

November 8, 2023

BCC Agenda Date/Item: _____

Board of County Commissioners
 Clackamas County

Approval of an Intergovernmental Agreement with Sunrise Water Authority for Low Income Household Utility Assistance Program. Agreement value is \$5250 for 1 Year. Funding is through the Sunrise Water Authority. No County General Funds are involved.

Previous Board Action/Review	10/31/2023-Briefed at issues		
Performance Clackamas	This funding aligns with the County’s strategic priority to ensure safe, healthy, secure communities.		
Counsel Review	Yes	Procurement Review	No
Contact Person	Brenda Durbin, Director, Social Services Division	Contact Phone	(503) 655-8641

EXECUTIVE SUMMARY: Sunrise Water Authority has designated funds to provide water and sewer assistance for low-income households in its jurisdiction. Sunrise Water Authority would like to continue collaborating with the Social Services Division’s Utilities Support Program (USP), where USP staff screen eligible low-income household applicants. The USP provides eligibility determination for other utility assistance resources and can provide eligibility screening services for Sunrise Water Authority.

FY21-22 and FY22-23 IGAs for this collaboration were under the \$5,000 threshold and authorized by the H3S Director’s office.

RECOMMENDATION: Staff recommends approval of this agreement and that Tootie Smith, Board Chair, or her designee be authorized to sign all documents on behalf of the Clackamas County Board of Commissioners.

Respectfully submitted,

Rodney A. Cook

Rodney Cook
 Director of Health, Housing and Human Services Department

For Filing Use Only

Sunrise Water Authority Intergovernmental
Agreement H3S Contract # 11336

INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY AND SUNRISE WATER AUTHORITY

THIS AGREEMENT (this “Agreement”) is entered into and between Clackamas County (“County”), a political subdivision of the State of Oregon, and Sunrise Water Authority (“Authority”), a unit of local government, collectively referred to as the “Parties” and each a “Party.”

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

Authority has designated funds to provide utility assistance for low income households in its jurisdiction and wishes to partner with County, through its Social Services Division’s Energy Assistance program, to maintain a program to screen eligible applicants. The County Social Services Division’s Energy Assistance Program provides eligibility determination for other utility assistance resources and can provide eligibility screening services for Authority.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or Sept. 30, 2024, whichever is sooner.
2. **Scope of Work.** The Authority and County agree to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein (“Work”).
3. **Consideration.** The Authority agrees to pay County, from available and authorized funds, a sum not to exceed five thousand two hundred and fifty dollars (\$5,250) for accomplishing the Work required by this Agreement. Consideration will include a one-time payment of \$1,500, to be paid by the Authority to County within thirty (30) days of execution of this Agreement, and a \$25-per-application-processed fee, as detailed in Exhibit A.
4. **Payment.** Unless otherwise specified, the County shall submit monthly invoices for Work performed. The submitted invoice shall include the total amount billed to date by the County prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which

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reimbursement is claimed. Payments shall be made to County following the Authority's review and approval of invoices submitted by County. County shall not submit invoices for, and the Authority will not pay, any amount in excess of the maximum compensation amount set forth above. Invoices delivered to the Authority to be electronically sent to accountspayable@sunrisewater.com.

5. Representations and Warranties.

- A. *Authority Representations and Warranties:* Authority represents and warrants to County that Authority has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Authority enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to Authority that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the County or the Authority may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the Authority may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period. Upon termination for default, each party shall have all rights and remedies available to it at law, in equity, or under this Agreement.
- C. The County or the Authority shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not

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be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.

- D. Either Party may terminate this Agreement in the event the terminating Party fails to receive expenditure authority sufficient to allow that Party, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited or the terminating Party is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the Authority, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Authority agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Authority or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Authority has a right to control.

8. Insurance.

The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

- 9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or

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notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

A. Linda Fisher or their designee will act as liaison for the County.

Contact Information:

Linda Fisher, Utility Support Program
Supervisor
lindafis@clackamas.us
503-650-5749

Jamey Pietzold or their designee will act as liaison for the Authority.

Contact Information:

Jamey Pietzold, Finance Director
10602 SE 129th Ave.
Happy Valley, OR 97086 503-761-0220
jpietzold@sunrisewater.com

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Authority that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Authority, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material

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breach of this Agreement.

- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** Authority shall retain, maintain, and keep accessible all records relevant to this Agreement (“Records”) for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Authority shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Authority shall permit the County’s authorized representatives’ access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Reserved.**
- F. **Reserved.**
- G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein

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regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- L. **No Third-Party Beneficiary.** Authority and County are the only parties to this Agreement and 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, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Subcontract and Assignment.** Authority shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Authority of any of its duties or obligations under this Agreement.
- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (O), (R), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.

