



RESOLUTION
(8-2017)

A RESOLUTION OF THE FAIRVIEW CITY COUNCIL AUTHORIZING THE CITY ADMINISTRATOR TO SIGN ON BEHALF OF THE CITY AN INTERGOVERNMENTAL AGREEMENT WITH ROCKWOOD WATER PEOPLES UTILITY DISTRICT (RWPUD) FOR THE PROVISION OF WATER

WHEREAS, there are areas outside the boundaries of the Rockwood People's Utility District (RWPUD or District) but within Fairview city limits where it is more appropriate to transfer water supply administration to RWPUD; and

WHEREAS, there is a need to maintain emergency interties between the two entities; and

WHEREAS, Fairview and RWPUD have had an intergovernmental agreement (IGA) on these topics but said IGA expired January 24, 2017; and

WHEREAS, the provisions of the IGA, expiring January 24, 2017, were extended to June 30, 2017 by mutual agreement between Fairview and RWPUD; and

WHEREAS, Fairview and RWPUD staff believe it is the best interest of both entities and their customers to maintain the relationship and terminate the provisions of the 2007 IGA and enter into a new IGA.

NOW, THEREFORE, BE IT RESOLVED BY THE FAIRVIEW CITY COUNCIL AS FOLLOWS:

Section 1 The City Administrator is hereby authorized to sign on behalf of the City an intergovernmental agreement with the Rockwood People's Utility District in a form substantially attached hereto as Exhibit A.

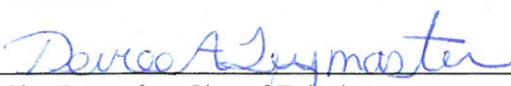
Section 2 This resolution is and shall be effective from the day of its passage.

Resolution adopted by the City Council of the City of Fairview, this 1st day of March, 2017.



Mayor, City of Fairview
Ted Tosterud

ATTEST



City Recorder, City of Fairview
Devree Leymaster

3-8-17

Date

**INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN
CITY OF FAIRVIEW AND THE
ROCKWOOD WATER PEOPLE'S UTILITY DISTRICT**

RECITALS

WHEREAS, the City of Fairview (City) owns and operates a municipal water system serving water system users within the City's territorial jurisdiction; and

WHEREAS, Rockwood Water People's Utility District (Rockwood) owns and operates a water system adjacent to the City and has statutory authority under ORS 261.305(4) to provide service outside of its territorial jurisdiction; and

WHEREAS, the City and Rockwood previously entered into an Intergovernmental Agreement for water sales to certain properties within the City and emergency water supply to the City dated January 24, 2007 (2007 IGA); and

WHEREAS, the 2007 IGA was enacted to allow the properties set forth on Exhibit 1, attached hereto and incorporated by reference, to connect to Rockwood's water supply system facilities because City did not have water distribution mains in the vicinity of these properties, thereby avoiding duplication of facilities; and

WHEREAS, the City and Rockwood are authorized to enter into intergovernmental agreements by virtue of ORS Chapter 190 and other provisions of law; and

WHEREAS, the City and Rockwood agree that Rockwood will: (1) provide water service to the properties originally governed by the 2007 IGA, (2) provide service to new properties, (3) provide an emergency water supply to the City, and both parties agree to terminate the 2007 IGA which will be replaced by this agreement, effective June 30th 2017.

AGREEMENT

NOW, THEREFORE, IT IS HEREBY AGREED:

I. Transfer of and Communication to Customers

- A. City hereby transfers full responsibility to Rockwood to provide safe, reliable, and adequate water service to existing and future water system users (Users) at the properties identified in Exhibit 1 (Properties), attached hereto and incorporated by reference. City and Rockwood agree these Properties and Users will be considered extraterritorial Rockwood accounts.

- B. On or before July 1, 2017, City and Rockwood will agree on a cutover plan to determine the date of transfer of customers, final meter reading and billing, customer service and account set-up, existence and functionality of cross connection control devices, other labor and materials required to be provided by Rockwood to accomplish cutover, and other necessary tasks.
- C. On or before July 1, 2017, City and Rockwood will send a joint notice to the Users and record owners of the Properties to provide notice of the change in service provider, explain the reason for the change, the change in rates, and provide the information set forth in Sections D, E and F below.
- D. Following complete transfer of the Users and Properties to Rockwood's service, City will direct all Users who receive service at the Properties to Rockwood to obtain information about service and to respond to normal customer service inquiries.
- E. City shall be responsible for all billing and collection matters for service provided to Users on Properties prior to the cutover date. City shall pay Rockwood for water service provided under the 2007 IGA up to the cutover date of July 1st 2017, which date is also the agreed termination date of the 2007 IGA.
- F. Upon transfer of customers to Rockwood, the Users and Properties are subject to all Rockwood Ordinances, Rules, and Regulations and other procedures and mandates for Users of the Rockwood water system.. New customer accounts shall be opened for each User and the User shall make all payments to Rockwood for water service provided to the User after the July 1st 2017. The Users will be subject to Rockwood's adopted rates, charges and fee schedule..

