

December 15, 2022

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Low-Income Household Water Assistance (LIHWA) Program Agreement with City of Milwaukie for Reimbursement of Water and Wastewater Services on Behalf of Low-Income Households. Agreement value not to exceed the \$840,019 allocated to the Low-Income Household Water Assistance Program. Funding through the State of Oregon, Department of Housing and Community Services.
County General Funds are not involved.

Purpose/Outcomes	Approval of an agreement with City of Milwaukie that will allow Clackamas County Social Services to assist eligible low-income households by making payments for drinking water and wastewater removal costs on behalf of the household.
Dollar Amount and Fiscal Impact	This is a no maximum agreement that provides reimbursement to City of Milwaukie, and is dependent upon eligible household applications. County does not obligate funds and no County General Funds are involved.
Funding Source	Oregon Housing and Community Services (OHCS) administers the LIHWA Program using two federal assistance funding sources: the County receives \$470,942 revenue Consolidated Appropriations Act (CAA) of 2021 and \$369,077 from the American Rescue Plan Act (ARPA) of 2021.
Duration	Agreement is effective upon signature, with LIHWA grant program eligibility from November 1, 2022 to September 30, 2023.
Previous Board Action/Review	None. Item at County Issues: <u>12-13-2022</u> .
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities.
Counsel Review	Approved November 22, 2022 by Andrew R. Naylor.
Procurement Review	<ol style="list-style-type: none"> 1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. If no, provide brief explanation: Agreement template is issued by the State. County determines eligibility and authorizes payment with grant funding from State.
Contact Person	Brenda Durbin, Director – Social Services Division – (503) 655-8641
Contract No.	H3S# <u>10918</u>

BACKGROUND:

The Social Services Division (SSD) of the Health, Housing and Human Services requests approval of an Agreement with City of Milwaukie, a Home Water and/or Wastewater Provider (HWWP). Federal funding for Low-Income Household Water Assistance (LIHWA) is being passed through to SSD through a direct appropriation by Oregon Housing and Community Services (OHCS). These funds, from the

Consolidated Appropriations Act (CAA) of 2021 and the American Rescue Plan Act (ARPA) of 2021, allow SSD to enter into agreements with HWWP's to assist eligible low-income households with water and wastewater bills, especially households with the lowest incomes and highest water burden in relation to income. Funding will help eligible households avoid shut-offs and support household water system reconnections related to non-payment, with eligible expenditures including arrearages and current charges.

OHCS has provided a State-issued agreement template and a list of HWWP's in the County. Data provided by OHCS shows that of the 99 systems identified, approximately 79,429 households are estimated as low-income. This program will serve Clackamas County households with a gross monthly income at or below 60% of the area median income. Demographic mapping and utility burden data were used to identify targeted communities that were most impacted, and those are the focus of the LIHWA program outreach. SSD identified areas with the greatest need in terms of lowest income, larger numbers of underserved populations, and greatest burden based on data for other energy sources. Agreements with HWWP's in those service areas will be executed, and a process of referring households that are disconnected and/or in arrears and at risk of disconnection will be established. Households with vulnerable populations that still meet the criteria for assistance due to burden would be eligible as outlined in the program guidance. Population prioritization will utilize data and demographics for the area. SSD worked with County Geographic Information Systems and mapping tools from OHCS to identify and target high need areas.

The agreement will allow SSD to determine eligibility and authorize payments on behalf of eligible households. County Counsel reviewed and approved the agreement. No County General Funds are involved. The agreement is effective upon signature and ends September 30, 2023.

RECOMMENDATION:

Staff recommends the Board approval of the agreement, and that the Board Chair be authorized to sign on behalf of the County.

Respectfully submitted,



Rodney A. Cook
Director
Health, Housing and Human Services Department

Attachment:
City of Milwaukie H3S #10918, Contract for Water Assistance Provisions

CONTRACT FOR WATER ASSISTANCE PROVISIONS
BETWEEN
CLACKAMAS COUNTY
AND
CITY OF MILWUAKIE

This Low-Income Housing Water Assistance (LIHWA) Program Agreement (“Agreement”) is entered into by and between the Clackamas County (“Agency”), City of Milwaukie (“Vendor”), and the Oregon Housing and Community Services Department, together with its successors and assigns (“Department”), (each a “Party” and collectively the “Parties”) under the following terms:

1. Entire Contract

- a) This Agreement is the mechanism by which all Parties can carry out the provisions of the Low-Income Household Water Assistance (LIHWA) Program.
- b) It is understood and agreed that the entire contract between the Parties is contained in this Agreement.
- c) This Agreement supersedes all previous commitments, promises, representations either oral or written, between the Parties relating to the subject matter hereof.
- d) The person signing this Agreement on behalf of the Vendor certifies and attests that the Vendor has the power and authority to enter into and perform this Agreement, and that the signor has full and complete authority to bind the Vendor.
- e) All the words and phrases used in this Agreement shall have the meanings given herein or as used in the LIHWA Program Requirements and other related requirements unless the context clearly requires otherwise.

