

CITY OF CLARKSTON
AND
PUBLIC UTILITY DISTRICT NO. 1 OF ASOTIN COUNTY
CITY SEWER SYSTEM OPERATOR AGREEMENT

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1. AGREEMENT

This CITY SEWER SYSTEM OPERATOR AGREEMENT (“Agreement”) is entered by and between the CITY OF CLARKSTON, WASHINGTON, a Washington municipal corporation (“City”), and PUBLIC UTILITY DISTRICT NO. 1 OF ASOTIN COUNTY, a Washington municipal corporation (“PUD”). The City and PUD are each a “Party” and collectively the “Parties” to this Agreement. The Parties agree as follows.

2. RECITALS

2.1 The City and the PUD both operate utility systems. The City and PUD have cooperated in the past and continue to seek opportunities to better serve the greater-Clarkston community. Each Party has contracting authority to work cooperatively in the provision of utility services, including, but not limited to, RCW 35A.11.010 and RCW 54.16.090.

2.2 The City currently owns, operates and maintains a system of sewerage, including collection, transport and treatment facilities and appurtenances (“City System”). The PUD and the City previously contracted (the “2011 Contract”) for the City acceptance and treatment for wastewater from the PUD system of sewerage (“PUD System”). The 2011 Contract became effective December 1, 2011 and expires December 31, 2041.

2.3 The Parties have now evaluated the feasibility and economies of the PUD’s service as Operator of the City System, together with the PUD System. The City and the PUD desire to enter into this Agreement for the terms and conditions of the PUD’s operation of the City System. In the future, the Parties will further consider acquisition of the City System by the PUD.

3. TERM, TERMINATION AND EFFECTIVE DATE

3.1 Term. This Agreement is effective January 1, 2023 (“Effective Date”) through December 31, 2028 (“Term”). The PUD’s operation of the City System under this Agreement commences April 1, 2023 (“Operations Date”). The Parties may mutually agree to adjust the Operations Date to ensure efficient implementation of this Agreement. Any change to the Operations Date will be processed as an Amendment, consistent with Section 13.4 of this Agreement.

3.2 Commencement of Services. The PUD’s obligation to provide the Operator Services under Section 4 of this Agreement commences on Operations Date through the Term. The City’s obligation to provide the Transition Services under Section 5 of this Agreement commences on the Effective Date and terminates on the later of the Operations Date or the date the Parties mutually agree the City has completed the Transition Services. Except as otherwise provided herein, all other respective obligations of the PUD and the City under this Agreement commence on the Effective Date through the Term.

3.3 Automatic Extensions. The Term will automatically extend for additional one (1) year periods unless the City or the PUD notifies the other Party on or before September 1 of the calendar year prior to the calendar year in which this Agreement will expire, that this Agreement will not be extended.

3.4 Future Transition Planning. Upon either Party's receipt of notice that this Agreement will not be extended, the Parties shall work together to develop a mutually agreed upon transition plan, which must include without limitation a process that incorporates the best reasonable efforts of any successor operator to hire PUD employees.

3.5 Early Termination. Either Party may terminate this Agreement for a material and substantial default by the other Party, if the default has not been cured in a reasonable period of time after written notice of default.

3.6 Suspension of 2011 Contract. Beginning on the Operations Date through the Term, the 2011 Contract is suspended and has no force or effect for that period.

4. PUD OPERATOR SERVICES

4.1 The Operator. The PUD shall serve as operator of the City System and shall provide the operator services described in this Section 4 and any other services agreed to between the City and the PUD ("Operator Services").

4.2 Asset Management Services. The PUD shall:

4.2.1 Operate the City System.

4.2.2 Make decisions on the use or application of processes, equipment and facilities, and control other operating decisions over the City System and integration and coordination with the PUD System.

4.2.3 Manage and implement repairs, expansions, or upgrades to the City System for individual projects or contracts.

4.2.4 Accommodate City expansion of or upgrades to the City System for individual projects.

4.2.5 Request and receive City approval for any repairs, expansions or upgrades to the City System that require debt financing.

4.2.6 Report annually to, or as may be requested by, the City and meet quarterly with the City Public Works Director regarding Operator Services, projects, capacity of the City System, contracts relating to the City System and other duties and responsibilities of the PUD under this Agreement.

4.2.7 In coordination with the City, maintain a joint comprehensive sewer system plan for the City System and the PUD System in accordance with the standards for sewer systems of comparable size under chapter 90.48 RCW, chapter 173-240 WAC and other applicable law.

