

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: December 4, 2012 **Approx Start Time:** 1:30pm **Approx Length:** 30 min

Presentation Title: CCSD#1 – Milwaukie Long Term Service Agreement

Department: Water Environment Services (WES)

Presenters: Mike Kuenzi –Director, WES
Chris Storey – Assistant County Counsel

Other Invitees: N/A

Executive Summary

Clackamas County Service District No. 1 (“District”) is currently providing wastewater treatment service to the City of Milwaukie (“City”) pursuant to a short-term memorandum of understanding (“MOU”) entered into on May 17, 2012. This MOU was based on a term sheet negotiated between the District and the City as the basis of a long-term wastewater treatment service agreement (“New Agreement”).

Since that time, District and City representatives have negotiated a proposed New Agreement that incorporates the term sheet provisions with Commissioner Savas as lead negotiator for the District. A draft of this New Agreement will be presented to the Riverhealth Advisory Board at after submission of this report and staff will be able to present a summary of the advisory board’s views on the agreement at the study session.

The proposed New Agreement is for a term of 25 years and addresses nearly all outstanding wastewater issues with the City, including: (i) bringing City rates up to equality with in-District rates, (ii) affirms rate-making authority of the Board, (iii) provides for District recovery for costs of growth in Milwaukie through payment of an SDC-equivalent charge, (iv) mutual agreement on the count of the number of connections within the City, (v) investments at the Kellogg Plant to be a good neighbor within the City including odor issues with an initial earmark of \$1,000,000 in immediate investment, (vi) land use regulatory challenges to the existence of Kellogg will be dropped, and (vii) mutual agreement on the importance of and a process for long term investments for the reduction of infiltration/inflow challenges in the parties’ respective conveyance systems.

FINANCIAL IMPLICATIONS (current year and ongoing):

At the mutually agreed number of connections for the City of 10,939 for this fiscal year and a rate of \$30.21 per EDU per month, the annual revenue to the District of the New Agreement is \$3,965,606 in the first year, and will increase with any rate increases adopted by the Board. The District expends significant resources in treating Milwaukie’s wastewater at the Kellogg Plant, and those amounts would offset both treatment costs and debt service payments relating to the expansion of treatment capacity for the District at the Tri-City Plant.

LEGAL/POLICY REQUIREMENTS:

The District is legally obligated to treat all wastewater that arrives at the Kellogg Plant under the Clean Water Act, and Milwaukie’s sewer system is constructed to deliver that wastewater to

Kellogg. It would be prudent to have an agreement that provides for compensation to the District for those services.

PUBLIC/GOVERNMENTAL PARTICIPATION:

The Riverhealth advisory committee will review this agreement prior to this study session. Each of the City Council and the Board as the governing body of CCSD#1 will need to address the proposed agreement in a public meeting.

OPTIONS:

1. Accept the New Agreement as negotiated and direct staff to place the item on the BCC's agenda at the next available business meeting.
2. Direct staff to reopen negotiations on certain points of concern identified by the BCC at the study session.
3. Reject the agreement.

RECOMMENDATION:

Staff recommends that the BCC, as the governing body of CCSD#1, accept the New Agreement as negotiated and direct staff to place the item on the BCC's agenda at the next available business meeting.

ATTACHMENTS:

Attachment 1 – proposed New Agreement

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

For information on this issue or copies of attachments, please contact: Chris Storey @ 503-742-4623

Fiscal Impact Form

RESOURCES:

Is this item in your current work plan and budget?

YES
 NO

START-UP EXPENSES AND STAFFING (if applicable):

None

ONGOING OPERATING EXPENSES/SAVINGS AND STAFFING (if applicable):

Staffing is covered within current WES budgets. Revenue over the 25 year period would represent a material support in keeping rates for both District and City ratepayers lower.

ANTICIPATED RESULTS:

Ending wastewater uncertainty around the Kellogg plant and service arrangements with Milwaukie.

COSTS & BENEFITS:

The costs are already being experienced due to our responsibilities under the Clean Water Act. The proposed New Agreement provides a mechanism to recover those costs and bring rate equity to all users of the system.

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

THIS INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION OF WASTEWATER TREATMENT 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 Beaver Creek 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,
a municipal corporation

CLACKAMAS COUNTY SERVICE
DISTRICT NO. 1, a county service district

By: _____

By: _____

Title: Mayor

Title: Chair

ATTEST: _____

ATTEST: _____

Title: City Recorder

Title: Secretary