

**INTERLOCAL AGREEMENT
BETWEEN CLARK COUNTY
AND CLARK REGIONAL WASTEWATER DISTRICT
FOR PUBLIC WORKS CONSTRUCTION**

THIS IS AN INTERLOCAL AGREEMENT entered into under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, between Clark County, a political subdivision of the State of Washington (County), and Clark Regional Wastewater District, a special purpose District providing wastewater services within Clark County, Washington (District) (referred to individually as a “Party” or collectively as the “Parties”).

WHEREAS, pursuant to Chapter 39.34 RCW (Interlocal Cooperation Act), one or more public entities may contract with one another to perform government functions or services which each is by law authorized to perform; and

WHEREAS, the County and the District each are authorized to construct sewer facilities pursuant to the statutes relating to counties and water-sewer districts and to construct public works pursuant to Chapter 39.04 RCW; and

WHEREAS, on occasion the inclusion of a public work by one party in the public work project of the other party will be cost effective and efficient;

NOW, THEREFORE, pursuant to Chapter 39.34 RCW and in consideration of the terms, conditions, covenants, and performances contained herein

THE PARTIES AGREE AS FOLLOWS:

1. **PURPOSE.** The purpose of this Agreement is to authorize Clark County Public Works to construct a sewer pipe and related facilities for the District, to facilitate efficiency and cost effectiveness. The sewer pipe and related sewer work will be included in the County's NE 99th Street Road Improvement construction contract with the expenses reimbursed to the County by the District. The Parties agree that this Agreement shall not supersede, amend or replace the existing general interlocal agreement between the County and the District currently in effect for general services (March 1, 2018 Agreement). In the event that the two agreements are in conflict, this Agreement will take precedent for the Work involved.

2. **DEFINITIONS.** Unless otherwise indicated in the text of this Agreement, the following terms are defined as set forth below:

“Project” means the County’s capital road improvement project CRP# 350722 on NE 99th Street, between NE 94th Avenue and NE 112th Avenue and is considered a public work project as defined by RCW 39.04.010(4) and includes the Work requested by the District.

“Work” means all survey, materials, equipment, labor, construction, construction inspection and contract administration requested by the District to be included in the County’s Project, and after approval, all such items actually included in the County’s Project.

“Working days” means Monday through Friday, excluding Washington State holidays per RCW 1.16.050.

3. **REQUEST FOR WORK.**

- 3.1. **Communication.** The County and the District have historically worked together to coordinate, plan, construct and maintain public works. The Parties agree to use their best efforts to keep each other informed of the details surrounding the Work and

the Project.

3.2. Request for Work. The District has asked the County to include the District's Work in the County's construction contract for the Project.

3.2.1. The Project will extend NE 99th Street from NE 94th Avenue east and connect near NE 104th Avenue. The Project will also improve existing road segments starting near NE 104th Avenue and east to near NE 115th Court.

3.2.2. The Parties agree upon the specifications, plans and provisions for the Work, and the Administrators, as identified in Section 10, shall confirm the inclusion of the Work in the Project, and the terms and conditions thereof, in writing, and shall include therein a date for issuance of the bid advertisement. Thereafter, the Administrator for the County may change the date for issuance of the bid advertisement by giving notice thereof to the Administrator of the District. The County shall include the Work as agreed to by the Administrators in the bid package for the Project. Unless agreed otherwise by the Administrators, the Work shall be in a separate schedule of work on the Project proposal form in the bid package so the proposed cost of the Work will be identified separate from other Project costs. The Administrator for the County shall deliver to the Administrator for the District a copy of the bid package prior to issuance of the bid advertisement.

3.2.3. Either Party may exclude the Work from the bid package for the County's Project by notifying the other Party of the exclusion at least twenty-one (21) days prior to issuance of the bid advertisement for the Project or after that if mutually agreed upon by the Parties.

3.2.4. The Party responsible for exclusion of the Work under Section 3.2.3 of this Agreement shall reimburse the other Party for all actual direct and related indirect

expenses and costs, including design, survey, engineering work, mobilization, construction engineering, contract administration and overhead costs associated with the Work, that are incurred up to the date of exclusion, as well as the cost of non-cancelable obligations, including any redesign, re-engineering or re-estimating, if necessary, to delete the Work.

3.2.5. The County shall require the County's contractor awarded the Project to have the District named as an additional insured on all policies of insurance to be maintained by the contractor under the terms of the Project contract.