4.2.8 In coordination with the City, design and construct select sewer system repair projects utilizing \$1.5 million in funding secured by the City under the American Relief Plan Act (ARPA).

4.3 Wastewater Treatment Services. The PUD shall:

4.3.1 Collect, receive, transport and treat wastewater discharged by the City and its residents and other users of the City System in accordance with the standards established by City Municipal Code and under the terms of this Agreement.

4.3.2 Coordinate actively with the City in the receipt, transport and treatment of wastewater exceeding the capacity of the City System or the standards established by City Municipal Code.

4.3.3 Receive, transport and treat septage and transport and dispose of sludge.

4.4 Hiring, Personnel, Public Works, and Procurement Services. The PUD shall:

4.4.1 Hire and designate employees, contractors and consultants to assist the PUD in managing the City System.

4.4.2 Offer employment to or otherwise use its best reasonable efforts to hire City employees of the City System. Former City employees hired by the PUD will be solely employees of the PUD, subject to all PUD employment standards and eligible for PUD employee benefits and leave accrual schedules at levels appropriate to experience as determined by the PUD. Former City employees will not be credited with unused sick leave accrued during City employment.

4.4.3 Apply federal, state and local building, land use and environmental laws applicable to the PUD in managing and implementing repairs or upgrades to the City System.

4.4.4 Apply PUD personnel laws to PUD employees in carrying out the PUD's responsibilities under this Agreement.

4.4.5 Apply public works and procurement laws applicable to the PUD in carrying out the PUD's responsibilities under this Agreement.

4.4.6 Upon the approval of the City Council, apply and exercise the powers of eminent domain applicable to the PUD in carrying out the PUD's responsibilities under this Agreement.

4.4.7 Apply and exercise the powers respecting surplus property applicable to the PUD in carrying out the PUD's responsibilities under this Agreement.

4.5 Billing and Bill Collection Services. The PUD shall:

4.5.1 Adopt PUD rates and charges for City System service to the City, its residents and other users of the City System sufficient to maintain and operate the City System, pay City allocable administrative costs associated with the City System and make all debt service payments on and maintain debt service coverage for all bonds and other obligations of the City secured by net revenue of the City System as identified under

Section 7 of this Agreement. The PUD shall have full authority to fix uniform rates and charges for the same classes of customers under any lawful classifications, including without limitation quantity and quality of wastewater delivered to the City System.

4.5.2 Administer billing of City rates and charges for City System service to the City, its residents and other users of the City System until such time as the PUD adopts a schedule of rates and charges for City System customers by resolution, which rates and charges may be included as part of the billing for other rates, charges or assessments imposed by the PUD, so long as the City rates and charges for City System service are separately described.

4.5.3 Upon PUD adoption of PUD rates and charges for City System customers, administer billing of PUD rates and charges for City System service to the City, its residents and other users of the City System, which rates and charges may be included as part of the billing for other rates, charges or assessments imposed by the PUD, so long as the PUD rates and charges for City System service are separately described.

4.5.4 Administer collection of City rates and charges or PUD rates and charges, as the case may be, in accordance with the collection, lien and foreclosure laws applicable to Washington public utility districts.

5. CITY TRANSITION SERVICES

5.1 City Services. The City shall retain ownership of the City System and shall provide the transition services described in this Section 5 and any other services agreed to between the City and the PUD (“Transition Services”).

5.2 Operational Transition Services. The City shall:

5.2.1 Assist the PUD in transitioning all support functions and operational duties and responsibilities from the City to the PUD.

5.2.2 Upon the request of the PUD, provide consultation reasonably necessary for the PUD to operate the City System in substantially the same manner as the City has historically provided.

5.2.3 Take all other necessary actions and execute all other necessary documents to transition operational duties and responsibilities to the PUD.

5.2.4 In coordination with the PUD, manage and disperse \$1.5 million in funding secured by the City under the American Relief Plan Act (ARPA) to the PUD for select sewer system repairs.

5.3 Asset Utilization and Transfer Services. The City shall:

5.3.1 Inventory and transfer, assign or cause to be assigned to the PUD all contracts and agreements and all rights, duties and responsibilities relating to the City System.

