

INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
AND
TRI-CITY SERVICE DISTRICT

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into this 18th day of December, 2008 by and between CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, a county service district ("CCSD#1") and TRI-CITY SERVICE DISTRICT, a county service district ("TCSD" and, together with CCSD#1, the "Parties").

RECITALS

WHEREAS, the Clackamas County Board of County Commissioners ("BCC") is the governing body of CCSD#1 and the governing body of the TCSD; and

WHEREAS, the Parties are authorized pursuant to Oregon Revised Statutes ("ORS") 451 to enter into agreements regarding the provision of services to their customers and service areas; and

WHEREAS, TCSD and CCSD#1 are separate legal municipal corporations, who do not intend for this Agreement to (i) commingle their assets, (ii) create a mechanism which would allow for a rate subsidy from one party to another, or (iii) alter the existing relationships of the respective districts' advisory committees.

WHEREAS, the Parties have entered into that certain Agreement for Wastewater Treatment dated February 25, 1999 (the "Diversion Agreement") pursuant to Board Order 99-33 regarding the diversion of flows and loads approximately equal to 5,500 Equivalent Dwelling Units as such are defined in CCSD#1's rules and regulations ("EDUs") of industrial-strength wastewater to the Tri-City Water Pollution Control Facility ("Tri-City Plant"); and

WHEREAS, CCSD#1 and TCSD desire to plan and provide for the long term capital and operational needs of wastewater treatment facilities to serve their respective customers and service areas, which may include mandated technological and regulatory changes, mitigation, construction of new facilities and repairs as necessary to provide sanitary sewer services; and

WHEREAS, CCSD#1 and TCSD have a common interest in coordination and delivery of a comprehensive package of public sanitary sewer collection and treatment services in order to provide service and create greater cost efficiency; and

WHEREAS, CCSD#1 has near-term needs to relieve loadings and flow on the Kellogg Creek Water Pollution Control Facility ("Kellogg Plant") to (i) facilitate

consistent permit compliance, (ii) accommodate near-term growth, (iii) permit required maintenance of the Kellogg Plant, and (iv) provide additional treatment capacity during the evaluation, planning, permitting, financing, design and construction of new wastewater treatment facilities for anticipated growth under the Metro 2040 Regional Plan; and

WHEREAS, CCSD#1 would not be in a position to bring new facilities on in a timely manner to avoid an interruption of service without relying in part on TCSD facilities; and

WHEREAS, TCSD anticipates that it will need to expand the Tri-City Plant within the next decade, depending on growth and projected long-term needs of the service district and desires the return of the rented capacity under the Diversion Agreement; and

WHEREAS, TCSD is willing to continue such diversion during the time necessary for CCSD#1 to construct new treatment facilities as an expansion to the Tri-City Plant as Phase 1 of the long-term CCSD#1 capacity plan (the "Phase 1 Capacity") with appropriate cost sharing as set forth below and on the understanding that this Phase 1 Capacity is not intended as an effort at consolidation of the two districts; and

WHEREAS, Engineering analysis has established that the necessary expansion of the Tri-City Plant and conveyance system from CCSD#1 to TCSD can be done in a coordinated and cost-effective manner that would accommodate the short-term needs of CCSD#1 and allow per-EDU cost savings to TCSD; and

WHEREAS, CCSD#1 anticipates constructing new and upgrading existing conveyance systems to the Tri-City Plant that may have some residual future value to TCSD. The Parties agree that there is currently too much uncertainty to appropriately set such value and therefore agree to enter into good faith negotiations at a later date when more certainty exists; and

WHEREAS, the Parties desire to provide for public health and safety, compliance with state and federal environmental laws, coordination of statutes, ordinances, and methods of implementation; and application of codes, implementation, and enforcement practices.

NOW THEREFORE, the Parties hereby agree as follows:

SECTION 1. INTERIM DIVERSION RATE AND TERMS.

1.1 Termination. The Diversion Agreement is hereby terminated. The diversion of wastewater from CCSD#1 to TCSD shall continue pursuant to the terms and conditions of this Section 1.