3.2.6. The County shall require the County's contractor to indemnify, defend and hold harmless the District and its officers, agents or employees from any claims filed against the District or its officers, agents or employees alleging damage or injury arising out of the contractor's participation in the Project.

4. BID ADVERTISEMENT AND AWARD.

4.1. Responsibilities during Bid Process. The County will be the District's representative during the bid advertisement and award period. When requested by the County, the District shall timely assist the County in answering bid questions and resolving any design issues related to the Work. The County will not answer any pre-bid questions regarding the District's Work without District approval. All comments and clarifications related to the bidding process must go through the County. The County shall provide the District with written notification of the bid price for the Work specifically and the Project generally within twenty-four (24) hours after the bid opening.

4.2. Bid Consideration and Award. The Parties acknowledge and agree that the County will review, accept, reject and award the bids for the Project in accordance with applicable competitive bidding requirements, rights and obligations of state law and the plans, specifications and provisions of the bid package. The Parties further acknowledge and agree

that the District's Work will be considered an integral part of the Project and will not be treated differently or separately for competitive bidding purposes, unless agreed otherwise by the Administrators.

4.3. Elimination of Work. The County will provide the District with an opportunity to review the bids submitted by contractors on the Project to determine whether the bids for the District's Work are subject to unbalanced bidding which would result in the District paying an unreasonable or inequitable amount for the Work or the bids are unreasonably high based on the District's estimated cost of the Work. The District may within forty-eight (48) hours of receiving the bid results for the Work request the County to eliminate the Work from the Project and/or reject the bid for the Project. The County may, but is not required to, eliminate the Work from the Project, taking competitive bidding laws, regulations and case authority into account.

5. CONSTRUCTION, INSPECTION, AND ACCEPTANCE.

5.1. Construction and Administration Responsibility. The County shall construct and administer the Work on behalf of the District as specified in the bid package. The County will keep the District advised as to the progress of the Project. The County shall notify the District if the Work cannot be completed as designed, regardless of cause. Whenever practical, the District shall have final discretion with regard to the design of field-adjustments relating to the District's Work. To the extent reasonably practicable, the District will provide the County with its approval of any design field-adjustment decisions or alternative designs at least ten (10) working days before the anticipated work is scheduled to be performed.

5.2. Communication during Project. All formal communications between the District and the County's contractor shall be through the County's designated representatives; provided that the District may have informal communications with the County's contractor if approved by the County. The County will inform the District of any proposed contractor

schedule changes and the District must approve those changes. The District will attend all scheduled weekly construction meetings to ensure necessary communications between the County, District, and contractor.

- 5.3. Construction Observation. The District will provide an inspector to observe, inspect and approve the installation of the sanitary sewer pipe and associated Work. The District inspector shall be onsite during or available to be onsite within 30 minutes after notification by the County, during operations associated with the District's Work, during normal pre-determined business hours of work. If the Contractor requests working outside of the hours specified in the construction contract, the County shall receive approval from the District before approving the Contractor's request.
- 5.4. Documentation. The District's inspector shall provide to the County all inspection documentation including but not limited to inspection reports, pay notes, backfill test results, closed circuit TV reports and submittals of a material and substantial nature. The District assumes full responsibility for the District's Work including the constructability, tolerances, settlement and schedule requirements, provided that the District is given the opportunity to inspect the Work by County. The District will have access to the Project area at all times for inspection of the Work.
- 5.5. Completion and Acceptance. Upon substantial completion of the Work, the County shall provide the District with a written notice of its intent to issue a formal notice of substantial completion to the contractor. The District shall, within fourteen (14) calendar days of being notified by the County of its intent to issue a notice to the contractor that the Work is substantially complete, perform any necessary walk-through or inspection of the Work and either (a) deliver to the County a written letter of acceptance, or (b) deliver to the County a written explanation in punch list format, detailing the reasons why the Work does not comply with the approved specifications and plans. The District and the County will work

diligently and in good faith to resolve any issues relating to the Work so as not to delay the County's acceptance of the Project. If issues raised by the District are resolved, the District shall immediately deliver to the County a letter of acceptance.

If the District does not respond within fourteen (14) calendar days as required by Section 5.5, the Work and the administration thereof shall be deemed accepted by the District, and the County shall be released from all future claims and demands related to the Work. Acceptance of the Work by the District shall not constitute acceptance of any unauthorized or defective work or materials, nor be a waiver of any manufacturer's, supplier's, or contractor's warranties.