5.3.2 Permit the PUD to utilize all items of personal property purchased by the City for operation of the City System, including without limitation the following items (collectively, “Personal Property”):

- (i) All laboratory equipment and supplies purchased for and stored in the on-site laboratory.
- (ii) All tools and specialized equipment purchased for or required for operation and maintenance of the City System.
- (iii) All spare parts purchased for or furnished by equipment manufacturers for the treatment plant.
- (iv) All vehicles, fixtures, furniture, furnishings, appliances, chemicals, supplies and related items purchased for or routinely used in the operation of the treatment plant.

5.3.3 To the extent transferable by the City, assign to the PUD all contracts and intangibles related to the City System pursuant to an assignment of contracts and intangibles substantially in the form attached as Schedule 1 (the “Assignment of Contracts and Intangibles”), including without limitation the following items (collectively, “Contracts and Intangibles”):

- (i) All forms of documentation associated with the operation of the City System, including without limitation engineering contracts, consultant contracts, reports, plans, specifications, estimates, designs, drawings, maps, surveys, construction records, photos, documentation, operation and maintenance manuals and correspondence related to the City System, any component thereof, and any existing, in-progress or proposed parts of the City System.
- (ii) All warranties and guarantees.
- (iii) All permits, licenses and approvals relating to the operation of the City System.
- (iv) All rights and duties under any other existing contracts relating to the operation of the City System.

5.4 Reserve Management Services. The City Shall:

5.4.1 Between the Effective Date and the Operations Date, not withdraw funds from any unrestricted and capital fund reserve money, except for purposes of payment of capital costs incurred by the City System and other obligations of the City System prior to the Effective Date. On the Operations Date or in no event later than 10 days thereafter: first, provide a final accounting of all unrestricted and capital funds of the City System through the end of the month prior to the Operations Date to the PUD; and second, wire, transfer or otherwise remit all unrestricted and capital funds of the City System to the PUD

under fund transfer instructions mutually agreeable between the Parties. The unrestricted and capital funds of the City System include without limitation:

- (i) 400 – Sewer Operations and Maintenance
- (ii) 401 – Sewer Equipment Reserve
- (iii) 402 – Sewer Line Reserve
- (iv) 403 – Sewer Capital Reserve
- (v) 404 – Sewer Reserve

5.4.2 Manage all remaining accounts receivable and accounts payable of the City System incurred prior to the Operations Date but remaining outstanding after the Operations Date without reconciliation or “true up” with the unrestricted funds of the City System transferred to the PUD under Section 5.4.1 of this Agreement.

5.5 Capital and Debt Fund Services. For the Term of this Agreement, the City shall:

5.5.1 Manage capital funds of the City System in accordance with the capital plan of the City System and any subsequent joint comprehensive sewer plan developed by the PUD in consultation with the City under Section 4.2.6 of this Agreement, including without limitation the following funds:

- (i) 405 – Sewer Construction.

5.5.2 Manage the debt service funds for bonds and other obligations of the City secured by net revenue of the City System in accordance with the terms and covenants of such bonds and other obligations, including without limitation:

- (i) 406 – Sewer Revenue Bond.
- (ii) 407 – PWTF Loan Fund.
- (iii) 408 – SRF Loan Fund.
- (iv) The City shall pay all bond and other obligations not the responsibility of the PUD under this Agreement.

6. AUTHORITY; COMPLIANCE WITH LAWS; LEVELS OF SERVICE.

6.1 Powers and Authority. The PUD shall have full power and authority to control the City System, including without limitation hiring and designating of staff and consultants; entering contracts; making decisions on the use or application of processes, equipment and facilities; and, controlling other operating decisions. As part of its operational functions, the PUD will also manage and implement capital improvements to the City System. Neither the City, nor an individual officer of the City, may direct the PUD to appoint or remove its staff or consultants, nor may the City give orders to any employee or consultant working for the PUD. This restriction does

not prohibit the City from fully and freely discussing with representatives or staff of the PUD anything pertaining to appointments and removals of staff or consultants. The PUD will report periodically, or on request, to the City on the operations of the City System.

6.2 Compliance with Laws. The PUD shall provide the Operator Services and other services of this Agreement in accordance with the statutes and regulations applicable to Washington public utility districts and all other applicable laws, regulations and operating permits.

6.3 Levels of Service and Operating Standards. The PUD shall comply with the minimum levels of service and basic operating standards adopted by the City in the City Municipal Code. The minimum levels of service and standards adopted by the City shall be consistent with customary practices for wastewater facilities in Washington State of the type comprising the City System.