1.2 Availability of Capacity. TCSO agrees to and shall receive and treat by means of the existing facilities no more than two million gallons per day (the "Contracted Capacity"). TCSO will provide this quantity of contracted capacity of sewage until such time as construction of the Phase 1 Capacity. Once the Phase 1 Capacity is on-line and fully functional, the terms and payments contemplated by this Section 1 shall expire and the continuing and expanded diversion of wastewater into the Phase 1 Capacity facilities shall be governed by the other sections of this Agreement. No minimum level of diversion is defined and will be solely defined by the Tri-City Plant performance and available capacity.

1.3 Diversion Management. The Parties acknowledge that the sewage flows from CCSD#1 are more commercial and industrial in nature and typically exhibit a strength 2-3 times greater than the current sewage flows to the Tri-City Plant. The quality, strength and character of the CCSD#1 diverted flows will be more variable because of their commercial and industrial nature. These conditions require such diversions to be carefully managed and controlled so that consistent diversion flows and loadings are achieved and treatment plant performance is maintained.

Based on current flow monitoring and sampling, CCSD#1's Contracted Capacity is based on diversion of flows generated east of I-205 to the Tri-City Plant. Treatment plant performance conditions, actual diverted flow quantity, quality or character, or other conditions may occur that require CCSD#1 diversions to be controlled at levels below the Contracted Capacity. The plant managers from the Tri-City and Kellogg treatment plants will work cooperatively to manage the diversion of flows and loads to meet permit conditions and protect public health and safety. The Director or his designee will have primary responsibility for day-to-day control of the diversion flows and loads.

1.4 Capacity Limit. CCSD#1 may not discharge flows or loads into the Tri-City Plant in amounts greater than its Contracted Capacity. If it is determined that the actual flow and load of sewage is in excess of the Contracted Capacity of sewage, CCSD#1 shall pay, in addition to its ordinary charges described in Section 1.5 below, any extraordinary costs incurred to treat the excess sewage. TCSO's acceptance of excess amounts on any occasion or occasions shall not bind TCSO to accept excess sewage amounts on any other occasions.

1.5 Payments. Upon diversion of flow, CCSD#1 shall make an annual payment to TCSO for the treatment of the CCSD#1's wastewater. The payment shall consist of CCSD#1's proportionate share of the maintenance, operation, capital, allocated costs and debt service costs adopted in the annual budget of TCSO. TCSO's statement to CCSD#1 shall contain line items which delineate costs pertaining to operations, maintenance, and capital improvements. CCSD#1's percentage share of the total annual operations and maintenance, capital, overhead and debt service costs shall be established in accordance with this allocation formula:

- 1.5.1 CCSD#1's portion of maintenance and operation costs will be based on CCSD#1's measured sewage flow and load as a percentage of the total flow and load to the Tri-City Plant and the sewage treatment conditions specified in Sections 1.3 and 1.4.

- 1.5.2 Capital improvement costs for upgrade or expansion of the Tri-City Plant excluding the Phase 1 Capacity shall be based on the capacity allocations and the sewage treatment conditions specified in Sections 1.3 and 1.4.

If the amount remitted by CCSD#1 is less than the amount due and owing for the fiscal year based on audited actual maintenance, operation, capital, overhead and debt service costs, final adjustment and payment shall be made by CCSD#1 within 30 days of date of the Clackamas County Water Environment Services completed annual audit for CCSD#1. If CCSD#1 has overpaid, a credit shall be given by TCSD toward succeeding payments due from CCSD#1 until the credit is fully used. Costs of billing shall be borne by CCSD#1. The adjusting bill shall be accompanied by a full accounting of all flows and mass Biological Oxygen Demand ("BOD"), Total Suspended Solids ("TSS") and other applicable load levels as well as a separate summary of the actual maintenance, operation, capital, allocated costs and debt service costs incurred during the previous fiscal year.

