverhealth Advisory Board bylaws, as amended from time to time.

4.9.2 **Surface Water Management**. Unless otherwise agreed, CCSD#1 and City shall each be solely responsible for surface water management within their respective boundaries, and CCSD#1 shall not charge City for stormwater services.

4.9.3 **Laboratory Services**. CCSD#1 shall provide all laboratory services necessary to comply with all relevant regulatory requirements for Wholesale services. If desired by City, CCSD#1 will provide laboratory testing and results for City relating to Retail or stormwater tests pursuant to the laboratory services fee schedule attached hereto as Exhibit A, as such fee schedule may be updated from time to time, but no more frequently than annually. CCSD#1 agrees that City shall not be charged any per-test fee greater than that charged to other lab customers using similar services.

4.10 Peak Flow/I&I. The Parties agree on the importance of maintaining their conveyance infrastructure to avoid I/I problems. To that end the Parties agree that they will work cooperatively to respond and comply with any regulatory requirements imposed under the Clean Water Act on conveyance infrastructure. The Parties also

acknowledge that excessive I/I problems can lead to treatment failure at the Kellogg Plant, and that if the plant experiences two or more permit violations during a calendar year relating to excess flow as determined by the Operations Supervisor or Kellogg Plant Manager, then each Party shall conduct an investigation of their respective conveyance systems to identify and remedy I/I problems to ensure the plant maintains a peaking factor of no more than 4:1 above average dry weather flow.

4.10.1 **Mutual Investment in I/I Reduction**. CCSD#1 agrees to contribute ten percent (10%) of the City's costs for all wastewater conveyance infrastructure projects designed to reduce I/I within the City. To obtain this contribution, the City will provide CCSD#1 staff with an annual list of anticipated projects no later than February 15 for the next fiscal year beginning July 1, which will be evaluated by such staff for its impacts on I/I, as distinct from structural rehabilitation or service for growth. CCSD#1 staff shall provide a written response and evaluation of the Project no later than March 15 of the same year detailing how much of the project, in their opinion, relates to I/I mitigation. In the next fiscal year the City will, at its discretion, provide either copies of monthly invoices showing the expenses and requesting 10% reimbursement of the appropriate amounts of such projects, or one request for 10% of the approved costs at the end of such project, which CCSD#1 shall pay within thirty (30) days.

4.11 Good Neighbor Fund & Efforts. CCSD#1 shall establish a district fund and for the duration of this Agreement shall deposit monthly the equivalent of One and no/100 Dollars ($1.00) per EDU of the City's connections as reported under Section 3.3 (the "Good Neighbor Fund"), after receipt of payment from the City for such month. The Good Neighbor Fund shall be used for the purpose of mitigating the impact of the Kellogg Plant on the surrounding neighborhoods, which may include, for example, buffer acquisitions and/or landscaping within 200 yards of the plant property line, improvements on the Kellogg Plant property, or neighborhood sewer infrastructure projects (a "Fund Approved Purpose"). City shall establish a process for developing and prioritizing projects and/or efforts to be undertaken with Good Neighbor Fund monies that will include participation by City citizen groups representing areas near the Kellogg Plant. CCSD#1 staff shall meet and assist in planning any intended uses for this fund, and will generally defer to the desires of the City as expressed by City staff for the uses of those funds. CCSD#1 staff shall make the final determination if the proposed use of the monies is consistent with the purposes of the Good Neighbor Fund as expressed in this section subject to Section 5.3 herein.

At the City's discretion, it may request that up to eighty percent (80%) of the monthly revenues deposited into the Good Neighbor Fund as described in this Section 4.11 be remitted to the City's sewer utility fund to support debt service payments for certain capital projects. CCSD#1 shall grant such a request so long as (i) the remitted revenues will support a project that is a Fund Approved Purpose; (ii) that, in the reasonable opinion of CCSD#1 staff, the proposed project will not violate the legal authority of the district's authorizing statutes; and (iii) the Parties shall reach agreement regarding the future ownership and/or maintenance of the resulting capital project. This

remittance shall continue only for so long as the length of the loan or other financing undertaken at the time of the request to accomplish the Fund Approved Purpose project proposed to CCSD#1.

