

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

This agreement is made and entered into to be effective the 1st day of January, 2024, by and between CITY OF CLARKSTON, WASHINGTON, a Washington Municipal corporation (“City”), and the PUBLIC UTILITY DISTRICT NO. 1 OF ASOTIN COUNTY, WASHINGTON, a Washington Municipal corporation (“PUD”) (collectively, “the Parties”)

RECITALS

WHEREAS, it is in the interests of the Parties to enter into this agreement, and in the interests of the public health, safety, welfare and convenience of the area covered by this agreement, and its residents, that this agreement be made and performed; and

WHEREAS, pursuant to State law, the City and the PUD are each authorized to operate wastewater collection and treatment systems, and to enter into agreements regarding the transmission, disposal and treatment of wastewater and the operation and ownership of facilities therefore; and

WHEREAS, the City currently owns a wastewater treatment facility and sewer collection system in the incorporated City of Clarkston; and

WHEREAS, the PUD currently contracts to operate the City Sewer System and, as such, provides management services to the City; and

WHEREAS, the City desires to transfer ownership of the City Sewer System and other enumerated assets to the PUD and the PUD wishes to accept ownership and control of such City Sewer System and assets; and

WHEREAS, in consideration of such transfer, the PUD is willing to assume the indebtedness of the City Sewer System as outlined in Section 3(C); and

WHEREAS, the Parties wish to provide for the intended transfer of assets and assumption of indebtedness; and

WHEREAS, the City Council and the PUD Board of Commissioners have approved this agreement by their respective resolutions, City Resolution No. 2023-18 and PUD Resolution No. 23-524, and authorized its execution, delivery and performance;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, IT IS AGREED BY THE CITY AND THE PUD, as follows:

Section 1. Definitions. For the purposes of this agreement, the following words and terms shall have the following meanings:

- (A) City shall mean City of Clarkston, Washington, the governing body of which is their City Council.
- (B) City Sewer System shall mean the sewage collection, transmission, and treatment facilities owned and operated by the City, together with any real property, additions or betterments thereto.
- (C) PUD shall mean the Public Utility District No. 1 of Asotin County, Washington, the governing body of which is its Board of Commissioners.
- (D) Sewage or Wastewater shall mean sanitary sewage only and shall consist of domestic, commercial and industrial wastewater (but not other industrial waste) from which storm, surface and groundwater is excluded.
- (E) Title Transfer Date shall mean the date when ownership and control of the City Sewer System and other assets are transferred to the PUD and the PUD assumes and agrees to pay the indebtedness and obligations of the City in accordance with their terms, which shall be that date mutually agreed to by the Parties.

Section 2. Authority for Agreement, Term and Termination of Operator Agreement. This agreement is made and entered into pursuant to the authority granted the City and the PUD by the provisions of RCW Chapter 35.94.010 and RCW Chapter 54.16.090. After the PUD's acquisition of the City Sewer System pursuant to this agreement, this agreement shall remain in effect for so long as the PUD shall own and operate the PUD sewer system, together with any additions and betterments thereto, serving that portion of the territory of the City depicted on Attachment A.

The Parties intend that as of the Title Transfer Date, the *City of Clarkston and Public Utility District No. 1 of Asotin County City Sewer System Operator Agreement*, dated December 22, 2022 ("Operator Agreement"), shall be terminated and have no further force or effect. To wit, the "PUD Operator Services" set forth in Section 4 of the Operator Agreement shall fully transition to the PUD, with continued coordination between the Parties, as necessary and appropriate. Accordingly, the "City Transition Services" set forth in Section 5 of the Operator Agreement shall be deemed

complete, with remaining coordination with the PUD, as necessary and appropriate. Any remaining obligations of the Parties concerning “City Compensation” and “PUD Payments to City” set forth in Section 7 of the Operator Agreement will be reconciled as of the Title Transfer Date.