2. Definitions

- a) Authorization means a form that contains the Eligible Household’s account number, name of person applying for LIHWA assistance, name on the account, address of Eligible Household, and amount of the LIHWA Payment to be applied to the Eligible Household’s account.
- b) Commitment means the initial communication that an Eligible Household has qualified for LIHWA Payments and serves as notice of the forthcoming Authorization.
- c) Eligible Household means a household receiving services from the Vendor that has been determined, by the Agency in accordance with LIHWA eligibility guidelines, to be eligible for a LIHWA Payment.
- d) LIHWA Payment(s) includes regular and crisis payments made by the Agency to the Vendor on behalf of Eligible Households for eligible drinking water and/or wastewater service charges (including reconnection charges, fees, penalties, or reduction of current charges and fees).

3. The Agency agrees to do the following:

- a) To assign a vendor number/business code to each Vendor after the Agreement is fully executed.
- b) To obtain an Eligible Household’s consent through a Release of Information in order for the Agency to initiate two-way communication with the Vendor regarding Account information (such as current amount owed, status of service, and crisis situation indicators).
- c) To effectuate LIHWA Payments to the Vendor on behalf of Eligible Households, including:
 - i. Notifying the Vendor of Commitments through an agreed-upon format (i.e., direct portal input, written, oral, etc.),
 - ii. Notifying the Eligible Household of Commitments made to Vendor,
 - iii. Pursuant to Commitment, submitting payment to the Vendor promptly and no later than 45 days after Commitment issued, and
 - iv. Prior to receipt of payment, notifying Vendor of any changes to Commitments caused by federal or state law.
- d) To issue to Vendor a single check or Automated Clearing House (ACH) payment that includes benefits for all Eligible Households. A payment register precedes the check or ACH deposit. The register includes the names of the Eligible Households, the account names and numbers, the amounts to be applied to each account, and the addresses and counties of residence of the Eligible Households.

- e) To inform the Vendor in the case an Eligible Household is in crisis or life-threatening situation and speaking to the Vendor on behalf of the Eligible Household when a member of the Eligible Household is not present or does not have accessibility to such a discussion.

4. The Vendor agrees to do the following:

- a) To refer its customers to the Agency for assistance.
- b) To charge all Eligible Households using the Vendor's normal billing process.
- c) To charge all Eligible Households the price normally charged for drinking water and/or wastewater services supplied to non-eligible households, except for other billing assistance and/or discount programs.
- d) Not to exclude or discriminate against any Eligible Households with respect to cost of services, terms, deferred payment plans, credit, conditions of sale, or discounts and programs offered to non-eligible households.
- e) Not to treat any Eligible Households adversely because of receipt of LIHWA assistance.
- f) To continue to apply the regular drinking water and/or wastewater service charges and credits of payments in regular fashion, even in consideration of a Commitment or LIHWA Payment.
- g) To process all LIHWA Payments, on behalf of Eligible Households from the Agency, including:
 - i. Applying a credit notation to the Eligible Household's account as soon as the Vendor receives a LIHWA Authorization from the Agency.
 - 1. This credit can only be applied to water and wastewater related charges and fees.
 - 2. This credit cannot be applied to charges and fees including but not limited to police, streetlights, and garbage service.
 - ii. Applying and itemizing LIHWA Payments for all Eligible Households identified in the LIHWA Payment Register as directed by the Agency.
 - iii. Posting all payments to Eligible Household accounts promptly after being received, no later than the next billing cycle.
 - iv. If a LIHWA Payment cannot be credited to the Eligible Household's account, processing a refund, according to the Oregon LIHWA Vendor Refund Policies, directly to the Eligible Household within thirty (30) days.
- h) To discuss the Eligible Household's crisis or life-threatening situation with the Agency, speaking on behalf of the Eligible Household when a member of the Eligible Household is not present or does not have accessibility to the discussion.
- i) To cooperate with the Agency, once informed of the crisis or life-threatening situation and in receipt of a Commitment, to resolve the Eligible Household's situation related to drinking water and/or wastewater services with urgency.
- j) To comply with Oregon LIHWA Vendor Refund Policies, as described below in this Agreement.
- k) To maintain an accounting system and supporting fiscal records that represent the amounts and billing of drinking water and/or wastewater services provided to Eligible Households.
- l) To fully cooperate with the Department's and Agency's monitoring practices, including but not limited to providing requested documentation for Federal representatives or Oregon Secretary of State representatives within set time frames, as well as communicating with Department or Agency staff.
- m) To provide at no cost to the Department, Eligible Household, or Agency, written information on an Eligible Household's drinking water and/or wastewater services costs, bill payment history, and/or arrearage history for no more than the previous 12 monthly billing periods, even when it may be from a prior occupant household.
- n) To provide at no cost to the Department or Agency, or an authorized agent to the Department or Agency, for the purposes of research, evaluation, and analysis, information on household drinking water and/or wastewater services costs and usage for Eligible Households.
- o) **Program Requirements:** Vendor agrees to timely satisfy all requirements of this Agreement, including all LIHWA Regulations or other forms of LIHWA federal guidance, as applicable, and all other applicable federal, state, and local statutes, rules, regulations, ordinances, and orders (all of the foregoing, as amended from time to time, collectively, the "Program Requirements") to the satisfaction of Department or Agency.