4.11.1 **City Report & Neighborhood Groups**. CCSD#1 staff will attend neighborhood meetings at least every other month for both of the Island Station and Historic Milwaukie neighborhood associations. By July 1 of each year, CCSD#1 staff will provide an annual report to the Milwaukie City Council and Citizens Utility Advisory Board regarding communication with the neighborhood groups and a summary of the budget and Rate decisions made by the BCC for the coming fiscal year.

4.12 Odor Control. CCSD#1 shall contribute One Million and No/100 Dollars ($1,000,000.00) as "seed" funding to the Good Neighbor Fund described in Section 4.11 above, and the City shall have the discretion to decide the best approach for the initial odor control improvements at or around Kellogg with such seed funding. After the initial investment of the seed funding, CCSD#1 shall conduct an odor control study upon the written request of Milwaukie but no more frequently than once every eighteen (18) months. Such studies shall be paid for by CCSD#1, not be funded by the Good Neighbor Fund, and shall be undertaken within ninety (90) days of receipt of the written request. If the study finds odors that would be reasonably detectable by and objectionable to an ordinary person, then CCSD#1 and City shall jointly investigate additional actions necessary to obviate the odor issues and such expenses shall be paid by CCSD#1 as part of the Wholesale rate.

## SECTION 5. DEFAULTS AND DISPUTE RESOLUTION

5.1 Defaults. Subject to a Force Majeure Event, extensions of time by mutual consent in writing, or the special circumstances described in Section 5.2, failure or unreasonable delay by any Party to substantially perform any provision of this Agreement, or breach of any term of this Agreement, shall constitute a default (a "General Default"). In the event of an alleged General Default, the Party alleging such a violation shall give the other Party not less than thirty (30) days notice in writing specifying the nature of the alleged General Default and the manner in which the General Default may be cured satisfactorily. During this 30-day period, the Party in charge shall not be considered in default for the purposes of termination or instituting legal proceedings. The defaulting Party must cure such General Default within such 30 day period unless it submits a written notice to the other Party alleging (i) an inability to cure within 30 days and setting forth a plan to expeditiously cure the General Default, or (ii) disputing the General Default notice and requesting dispute resolution as set forth in Section 5.3.

5.2 Special Defaults. Except in the case of a Force Majeure Event, failure by City to comply with the relevant provisions of Sections 3 and 4, including but not limited to failure to (i) pay amounts due within the proscribed time period, (ii) disclose new connections or EDU levels, (iii) pay SDC-equivalent charges, (iv) allow non-Domestic Sewage to be delivered to CCSD#1, or (v) allow I/I or peak flow issues beyond the scope

agreed (each, a "Special Default") shall constitute an immediate and material breach of this Agreement. The occurrence of a Special Default shall immediately vest CCSD#1 with the right to either (x) terminate this Agreement with 90 days prior written notice to City without need of any opportunity to cure or other action, step or process, including any set forth in Sections 5.1 and 5.3, or (y) impose a fifteen percent (15%) surcharge on the Rate, SDC charges, interest, and related financial terms until such time as the City comes into compliance with the Agreement.

5.3 Dispute Resolution Steps. Except as otherwise provided in Section 5.2, the Parties agree to attempt to settle any disputes or General Defaults pursuant to the following process:

5.3.1 **Negotiation**. The City Manager of City and the Director of CCSD#1 or other persons designated by each of the disputing Parties will negotiate on behalf of the entities they represent. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each the City Manager and the Director, and may be ratified by the governing bodies of the Parties, as appropriate.

