

## **CLARK REGIONAL WASTEWATER DISTRICT AND CITY OF VANCOUVER COORDINATION OF SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into by and between CLARK REGIONAL WASTEWATER DISTRICT, Clark County, Washington ("District") and the CITY OF VANCOUVER, Washington ("City"), each a Washington municipal corporation.

### **RECITALS**

A. The District and the City both operate wastewater collection systems. The District's wastewater is treated at the City's Westside Wastewater Reclamation Facility and the Clark County's Salmon Creek Treatment Plant. The City's wastewater is treated at the City's Westside and Marine Park Wastewater Reclamation Facilities.

B. A significant portion of the District's territory lies within the City's urban growth area. Pursuant to the Growth Management Act and the City's comprehensive plan, the City will annex the urban growth area within the District's territory.

C. The City is authorized by state law to assume the ownership, operation and maintenance of the portion of the District's wastewater system that lies within an annexed area, and to assume ownership, operation and maintenance of all of the District's wastewater system when either 60% of the assessed value of real property in the District or 60% of the area of the District is included within the City.

D. In order for the District and the City to serve well their respective customers, and to collect and treat efficiently and effectively the wastewater generated by those customers, the District and the City should coordinate and plan cooperatively their services, facilities and annexations, as well as City assumptions.

E. The District and the City desire to enter into this Agreement to coordinate and plan cooperatively their services, facilities and annexations, as well as City assumptions.

### **AGREEMENT**

In consideration of the following terms and conditions, the District and the City agree as follows:

1. City assumption of entire District.

1.1 The City shall notify the District when at least 45% of the assessed valuation of the real property of the District is within the City or at least 45% of the area of the District is within the City.

1.2 In consideration of the forbearance of its rights to assume the District under Chapter 35.13A RCW, and receipt of the Interlocal Operating Fee to be paid by the District to the City as set forth in Section 7.6, the City agrees that it shall assume the entire District on January 1 of the year following the date on which (1) at least 60% of the assessed valuation of the real property of the District is within the City or at least 60% of the area of the District is within City and (2) at least twelve (12) years have elapsed since the effective date of this Agreement; provided, that if such date is on or after September 1, then the assumption shall occur on January 1 of the second year following such date. This assumption shall be referred to in this Agreement as the "District assumption," and shall be carried out in accordance with RCW 35.13A.020 and 35.13A.030. The assessed valuation of the District shall include the Meadow Glade and Hockinson areas of Clark County. Except for the portions of Meadow Glade that are located within the city limits of the City of Battle Ground, the assessed valuation of the real property of the District shall not include the incorporated area and urban growth area of other cities and towns.

1.3 Prior to the District assumption, the City shall not assume portions of the District pursuant to RCW 35.13A.040 (less than 60% of area or valuation).

1.4 Upon the District assumption, (1) all property and rights of the District shall become the property and rights of the City, subject to all outstanding contractual obligations and indebtedness of the District, and (2) the City shall assume the obligation of paying and providing for all outstanding contractual obligations and indebtedness of the District, all as required and authorized by RCW 35.13A.030 and 35.13A.020.

1.5 The District assumption, and any other City assumptions, shall be governed by Chapter 35.13A RCW as of the effective date of this Agreement.

1.6 Unless provided otherwise in this Agreement, all rights and obligations of this Agreement shall continue until the District assumption.

2. Planning for City annexations. The City shall notify the District of a proposed City annexation of the District's service area. The District's service area is defined as the land that is proposed to be served by the District in the District comprehensive plan or a District resolution ("District's service area"). Where the annexation is initiated by petition, letter or written notice, the City shall notify the District when the petition, letter or notice (1) is distributed to the City Council for setting of a meeting or hearing date, or (2) is sent to Clark County and the fire protection district with jurisdiction over the proposed annexation area, as applicable. Where the annexation is initiated by City Council resolution, the City shall notify the District at least 30 days before adopting such resolution.

3. District support of City annexations. The District shall not oppose or object to a proposed City annexation within the District's service area, but may provide comments to the City regarding the proposed annexation. The District may send to District

customers a notice of a proposed City annexation and the effects of such annexation on District customers, as long as the District provides a draft of the notice to the City at least 30 days prior to issuance of the notice.