5. Termination

- a) This Agreement shall terminate upon the earliest to occur of the following events:

- i. A change in the requirements of applicable Federal or State regulations for LIHWA administration,
 - ii. A change in the state plan for administering LIHWA that affects the terms and conditions of this Agreement,
 - iii. Thirty (30) days' written notice of termination by any Party,
 - iv. Mutual consent of all Parties,
 - v. Any license or certificate required by law or regulation to be held by the Vendor to provide services outlined in this Agreement is denied, revoked, or not renewed, or
 - vi. The end of the LIHWA program year, which begins on January 1, 2022 and ends on September 30, 2023.
- b) This Agreement will terminate effective immediately upon determination by the Department that the Vendor is not in compliance with the terms of this Agreement, including the Program Requirements. The Vendor will be notified within ten (10) days of termination.
 - c) Termination by any Party shall not discharge any obligations owed by any Party to another or to an Eligible Household or any liability, which has accrued prior to termination.
 - d) The rights and remedies of any Party provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

6. Miscellaneous

- a) **Subcontracts:** The Vendor shall not enter into any subcontracts, beyond those already in place for normal and current billing operations, for any of the services provided under this Agreement without obtaining prior consent from the Department or Agency. The Vendor shall also provide the subcontract agreement(s) with this Vendor Agreement (see Attachment A).
- b) **Amendments:** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument between the Parties.
- c) **Execution and Counterparts:** This Agreement may be executed in counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
- d) **Severability:** If any court of competent jurisdiction shall hold any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof.
- e) **Assignment:** The Vendor shall not assign or transfer its interest in this Assignment without the express written consent of the Department and Agency.
- f) **Waiver:** The failure by any Party to enforce any provision of this Agreement shall not constitute a waiver by another Party of that or any other provision.
- g) **Independent Contractors/Workers' Compensation Coverage:** Vendor and Agency are independent contractors under this Agreement and both covenant, warrant, and affirm that neither they nor any of their agents, representatives or employees are an officer, employee, or agent of the other party. Vendor and Agency further covenant, warrant and affirm that they shall provide Workers' Compensation insurance for their prospective employees and require such by their subcontractors.
- h) **Indemnity:** Subject to any applicable limitations in the Oregon Constitution and the Oregon Tort Claims Act, each Party (the "Indemnifying Party") shall save, defend (consistent with ORS chapter 180), indemnify and hold harmless the other Party, the Department and each of their officers, agents, employees and members (the "Indemnified Parties") from all claims, suits or actions of whatsoever nature (collectively, "Claims") to the extent resulting from or arising out of the negligent or wrongful acts or omissions of the Indemnifying Party or its subcontractors, agents, or employees in its performance or non-performance of its obligations under this Agreement unless such Claims primarily result from the Indemnified Party or Parties' negligence, gross negligence or willful misconduct. In no event shall either Party be liable to the other for Claims in an amount more than \$50,000 per event.
- i) **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 successors and assigns, if any.
- j) **Force Majeure:** A Party shall not be held responsible for delay or default as a result of an event or action beyond its reasonable control, including without limitation, fire, riots, acts of God or war.
- k) **Governing Law:** This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.
- l) **Merger:** This Agreement constitutes the entire Agreement between the Parties. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties.