5.3.2 **Mediation**. If the dispute cannot be resolved within 30 days of the beginning of negotiation as set forth in Section 5.3.1 or within such longer period of time as may be mutually agreed to by CCSD#1 and City, the Parties shall submit the matter to non-binding mediation. The Parties shall attempt to agree on a single mediator. If the Parties cannot agree on a single mediator, the Parties shall request a list of five (5) mediators from an entity or firm providing mediation services. The Parties will attempt to mutually agree on a mediator from the list provided, but if they cannot agree, each Party shall select one (1) name from such list. The two selected mediators shall select a third person. The dispute shall then be heard by a panel of three (3) mediators, and any common cost of mediation shall be borne equally by the Parties who shall each bear their own costs and fees therefore. If the dispute is resolved at this step, there shall be a written determination of such resolution, signed by each the City Manager and the Director, and ratified by the governing bodies of the Parties which shall be binding upon the Parties.

5.3.3 **Binding Arbitration**. After exhaustion of the preceding processes, any remaining dispute shall be submitted to binding arbitration under the jurisdiction of the Circuit Court of the State of Oregon for Clackamas County pursuant to ORS Chapter 36.

**SECTION 6. TERM AND TERMINATION**

6.1 Term. This Agreement shall be effective as of July 1, 2012 and shall expire on June 30, 2037.

6.2 Early Termination. This Agreement may be terminated prior to the Termination Date upon (i) the mutual written consent of the Parties, or (ii) upon twenty-four (24) months prior written notice by one Party to the other.

6.2.1 **Early Termination by CCSD#1**. If CCSD#1 exercises its early termination right pursuant to this Section 6.2, the City will be obligated to pay only its pro rata share of CCSD#1 outstanding obligation and debt, including capital debt, that existed at the time the Agreement was entered into and that relates directly to the Kellogg Plant or that was incurred after execution but before notice of termination, that directly relates to the Kellogg Plant. "Pro rata share" means a share consistent with the City's 5-year average of flows based on EDUs prior to the notice of termination.

6.2.2 **Early Termination by City**. If City exercises its early termination right pursuant to this Section 6.2, the City will be obligated to pay for its share of the outstanding debt of CCSD#1 in a manner equivalent to similarly situated parties under ORS 222.524, as though City has been a part of CCSD#1 and was withdrawing.

6.3 Termination of Prior IGAs. The Parties acknowledge and agree that each and all of the Prior IGAs are hereby terminated and shall have no further force or effect.

6.4 Extensions. CCSD#1 and City agree that they shall meet on the first business day of July 2035 to discuss an extension, renewal, or alternative service arrangements for City wastewater, unless terminated earlier pursuant to Section 6.2 hereof.

**SECTION 7. ADDITIONAL PROVISIONS**

7.1 Other Necessary Acts. Each Party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other Party the full and complete enjoyment of rights and privileges hereunder.

7.2 Severability and Waiver. In case any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired in any way. One or more waivers by either Party of any provision, term, condition or covenant shall not be construed by the other Party as a waiver of subsequent breach of the same by the other Party.

7.3 Amendment. The Agreement may be amended at any time by mutual written agreement.

7.4 Force Majeure. In addition to the specific provisions of this Agreement, performance by any Party shall not be in default where delays or default is due to a Force Majeure Event.

7.5 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.

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

7.7 Governing Laws. This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Venue in connection with any legal proceeding affecting this Agreement shall be in the Circuit Court of the State of Oregon for Clackamas County.

7.8 Number and Gender. Whenever applicable, the use of the singular number shall include the plural, the use of the plural number shall include the singular, and the use of any gender shall be applicable to all genders.

7.9 Successors and Assigns. This Agreement is to be binding on the successors and assigns of the Parties hereto. No assignment of this Agreement shall be effective until the assignee assumes, in writing, the obligations of the assigning Party, and delivers such written assumption to the original Party to this Agreement.

