

**CLARK REGIONAL WASTEWATER DISTRICT AND CITY OF VANCOUVER
COORDINATION OF SERVICES AGREEMENT
[AMENDED AND RESTATED JUNE 21, 2021]**

THIS COORDINATION OF SERVICES AGREEMENT ("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, (individually a "Party" or collectively the "Parties").

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 Discovery Clean Water Alliance's Salmon Creek Treatment Plant and Ridgefield 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 intends to annex the City's 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 better serve their respective customers, and to collect and treat efficiently and effectively the wastewater generated by those customers, the District and the City have agreed to coordinate and plan cooperatively their services, facilities, and annexations, as well as any City assumptions.

E. On June 28, 2010, the District and the City entered into a Coordination of Services Agreement effective July 1, 2010 to coordinate and plan cooperatively their services, facilities, and annexations, as well as any City assumptions including an agreement for the City to assume the entirety of the District when the threshold of 60% under RCW 35.13A.030 is reached.

F. Pursuant to the original Coordination of Services Agreement, the District and the City agreed to coordinate and plan cooperatively their services, facilities, and annexations, as well as City assumptions under Chapter 35.13A RCW, and have established an excellent and cooperative working relationship which serves the best interests of both Parties and their respective customers and residents.

G. The District wastewater collection system also serves the Ridgefield urban growth area pursuant to a separate agreement with the City of Ridgefield. The City of Ridgefield transferred ownership of its wastewater collection system to the District effective January 1, 2014.

H. On September 14, 2015, the District and the City entered into the First Amendment to the Coordination of Services Agreement ("First Amendment") pursuant to which the City agreed to assist the District in the collection of delinquent District sewer service charges by terminating water service to the subject property in limited circumstances.

I. Since entering into the Coordination of Services Agreement, certain events have occurred, including the formal creation of the Discovery Clean Water Alliance pursuant to Chapter 39.106 RCW, and effective as of January 1, 2015 the Alliance assumed full ownership and operational responsibility over certain regional wastewater treatment facilities which serve District customers, including customers located within certain areas of the City. The District serves as both the Administrative Lead and as an Operator under contract with the Alliance.

J. Given the passage of time since entering into the original Coordination of Services Agreement, the District and City now desire to enter into this Agreement to update and consolidate the terms and conditions of the original Coordination of Services Agreement and the First Amendment to the Coordination of Services Agreement which the Parties acknowledge has fostered a mutually beneficial relationship between the District and the City.

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 may at its sole option elect to assume the entire District on January 1 of the year following the date on which 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; provided, that if such date is on or after

September 1, then any assumption shall occur on January 1 of the second year following such date. This assumption is 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.020 and 35.13A.030.

1.5 If the City elects to proceed with a District assumption in accordance with the terms of this Agreement, the District agrees not to oppose or object to the District assumption or to initiate, directly or indirectly, the referendum process authorized in Chapter 35.13A RCW. Any District assumption shall be governed by Chapter 35.13A RCW, as may be amended.

1.6 Given the District's service commitments within the cities of Battle Ground and Ridgefield a District assumption could impact the interests of the cities. The District and the City acknowledge the importance of proper planning and coordination between municipal entities for the delivery of regional services like wastewater collection services. Therefore, in the event a District assumption has the potential for impacting the interests of Battle Ground and Ridgefield, the District and the City will work cooperatively to identify any such impacts and will evaluate the potential options available to eliminate or minimize the impacts of a District assumption. Upon initiation of a District assumption, the District and the City will engage with Battle Ground and Ridgefield to discuss potential impacts associated with a District assumption and will work cooperatively to resolve such impacts to the extent reasonably possible.

1.7 Unless provided otherwise in this Agreement, all rights and obligations of the Parties under 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 regulations and policies 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 right 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, less applicable B&O or other taxes paid by the District ("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 payment of the Interlocal Operating Fee 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 the 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. If this Agreement is terminated for any reason described in Section 17, and the City subsequently engages in a partial assumption of the District's service area, sewer facilities, and District Office (or the replacement parcel and/or improvements), the District shall retain the right in its sole discretion to occupy and use the District Office (or the replacement parcel and/or improvements) for a period of 10 years after the termination of this Agreement. The rights and obligations in this Section 8 shall survive the termination of the Agreement.