1.6 Treatment of Wastewater Only. No Party shall allow discharge into the Treatment Facilities any hazardous, toxic or other wastewater prohibited by the Federal Clean Water Act, comparable state statutes, administrative rules, and the districts' respective Ordinances or Rules and Regulations.

1.7 Wastewater Quality. Each Party shall continue to use ordinances and programs to mitigate mass BOD and TSS or other pollutant levels which are higher than acceptable norms, for the various customer classes as determined by either regulatory requirements or by generally accepted environmental practices.

1.8 Pre-Treatment and Bio-Solids Disposal Ordinances. The Parties shall maintain Pre-Treatment and Bio-Solids Disposal Ordinances meeting all Federal and/or State requirements. Each Party shall be responsible for the administration and operation of its pre-treatment program, but in no event will any discharges violate TCSD's standards based upon its maximum allowable headworks loadings, as defined in the TCSD pretreatment program. Administration and operation shall include, but not be limited to, developing procedures, forms, and instruction; categorizing dischargers; record keeping; compliance tracking; establishment of local limits; sampling, testing, and monitoring; preparation of control documents; collection of fees and preparation of permits. TCSD shall be responsible for bio-solids management at the Tri-City Plant.

1.9 Operation and Maintenance of the Tri-City Plant. TCSD shall be responsible for the operation and maintenance of the Tri-City Plant subject to the terms of this Agreement. The Tri-City Plant shall be operated and maintained in accordance with generally accepted standards, and the standards established by the EPA, DEQ, the Oregon Health Department and other federal, state and local agencies. The quantity of sewage delivered by CCSD#1 into the Tri-City Plant shall be metered at the discharge points for the wastewater diversion (the "Discharge Points"), with the exception of commingled flows, which will be accounted for using either Equivalent Dwelling Units, or other methods as

agreed upon by the parties. The meters that measure CCSD#1's discharge of sewage into the Tri-City Plant shall be calibrated on a regular basis by CCSD#1 with oversight by TCSD if it so desires, and may be inspected by either Party at the expense of such Party at any time upon reasonable notice to the other. Interruptions of metering due to equipment malfunction or power loss shall be recorded by CCSD#1. As soon as reasonably possible after any such interruption, CCSD#1 shall provide data regarding the duration of the interruption and the methodology for estimating the flows discharged to the Tri-City Plant by CCSD#1. CCSD#1 will also monitor the mass BOD and TSS levels of the sewage diverted from its system to the Tri-City Plant in accordance with the current sampling program. TCSD may, at its own cost, conduct sampling at a greater frequency than the intervals established in the adopted sampling plan.

1.10 Reporting and Inspection Requirements. CCSD#1 shall provide TCSD with bimonthly reports of the number and type of new sewer connections. TCSD and CCSD#1 shall periodically inspect all sewer lines and other sewer facilities upstream from the Discharge Points owned and operated by either District (the "Internal System") to ensure adherence to applicable standards and to minimize infiltration, exfiltration, and deposits of rock or other debris. TCSD and CCSD#1 at any reasonable time may inspect the Internal System and related facilities of the other.

1.11 Allocated Costs. CCSD#1 will pay allocated costs as established in Section 1.5. The allocated cost percentage may be evaluated by district staff at the request of CCSD#1.

1.12 CCSD#1's Rates and Sources of Payment. CCSD#1 shall pay the charges described in Section 1 out of the available and unpledged revenues of CCSD#1. CCSD#1's payment obligation to TCSD shall not be prior and superior to any charge or lien of any existing or future revenue bonds issued by CCSD#1. CCSD#1 shall establish rates and collect fees and charges for sewer service in accordance with all applicable laws and regulations in an amount at least sufficient to pay for, in addition to any other obligation of the district, CCSD#1's payments to TCSD.

1.13 TCSD Rates. TCSD shall establish rates and collect fees for sewer service in accordance with all applicable laws and regulations in amounts at least sufficient to pay for, in addition to any other obligation of the district, its proportionate share of the maintenance and operation of the Tri-City Plant.