The County's contractor shall warrant the workmanship and materials utilized in the Work to be free from defects for a period of one (1) year from the date of the County's final acceptance of the Work, with all such warranties running to the District as a third party beneficiary with full authority to make such warranty claims.

5.6. Future Costs. Upon completion and acceptance of the Work pursuant to Section 5.5, the District agrees that it shall be solely responsible for all future ownership, operation and maintenance costs of any facilities constructed by the Work, without expense to the County; provided, that the District shall not be responsible for any repair and maintenance costs that are the responsibility of the County's contractor for the Project.

5.7. As-Builts. The County will prepare the final construction documentation in general conformance with the County's and District's construction practices. The County shall maintain one set of plans as the official "as-built" set, then make notations of all plan revisions typically recorded per standard practice of the County. Once the District has accepted the Work per Section 5.5, the County will provide one copy of the as-builts plans to the District upon request.

6. BILLING METHOD AND PROCESS.

6.1. District Payment Requirement. The District shall pay for the County's actual direct and related indirect cost of the Work, including any design, survey, engineering work, mobilization, construction engineering, contract administration and overhead costs for the Work. The indirect rates charged to the District shall be consistent with the indirect rates formally adopted by the County for overhead and contract administration. Indirect rates charged to the District that are not formally adopted by the County shall be subject to review and verification by the District as to their reasonableness. The County shall send invoices to the District, providing with each invoice sufficient documentation and information to justify the costs. If requested by the District, the County shall send any information or records in its possession that relate to and support any invoice. The District shall pay the invoice within thirty (30) calendar days of receipt; provided that if the District disagrees with all or part of the invoice, the District shall notify the County in writing of the disagreement within twenty (20) calendar days of receipt of the invoice. The notice shall include an explanation of the disagreement and shall be supported by documentation and information, if any. The District shall pay all parts of an invoice that are not contested within the thirty-day period. The District shall pay a contested portion of an invoice within thirty (30) calendar days after the parties resolve the disagreement. District shall have opportunity to review and approve Contractor's monthly billing (quantities) and change order requests prior to approval by the County.

6.2. Billing and Payments. Billing for services will be monthly until the Project is complete. The estimated total billing for the Work is \$3,033,523., including contractor payments and all County expenses (staff time, plus direct expenses and overhead) during the construction period.

Payments shall be remitted to the entity identified in Section 16 of this Agreement.

6.3. Delinquent Payments. Costs that are not paid within the applicable periods in Section 6.1 shall be delinquent. Delinquent charges shall accrue interest from the date of delinquency until paid, at an interest rate of one percent (1%) per month.

6.4. Termination Right for Nonpayment. If the District fails to pay an invoice pursuant to Section 6.1, the County shall have the right to terminate this Agreement, charging the District for the County's associated costs of termination, including but not limited to non-cancellable items, delay costs, and unpaid contractor charges for the Work.

7. CHANGE IN WORK OR COST INCREASE.

7.1. Increase in Cost. In the event it is determined that the cost of the Work will exceed the contract amount or a change order approved amount (including sales tax, engineering, and contingencies) by more than ten percent (10%), the County shall notify the District of the anticipated increase and seek the District's approval before the County authorizes additional work or expenses and/or before the County authorizes payment to the County's contractor relating to the Work. The District will review and approve or deny the requested increase in cost within five (5) working days of being notified by the County of such cost increase.

7.2. Notice of Change in Work. If the County desires or the contractor requests to add to or change the Work, it shall give advance notice of such proposed addition or change to the District, except as provided in Section 7.3 for emergencies or safety threats. The District shall respond to the County's request within five (5) working days. The County cannot proceed with the addition or change to the Work unless the District approves the addition or change in writing. If the District fails to respond to the County's request within the five (5) day period, the District shall be deemed to have denied the request. The District agrees to pay all costs associated with any District-approved addition or change to the Work, as well as the costs of Project or Work delays and/or County-approved contractor claims

associated with the District's failure to timely respond or the District's failure to approve a meritorious change order.

7.3. Change in Work for Emergency. When the County determines that a change in the Work is required to respond to or mitigate a Project emergency or safety threat, the County has authority to implement the change without the District's prior approval. The County shall notify the District of such change and the basis for the emergency or safety threat as soon as it becomes known to the County and can be reasonably communicated. The County's first priority will be to address the emergency or safety threat. The District agrees to pay all costs associated with emergency or safety threat changes to the Work.