7. COMPENSATION; PAYMENT FOR SERVICES

7.1 City Compensation. The PUD shall pay the City for all allocable administrative costs and all debt service costs related to the City System.

7.1.1 Allocable Administrative Costs. Allocable administrative costs include administrative overhead costs related to the City System, enforcement costs related to the wastewater quality program under Section 8 of this Agreement and fire and casualty insurance premiums maintained and deductibles (or self-insured retention, as the case may be) incurred by the City for the City System under Section 11.1 of this Agreement.

7.1.2 Debt Service Costs. Debt service costs include all debt service payments (interest and principal) required to be made by the City for all bonds and other obligations of the City secured by net revenue of the City System.

7.2 PUD Payments to City. The PUD shall pay the City allocable administrative costs on an as needed basis as services are performed related to the City System. Payment for allocable administrative costs will be based upon the calculated hourly rate for affected City employees. Calculated hourly rates will be provided on January 1 of each year during the Term. The PUD shall pay the City debt service costs no later than 15 days prior to any required debt service payment date of the City in amounts sufficient to make such debt service payments.

8. WASTEWATER QUALITY PROGRAM

8.1 The PUD shall accept wastewater volumes up to the permitted capacity of the City System. No Person may discharge into the City System wastewater in excess of its permitted capacity. The PUD may decline to accept and treat any wastewater volumes in excess of the permitted capacity.

8.2 When the volume of wastewater received reaches 85% of the permitted capacity of the City System, the PUD shall notify the City. The PUD and the City shall then commence in the preparation of plans for the usage of the City System's remaining permitted capacity and for upgrade to wastewater treatment capacity.

8.3 No person may discharge into the City System any wastewater that does not meet the wastewater quality standards required by City Municipal Code. The City shall enforce compliance with this provision.

8.4 The PUD is obligated to treat only wastewater that meets the wastewater quality standards required by the City Municipal Code. The PUD may decline to transport and treat wastewater that does not conform to applicable state or federal standards for wastewater.

8.5 The PUD and the City shall cooperate to develop, as needed, ordinances, resolutions, procedures and programs to mitigate Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS) levels, metals and other pollutant levels that are higher or lower than acceptable norms, as determined by either regulatory requirements or by generally accepted environmental practices.

8.6 The PUD shall adopt an industrial wastewater pre-treatment resolution, procedure or program, as appropriate, meeting applicable City Municipal Code or state and federal requirements, whichever is greatest. The PUD is responsible for implementing the industrial wastewater pre-treatment program, in compliance with the Clean Water Act, as a condition of the NPDES Permit. The PUD and the City shall coordinate with each other in the identification of dischargers, issuance of control documents, issuance of permits, compliance enforcement and the collection of any special fees, penalties or other associated extraordinary charges.

8.7 The PUD and the City shall cooperate with each other to determine the source of possible violations of applicable law, regulations and permits (including applicable NPDES Permits).

9. PERFORMANCE OF NON-CITY SERVICES BY THE PUD

Upon the approval of the City, the PUD may perform retail and wholesale services with respect to the City System that are not in conflict with the services provided to the City and its residents and other users of the City System or in conflict with the PUD's responsibilities under this Agreement. This Section 9 does not limit the PUD from carrying out the purposes of Title 54 RCW in its discretion with respect to non-City facilities or activities.

10. DISPUTE RESOLUTION; REMEDIES

10.1 Meet and Confer. The Parties shall first attempt to resolve any dispute under this Agreement by discussions between representatives of the City and the PUD.

10.2 Mediation. If the discussions under Section 10.1 are not successful, either Party may demand mediation and the Parties shall select a third party to mediate a resolution of the dispute. The cost of mediation shall be divided equally between the City and the PUD.

10.3 Arbitration. Disputes relating to the dollar amount of (but not the authority to impose) rates and charges established for City System services or relating to the amount of any payment between the City and the PUD with respect to the City System not resolved by meetings or mediation will be resolved exclusively by arbitration. Arbitration under this Section will be governed by the laws of the State of Washington, in accordance with the Commercial Arbitration

Rules of the American Arbitration Association with a single arbitrator (who need not be a lawyer), except the American Arbitration Association will not administer or otherwise have any involvement in arbitration matters between the Parties.

10.4 Other. Disputes not resolved by meetings or mediation, and not subject to arbitration, may be advanced by either Party to the Asotin County Superior Court.