1.14 Term of Diversion. This Section 1 and the rental of capacity by CCSD#1 from TCSD that it governs shall continue from the date this Agreement is executed until the date the Phase 1 Capacity is certified by the design engineer for continuous operation ("Phase 1 Start Date"), at which time all terms of this Section 1 shall cease to have any effect and the terms of Sections 2-8 shall exclusively govern the relationship of the Parties.

SECTION 2. GROUND LEASE AND CAPITAL PAYMENT.

2.1 Lease of Property. TCSD leases to CCSD#1, and CCSD#1 leases from TCSD, the real property consisting of approximately 2.88 acres (the "Premises") described on Exhibit A attached hereto and incorporated by this reference.

2.2 Term of Lease. The Premises are leased until December 31, 2030 (the "Term"), commencing on the Phase 1 Start Date.

2.3 Phase 1 Capacity. CCSD#1 intends to construct a wastewater treatment process on, under, and over the Premises. This Phase 1 Capacity includes any future alterations, additions, replacements, or modifications thereto during the Term of this Agreement. The preliminary plans and specifications for the Phase 1 Capacity are attached as Exhibit B hereto and incorporated by this reference. CCSD#1 shall incorporate into the design of the Phase 1 Capacity provisions appropriate to control septic conditions, odors and other conditions normally expected to occur in a long force main and membrane treatment process train, that could impact TCSD plant performance, cause objectionable conditions at the TCSD plant site, or increase plant operations and maintenance costs and complexities.

2.4 Construction. CCSD#1 shall construct the Phase 1 Capacity in accordance with the final plans and specifications approved by TCSD, which approval shall not be unreasonably withheld, conditioned or delayed. The work shall be performed in accordance with all Legal Requirements (as defined below) and in a good and professional manner. For the purposes of this Agreement, the term "Legal Requirements" includes all present and future laws, ordinances, orders, rules, regulations, and requirements of all federal, state, and municipal governments, departments, commissions, boards, and officers, foreseen or unforeseen, ordinary as well as extraordinary. TCSD shall have the right to inspect the work at reasonable intervals subject to the supervision of CCSD#1 and in a manner that will minimize any interference with the work.

2.5 Rent. CCSD#1 covenants and agrees to promptly pay to TCSD on the Phase 1 Start Date an amount equal to the sum of:

- 2.5.1 One-half the actual cost of remediating the Premises for garbage cleanup and handling (the "Ground Lease Payment"); *provided, however,* that in no event shall the Ground Lease Payment be less than Four Hundred Thirty-One Thousand Eight Hundred Eighteen and No/100 Dollars (\$431,818.00), and *provided, further,* that if such total actual cost exceeds \$1.2 million, the Parties agree to meet and discuss the projected costs, options of cost control, and appropriate allocation of costs going forward over \$1.2 million.
- 2.5.2 Three Million Three Hundred Thirty-Two Thousand Nine Hundred Thirty-One and No/100 Dollars (\$3,332,931.00), representing a one-time present-valued payment for use of the existing capital infrastructure of the Tri-City Plant from the date that the Phase 1

Capacity is completed and brought on-line through the Term of the Agreement (the "ROI Payment").

2.5.3 Two Hundred Thirty-Five Thousand Two Hundred Fifty-One and No/100 Dollars (\$235,251) as compensation for the opportunity to lease land and attach the Phase 1 Capacity to existing TCSD infrastructure (the "Opportunity Payment").

The Ground Lease Payment, the ROI Payment, and the Opportunity Payment together are the "Rent" for purposes of this Agreement.

2.6 No Offsets. It is intended that the Rent provided for in this section shall be an absolutely net return to TCSD throughout the Term, free of any expense, charge, or other deduction whatsoever, including all claims, demands, or setoffs of any nature whatsoever, except as provided in Section 2.24.

2.7 Use. CCSD#1 shall use and occupy the Premises continuously during the Term for the operation of the Phase 1 Capacity. CCSD#1 shall not use or occupy, or permit or suffer all or any part of the Premises or the Phase 1 Capacity to be used or occupied (i) for any unlawful or illegal business, use, or purpose, or (ii) for any purpose or in any way in violation of any Legal Requirements.