II. Rockwood Obligations

- A. Rockwood will install, at its cost, all meters it determines are necessary to provide service to the Users and Properties. Existing meters and cross connection control devices will continue to be used if functional as determined in Rockwood's sole discretion. However, if the existing meters have value, they will be returned to Fairview, or a credit determined to the benefit of Fairview.
- B. Rockwood will install or maintain, as necessary, all facilities it determines are necessary to provide service to the Users and Properties.
- C. Rockwood will bill all customers receiving service at the Properties utilizing its normal billing systems and practices.
- D. Rockwood will include the Properties in any long-term planning required by law or, in Rockwood's sole discretion planning that is necessary to

maintain the adequate development and financial integrity of its entire system.

- E. Rates, charges, system development charges, fees, and other costs for service to the Users and Properties will be determined by Rockwood in its sole discretion consistent with lawful and prudent utility practices.
- F. Existing Users will not be subject to a system development charge. New Users connecting to the Rockwood system after the date of this Agreement will be subject to all applicable Rockwood system development charges, meter charges, and all other fees and charges adopted by the Board of Directors.
- G. Franchise Fee: Rockwood shall remit to City the franchise fee (not to exceed 5%) on meter base and volume charges collected by Rockwood.

III. City Obligations

- A. City will cooperate with Rockwood and provide adequate staff to perform the tasks required of it in Section I with reasonable diligence to implement the transition and cutover in a smooth and efficient manner.
- B. Any monies received by the City for post transfer water services shall be immediately remitted to Rockwood with an explanation of the account to which it applies.
- C. City shall pay Rockwood all sums due and owing for water service provided to City by Rockwood under the 2007 IGA to the date of transfer.
- D. To coordinate and plan capital improvements with Rockwood that may affect Rockwood water system facilities or service.
- E. If the emergency intertie is employed, the City will pay Rockwood as set forth in Section V(B) below. .

IV. Term and Termination

- A. This Agreement shall commence when approved and fully executed by each Party and remain in effect until terminated by either or both of the Parties as described in subsection B below.
- B. Either Party may terminate this Agreement at any time after providing one year written notice to the other Party, unless the Parties mutually agree otherwise..
- C. Either Party may terminate this Agreement upon default of the other Party after exhaustion of the Dispute Resolution process set forth in Section VI.

- D. Upon the termination date:
1. Responsibility for service to the Users and Properties shall transfer back to the City and Rockwood shall have no further obligation to provide service to the Users and Properties.
 2. The City shall have completed construction of its own water system facilities to provide direct service to the Users and Properties. The Parties shall develop a transfer plan as provided in Section I. City shall pay Rockwood all costs incurred by Rockwood to perform the transfer plan. Rockwood will provide an invoice and the City shall reimburse Rockwood for the value of all meters and facilities then in service which are related to providing service to the Users and Properties and other costs incurred in transfer of the Users and Properties. City will pay within 30 days of receipt of invoice.
 3. If the Parties mutually agree, the City may provide service by wheeling water through the Rockwood water system facilities to the re-acquired Users and Properties. In the event this is necessary the City and Rockwood will need to enter into a new agreement as set forth in Section V(A) below. .

V. **Water Sales and Emergency Water Supply**

- A. An intertie between the City and Rockwood systems exists at 223rd Avenue and NE Glisan Street. If the City wishes to become a wholesale water customer of Rockwood for all or a portion of its boundaries other than the Users and Properties that are subject to this Agreement, then a separate water sales agreement with the City of Portland, and “wheeling” rates, must be mutually agreed and executed to include this intertie plus any others that would be operable. If this occurs, Rockwood will be responsible to obtain consent from the city of Portland under its Regional Water Sales Agreement.
- B. The provision of water by Rockwood to City during an emergency is at the sole discretion of Rockwood. Rockwood will endeavor to assist the City and to supply water providing it does not jeopardize or negatively impact the provision of drinking water to Rockwood customers. If City believes an emergency exists, it shall notify Rockwood as soon as possible describing the emergency, the estimated quantity needed and duration of the emergency to obtain permission to take water through the intertie. The City will share the cost of maintaining and testing meters on an annual basis. Upon Rockwood approval, City will read the meter before taking water and at the end of use and report the readings to Rockwood. Rockwood will send an invoice to City for the water used at Rockwood’s rates and fees in place at the time of the emergency plus a twenty percent (20%) administrative overhead fee. Payment is due within 30 days of receipt of invoice. City will be responsible for all elements for use of the

intertie including but not limited to, traffic control, vault entry, meter reading, valve operation, and safety. Rockwood will flush or blow off water near the intertie to provide fresh water to City.

