

RESOLUTION NO. 64-2009

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO SIGN AN INTERGOVERNMENTAL AGREEMENT FOR THE COLLECTION OF PAYMENTS FROM THE CLACKAMAS COUNTY DEVELOPMENT AGENCY TO DEFRAY THE PRIVATE SANITARY SEWER SYSTEM CONNECTION COSTS OF PROPERTIES IN THE NORTH CLACKAMAS URBAN RENEWAL DISTRICT TO BE SERVED BY CITY OF MILWAUKIE SANITARY SEWERS.**

**WHEREAS**, the City Council has previously committed the City to construct the North East Sewer Extension (NESE) Project to serve properties within the North Clackamas Urban Renewal District; and

**WHEREAS**, the City of Milwaukie anticipates recovering costs for the project through a reimbursement district; and

**WHEREAS**, the North Clackamas Urban Renewal District plan calls for renewal district revenues to help support the construction of sanitary sewer collection systems in the area; and

**WHEREAS**, the Clackamas County Development Agency administers the North Clackamas Urban Renewal District;

**NOW, THEREFORE, BE IT RESOLVED** the City Council of the City of Milwaukie authorizes the Intergovernmental Agreement with the Clackamas County Development Agency (attached as Exhibit 1) and authorizes the Mayor to sign the agreement, governing the timing, form and amount of payments from the Development Agency to the City in order to allow discounts to be provided to future City of Milwaukie wastewater customers within the North Clackamas Urban Renewal Area.


Introduced and adopted by the City Council on October 20, 2009.

This resolution is effective on October 21, 2009.

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

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

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


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

EXHIBIT 1

**AN INTERGOVERNMENTAL AGREEMENT FOR THE PARTIAL  
PAYMENT OF CHARGES RELATED TO THE CONNECTION  
OF PROPERTIES TO A SANITARY SEWER SYSTEM TO BE  
CONSTRUCTED IN THE NORTH CLACKAMAS URBAN  
RENEWAL DISTRICT**

**BETWEEN THE CLACKAMAS COUNTY DEVELOPMENT  
AGENCY AND THE CITY OF MILWAUKIE**

This Intergovernmental Agreement (the "Agreement") is made and entered into by and between the Clackamas County Development Agency, the urban renewal agency of Clackamas County, (the "Agency") and the City of Milwaukie, an Oregon municipality (the "City") as of ~~October~~ <sup>November</sup> 5, 2009.

**RECITALS**

- A. The Agency has an urban renewal district, the North Clackamas Revitalization Area (the "NCRA").
- B. A project under the NCRA Urban Renewal Plan and Design Plan is to facilitate the process of providing sanitary sewers to those areas of the NCRA now served by septic systems. A map of the North Clackamas Revitalization Area is attached to this document as Exhibit "A".
- C. The City intends to provide sanitary sewers to a portion of the NCRA known as the Dual Interest Area ("DIA") as provided for in the City/County Urban Growth Management Agreement. A map depicting the portion of the DIA to be served by the City is attached to this document as Exhibit "B".
- D. The Agency and the City have the ability and obligation to work together to efficiently provide services to Clackamas County citizens and businesses.

NOW, THEREFORE, AS THE AGENCY DESIRES TO FACILITATE THE PROCESS OF PROVIDING SANITARY SEWERS TO THOSE AREAS OF THE NCRA NOW SERVED BY SEPTIC SYSTEMS, AND THE CITY WISHES TO PROVIDE SANITARY SEWERS TO THOSE AREAS OF THE NCRA WITHIN ITS URBAN GROWTH MANAGEMENT BOUNDARY AREA, THE AGENCY AND THE CITY AGREE AS FOLLOWS:

1. Purpose: The purpose of this Agreement is to provide a mechanism for the Agency to implement the NCRA Urban Renewal Plan and Design Plan and for the City to realize the efficiencies associated with the expeditious connection of properties now served by septic systems to the sewers the City plans to construct in the area. The Agency is

providing \$2,200.00 of financial assistance per eligible property for the sewer system development charges associated with the City's connections to developed lots in the DIA. The Agency is also partially underwriting the costs of assessments or reimbursement fees with a subsidy of \$1,250.00 for properties requiring sewer service.

2. Effective Date: This Agreement shall become effective as of the date first written above, and shall continue until terminated as set out below in Section 6 due to term or Section 7 because of default.