7.10 Notice. Any notice herein required or permitted to be given, shall be given in writing and shall be effective upon receipt for hand delivery or facsimile or upon actual receipt or three (3) days after mailing, whichever is earlier, for notices delivered by U.S. mail, first class postage prepaid, addressed to the Parties as follows:

Clackamas County Service District No. 1
c/o Water Environment Services
Attn: Director
150 Beavercreek Road, 4th Floor
Oregon City, Oregon 97045

City of Milwaukie
Attn: City Manager
10722 SE Main Street
City, Oregon 97222

Changes to the above shall be by notice to the other in the manner provided in this Section 7.10.

7.11 No Waiver. No failure by City or CCSD#1 to insist on the strict performance of any agreement, term, covenant, or condition of this Agreement or to exercise any right or remedy consequent to a breach, and no acceptance of full or partial Rent during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by either Party, and no breach by either Party, shall be waived, altered, or modified except by a written instrument executed by

the non-breaching Party. No waiver of any breach shall affect or alter this Agreement, but each and every agreement, term, covenant, and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach.

7.12 Cumulative Remedies. Each right and remedy provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by City or CCSD#1 of any one or more of the rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Party in question of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise.

7.13 Annexation. Nothing in this Agreement shall be construed to impair City's ability, if it so desires, to annex into CCSD#1 with due and appropriate process. Similarly, nothing in this Agreement shall obligate City to seek annexation. The Parties agree that upon annexation of City into CCSD#1, if ever, this Agreement shall terminate as of the effective date of the annexation.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have, pursuant to official action that the respective governing bodies duly authorized the same, caused their respective officers to execute this Agreement on their behalf on the date stated above.

| | |
|---|---|
| CITY OF MILWAUKIE,<br>a municipal corporation | CLACKAMAS COUNTY SERVICE<br>DISTRICT NO. 1, a county service district |
| By:_____ | By:_____ |
| Title: Mayor | Title: Chair |
| ATTEST: _____ | ATTEST: _____ |
| Title: City Recorder | Title: Secretary |

Exhibit A

*Initial Laboratory Fee Schedule*

Exhibit A

Lab Fees & Rates

## Lab Fees FY12/13 Per Test

| | |
|---|---|
| Ammonia | $26 |
| BOD | $32 |
| Conductivity | $13 |
| E Coli | $37 |
| Hardness | $21 |
| Dissolved metals | $26 |
| Metals | $21 |
| Nitrate (NO3) | $28 |
| oPO4 | $30 |
| Phosphorous | $42 |
| TDS | $28 |
| TSS | $24 |
| Winkler DO | $16 |
| TS/VS | $26 |

**RESOLUTION NO. _____-2012**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 AND AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT**

**WHEREAS,** the City of Milwaukie has been a wholesale customer of Clackamas County Service District No. 1 (CCSD#1) since 1970 and has received wastewater treatment services from CCSD No. 1 at the Kellogg Creek Water Pollution Control Plant since 1972;

**WHEREAS**, over the past 40 years, the City and CCSD No.1 modified the terms of the treatment agreement several times and since 2008 were engaged in discussions about a proposed new rate collection methodology and related issues.

**WHEREAS**, discussions were not successful until the past year when City and CCSD No. 1 negotiating teams met and identified several key issues for resolution;

**WHEREAS,** the negotiating teams reached agreement on issues and drafted an agreement that resolves all outstanding issues regarding rates; and

**WHEREAS**, the Parties each desire to adopt the agreement in December, 2012 to establish terms through June 30, 2037.

**Now, therefore, the City of Milwaukie, Oregon, resolves as follows:**

Section 1: The City Council of the City of Milwaukie agrees to the terms of the Intergovernmental Agreement with Clackamas County Service District No. 1.

Section 2: The Mayor is authorized to sign the Intergovernmental Agreement on behalf of the City of Milwaukie.