VI. Miscellaneous Provisions

- A. Cooperative Planning. City and Rockwood will periodically meet to plan and review capital improvement plans that may affect their respective public improvements and infrastructure. Each Party will notify the other at the earliest practical time of proposed actions that may affect the other.
- B. Integration. This Agreement is the entire agreement between the Parties and no other written or oral agreements, understandings or commitments of any kind exist except as set forth herein.
- C. 2007 IGA. Upon execution of this Agreement, the Parties declare the 2007 IGA is terminated and of no further effect except for any outstanding payment obligations.
- D. Choice of Law and Venue. The laws of the State for Oregon shall apply and the Parties agree that venue shall be in the Circuit Court of the State of Oregon for Multnomah County.
- E. Default.
 - 1. Event of Default. The failure of a Party to perform any duty imposed upon it by this Agreement shall constitute a default.
 - 2. Notice of Default. The non-defaulting Party shall give the defaulting Party a written notice of default, which shall describe the default in reasonable detail and state the date by which the default must be cured, which date shall be 30 days after receipt of the notice of default, except in the case of a failure to make full payment, in which case the date shall be 15 days after receipt of the notice of default.
 - 3. Opportunity to Cure. If defaulting Party cures the default, or if the failure is one (other than the failure to make full payments) that cannot in good faith be corrected within such period and the defaulting Party begins to correct the default within the applicable period of Section E (2) and continues corrective efforts with reasonable diligence until a cure is effected, the notice of default shall be inoperative, and the defaulting Party shall lose no rights under this Agreement. If, within the specified period, the defaulting Party does not cure the default or begin to cure the default as provided above, the non-defaulting Party at the expiration of the applicable period shall have the rights specified in Section E(4) below.

4. Rights Upon Default. If the defaulting Party has not cured the default, in addition to the remedies provided herein, the non-defaulting Party may pursue any other remedy available at law or in equity against the defaulting Party subject to the dispute resolution procedures of Section F.

F. Dispute Resolution. If a dispute arises between the Parties regarding this Agreement, the Parties shall follow the dispute resolution provisions below:

1. Written Notice. A written notice regarding the dispute (Dispute Notice) shall be sent to the other Party.

2. Negotiations. Within thirty (30) days following receipt of the Dispute Notice, the Parties to the dispute ("Disputing Parties") shall assign a representative to participate in good faith negotiations for a period not to exceed sixty (60) days after appointment of the representatives.

If the Parties cannot resolve the dispute(s) within the period for negotiation either of the Disputing Parties may initiate litigation. Moreover, each of the Disputing Parties shall bear its own legal and expert witness fees at all stages of the dispute resolution process, including at trial or on any appeals. In addition, nothing shall prevent the Disputing Parties from waiving any of the dispute resolution steps by mutual consent.

G. Indemnity. To the extent allowed by law, each Party shall defend indemnify and hold harmless the other Party, its governing body, agents and employees from and against any and all liens, encumbrances, claims, losses, liabilities, costs, expenses, damages, causes of action, demands, and proceedings (including without limitation attorney's fees and costs), arising out of, or directly or indirectly related to its activities under this Agreement to the extent of the indemnifying Party's negligence.

H. Modification. The Parties may modify this Agreement only by mutual written agreement.

I. Counterparts. This Agreement may be executed in any number of counterparts and by the Parties or separate counterparts, any one of which shall constitute an agreement between and among the Parties.

J. Notices. Any notice herein required or permitted to be given shall be given in writing, shall be effective when actually received, and may be given by hand delivery, by PDF via email with delivery confirmed by read receipt, or by United States mail, first class postage prepaid, addressed to the Parties as follows:

If to City:

If to District:

City of Fairview
Attn: Nolan Young, City Administrator
1300 NE Village Street,
Fairview, Oregon 97024

Brian R. Stahl, General Manager
19601 NE Haley Street
Gresham, Oregon
Email: Bstahl@rwpud.org

- K. Waiver. The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach of any provision of this Agreement or limit the Party’s right thereafter to enforce any provision or exercise any right.
- L. Survival of Terms and Conditions. The provisions of this Agreement shall survive its termination to the full extent necessary for their enforcement and the protection of the Party in whose favor they run.
- M. Time is of the Essence. A material consideration of the Parties entering into this Agreement is that the Parties will make all payments as and when due and will perform all other obligations under this Agreement in a timely manner. Time is of the essence of each and every provision of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Water Sales Amendment as of the Effective Date.

CITY OF FAIRVIEW

ROCKWOOD WATER PEOPLE’S
UTILITY DISTRICT

By: _____
City Administrator

By: _____
General Manager

Date: _____

Date: _____