3. The obligations of the Agency: The Agency shall pay the City according to the terms set out in this Agreement. The City shall account for funds provided by the Agency and track credits to eligible properties as set out in Section 5.5 below. No other use shall be made of this money than that of providing sewer system connection benefits as specified in this document.

4. The obligations of the City: The City shall accept payment from the Agency according to the terms set out in this Agreement.

5. The Administration of the Program.

5.1. The terms of this Agreement only apply to those portions of the DIA expected to receive sewer service from the City as shown on attached Exhibit B. As later specified in this document, the payment by the Agency to the City will provide two separate benefits to eligible property owners in the DIA. The first benefit is payment of \$2,200.00 for a single sewer system development charge (the "SDC") for each developed lot requiring a new connection to the City's sanitary sewers. The second benefit is a payment of \$1,250.00 as a subsidy or discount of the reimbursement fee for properties subject to the cost associated with a reimbursement district for provision of sewer service. The City may elect to credit the benefit for a sewer system development charge against the reimbursement fee for eligible properties.

5.2. The Agency and the City shall identify and agree as to the number of potential connections to developed lots in the DIA, and as to the number of properties subject to a sewer assessment or reimbursement fee.

5.3. The Agency shall initially pay the City two hundred fifty thousand dollars (\$250,000.00) plus any additional payment as may be necessary to cover benefits due to eligible properties connecting to sewer during the period between sewer service becoming available and the Agency securing its initial bond to finance projects within the NCRA. This initial payment shall not exceed five hundred thousand dollars (\$500,000.00), and shall serve as a partial prepayment of the costs of connecting each developed lot to the City's sanitary sewers within the NCRA according to the terms set out in this Agreement. The payment will be in the form of a deposit of immediately bankable funds. The City shall account for funds provided by the Agency and track credit to eligible properties as set out in Section 5.5 below. No other use shall be made of this money than that of providing sewer system development connection benefits.

5.3.1 The Agency shall have no obligation to make this initial payment until both of the contingent events set out immediately below have occurred:

5.3.1.1. The Agency has secured its initial bond to finance its projects within the NCRA; and

5.3.1.2. The Agency is satisfied that the City has implemented its plan to provide sanitary sewers, and has provided a process for annexation as properties are connected to the system of sanitary sewers.

5.3.2 The Agency shall make additional payments, if necessary, to the City with each subsequent bond the Agency secures to finance projects within the NCRA, or every three years, whichever comes first. The amount of each additional payment shall cover any benefits due to eligible properties not covered by the prior payment and the anticipated demands for benefit payments for the next three-year period. A payment may be skipped if the amount of money already contributed by the Agency is reasonably expected to cover sewer connections for the next three-year period. Payments shall continue until benefits for all eligible properties have been paid or until the termination of this Agreement.

5.4. The City agrees that the total amount to be paid by the Agency during the term of this Agreement, calculated with the assistance of the City, will be based on the number of eligible properties within the DIA with the potential to connect to the sewer system. The SDC benefit is determined by multiplying the number of developed lots eligible to receive an SDC credit by \$2,200.00. The assessment or reimbursement fee discount is determined by multiplying the number of properties expected to be subject to a reimbursement fee for the sewer project by \$1,250.00. The sum of the two totals is the maximum total amount to be paid by the Agency during the term of this Agreement. Based on a preliminary estimate of the number of properties expected to receive access to sewer service, the SDC benefit is estimated to be \$635,000.00 and the portion of the payment attributable to the reimbursement fee subsidy is estimated at \$365,000.00, resulting in a total of \$1,000,000.00. The actual total payment will be based on the total number of eligible properties agreed upon by the Agency and the City as set out in Section 5.2.

5.4.1. The initial prepayment is expected to be sufficient to accommodate the connection of properties during the first three years after sewer service becomes available. Upon annexation and connection to the City sanitary sewer system, the City shall credit each eligible property \$2,200.00 for sewer system development charges and \$1,250.00 as a credit against the reimbursement fee computed for the property, for a total of \$3,450.00 per eligible property. At the City's discretion it may elect to credit the benefit for sewer system development charges against the reimbursement fee for eligible properties. In the event a property is eligible for one type of credit but not the other, the City shall credit the property the appropriate amount for which it is eligible.

5.4.2 The only sewer system development charges which may qualify for a system development charge credit are those attributable to a single connection to a developed lot. For the purposes of this Agreement, a "developed lot" is a property which is assessed, according to the assessment and tax roll of Clackamas County, as an improved property with buildings and structures and assigned a real market value equal to, or greater than, \$50,000.00.