Section 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on December ___, 2012

By: _____
Mayor Jeremy Ferguson

ATTEST:

APPROVED AS TO FORM
Jordan Ramis PC

_____
Pat DuVal, City Recorder

_____
City Attorney

Agenda Item: 6.B.
Meeting Date: 12/04/2012

## COUNCIL AGENDA ITEM SUMMARY

**Issue/Agenda Title:** Wastewater Rate Study – Adoption of Rate
**Prepared By:** Gary Parkin, Public Works Operations Director
**Dept. Head Approval:** Casey Camors, Finance Director
**City Manager Approval:** Bill Monahan, City Manager
**Reviewed by City Manager:** November 30, 2012

### ISSUES BEFORE THE COUNCIL
Review the progress of the wastewater rate study and the recommendation of the Citizen's Utility Advisory Board (CUAB) on a rate to adopt.

### STAFF RECOMMENDATION
Adopt a rate for the wastewater utility as recommended by the CUAB.

### KEY FACTS & INFORMATION SUMMARY
At their June 19, 2012 Council work session, Council received information about wastewater rate options that could be incorporated into a rate structure. Council asked staff to move forward with an expert rate consultant using the CUAB in an advisory role to design a rate structure that continues to include a variable component and look at adding a high-strength component.

Staff reported back at the November 20, 2012 Council work session on the study findings, focusing on issues with splitting the commercial class into multiple classes for purposes of assigning strength of sewage and the issue with continuing a rate that is mostly variable in light of the increasingly fixed nature of expenses with the new treatment agreement.

**The CUAB recommendation from their November 29th meeting is attached, and the revised Resolution based on their recommendation.**

**After looking at options differing primarily in the number of customer class divisions, the CUAB chose a rate structure that is similar to the current structure, one with Residential and Commercial classes. The rate continues to engage a usage-based component but is largely fixed reflecting the treatment cost.**

### OTHER ALTERNATIVES CONSIDERED
None

### CITY COUNCIL GOALS
Related to goal 3 - Complete a fair wastewater agreement with Clackamas County Service District #1 and make the Kellogg Plant a good neighbor.

**FISCAL NOTES**
Adoption of the recommended rate provides funding to ensure a fiscally balanced wastewater utility that can support the appropriate operation and maintenance of the wastewater system.

**ATTACHMENT LIST**
1. Staff Report
2. CUAB Rate Recommendation
3. Resolution

**To:** **Mayor and City Council**

**Through:** **Bill Monahan, City Manager**

**From:** **Casey Camors, Finance Director and**
**Gary Parkin, Public Works Operations Director**

**Subject:** **Wastewater Rate Study – Rate Adoption**

**Date:** **November 30, 2012 for December 4, 2012 Regular Session**

---

## ACTION REQUESTED

Adopt a wastewater rate based on the recently completed wastewater rate study.

## HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

**November 20, 2012** City Council was updated on the wastewater rate setting process.

**June 19, 2012** City Council met with the Citizens Utility Advisory Board (CUAB) in a work session discussion of the wastewater rate.

**June 5, 2012** City Council adopts an interim rate increase of 30% on the volume charge to match the increased treatment charge.

**May 15, 2012** City Council adopts Memorandum of Understanding endorsing a wastewater treatment agreement with Clackamas County Service District #1 (CCSD#1) that includes a 44% increase in treatment charges to the City.

**September 4, 2001** A wastewater rate study was adopted by Council changing from a fixed to volume based wastewater rate.

## BACKGROUND

In response to an increase in treatment charges to the City, Council acted in June of 2012 to increase wastewater rates on an interim basis until a rate study could be completed. The study would determine a rate that was fair and equitable and sufficient to cover the complete cost of providing wastewater service.

Staff has been working with the rate consulting firm of Stepwise Utility Advisors and the CUAB to design a rate structure that recovers the full cost of the City's wastewater

service while fairly and equitably assigning the wastewater treatment charges assessed by CCSD #1. The rate structure will also separate the City's cost to operate and maintain the collection portion of the system from the CCSD#1 charge for treatment. Customers will be able to see the cost allocation on their bill.