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 levels of service. On May 28, 2013, the District adopted Resolution No. 1586 which established the initial levels of service, standards and fiscal policies for operation and maintenance of its wastewater system and capital improvements to its system ("Service Plan"). The District shall maintain this Service Plan during the term of this Agreement. The oversight committee established in Section 12 below shall review and comment on any proposed updates to the 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. Unless otherwise agreed to by the Parties, disputes shall not be resolved 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, including the Discovery Clean Water Alliance, regarding the provision and delivery of wastewater service in Clark County. Before District assumption:

14.1 The District may participate in or manage the Discovery Clean Water Alliance or other 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 Discovery Clean Water Alliance or other 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, or the Discovery Clean Water Alliance or other 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, including the Discovery Clean Water Alliance 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 the date of full execution by the Parties. Upon full execution, this Agreement shall supersede and replace the Coordination of Services Agreement dated June 28, 2010 and the First Amendment to the Coordination of Services Agreement dated September 15, 2015 previously entered into by the Parties. The term of this Agreement shall be twenty-five (25) years. If no District assumption occurs within the initial 25-year term, this Agreement shall be automatically extended for successive five (5) year terms until such time as the Agreement is terminated as provided for in this Agreement. This Agreement shall automatically terminate upon the effective 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 District becomes primarily a wholesale service provider;

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

17.4 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; or

17.5 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. Upon termination, the District property, responsibilities, and customers in the areas annexed by the City may 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 RCW 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 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 substantially 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 regulations and policies. A reasonable period of time before District assumption, a District employee may cash out accrued sick leave, in accordance with District regulations and policies, 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 regulations and policies. 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 regulations and policies, 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 regulations and policies 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 criterion of Section 18 is 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 (3) 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 principles 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 the Discovery Clean Water Alliance or other 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. City water service shut off. After the District has completed its established delinquent sewer service charge collection process for property that has delinquent sewer service charges, the District General Manager or designee may file a written request with the City Director of Public Works or designee to shut off the water service for such property. Upon receipt of the request, the City Director of Public Works or designee shall

shut off the water service, following the City's procedure and requirements for shutting off water service for nonpayment of City water service charges, as contained in the City Code or rules and regulations adopted by the City Director of Public Works. The City Director of Public Works shall adopt and maintain rules and regulations necessary to implement this process in a manner that is consistent with City ordinances. The water service shall remain shut off until the delinquent sewer service charges, plus penalties, interest and fees, have been paid in full or the property owner and the District have entered into a payment arrangement, as is authorized by VMC 14.16.020. The District General Manager or designee shall notify the City Director of Public Works or designee when the charges have been paid in full or satisfactory payment arrangement have been made with the District.

25. 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:

Jonathan Young
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:

Eric C. Frimodt
Inslee, Best, Doezie & Ryder, P.S.
Skyline Tower, Suite 1500
10900 NE 4th Street
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.

26. 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.

27. 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.

28. 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.

29. 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.

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

31. 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.

32. 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.

33. 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.

34. 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

CLARK REGIONAL WASTEWATER DISTRICT


Anne McEnery-Ogle, Mayor

Date: June 30, 2021


Neil Kimsey, President

Date: June 8, 2021

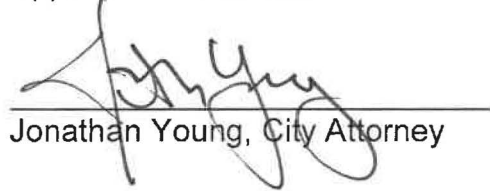
Attested to:


Natalia Ramos
City Clerk

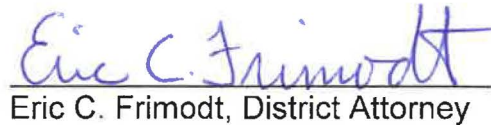
Attested to:


Norm Harker, Secretary

Approved as to form:


Jonathan Young, City Attorney

Approved as to form:


Eric C. Frimodt, District Attorney