10.5 Costs. Unless otherwise provided in this Agreement, each Party bears its own costs for disputes arising under or related to this Agreement.

11. INSURANCE AND INDEMNIFICATION

11.1 General. The City shall insure, at replacement cost value (not less than \$10,000,000), the City System for fire and casualty. The PUD shall obtain and maintain insurance, or equivalent self-insurance risk pool coverage, for its acts and omissions under this Agreement, with the scope, coverage and limits provided herein. Upon request of the City, the PUD shall provide evidence of insurance, or self-insurance risk pool coverage in a form acceptable to the City. The PUD shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not limited to, the additional insured endorsements, evidencing the insurance requirements of the PUD before commencement of this Agreement.

11.2 Term. The PUD shall procure and maintain insurance, as required in this Section 11, without interruption from the Operations Date through the Term and for thirty (30) days after the Term or earlier termination, unless otherwise indicated herein.

11.3 No Limitation. The PUD's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the PUD to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity. If the PUD maintains higher insurance limits than the minimums in Section 11.8, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the PUD, irrespective of whether such limits maintained by the PUD are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the PUD.

11.4 Other Provisions. PUD Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the PUD's insurance and shall not contribute with it.

11.5 Subcontractors. The PUD shall cause each and every subcontractor to provide insurance coverage that complies with all applicable requirements of the PUD-provided insurance as set forth herein, except the PUD shall have sole responsibility for determining the limits of coverage required to be obtained by subcontractors. The PUD shall ensure that the City is an additional insured on each and every subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

11.6 Cancellation Notice. The PUD shall provide the City and all additional insureds for the Operator Services with written notice of any policy cancellation within two business days of its receipt of such notice.

11.7 Insurance Maintenance. Failure on the part of the PUD to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the PUD to correct the breach, immediately terminate this Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the PUD from the City.

11.8 PUD Minimum Scope and Amounts of Coverage. The following insurance types, coverage and limits shall be maintained by the PUD:

11.8.1 Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

11.8.2 Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01, shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract, and insurance shall be written with limits no less than \$10,000,000 each occurrence, \$10,000,000 general aggregate and \$10,000,000 products-completed operations aggregate limit. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. When available, the City shall be named as an additional insured under the PUD's Commercial General Liability insurance policy with respect to the Operator Services performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.

11.8.3 Workers Compensation coverage as required by the Industrial Insurance laws of the State of Washington and federal Law.

11.8.4 Pollution Liability insurance covering losses caused by pollution conditions that arise from the PUD's provision of the Operator Services. Pollution Liability insurance shall be written in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$1,000,000. Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense including costs and expenses incurred in the investigation, defense, or settlement of claims. If the PUD's Pollution Liability insurance is written on a claims-made basis, the PUD warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that Operator Services are terminated. When available, the City shall be named by endorsement as an additional insured on the PUD Pollution Liability insurance policy. If the scope of services as defined in this contract includes the disposal

of any hazardous materials from the job site, the PUD must furnish to the City evidence of Pollution Liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this contract.

11.9 Indemnification. The PUD shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or resulting from the acts, errors or omissions of the PUD in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the PUD and the City, its officers, officials, employees and volunteers, the PUD's liability, including the duty and cost to defend hereunder, shall be only to the extent of the PUD's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the PUD's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

12. REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of City. City represents and warrants to the PUD as follows:

12.1.1 Organization and Authority. City is a Washington municipal corporation duly organized, validly existing and in good standing under the laws of the State of Washington. The City has the right, power and authority to enter into this Agreement, to execute all documents and instruments contemplated by this Agreement, to consummate this transaction and to perform all other obligations to be performed by City under this Agreement. The execution, delivery and performance of this Agreement and all agreements, documents and instruments contemplated by this Agreement have been duly authorized by all necessary action on the part of City.

12.1.2 Title to Assets. Except as otherwise disclosed to the PUD in writing, as of the Effective Date, City has good and marketable title to the City System, the Personal Property and the Contracts and Intangibles.

12.1.3 No Litigation. There are no suits, claims, proceedings, judgments or pending actions against City relating to its interest in or operation of City System, the Personal Property or the Contracts and Intangibles.

12.1.4 No Violation. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the performance by City of, and compliance by City with, this Agreement will violate federal, state or local laws, regulations, approvals or permits.