7.4. Changes or Additions to Work. The District may request in writing changes or additions to the Work, provided the District provides the necessary plans and specifications for the change or addition. The County shall implement the requested change or addition, as requested by the District or as agreed to by the County and the District, as long as the change or addition does not negatively impact the County's Project and does not materially delay the Project Schedule. The County shall respond to the request within five (5) working days, and if the change or addition is approved (as requested or amended by agreement), shall include in the response the terms and conditions of the approved change or addition, including the cost, if any. The District agrees to pay for the increases in Project cost, if any, for the approved changes or additions in accordance with Section 6 (Billing Method and Process).

7.5. Change Order Documentation. The County shall make available to the District all change order documentation related to Work, prior to District approving any contract changes.

7.6. Different Materials or Structures. The County shall provide to the District within twenty-four (24) hours any request of the Project contractor to use different materials or structures for the Work. The District shall within five (5) working days advise the County

as to whether it accepts the different material or structure. If the District fails to respond within five (5) working days, the County shall be authorized to make a determination on the District's behalf.

8. PERMITS AND APPROVALS. The District shall be responsible to apply for and obtain all required permits and approvals for the Work. The District shall provide a copy of all permits and approvals to the County at least forty-five (45) calendar days prior to the bid advertisement date for the Project or as agreed to by the County.
9. RIGHT OF ENTRY. If necessary, to carry out the Work, the District shall obtain rights of entry for the County and its contractors upon all privately owned lands. The rights of entry may include reasonable entry and use restrictions. The District shall provide copies of the rights of entry to the County within five (5) working days prior to the date of Notice to Proceed to the County's contractor.
10. ADMINISTRATORS OF AGREEMENT. The County Manager and the District General Manager, or their respective designees identified in writing (individually, "Administrator," and collectively "Administrators"), shall administer this Agreement. Unless provided otherwise in this Agreement, all notices shall be delivered to the Administrators.
11. DISPUTE RESOLUTION. The Administrators shall attempt to resolve any dispute informally.
 - 11.1. Mediation and Arbitration. Any dispute that cannot be resolved by the Administrators may upon mutual agreement of the Parties be submitted to mediation. If the dispute is not resolved through mediation, it may upon the mutual agreement of the Parties be submitted to binding arbitration in accordance with the rules and procedures set forth in Chapter 7.04A RCW.
 - 11.2. Legal Actions or Proceedings. In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this

Agreement, the Parties agree that any such action or proceedings shall be brought in the Superior Court of Clark County, Washington. Each Party shall be responsible for its own attorneys' fees and costs.

12. INDEPENDENT PARTIES. Each Party is independent for all purposes, and the employees of each Party and any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be the employees of the other Party. Each Party shall retain all authority for provision of services, standards of performance, discipline and control of employees, and other matters incident to its performance of services pursuant to this Agreement. Nothing in this Agreement shall make any employee of the County an employee of the District or any employee of the District an employee of the County for any purpose, including but not limited to, withholding of taxes, payment of benefits, workers' compensation pursuant to Title 51 RCW, or any other rights or privileges accorded to the employees by virtue of their employment.

13. HOLD HARMLESS/INDEMNIFICATION.

13.1. Indemnification. To the extent authorized by law, each Party shall indemnify and hold harmless the other Party and its employees, officers, contractors and agents, from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or cost, of whatsoever kind or nature related to the actions of that Party incident to that Party's performance or failure to perform any aspect of this Agreement; provided that if such claims are caused by or result from the concurrent negligence of (a) the County and (b) the District, or their respective employees, officers, contractors or agents, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the County or the District; and provided further that nothing herein shall require the County or the District to hold harmless or defend the other or its employees, officers, contractors or

agents from any claims arising from that party's sole negligence or that of its employees, officers, contractors or agents. The terms of this section shall survive the termination of this Agreement.

13.2. Participation in Legal Action. In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against either Party, each Party retains the right to participate in said suit if any principle of public law is involved.

13.3. Worker's Compensation. Section 13.1 shall include any claim made against either Party by an employee, officer, contractor, subcontractor or agent of the other Party, even if the other Party is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the sole negligence of the indemnified Party. Both Parties specifically acknowledge that the provisions contained herein have been mutually negotiated by the Parties and it is the intent of the Parties that each Party provide the other Party with the broadest scope of indemnity permitted by RCW 4.24.115.