5.4.2 Only one connection per developed lot may qualify for a single sewer system development credit of \$2,200.00. To the extent a property may be assessed more than one sewer system development charge (e.g. a business rated to produce more than one equivalent dwelling unit of wastewater at its point of connection), the remaining sewer system development charge shall be paid by the property owner at the then-current rate for such system development charge. If the City elects to credit the benefit for a sewer system development charge against the reimbursement fee then the property owner will be responsible for payment of the full sewer system development charge for a property.

5.4.2.1 At the time of connection, if the then-current rate for a sewer system development charge is less than \$2,200.00, the difference shall be applied to reduce the reimbursement fee attributable to the property. Should the then-current SDC rate be greater than \$2,200.00, the amount of the SDC above \$2,200.00 shall be paid by the property owner. If the City elects to credit the benefit for a sewer system development charge against the reimbursement fee then the property owner will be responsible for payment of the full sewer system development charge for a property.

5.4.3 This Agreement does not reach, and has no effect on, the manner and amount by which the City otherwise imposes its sewer system connection charges.

5.4.4 No part of this instrument shall entitle the Agency to any share, interest, or participation in the management of sanitary sewers in the DIA other than the right to use and enjoy the same under the existing ordinances of the City.

5.5. The City shall, in a manner consistent with its procedures and practices, account for any and all funds paid to the City by the Agency under this Agreement, as a credit against sewer system connection charges imposed as a condition for the connection of eligible properties to the City's sanitary sewers in the DIA. The City shall also keep a record of properties having received the \$2,200.00 sewer system development charge credit and the \$1,250.00 sewer reimbursement fee credit. The City shall provide the Agency a semi-annual report of all eligible properties receiving sewer system development charge benefits and/or sewer reimbursement fee credits, along with the amount of funds remaining to be credited or any deficit to be met with the next required payment. If the City elects to apply the credit for a sewer system development charge against the reimbursement fee for a property, the City shall note this in the report of eligible properties receiving benefits. The City shall also, upon reasonable notice, make its records available for inspection by the Agency.

5.5.1. Upon the termination of this Agreement or termination of the reimbursement district by the City, the Agency shall have the ability to demand a repayment, and the City shall promptly repay, any monies remitted to the City for purposes of this Agreement that were not used as sewer system development connection benefits for eligible properties. The City may retain any interest earned by the unused funds up to the time repayment is demanded. Following the Agency's demand for repayment all interest earned on the unused funds shall be paid to the Agency.

5.5.2. The City shall not impose any fees on property owners within the DIA for participation in the program, including processing charges, overhead, and participation payments, without the express permission of the Agency; provided, however, that such limitation shall not prevent the City from charging its customary fees and rates for all similarly-situated potential or actual customers of the City.

6. Term: This Agreement shall be effective upon execution, and shall expire upon the Agency paying the City the full amount necessary to provide financial assistance for sewer service connection for all eligible properties in the DIA, and the City properly crediting all eligible properties upon connection, or upon mutual written agreement of the Agency and the City.

6.1 If all eligible properties have not connected to the sanitary sewer system by the date of termination of the NCRA levy, the Agency shall, if necessary, pay the City an additional amount required to provide financial assistance to any remaining eligible properties. The City shall provide written documentation that the remaining eligible properties will be credited for financial assistance upon connection.

6.2 If, upon the expiration of this Agreement and the crediting of all eligible properties, there is any excess balance remaining attributable to the Agency's initial payment or any additional payments supplementing that sum, that excess amount shall be remitted to the Agency in the manner set out in Section 5.5.1.

6.2.1 If the City terminates the reimbursement district prior to all eligible properties in the DIA having connected to the sanitary sewer system, the City shall remit any excess balance attributable to the Agency's initial payment or any additional payments supplementing that sum, to the Agency in the manner set out in Section 5.5.1.

## 7. Default and Termination.

7.1. Default: The failure or delay by either the City or the Agency to perform any term or provision of this Agreement constitutes a default under this Agreement.

7.1.1. The injured party shall give written notice of default to the party in default, specifying the default complaint of the injured party.

7.1.2. If the party in default commences to cure, correct, or remedy the default within thirty (30) days after receipt of a notice specifying the default, and thereafter diligently prosecutes the cure, correction, or remedy to completion, then such party shall not be in default.

7.1.3. Default shall be grounds for the termination of this Agreement.

7.2. Termination: This Agreement may be terminated prior to the expiration of its term by default or the mutual written agreement of the City and the Agency.