4. Planning for District annexations. The District shall notify the City of a proposed District annexation. Where the annexation is initiated by notice or petition of property owners or residents, the District shall notify the City at least 30 days before the notice or the petition is first presented to Board of Commissioners for consideration or for setting the date of a meeting or hearing. Where the annexation is initiated by resolution of the Board of Commissioners, the District shall notify the City at least 30 days before adopting such resolution.

5. City support of District annexations. The City shall not oppose or object to a proposed District annexation, but may provide comments to the District regarding the proposed annexation. The City may send to City customers a notice of a proposed District annexation and the effects of such annexation on City customers, as long as the City provides a draft of the notice to the District at least 30 days prior to issuance of the notice.

6. District comprehensive plan amendments.

6.1 The City shall not oppose or object to proposed or adopted District comprehensive plan amendments.

6.2 The District shall notify the City at least 30 days before adoption of a resolution approving a District comprehensive plan amendment.

6.3 The District comprehensive plan shall (1) include facilities to serve the District territory and the District's service area, (2) provide for service to all District customers, and (3) provide that where the District is unable to provide service to the District territory or the District's service area that flows to the City treatment plant, the City is the logical service provider for such territory or service area.

7. Jurisdiction over customers and facilities in annexed areas; Interlocal Operating Fee. Upon City annexation of District land:

7.1 The District shall retain its customers in the annexation area;

7.2 The District shall retain ownership and control of and jurisdiction over wastewater facilities, structures and buildings in the annexation area;

7.3 The District laws and regulations shall continue to apply in the annexation area;

7.4 The City shall incorporate applicable portions of the District

comprehensive plan into the City capital facilities plan and the capital facilities plan element of the City comprehensive plan;

7.5 The District shall continue to set wastewater rates and charges in accordance with the principles and factors of RCW 57.08.005 and 57.08.081, as presently in effect or as hereafter amended; and

7.6 In consideration of and as compensation for the City's forbearance of its rights to assume the District under Chapter 35.13A RCW, as it now exists or may be amended, and the rights granted to the District under this Agreement to operate its existing and future sewer facilities within the City's corporate limits, including any future annexed areas, the District agrees to pay to the City an Interlocal Operating Fee as follows: The District shall pay to the City an amount equal to 6% of the regular District service charges that are collected from customers in the annexation area ("Interlocal Operating Fee"). To satisfy the payment, the District may impose on customers in the annexation area a surcharge of 6% of the regular District service charge, over and above the regular District service charge, and may identify such surcharge on a customer billing as a City charge. If the District imposes the surcharge and also pays to the City a franchise fee for sewer facilities located in the City's right of way and/or a City utility tax, the franchise fee and/or the City utility tax shall be a credit against the Interlocal Operating Fee, and the franchise ordinance or agreement shall coordinate the timing of the payment with the collection of the District's surcharge. The franchise fee and the City utility tax, combined, shall not exceed the Interlocal Operating Fee. The District shall remit the payment to the City once a month.

8. District office/operations building. Until the District assumption, the District shall own, operate and control the real property and improvements that comprise the District office and operations site ("District Office"). If District sells or transfers all or part of the District Office, and acquires a replacement parcel and/or improvements, the District shall own, operate and control the replacement parcel and/or improvements.

9. Common operation and maintenance standards. The Parties will coordinate planning, operation and maintenance of their respective wastewater facilities and systems to the greatest extent possible. The Parties will endeavor to standardize their respective laws and regulations to the greatest extent possible, and to this end, the Parties will attempt to develop joint operation and maintenance standards for their respective wastewater facilities and systems.

10. Coordination of services and rates. The Parties will coordinate delivery of services to the greatest extent possible. The Parties will provide to each other 30 days notice of adoption of any changes in service rates and connection charges.

11. District expenditures. Within three (3) years after the effective date of this Agreement, the District shall adopt by resolution levels of service, standards and fiscal policies for operation and maintenance of its wastewater system and capital

improvements to its system ("Service Plan"). Within two (2) years after the effective date of this Agreement, the District shall prepare and send to the City a draft of the Service Plan. In developing the Service Plan, the District shall consider the City's levels of service, standards and fiscal policies for operation and maintenance of the City's wastewater system and capital improvements to the City's system. The oversight committee established in Section 12 below shall review and comment on the draft Service Plan pursuant to a procedure adopted by the oversight committee.

12. Oversight committee. An oversight committee, consisting of two staff persons and one elected official from each Party, shall meet at least once every six months to monitor and discuss implementation of and compliance with this Agreement.