12.1.5 Hazardous Materials. To the City's knowledge: there are no Hazardous Materials on, under, or about City System; no Hazardous Materials have at any time been generated, manufactured, released or disposed of on, under or about City System; there are

no past, current, or threatened Hazardous Materials Claims. For the purposes of this paragraph, “Hazardous Materials” includes, but is not limited to, any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic, or radioactive substance, or other similar term, by any federal, state, or local environmental statute, regulation or ordinance presently in effect (collectively, “Hazardous Material Laws”). For the purposes of this paragraph, Hazardous Materials Claims means any enforcement, cleanup, removal, remedial or other governmental or regulatory notices, actions, agreements or orders threatened, instituted or completed pursuant to any Hazardous Materials Laws, together with any and all claims made or threatened by any third party against City or the property relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials.

12.1.6 Representations and Warranties True at Closing. The representations and warranties made by City in this Agreement will be correct as of the Operations Date with the same force and effect as though such representations and warranties had been made as of the Operations Date.

12.2 Representations and Warranties of the PUD.

12.2.1 Organization and Authority. The PUD is a Washington public utility district organized, validly existing and in good standing under the laws of the State of Washington. The PUD has the right, power and authority to enter into this Agreement, to execute all documents and instruments contemplated by this Agreement, to consummate this transaction and to perform all other obligations to be performed by the PUD under this Agreement. The execution, delivery and performance of this Agreement and all agreements, documents and instruments contemplated hereby have been duly authorized by all necessary action on the part of the PUD.

12.2.2 No Violation. Neither the execution and delivery of this Agreement, the consummation of the transaction contemplated hereby, nor the performance by the PUD of, and compliance by the PUD with, this Agreement will violate federal, state or local laws, regulations, approvals or permits.

12.2.3 No Litigation. There are no suits, claims, proceedings, judgments or pending actions against the PUD relating to its interest in or operation of City System, the Personal Property or the Contracts and Intangibles.

12.2.4 Representations and Warranties True at Closing. The representations and warranties made by the PUD in this Agreement will be correct as of the Operations Date with the same force and effect as though such representations and warranties had been made as of the Operations Date.

13. GENERAL

13.1 Cooperation. The Parties shall cooperate fully in executing documents that are necessary for the PUD to provide services under this Agreement.

13.2 Records. The PUD shall maintain accounts and records that sufficiently and properly document its services and charges under this Agreement. Upon reasonable notice, each Party shall have the right to inspect and copy, without charge, all non-privileged records held by the other Party relating to this Agreement.

13.3 Notices.

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

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

Monika Lawrence, Mayor
City of Clarkston
829 5th Street
Clarkston WA 99403

with a copy to:

Todd Richardson, Attorney
City of Clarkston
829 5th Street
Clarkston WA 99403

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

Tim Simpson, General Manager
Asotin County PUD
PO Box 605
Clarkston WA 99403

Either Party may notify the other Party in writing of changes in the persons to whom notices are to be delivered. 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.

13.4 Entire Agreement; Amendment. This Agreement contains the entire written understanding of the Parties and supersedes all prior discussions and agreements. This Agreement may be amended only in writing, signed by both Parties.

13.5 Successors and Assigns. All of the provisions, terms, conditions and requirements contained in this Agreement are binding upon the successors of the Parties. A Party may not assign its rights and duties under this Agreement without the consent of the other Party, which may not be unreasonably withheld.

13.6 No Third-Party Rights. This Agreement is solely for the benefit of the Parties and does not grant any right to any other party or person.

13.7 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.

13.8 Jurisdiction and Venue. This Agreement is governed by and construed according to the laws of the State of Washington. As against the other Party, each Party may file suit to enforce this Agreement only in the Superior Court of Washington for Asotin County.

13.9 Enforcement; No Waiver; Prevailing Party Costs. In addition to the remedies provided by law, this Agreement shall be specifically enforceable by either Party. 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. The failure of a Party to exercise any right or enforce any provision of this Agreement shall not be considered a waiver of such right or enforcement remedy.

13.10 Independent Contractor. The PUD is and shall be at all times during the Term of this Agreement an independent contractor and not an employee of the City. PUD employees are not and, at all times during the Term of this Agreement, shall not be considered City employees.

13.11 Severability. The provisions of this Agreement are separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, holds any provision of this Agreement invalid or unenforceable as to any person or circumstance, the offending provision, if feasible, is modified to be within the limits of enforceability or validity. If the offending provision cannot be modified, it is null and void with respect to the particular person or circumstance. All other provisions of this Agreement in all other respects, and the offending provision with respect to all other persons and all other circumstances, remain valid and enforceable.