Section 3. Transfer of City Sewer System and Other Assets to the PUD and Assumption of City Indebtedness. The City Council has determined that it is in the public interest and conducive to the public health, safety, welfare and convenience to transfer to the PUD all property, assets, indebtedness and obligations of the City Sewer System, including the sewer system itself. The PUD Board of Commissioners has determined that it is willing to accept ownership of all of the property and assets of the City Sewer System, including the sewer system itself, and to assume and pay in accordance with their terms all the indebtedness of the City Sewer System. The principal City Sewer System assets, indebtedness known to the City Council are shown on Attachment C and Attachment D attached hereto and made a part hereof.

The PUD will provide wastewater collection and treatment to existing customers in the City limits and in areas presently served outside of the City in unincorporated Asotin County, as shown in Attachment A, and will assume any and all obligations of the City for treatment. The PUD shall serve those seeking to connect to the PUD sewer system within the City limits in accordance with requirements applicable to existing customers and shall provide wastewater collection and treatment to those seeking service within other unincorporated areas of Asotin County consistent with applicable planning, capacity and regulatory requirements.

- (A) Transfer of City Facilities, Property and Other Assets. All City Sewer System facilities, consisting of all pipes, lines, and pumps and other appurtenances thereto depicted on the map in Attachment B attached hereto and made a part hereof, including any updates or additions made to the City Sewer System between the date of this agreement and the Title Transfer Date, together with all other assets of the City of any kind, including all rolling stock, land tools and other equipment used to maintain the sewer system, as well as all inventory of pipe and other hardware, as set forth in Attachment C, attached, and other property and property rights contemplated herein, shall be conveyed to the PUD by appropriate Easement, Bill of Sale, Deed, Motor Vehicle Title and Assignment of Franchising Contract, or Grant from the City to the PUD on the Title Transfer Date. The Parties agree there will be a transfer of funds to the equipment repair and replacement fund of the City from the sewer fund for some equipment.

Costs and expenses of all such transfers, including recording of any such documents necessary to transfer ownership of facility, easements, leases and other tangible and intangible property from the City to the PUD shall be borne by the PUD. After the Title Transfer Date, the PUD shall own and shall be responsible for the maintenance and operation of the facilities constituting the former City Sewer System, which should be made a part of the PUD sewer system. The PUD shall be entitled to receive all revenues as may be derived from the former City Sewer System. All the facilities and property to be acquired by the PUD pursuant to this agreement shall be used for the benefit of the people now or hereafter residing in PUD service area.

The City presently maintains and operates an animal shelter at the City's Sewer System facility. The City and PUD agree that the real property on which the animal shelter is located shall transfer pursuant to this Section 3. Notwithstanding, the City may continue to operate the shelter at this location until such time as the City elects to relocate the facility. In the event the shelter is relocated as contemplated herein, the vacated space and improvements shall transfer to the PUD for its use, at the PUD's sole discretion.

- (B) Assignment of Governmental Leases and Easements. On or prior to the Title Transfer Date (or reasonably thereafter as a result of any State and federal governmental approvals), the City and PUD shall cooperate to transfer and assign easements and leases associated with the City Sewer System plant and outfall. Specifically, the Washington State Department of Natural Resources – City Aquatic Lands Outfall Easement (“DNR Easement”) requires State consent *prior to* the City's assignment of said easement to the PUD. The City also holds an easement, as grantee, allowing location of the sewer plant on United States Army Corps of Engineers (“Corps”) federal lands pursuant to the instrument dated November 10, 1971, entitled, Easement for Right Of Way – DACW68-2-72-38 (“Corps Easement”). The Corps Easement provides that the Easement inures to and is assignable by the grantee (without Corps permission).
- (C) PUD Assumption or Payment of Indebtedness. On such date as determined by the PUD, which shall be on or prior to the Title Transfer Date (the “Redemption Date”), the PUD shall deposit money with the City or U.S. Bank Trust Company, National Association, to defease and pay off the City's outstanding Sewer Revenue Bonds, 2011 (the “2011 Bonds”) and the City's outstanding Sewer Revenue Bonds, 2013 (the “2013 Bonds”) described in Attachment D. The PUD will pay the remaining principal balance of the 2011 Bonds of \$1,575,000, together with any accrued interest to the Redemption Date (less any amounts held by the City to pay debt service on the 2011 Bonds), to defease and pay off the 2011 Bonds on the Redemption Date. The PUD will pay the remaining principal balance for the 2013 Bonds of \$2,665,000, together with any accrued interest to the Redemption Date (less any amounts held by the City to pay debt service on the 2013 Bonds), to defease and pay off the 2013 Bonds on the Redemption Date. On the Redemption Date, the 2011 Bonds and 2013 Bonds will no longer be outstanding, and pursuant to Section 2.07 of Ordinances Nos. 1495 and 1514 of the City, authorizing the 2011 Bonds and 2013 Bonds, respectively, the owners of such bonds will no longer have any rights and interest in the covenants of such ordinances. Once the 2011 Bonds and the 2013 Bonds are no longer outstanding, any remaining money in any bond funds (including any reserve fund) held by the City Treasurer related to the City Sewer System, the 2011 Bonds or the 2013 Bonds not needed for the defeasance of such bonds will be transferred to the PUD and be the property of the PUD, less any unreimbursed costs from transferring the City Sewer System.