The current rate structure includes two parts; a fixed charge and a volume charge. The charges are assessed based on two customer classes; residential and commercial. Residential customers pay a fixed rate per Equivalent Dwelling Unit (EDU) which is defined as the amount of sewage contributed by a single family dwelling unit and a volume rate that is variable based on their measured average monthly winter use of water. Commercial customers pay similarly with a rate that includes an identical fixed charge and a volume rate that is 30% higher than the residential rate and assessed per actual monthly water use.

The current rate is designed to collect about 80% from the volume charge or variable portion of the rate. This gives customers some control of their wastewater bill by their usage. In contrast, on the expense side more than 80% of the costs incurred by the City are fixed. This can lead to budgeting issues as revenue varies and the cost to provide service is mostly fixed. To address this issue in light of the directive for full cost recovery, the study will design a rate that is mostly fixed to better match expenses.

To address the fair and equitable directive, the process looked at distinguishing the sewage characteristics of customers. Flow volume equity is achieved with a rate that accounts for volume of flow. The makeup or strength of the sewage flow is another important factor in the cost to treat it. Several parameters are used to identify sewage strength according to how difficult it is to treat. The value of the parameters for a certain class may be determined by testing or by looking at previously collected, statistically valid, reference information.

The rate-setting process looked at dividing the commercial class into several classes with different amounts of sewage strength characteristics. This allows for charging customers a rate that more closely approximates their use of the system. Depending on how many classes are used, dividing the commercial class can dramatically shift the cost assignment. For example, the normal commercial class (which includes offices) has a sewage strength similar to residential while the restaurant class has a strength profile close to heavy industrial. Segregating the commercial classes lowers the rate for the normal commercial class and raises it for restaurants.

At their November 29, 2012 meeting the CUAB considered certain rate design scenarios that provide varying measures of full cost recovery along with fairness and equity. In all scenarios the same rates for the infrastructure charge which funds for the collection system and the billing charge to account for administrative costs. The CUAB considered four options for a treatment rate that will fund the CCSD#1 treatment charges:

1. Allocate more costs to high strength surcharge (HSS) customers.
2. Allocate specifically to customer class.
3. Allocate specifically to Residential and Commercial.
4. Allocate evenly across the City.

The CUAB recommendation is for option 3 and was stated as follows:

*The CUAB at their meeting of November 29, 2012, after having reviewed the Wastewater rate study in the capacity of the Advisory Committee beginning with the kickoff meeting on September 20, 2012, makes the following recommendation;*
*The rate structure continues with two classes; Residential (including low-income) and Commercial. The components of the rate are:*

*A fixed monthly rate of $26.10**** per EDU for treatment costs for residential customers and $56.75 for commercial customers*
*A fixed monthly rate of $7.65**** per EDU for administrative costs for both classes*
*A volume based monthly rate of $2.46 per ccf for infrastructure operation and maintenance costs for both classes*

*******The low-income discount for residential customers is expected to continue as provided for in the current code*

*Findings:*

*The CUAB finds the recommended rate structure to be:*

1. *Equitable between classes*
2. *Least impactful change to customers*
3. *Most administratively feasible*
4. *The structure that brings us most closely in line with CCSD#1 rate structure*

*Note: the CUAB's recommendation is for the rate structure. The exact rate figures may change as they are reviewed by our consultant.*

**CONCURRENCE**
The CUAB worked throughout the rate setting process and given the circumstance of the treatment cost, concurs with the rate structure. Finance and Operations were also involved in the process and concur with the findings. The rate provides capital improvement/maintenance funding at the level recommended by Engineering in the Wastewater Master Plan.

**FISCAL IMPACTS**
Adoption of the recommended rate provides funding to ensure a fiscally balanced wastewater utility that can support the appropriate operation and maintenance of the wastewater system.

**WORK LOAD IMPACT**
The study itself has required finance, engineering and operational support. The rate to be adopted will provide for the continued maintenance of the system and support system replacement.