13. Dispute resolution. The Parties shall first attempt to resolve a dispute by discussions among a City representative or representatives selected by the Mayor and a District representative or representatives selected by District General Manager. If the discussions are not successful, the Parties shall engage in mediation within 45 days of termination of discussions, according to a process and before a mediator agreed upon by the Parties. The Parties shall not resolve a dispute by mandatory arbitration. The Parties reserve their rights to pursue any available Court remedies at any time after a dispute arises.

14. Regional facilities. The Parties may participate in discussions, initiatives and studies with other Clark County governmental entities regarding the provision and delivery of wastewater service in Clark County. Before District assumption:

14.1 The District may participate in or manage a regional entity or regional operation, the purpose of which is to operate and maintain regional wastewater conveyance and treatment facilities for Clark County, the District and Clark County municipalities other than the City.

14.2 The City may participate in the regional entity or regional operation described in Section 14.1 if the area of the City is or will be served by the facilities described in Section 14.1.

14.3 The District shall provide retail (collection) wastewater services within its service area.

14.4 The District shall obtain wholesale (treatment) wastewater services from the City and Clark County (or a new regional entity as described in Section 14.1).

After District assumption, the City shall provide retail (collection) wastewater services in the District's service area, and shall comply with the terms and conditions of any agreements between the District and Clark County and/or Clark County municipalities regarding the operation and maintenance of regional wastewater conveyance and treatment facilities for Clark County and Clark County municipalities.

15. Meadow Glade and Hockinson systems. The City acknowledges that the Meadow Glade and Hockinson wastewater systems may not be owned by the District on the date of the District assumption. Consistent with this acknowledgment, the City authorizes the District to transfer ownership and/or operation and maintenance of such systems to the City of Battle Ground, after 30 days notice to the City.

16. Effective Date; Term of Agreement. The effective date of this Agreement shall be July 1, 2010. If no District assumption occurs within thirty (30) years after the effective date of this Agreement, the term of this Agreement shall be thirty (30) years. If a District assumption occurs within thirty (30) years after the effective date of this Agreement, the term of this Agreement shall be five (5) years after the date of the District assumption.

17. Early termination of Agreement. Either Party may terminate this Agreement for any of the following reasons:

17.1 A new city is incorporated in all or a portion of the District's service area;

17.2 The status, role or function of the District or the City materially and significantly changes, including but not limited to:

17.2.1 The City or the District becomes a member of a new regional entity for wastewater treatment and/or collection;

17.2.2 By interlocal agreement, the City or the District participates in a new regional operation for wastewater treatment and/or collection;

17.2.3 The District takes over ownership and/or operation of a city wastewater system;

17.2.4 The District acquires, constructs and/or operates a wastewater treatment plant;

17.2.5 The District becomes primarily a wholesale service provider; or

17.2.6 The District merges into another governmental entity. The term "merger" means permanent transfer of all property and indebtedness and cessation of operation.

17.3 The City or the District is precluded by a court order or judgment from complying with any term of this Agreement regarding employment and rights of District or City employees.

17.4 Chapter 35.13A RCW (the assumption statute) is amended to change materially the process by which the City may assume all or a portion of the District,

including but not limited to approval by the voters within the assumption area or within the District, or to change the percentage of area or valuation of the District that allows a City assumption.

The terminating party shall give 180 days notice to the other Party, except that the terminating party need only give 120 days notice to the other Party of an intent to become a member or participant in a new regional entity or a new regional joint-operation arrangement. Upon termination, the District property, responsibilities and customers in the areas annexed by the City shall be transferred to and assumed by the City pursuant to RCW 35.13A.030 (more than 60% of assessed valuation or 60% of area of District) or 35.13A.040 (less than 60% of assessed valuation and 60% of area of District), as applicable and according to the version of the statute in effect on the date of termination.

18. Hiring of employees and consultants prior to assumption. On and after a date when (1) twelve (12) years have elapsed since the effective date of this Agreement and (2) at least 45% of the assessed valuation of the real property of the District is within the City, the District shall not enter into or extend the term of any contract between the District and District employees or consultants beyond the anticipated date of the District assumption, without approval of the City. The "anticipated date of the District assumption" shall be two (2) years, unless agreed otherwise by the Parties.