7.2.1. The termination of the Agreement becomes effective-

7.2.1.1. In instances of termination according to mutual written agreement, according to the specific terms of that document; or

7.2.1.2. In instances of default, seven (7) days after the injured party's notice to the defaulting party of the defaulting party's failure to cure, correct, or remedy the default.

7.2.2. Neither the Agency nor the City shall incur any new obligations after the effective date of the termination, and each shall cancel as many obligations as possible. Full credit shall be allowed for each party's expenses and all non-cancelable obligations properly incurred up to the effective date of termination.

7.2.3. If upon termination there is any balance remaining from the sums paid by the Agency the City shall, upon the Agency's demand, remit that sum to the Agency in the manner set out in Section 5.5.1.

## 8. Miscellaneous.

8.1. Dispute Resolution: The provisions of this Agreement shall be construed according to the applicable provisions of the laws of the State of Oregon. Any litigation to enforce any provision of this Agreement shall be conducted in the Circuit Court of the State of Oregon for Clackamas County.

8.2. Merger: This Agreement and the attached exhibits constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

8.3. Amendment: Modifications, amendments, or change of terms of this Agreement shall be made by mutual consent of the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing.

8.3.1. The City and the Agency acknowledge and agree that, in the event that it is necessary to amend this Agreement, the necessary approval is delegated to the City's Public Works Director and the Agency's Manager.

8.3.2. Any waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.

8.4. Waiver: The failure of the City or the Agency to enforce any part of this Agreement shall not constitute a waiver of that or any other provision.

8.5. Notice: All notices required under this Agreement shall be deemed to be properly served if sent by U.S. Mail to the representative and address identified below. Until such time as the parties name other individuals, for purposes of providing notice under this Agreement the parties designate the individuals set out below:

For the Agency: Clackamas County Development Agency  
Development Agency Manager  
Development Services Building  
150 Beaver Creek Rd.  
Oregon City, OR 97045

For the City: City of Milwaukie  
Director of Community Development & Public Works  
6101 SE Johnson Creek Blvd.  
Milwaukie, OR 97206

8.6. Severability: In case any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be effected or impaired thereby.

8.7. Indemnification and Insurance: The City and the Agency agree, to the extent permitted under the Oregon Constitution and laws, to work to hold each other harmless and indemnify the other, and elected and appointed officials, agents, and employees, from and against all claims, demands, and causes of action of any kind or character arising on account of personal injuries, death, or damage to property caused by or resulting from their own actions or omissions or those of their officials, agents, and employees. Each party agrees to maintain insurance levels, or self insurance in accordance with ORS 30.282, for the duration of this Agreement to levels necessary to protect against public body liability as set out ORS 30.270.

8.8. Overhead and Administration: The City and the Agency shall each be responsible for their own overhead and administrative costs relating to this Agreement, and not look for reimbursement from one to the other.

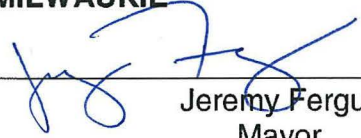
8.9. Compliance with the law and notice of action: The City and the Agency agree to comply with all applicable local, state, and federal ordinances, statutes, laws, and regulations. Each party shall give the other immediate written notice of any action or suit filed or any claim made against them that may result in litigation in any way related to this Agreement.


8.10. No third party beneficiaries: While the Agency and the City intend, as a natural consequence of their actions, to improve the NCRA for the benefit of its inhabitants, there are no third party beneficiaries to this Agreement. The only parties able to enforce its terms are the Agency and the City.

8.11 Remedy: The Agency and the City agree that each may avail itself of any remedy at law or in equity to enforce or preserve the rights conferred and obligations assumed by the respective parties herein, and to obtain compensation for any damages or loss incurred as a result of breach by the other party of any provision contained herein.

IN WITNESS HEREOF, the parties have executed this Agreement by the date set forth opposite their names below.

**CITY OF MILWAUKIE**

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

  
\_\_\_\_\_  
Pat DuVal  
Recorder

Nov 2, 2009  
Date

**CLACKAMAS COUNTY DEVELOPMENT AGENCY**

Board of County Commissioners Acting as the Governing Body of the Clackamas County Development Agency

  
\_\_\_\_\_  
Lynn Peterson  
Chair

  
\_\_\_\_\_  
Mary Raethke  
Recording Secretary

11-5-09  
Date

Exhibit "A"