**ALTERNATIVES**
If the current rate continues unchanged, reserves will be depleted by 2015. Further study may be done to redesign the rate but the need to raise rates is based on teamnet charges that are outside of City control.

**ATTACHMENTS**
1. CUAB Rate Recommendation
2. Resolution for the adoption of a new wastewater rate

Attachment 1

The CUAB at their meeting of November 29, 2012, after having reviewed the Wastewater rate study in the capacity of the Advisory Committee beginning with the kickoff meeting on September 20, 2012, makes the following recommendation;

The rate structure continues with two classes; Residential (including low-income) and Commercial. The components of the rate are:

A fixed monthly rate of $26.10***** per EDU for treatment costs for residential customers and $56.75 for commercial customers

A fixed monthly rate of $7.65***** per EDU for administrative costs for both classes

A volume based monthly rate of $2.46 per ccf for infrastructure operation and maintenance costs for both classes

*****The low-income discount for residential customers is expected to continue as provided for in the current code

Findings:

The CUAB finds the recommended rate structure to be:

1. Equitable between classes
2. Least impactful change to customers
3. Most administratively feasible
4. The structure that brings us most closely in line with CCSD#1 rate structure

Note: the CUAB's recommendation is for the rate structure. The exact rate figures may change as they are reviewed by our consultant.

Attachment 2

**RESOLUTION NO. _____**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING A WASTEWATER RATE TO SUPPORT WASTEWATER OPERATION AND TREATMENT SERVICE**

**WHEREAS,** the City of Milwaukie has been a wholesale customer of Clackamas County Service District #1 (CCSD #1) for the provision of wastewater treatment at the Kellogg Treatment Plant since construction took place in the 1970's; and

**WHEREAS,** the City and CCSD #1 have developed a Wastewater Service Agreement specifying that the District shall provide wastewater treatment services to the City and the City shall pay the District for such services consistent with the terms and conditions of the Wastewater Service Agreement; and

**WHEREAS,** the treatment rate outlined in the Wastewater Service Agreement is $30.21 per equivalent dwelling unit (EDU) per month equating to a treatment charge to the City of approximately $4 million per year, a service charge the City has not fully budgeted for; and

**WHEREAS,** the City of Milwaukie must maintain revenue in the Wastewater Fund sufficient for necessary capital improvement, maintenance projects, minimum working capital, debt service, debt service coverage requirements, and inflation factors; and

**WHEREAS,** Milwaukie Municipal Code Section 13.12.070(A) authorizes the City Council to establish sewer service charges by resolution;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council that wastewater rates established by Resolution 36-2012 by amended as follows:

A wastewater residential volume rate of $2.46 per ccf based on water use and a fixed rate of $ 7.65 per customer and a fixed rate of $26.10 per EDU for treatment cost.

A low income volume rate of $1.23 per ccf and a fixed rate of $3.83 per EDU and a fixed rate of $13.05 per EDU for treatment cost for residential low-income utility customers eligible for reduced rates under MMC section 13.2.010.

A commercial volume rate of $2.46 per ccf based on monthly billed water use and a fixed rate of $ 7.65 per customer and a fixed rate of $56.75 per EDU for treatment cost. An EDU for commercial customers is defined as 10 ccf of monthly billed water. EDUs for commercial customer will be charged in increments of $1/10^{th}$ of an EDU.

These rates will remain in effect until July 1, 2014 and a new rate is adopted. Average household water use shall be the most up-to-date

winter average water use as measured for each household over four winter season billing cycles (four months). (A typical household uses 5 ccf of water per month. This amounts to an increase of $4.67 per month for a typical residential customer in Milwaukie).

Introduced and adopted by the City Council on December 4, 2012.

This resolution is effective on January 1, 2013..

_____
Jeremy Ferguson, Mayor

ATTEST:

_____
Pat DuVal, City Recorder

APPROVED AS TO FORM:
Jordan Ramis PC

_____
City Attorney