14. ATTORNEYS FEES AND COSTS. The Parties shall bear their own costs of enforcing the rights and responsibilities under this Agreement.

15. NO THIRD-PARTY BENEFICIARY. The County does not intend by this Agreement to assume any contractual obligations to anyone other than the District. The District does not intend by this Agreement to assume any contractual obligations to anyone other than the County. The County and District do not intend that there be any third-party beneficiary to this Agreement.

16. NOTICE. Unless provided otherwise in this Agreement, any notices to be given and any payments to be made under this Agreement shall be delivered, postage prepaid and addressed to:

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

Clark County
P.O BOX 9810
Vancouver, WA 98666-
9810
Attention: County Manager

The name and address to which notices shall be directed may be changed by either party by giving the other notice of such change as provided in this section.

17. WAIVER. No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or different provision.

18. TERM. The term of this Agreement is for a period of five (5) years from the date of this Agreement as set forth at the end of the Agreement.

19. EXTENSIONS. The term of this Agreement shall automatically be extended in one (1) year increments, up to a maximum of ten (10) additional years, without further authorization of the legislative bodies of the Parties to enable the completion of the Project.

20. TERMINATION. Either Party may choose to terminate this Agreement by notifying the other party in writing ninety (90) days prior to termination.

21. INTERLOCAL COOPERATION ACT COMPLIANCE. This is an Agreement entered into pursuant to Chapter 39.34 RCW. Its purpose is as set forth in Section 1. Its duration is as specified in Sections 18 (Term), 19 (Extensions), and 20 (Termination). Its method of termination is set forth in Section 20. Its manner of financing and of establishing and

maintaining a budget therefor is described in Sections 6 (Billing Method and Process) and 7 (Change in Work or Cost Increase). No separate entity shall be created with this Agreement. No property shall be acquired pursuant to this Agreement which will need to be disposed of upon partial or complete termination of this Agreement.

22. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the Parties with respect to the subject matter covered or mentioned therein, and no prior agreements shall be effective to the contrary.

23. AMENDMENT. The provisions of this Agreement may be amended with the mutual consent of the Parties. No additions to, or alterations of, the terms of this Agreement shall be valid unless made in writing and formally approved and executed by authorized representatives of the both Parties, except as provided in previous Sections.

24. AUDIT AND RECORDS. During the progress of the Work and for a period of not less than three (3) years from the date of final payment, both Parties shall maintain the records and accounts pertaining to the Work and shall make them available during normal business hours and as often as necessary, for inspection and audit by the other Party, the State of Washington, or the Federal Government, and copies of all records, accounts, documents or other data pertaining to the Work will be furnished upon request. The requesting Party shall pay the cost of copies produced. If any litigation, claim or audit is commenced, the records and accounts along with supporting documentation shall be retained until any litigation, claim or audit has been resolved even though such litigation, claim or audit continues past the three-year retention period.

25. DOCUMENT EXECUTION AND FILING. The County and the District agree that there shall be two (2) duplicate originals of this Agreement procured and distributed for signature by the necessary officials of the County and the District. Upon execution, the County Administrator shall cause one executed original of this Agreement to be filed with and retained by the County Clerk, and the District Administrator shall cause one executed original of this Agreement to be

filed with and retained by the District Clerk. The District Clerk shall post a copy of this Agreement on the District website pursuant to RCW 39.34.040. Upon execution of the originals and posting of a copy on the District’s website, each such duplicate original shall constitute an agreement binding upon both parties.

26. RATIFICATION. Acts taken in conformity with this Agreement prior to its execution are hereby ratified and affirmed.

27. SEVERABILITY. If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

IN WITNESS WHEREOF, the County and the District have caused this Agreement to be executed in their respective names by their duly authorized officers and have caused this Agreement to be dated as of the _____ day of _____, 2021.

CLARK COUNTY

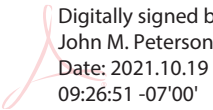
By: _____
Kathleen Otto, County Manager

Approved as to form:

Anthony F. Golik, Prosecuting Attorney

By: Bill Richardson
Bill Richardson, Civil Deputy Prosecuting Attorney

CLARK REGIONAL WASTEWATER DISTRICT

By: **John M. Peterson**  Digitally signed by John M. Peterson
Date: 2021.10.19 09:26:51 -07'00'
John M. Peterson, District General Manager

Approved as to form:

By: Eric Frimodt
Eric Frimodt, Attorney for the District