19. Employment and rights of District employees.

19.1 In the City budget for the calendar year in which the District assumption will occur, the City shall provide full-time positions for all District full-time employees and part-time positions for all District part-time employees, who were employed by the District on December 1 of the year before the District assumption. These City positions shall be similar in nature and salary to the District positions. Any District employee having an employment contract with the District shall be considered a District employee. The District shall not hire any new employee after December 1 of the year before the District assumption.

19.2 On or before December 15 of the year before the District assumption, the City shall offer to the District employees described in Section 19.1 the positions provided for in the City budget described in Section 19.1. On or before December 31 of the year before the District assumption, the District shall advise the City of the District employees who will not accept a position with the City.

19.3 The City shall not reduce the wages of a former District employee, but may freeze a former District employee's wages within a job classification until the City's wage rate is equal to or exceeds the former District employee's wage rate.

19.4 Former District employees shall not be laid off during the first calendar year after commencing employment with the City. The term "laid-off" means elimination

of a position.

19.5 The City reserves the right to discipline or terminate a former District employee "for cause."

19.6 Former District employees shall carry over to the City all accrued sick leave at the time of District assumption, in accordance with District laws and regulations. A reasonable period of time before District assumption, a District employee may cash out accrued sick leave, in accordance with District laws and regulations, so that after cash out the District employee shall retain for carry over to the City no less than 25% of the maximum accrued sick leave under City laws and regulations.

19.7 Former District employees shall carry over to the City all accrued vacation at the time of District assumption, in accordance with District laws and regulations. A reasonable period of time before District assumption, the District shall cash out accrued vacation in excess of 75% of the maximum accrued vacation under City laws and regulations. A District employee may cash out accrued vacation, in accordance with District laws and regulations, so that after cash out the District employee shall retain for carry over to the City no less than 25% of the maximum accrued vacation under City laws and regulations.

19.8 Except for vacation and sick leave, the City shall not be responsible for former District employee time off with pay, including but not limited to compensatory time, floating holidays and recognition time.

19.9 Years of service at the District shall be applied to years of service at the City for all purposes, including but not limited to determining vacation accrual, sick leave benefits, service awards and layoffs.

19.10 During the first year of employment with the City after the District assumption, former District employees shall earn vacation under City laws and regulations in effect during such first year of employment or under District laws and regulations in effect immediately before the District assumption, whichever is greater. After the first year of employment and thereafter, former District employees shall earn vacation under City laws and regulations.

19.11 After the two criteria of Section 18 are satisfied, the City shall use its best efforts to include in any applicable City collective bargaining agreements the terms and conditions of this section 19 that are subject to collective bargaining. At the request of the District, the City shall, within 14 days of the request, file with the District a written report of the City's efforts to include such terms and conditions in such collective bargaining agreements.

20. Records review. Upon three business days notice, or upon notice agreed upon by the Parties, a Party shall have the right to inspect and copy, without charge, all



records of the other Party relating to this Agreement or its subjects.

21. Indemnification. To the maximum extent permitted by law, each Party shall defend, indemnify and hold harmless the other Party, and all of its officials, employees, principals and agents, from any and all claims, demands, suits, actions, fines, penalties, and liability of any kind, including injuries to persons or damages to property, which arise out of or are related to any negligent acts, errors, omissions of the indemnifying Party and its contractors, employees, agents and representatives in performing obligations under this Agreement. However, if any such damages and injuries to persons or property are caused by or result from the concurrent negligence of the District or its contractors, employees, agents, or representatives, and the City or its contractors or employees, agents, or representatives, each Party's obligation hereunder applies only to the extent of the negligence of such Party or its contractors, employees, agents, or representatives.

The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under industrial insurance, Title 51 RCW, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been mutually negotiated.

22. Rates after assumption. After the District assumption:

22.1 The City shall retain its authority to fix rates and charges in accordance with the general principle and factors of RCW 35.67.190 and 35.92.020 as presently in effect or as hereafter amended; and

22.2 The City shall not charge an out-of-city rate to former District customers, although the City may establish a rate differential for such customers based upon the treatment plant serving such customers.