The State of Washington Public Works Trust Fund loan and the State Revolving Fund (“SRF”) loan (as described in Attachment D) require written permission before the City assets may be transferred to the PUD. The City shall, by resolution, authorize the PUD to assume ownership of said loans on the Title Transfer Date. The PUD will work directly with the State of Washington Public Works Board and Department of Ecology SRF program to

assume those loans and release the City therefrom. A copy of each written permission shall be obtained prior to the Title Transfer Date. The PUD will pay the loans along those terms and satisfy the same.

- (D) Transfer of Financial Assets of the City Sewer System. Any funds previously allocated or restricted by the City to be used for such City Sewer System, including any upgrades or improvements to the City Sewer System, shall be used for the City Sewer System, even if such upgrades or improvements occur after the Title Transfer Date.

Section 4. Conditions Incident to the City Acquiring, Owning, Operating and Maintaining the City Sewer System.

- (A) Records and Covenants. Prior to the transfer of the City Sewer System, the City shall provide to the Manager of the PUD copies of all records, as-built plans, specifications, easements, rights-of-way, franchises, operations and maintenance manuals, permit applications, permits, maps, sewer studies, construction inspection records, operation and maintenance records, system maps, and similar data now or hereafter prepared for or in connection with the City Sewer System. On the Title Transfer Date, or promptly thereafter, the City shall execute and record all documents necessary to convey all City Sewer System easements, franchises, liens, refunds and accounts receivables in a manner that will render those easements and franchises fully effective and enforceable.
- (B) Conformity with PUD Sewer Code. After the date of this agreement, all sewer customers within the former City Sewer System shall conform, as required of all PUD customers, to the most current statutes, ordinances, rules and regulations governing sewage pretreatment, discharges, rates, charges and other matters governing sewer service.
- (C) Comprehensive Plans. The City Sewer System currently is described in the General Comprehensive Plan for a system of sewers for the City, approved by the City Council. The parties agree that the transfer of the City Sewer System and attendant responsibilities to the PUD's sewer system will be compatible both to the PUD's and the City's Comprehensive Planning Program documents and will enhance both service to their residents and effectiveness of their planning activities. The City will amend their Comprehensive Plan to indicate that all wastewater services in the future will be the responsibility of and be provided by the PUD so that the PUD will adopt a general sewer plan of its own which is similar to, if not identical to, the current City sewer plan in place. When the Comprehensive Plans are amended, the Parties agree to cooperate with each other in good faith, looking to the public interest in order to realize the greatest good for the public they serve.
- (D) Developer Agreements. The City will assign to the PUD, on the Title Transfer Date, all the City's rights and obligations under the developers' reimbursement agreements and other payback agreements in existence prior to the Title Transfer Date. The City shall assist the PUD staff to understand the extent of the obligations and timing of payments under such agreements, and the City shall take any other actions necessary to transfer those agreements fully and effectively to the PUD. No such agreements currently exist to the best knowledge of the City.

- (E) ULID's. The PUD shall have full jurisdiction and statutory authority after the date of this agreement to create utility local improvement PUDs within the City to provide for the construction of wastewater system improvements, to collect assessments and to take all other actions necessary and appropriate in connection with the creation of such PUDs, the construction or improvements therein and the levying and collecting of assessment.