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- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Time is of the Essence.** Authority and County agree that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither Authority nor County shall be held responsible for delay or default caused by events outside of the Authority or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Authority shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **Confidentiality.** Authority and County acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by either County or Authority or its employees or agents in the performance of this Agreement shall be deemed confidential information of the respective organization. ("Confidential Information"). Authority agrees to hold Confidential Information in strict confidence, using at least the same degree of care that County uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.
- U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

SIGNATURE PAGE FOLLOWS

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

SUNRISE WATER AUTHORITY

By:  _____
Authorized Signature

10/15/2023


Dated

CLACKAMAS COUNTY

By: _____
Tootie Smith, Chair
Board of County Commissioners

Dated

Approved to Form:

By:  _____ 10/24/2023
Court Counsel

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EXHIBIT A
SCOPE OF WORK

Background

The Sunrise Water Authority (“Authority”) will provide assistance to low income Authority customers who are having difficulty paying their water bill. The Authority serves a population of approximately 53,000 in Happy Valley and Damascus. The average water bill ranges from \$25 to \$40/month. The Authority Board has authorized up to \$35,250 in program year 23-24 (October 1, 2023 to September 30, 2024) to fund program delivery and customer assistance subsidies.

Clackamas County, through its Social Services division (CCSS), operates a large energy assistance program and has the expertise to calculate income eligibility and to process payments to utility providers. CCSS understands that assistance for low & fixed income residents to pay their water bills is a need in many communities, and is therefore interested in continuing a partnership with the Authority to maintain the ongoing program.

This Agreement continues the program through the program year ending September 30, 2024. Both parties agree that the program is beneficial to the community it services and should be continued.

Program Structure

Authority customers who may benefit from assistance will be directed by the Authority to contact the CCSS’s Energy Assistance Program. CCSS will verify eligibility and inform the Authority of successful eligibility determinations. Eligible customers qualify for a one-time per program year subsidy to their water bill account. The subsidy has no cash value other than as applied to the Authority’s official unpaid billed water usage & service charge.

All eligible customers served under this program will receive a one-time subsidy of up to \$200 that will be applied to their Authority water bill(s). A customer is eligible for an income assistance subsidy once within the 12-month period of CCSS’s program year (Oct 1 to Sept 30).

CCSS will use following criteria to determine whether a customer meets the eligibility requirements of the program created by this Agreement:

- Customer is a current customer of the Authority;
- Customer meets the income eligibility standards for federal Low Income Household Energy Assistance Program (LIHEAP) program for local programs. Income eligibility standards include a provision

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for a self-declaration of “no income”;

- If a customer has been deemed to be eligible for energy assistance within the current program year, no additional eligibility determination will be required.

Outreach and Referrals. The parties agree to the following outreach and referral standards:

- The Authority will make its best effort to refer to the program customers who are falling behind on their water bill.
- The Authority retains the right to choose if and how to advertise this program.
- Any energy assistance client who is a customer of the Authority will be offered a water bill subsidy as part of their application for federal and state energy assistance programs.

CCSS agrees to:

1. Establish a streamlined process to accept referrals from Authority for eligibility screening.
2. Complete screening and provide Authority with eligibility determination for all referred applicants using LIHEAP criteria for local programs, and the criteria outlined above.
Any applicant to County programs approved for LIHEAP assistance beginning at the start of the LIHEAP year on October 1, 2023, will automatically be eligible for assistance if they have an account with the Authority.
3. Invoice the Authority on a monthly basis for successful eligibility screenings completed.

Authority agrees to:

1. Refer potentially eligible customers using a referral process developed by CCSS.
2. Process assistance subsidies in the amount of up to \$200 per household for each eligible customer residing in their district and having an active account, including those households not referred by Authority but determined by CCSS to be eligible for assistance. Each CCSS approved customer will be eligible for up to one \$200 assistance subsidy per 12 month period, which will align with the program year for federal energy assistance, which is Oct. 1st through Sept. 30th
3. Provide the County with a one-time payment of \$1,500 for program reauthorization at the beginning of each new program year (October), and a \$25 payment for each successful application processed under this program.

EXHIBIT B
BUDGET

\$1,500	Program annual startup/renewal fee (to be invoiced and paid upon execution of agreement)
\$3,750	Application processing fee of \$25.00 per successful applicant for up to 150 customers, as incurred.

The total amount to be paid to Clackamas County shall not exceed \$5,250, unless the Authority amends financing to expand program availability to qualifying parties. Any amendment to this Agreement will be done in writing and on terms acceptable to both parties. No additional startup/renewal fees will apply within the same program year.