23. Dissolution of District. Following the District assumption, the District shall remain in existence if necessary (1) to comply with applicable laws and regulations or to satisfy any outstanding District contractual obligations and indebtedness, or (2) to carry out any roles and responsibilities of a regional entity or regional operation for provision of wholesale (treatment) wastewater services in all or a part of Clark County. If item no. 2 in the previous sentence does not apply, and if the City determines that the District's existence is no longer necessary to comply with applicable laws and regulations or to satisfy any outstanding District contractual obligations and indebtedness, the District Board of Commissioners shall, at the written request of the City and pursuant to Chapter 53.48 RCW, as presently in effect or as hereafter amended, file a petition for dissolution with Clark County Superior Court.

24. Notices. All notices and other communications under this Agreement shall be in writing by email, facsimile, regular U.S. mail or certified mail, return receipt requested.

If to the City, the notice shall be sent to:

City of Vancouver  
P.O. Box 1995  
Vancouver, WA 98668  
Attention: City Manager

or to such other person or place as the City shall furnish to the District in writing, with a copy to:

Ted H. Gathe  
City Attorney  
P.O. Box 1995  
Vancouver, WA 98668

If to the District, the notice shall be sent to:

Clark Regional Wastewater District  
P.O. Box 8979  
Vancouver, WA 98668-8979  
Attention: General Manager

or to such other person or place as the District shall furnish to the City in writing, with a copy to:

Rod P. Kaseguma  
Inslee, Best, Doezie & Ryder, P.S.  
777 – 108<sup>th</sup> Avenue NE, Suite 1900  
Bellevue, WA 98004

Notices shall be deemed given upon delivery or, if mailed, upon the earlier of actual receipt or three (3) business days after the date of mailing.

25. Waiver. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement, unless stated to be such through written approval of the non-breaching Party and attachment of such written approval to this Agreement.

26. Severability. If any section or part of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such action shall not affect the validity or enforceability of any other section or part of this Agreement.

27. Entire Agreement; Amendment. This Agreement contains the entire written agreement of the Parties and supersedes all prior discussions. This Agreement may be

amended only in writing, signed by both Parties.

28. Successors and Assigns. All of the provisions, conditions, regulations and requirements contained in this Agreement shall be binding upon the successors and assigns of the Parties.

29. No Third Party Rights. This Agreement is solely for the benefit of the Parties and gives no right to any other party or person.

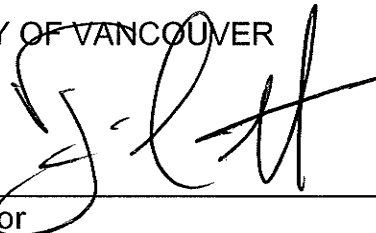
30. No Joint Venture. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one Party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees of the other Party.

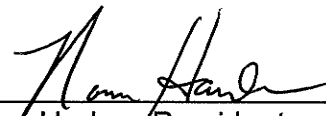
31. Jurisdiction and Venue. This Agreement shall be interpreted in accordance with the laws of the State of Washington. The Superior Court of Clark County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

32. Prevailing Party Costs. If either Party incurs attorney fees, costs or other legal expenses to enforce the provisions of this Agreement against the other Party, all such fees, costs and expenses shall be recoverable by the prevailing Party.

33. Counterparts. This Agreement may be signed in counterparts and, if so signed, shall be deemed one integrated agreement.

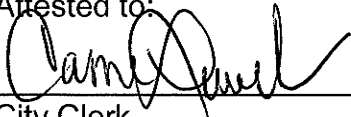
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized representatives.

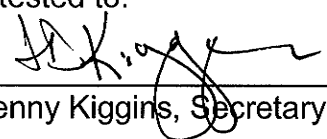
CITY OF VANCOUVER  
  
\_\_\_\_\_  
Mayor

CLARK REGIONAL WASTEWATER DISTRICT  
  
\_\_\_\_\_  
Norm Harker, President


Date: 06/28/10

Date: JUNE 22, 2010

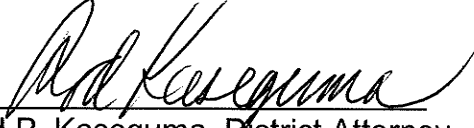
Attested to:  
  
\_\_\_\_\_  
City Clerk  
Carrie Lowellen  
Deputy City Clerk

Attested to:  
  
\_\_\_\_\_  
Denny Kiggins, Secretary

Approved as to form:

  
\_\_\_\_\_  
Ted H. Gathe, City Attorney

Approved as to form:

  
\_\_\_\_\_  
Rod P. Kaseguma, District Attorney