13.12 Captions. Captions given to the various provisions of this Agreement are for convenience only and are not intended to modify or affect the meaning of any provision.

13.13 Counterparts. This Agreement may be executed and delivered in counterparts, each of which is considered an original and all of which together constitute one and the same agreement.

This Agreement is executed by each Party as set forth below:

CITY OF CLARKSTON, WASHINGTON

PUBLIC UTILITY DISTRICT NO. 1 OF ASOTIN COUNTY

By: Monika Lawrence

By: [Signature]

Its: Mayor

Its: General Manager

Date: 12-28-22

Date: 12/28/2022

Schedule 1: Assignment of Contracts and Intangibles

This ASSIGNMENT OF CONTRACTS AND INTANGIBLES (“Assignment”) is entered into as of the 1st day of April, 2023, by THE CITY OF CLARKSTON, WASHINGTON, a Washington municipal corporation (“City”), in favor of PUBLIC UTILITY DISTRICT NO. 1 OF ASOTIN COUNTY, a Washington municipal corporation (“PUD”) (each a “Party” and collectively the “Parties” to this Assignment). The Parties agree as follows.

1. City System. The “City System” means the system of sewerage of the City, including collection, transport and treatment facilities and appurtenances.

2. Contracts and Intangibles. “Contracts and Intangibles” means the following legally transferrable papers of any sort, other tangible things or electronically stored information related to the City System, and the rights, obligations and contents thereto: (i) all forms of documentation associated with the operation of the City System, including without limitation engineering contracts, consultant contracts, reports, plans, specifications, estimates, designs, drawings, maps, surveys, construction records, photos, documentation, operation and maintenance manuals and correspondence related to the City System, any component thereof, and any existing, in-progress or proposed parts of the City System; (ii) all warranties and guarantees; (iii) all permits, licenses and approvals relating to the operation of the City System; and, (iv) all rights and duties under any other existing contracts relating to the operation of the City System.

3. Assignment. For good and valuable consideration received by the City, the receipt and sufficiency of which is hereby acknowledged, the City hereby grants, transfers and assigns to the PUD the entire right, title and interest of the City in and to the Contracts and Intangibles. The City shall continue to be responsible for, and shall perform and satisfy its obligations under, the Contracts and Intangibles insofar as such obligations relate to the period on or before the date of this Assignment. The assignment of warranties shall be on a non-exclusive basis, and the City reserves the right to pursue warranty claims in the event claims are brought against the City which might give the City claims under such warranties.

4. Assumption. The PUD hereby assumes the covenants, agreements and obligations of the City under the Contracts and Intangibles which are applicable to the period and required to be performed from and after the date of this Assignment, but not otherwise. No person or entity other than the City is a beneficiary of the provisions of this Section 4.

5. Indemnification. The City indemnifies the PUD from and against all obligations of the City under the Contracts and Intangibles to the extent such obligations were applicable to the period and required to be performed prior to the date of this Assignment. The PUD indemnifies the City from and against all obligations assumed by the PUD under the Contracts and Intangibles to the extent that such obligations are applicable to the period and required to be performed from and after the date of this Assignment.

6. Return. In the event the City Sewer System Operator Agreement, effective April 1, 2023, as may be amended, is terminated, the Contracts and Intangibles will transfer back to the City.

7. Governing Law. This Assignment is governed by and construed according to the laws of the State of Washington. As against the other Party, each Party may file suit to enforce this Assignment only in the Superior Court of Asotin County, Washington.

8. Successors and Assigns. All of the provisions, terms, conditions and requirements contained in this Assignment are binding upon the successors of the Parties.

9. Authority. Each Party represents and warrants to the other that it is fully empowered and authorized to execute and deliver this Assignment. The individuals signing below represent and warrant that they have the requisite authority to bind the Parties on whose behalf they are signing.

10. Counterparts. This Assignment may be executed and delivered in counterparts, each of which is considered an original and all of which together constitute one and the same agreement.

CITY OF CLARKSTON, WASHINGTON

PUBLIC UTILITY DISTRICT NO. 1 OF ASOTIN COUNTY

By: Monika Lawrence

By: [Signature]

Its: Mayor

Its: General Manager

Date: 12-28-22

Date: 12/28/2022