- m) **Mediation:** In the case the Parties become involved in a dispute regarding any part of this Agreement, the Parties shall submit to mediation prior to the commencement of litigation to enforce this Agreement. The mediator shall be an individual mutually acceptable to all Parties. Each Party shall pay its own cost for the time and effort involved in mediation and agrees to split equally the cost of the mediator. All Parties agree to exercise best efforts and act in good faith to resolve all disputes.
- n) **Eligible Household Information Confidentiality:** Due to the obligations outlined in this Agreement, all Parties will have access to Confidential Information of Eligible Households, including but not limited to household member names, social security numbers, addresses, account numbers, account payments and balances, and income information. All Parties shall use appropriate safeguards to prevent the disclosure of Confidential Information to unauthorized third parties (which excludes, for example, compliance with applicable Public Records Laws or as required by an official court order), and shall prevent employees, agents or subcontractors from accessing, copying, disclosing or using any such Confidential Information.
- o) **Red Flag Rules:** All Parties agree to establish, maintain, and abide by reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft related to Eligible Households through the administration of LIHWA.
- p) **Funds Available and Authorized:** The Vendor understands and agrees that payment of amounts under this Agreement is contingent on the Department receiving appropriations or other expenditure authority sufficient to allow the Department and Agency to continue to make payments under this Agreement.
- q) **Effective Date and Duration:** This Agreement shall be effective upon execution by all Parties and shall remain in effect until terminated as described in the "Termination" section herein.
- r) **Further Acts:** Vendor will do, make, execute, and deliver all such further acts or writings as Department or Agency may require to protect the Department or Agency's rights under this Agreement.
- s) **False Claims Act:** The Parties acknowledge the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) made by (or caused by) a Party that pertains to this Agreement or LIHWA Payments for Eligible Households. The Parties certify that no claim is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Each Party further acknowledge, in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representatives as of the date(s) written below.

VENDOR:

By: Michael Osborne Date: 11/17/2022

Print: Michael Osborne

Title: Assistant Finance Director

Vendor Name: City of Milwaukie

AGENCY:

By: _____ Date: _____

Print: Tootie Smith

Title: Chair, Clackamas County Board of Commissioners

Agency Name: Clackamas County

Oregon's Low-Income Household Water Assistance (LIHWA) Program Vendor Refund Policy

1. Credit Balances – Unless there is an event otherwise noted in this Refund Policy, all LIHWA Payments that create a credit balance remain on the Eligible Household's account until exhausted.
2. Ineligible Credit Balances - In the event that a LIHWA Payment cannot be applied to the Eligible Household's account, the remaining balance shall be returned to the Eligible Household within thirty (30) days after the Vendor receives the LIHWA Payment.
3. Deposits – All deposits and accrued interest become the property of the Eligible Household and shall be returned to the Eligible Household at the time specified in the deposit agreement in a manner consistent with applicable administrative rules, approved tariffs and other law.
4. Voluntary Closure and Moves - If the Eligible Household voluntarily closes the account that received a LIHWA Payment or moves to another service address that the Vendor does not represent, any credit balances resulting from a LIHWA Payment shall be refunded to the Eligible Household. If the Eligible Household moves to another service address by which the Vendor does represent, any credit balances resulting from a LIHWA Payment shall be transferred to the new address.
5. Inability to Locate Eligible Household – In the event that the Vendor is unable to locate the Eligible Household within one (1) year after service has been discontinued for any reason, any unused portion of a LIHWA Payment shall be returned to the Oregon Department of State Lands as unclaimed property.
6. Deceased Eligible Household – In the event a LIHWA Payment remains on the Eligible Household's account and the account is closed, the Vendor shall return the LIHWA Payment credit balance to the Department no later than the end of the program year. The Vendor shall submit a check to the Department with the notation of number six of this Refund Policy.
7. Return Address for Refunds to the State of Oregon – Mail refunds to:

OREGON HOUSING AND COMMUNITY SERVICES, ENERGY SERVICES SECTION
ATTN: LIHWA PROGRAM REFUND
725 SUMMER ST NE, SUITE B
SALEM, OR 97301