Section 5. Design and Construction Standards. Design and construction standards for facilities constructed by the City after the date of this agreement shall be required to conform to the then prevailing written specifications, codes, methods, and standards required by the PUD for construction in unincorporated areas to ensure that hookups conform to the PUD Sewer System requirements.

Section 6. Maintenance and Operations. Maintenance and operation of all wastewater facilities covered by this agreement shall be consistent with standard engineering practice and in accordance with all applicable laws and requirements. The PUD shall administer and respond to all reasonable questions, requests, and comments from City residents, staff and officials relating to the former City Sewer System after the Title Transfer Date.

Section 7. Insurance and Liability. The PUD from and after the Title Transfer Date agrees to save harmless and indemnify the City and the City Council, its predecessors and successors, individually and collectively, against damage to the wastewater facilities constituting the former City Sewer System, economic loss, environmental contamination, or claims by third parties for personal injury, death or property damage arising from performance of its maintenance and operation activities and administrative duties under this agreement occurring after the Title Transfer Date. The City agrees to save harmless and indemnify the PUD against damage to such wastewater facilities, economic loss, environmental remediation, or claims by the parties for personal injury, death or property damage arising from the operation, maintenance and construction activities of the City occurring prior to the Title Transfer Date.

Section 8. Interim Guidelines and Conditions To Be In Effect At All Times Before the Title Transfer Date. The following guidelines and conditions shall be in effect prior to the Title Transfer Date.

- (A) The City shall not issue a permit for a new connection to the City Sewer System in the area shown in Attachment A until the PUD has reviewed the plans to ensure all capacity charge money has been paid and pretreatment requirements have been met.
- (B) If the City is aware of a change of use for any property connected to the current City Sewer System that has resulted in or is likely to result in increased sewage flows, the City shall promptly advise the PUD.
- (C) The City shall obtain written approval from the PUD prior to materially altering or disposing of any City Sewer System property or entering into any agreements, or taking any action, which might subject the PUD to future obligations after the Title Transfer Date and which the PUD would be expected to assume or honor after the transfer of the City Sewer System.

- (D) The City shall carefully preserve and prudently maintain the City Sewer System, no part of which shall be materially altered or disposed of without the prior written approval of the PUD with the exception of carrying out any ULID which may inspect the same at any reasonable time or times.

Section 9. Notices and Communications. Any notice or communication to be given by the City to the PUD under this agreement shall be deemed properly given if delivered, or if mailed postage prepaid and addressed to:

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 the PUD, the notice shall be sent to:

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

The name and address to which notices and communications shall be directed may be changed at any time, and from time to time, by either the City or the PUD giving notice thereof to the other as herein provided.

Section 10. Entire Agreement. This agreement supersedes any and all other agreements, either oral or in writing, between the Parties and contains all of the covenants and agreements between them. Each party acknowledges that no representation, inducement, warranty, promise or agreement, orally or otherwise, has been made by either party, or anyone acting on behalf of any party, which is not embodied herein. Any modification of, or amendment to this agreement shall be effective only if it is in writing and signed by the Parties.

Section 11. Assignments. No part of this agreement or any rights, duties, or obligations described herein shall be assigned or delegated to another without the express written consent of both parties hereto.

Section 12. Mutual Cooperation. The PUD and City recognize that to realize the full benefits that are contemplated by the understandings and undertakings memorialized in this agreement it will be necessary for both parties to cooperate with each other in good faith, looking to the public interest and purposes to be achieved by the efficient performance of this agreement. They therefore agree to cooperate unselfishly in order to realize the greatest good for the publics they serve.

Section 13. Severability. In the event that any portion of this agreement is determined by a final order of a court of competent jurisdiction to be invalid void or unenforceable, such determination shall not affect the validity of the remaining provisions hereof.

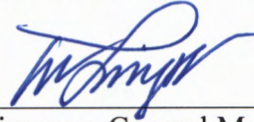
DATED to be effective as of this 12th day of December, 2023.

CITY CLARKSTON, WASHINGTON

PUBLIC UTILITY DISTRICT NO. 1 OF
ASOTIN COUNTY, WASHINGTON



Monika Lawrence, Mayor



Tim Simpson, General Manager