Refunds must include the following information: Eligible Household name, Eligible Household address, Name of Agency that provided LIHWA Payment to Eligible Household, Date of LIHWA Payment to Vendor, Reason for the return.
8. Incorrect Payments – All Agencies and Vendors are required to review the LIHWA Payments register for accuracy. In the event an Agency makes a payment in error, the Agency must correct the error within thirty (30) days of the error's discovery and the Agency is responsible for any applicable late charges, interest, or other penalties that cannot be waived in good faith. LIHWA Payments made in error must be corrected by the Agency and will be refunded from subsequent LIHWA Payments made to the Vendor. In the event the Vendor credits an account in error due to causes other than Agency error or otherwise misappropriates LIHWA Payments, the Vendor must correct the error within thirty (30) days of the error's discovery and is responsible for any applicable late charges, interest, or other penalties that cannot be waived in good faith.

Drinking Water and/or Wastewater Utility Vendor Information

Vendor Name		
City of Milwaukie		
Primary Contact Name	Primary Contact Phone	Customer Service Phone
Michael Osborne	503.786.7533	
Primary Contact Mailing Address	Primary Contact Fax	Primary Contact Email
10722 SE Main St Milwaukie, OR 97222		osbornem@milwaukieoregon.gov
Payment Contact Name	Payment Contact Phone	
Same as above	Same as above	
Payment Contact Mailing Address	Payment Contact Fax	Payment Contact Email
		osbornem@milwaukieoregon.gov

Legal Name (For tax purposes)			
Milwaukie, City of			
Taxpayer Identification Number (TIN)			
93-6002212			
Type of TIN			
<input checked="" type="checkbox"/>	Employer ID Number (FEIN)		Social Security Number (SSN)
	Individual Taxpayer ID Number (ITIN)		
Type of Entity			
	Individual/Sole Proprietor		Limited Liability Company
	Corporation	<input checked="" type="checkbox"/>	Government Entity

Counties served (Please check all that apply)							
<input type="checkbox"/>	Baker	<input type="checkbox"/>	Douglas	<input type="checkbox"/>	Lake	<input type="checkbox"/>	Tillamook
<input type="checkbox"/>	Benton	<input type="checkbox"/>	Gilliam	<input type="checkbox"/>	Lane	<input type="checkbox"/>	Umatilla
<input checked="" type="checkbox"/>	Clackamas	<input type="checkbox"/>	Grant	<input type="checkbox"/>	Lincoln	<input type="checkbox"/>	Union
<input type="checkbox"/>	Clatsop	<input type="checkbox"/>	Harney	<input type="checkbox"/>	Malheur	<input type="checkbox"/>	Wallowa
<input type="checkbox"/>	Columbia	<input type="checkbox"/>	Hood River	<input type="checkbox"/>	Marion	<input type="checkbox"/>	Wasco
<input type="checkbox"/>	Coos	<input type="checkbox"/>	Jackson	<input type="checkbox"/>	Morrow	<input type="checkbox"/>	Washington
<input type="checkbox"/>	Crook	<input type="checkbox"/>	Jefferson	<input type="checkbox"/>	Multnomah	<input type="checkbox"/>	Wheeler
<input type="checkbox"/>	Curry	<input type="checkbox"/>	Josephine	<input type="checkbox"/>	Polk	<input type="checkbox"/>	Yamhill
<input type="checkbox"/>	Deschutes	<input type="checkbox"/>	Klamath	<input type="checkbox"/>	Sherman		

Tribes served (Please check all that apply)			
<input type="checkbox"/>	Burns Paiute	<input type="checkbox"/>	Confederated Tribes of Warm Springs
<input type="checkbox"/>	Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians	<input type="checkbox"/>	Cow Creek Band of Umpqua Indians
<input type="checkbox"/>	Confederated Tribes of Grand Ronde	<input type="checkbox"/>	Coquille Indian Tribe
<input type="checkbox"/>	Confederated Tribes of Siletz	<input type="checkbox"/>	Klamath Tribes
<input type="checkbox"/>	Confederated Tribes of Umatilla Reservation		

COVER SHEET

- New Agreement/Contract
- Amendment/Change/Extension to _____
- Other _____

Originating County Department: _____

Other party to contract/agreement: _____

Document Title:

After filing please return to: _____

- County Admin
- Procurement

If applicable, complete the following: _____

Board Agenda Date/Item Number: _____