2.8 Flow Management. The Tri-City Plant Manager shall regularly monitor the relative quality, strength and character of the flows received from CCSD#1 and report on any unusual strength or content to the Director or his designee. At the Director's discretion, CCSD#1 may have a representative review the flow records and perform a general audit of flow delivered from CCSD#1 to the Tri-City Plant.

2.9 Regulatory Changes. The Parties acknowledge that construction of the Phase 1 Capacity will heighten discharge limitations for the Tri-City Plant as a whole pursuant to TCSD's National Pollution Discharge Elimination System ("NPDES") Permit. The current NPDES permit allows for a "20/20" BOD/TSS discharge standard, but after construction of the Phase 1 Capacity, the NPDES Permit will be modified to permit a "10/10" BOD/TSS discharge standard. Use of the Phase 1 Capacity could materially assist the Tri-City Plant as a whole in meeting the heightened standards. However, it is possible that TCSD may be required to upgrade certain facilities to meet the heightened standard. CCSD#1 and TCSD shall seek opportunities to minimize or avoid the cost of additional improvements through mutually agreeable modifications in the quantity and quality of sewage discharged by the parties. The Director or his designee will analyze the NPDES Permit requirements, the functionality of the Tri-City Plant's processes (including the Phase 1 Capacity) and apportion responsibility for any necessary capital costs given the relevant factors, including but not limited to the increased discharge restrictions imposed on the Tri-City Plant. This allocation formula shall be revisited in 2015, when current growth estimates anticipate TCSD would need to have upgraded the Tri-City Plant and triggered 10/10 regulatory compliance of its own accord.

2.10 Compliance with Requirements. CCSD#1 shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including but not limited to zoning variances, special exceptions, and nonconforming uses), privileges, franchises, and concessions that now apply to the Premises or that have been granted to or contracted for by TCSD or CCSD#1 in connection with any existing or presently contemplated use of the Premises or the Phase 1 Capacity.

2.11 No Encumbrances. CCSD#1 shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage, or other encumbrance on the reversion or other estate of TCSD or on any interest of TCSD in the Premises; *provided, however,* that CCSD#1 may pledge its leasehold interest and an interest in the Phase 1 Capacity as security for bonds, obligations or other financial instruments necessary to finance the construction of the Phase 1 Capacity or other infrastructure of CCSD#1. CCSD#1 shall not suffer or permit any liens to attach to the interest of CCSD#1 in all or any part of the Premises by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, CCSD#1 or anyone occupying or holding an interest in all or any part of the Phase 1 Capacity on the Premises through or under CCSD#1. If any such lien shall at any time be filed against the Premises, CCSD#1 shall cause the same to be discharged of record within 30 days after the date of filing the same, by either payment, deposit, or bond.

2.12 No Agency. Nothing in this Agreement shall be deemed to be, or be construed in any way as constituting, the consent or request of TCSD, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Premises or to the Phase 1 Capacity, or as giving CCSD#1 any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against TCSD's interest in the Premises or against TCSD's interest, if any, in the Phase 1 Capacity. CCSD#1 is not intended to be an agent of TCSD for the construction of Phase 1 Capacity on the Premises. The foregoing shall not be construed to diminish or vitiate any rights of CCSD#1 in this Agreement to construct, alter, or add to the Phase 1 Capacity.

2.13 Regulatory Compliance. Throughout the Term, CCSD#1 shall promptly comply with all Legal Requirements that may apply to the Premises or to the use or manner of uses of the Premises or the Phase 1 Capacity or the owners or users of the Phase 1 Capacity, whether or not the Legal Requirements affect the interior or exterior of the Phase 1 Capacity, necessitate structural changes or improvements, or interfere with the use and enjoyment of the Premises or the Phase 1 Capacity, and whether or not compliance with the Legal Requirements is required by reason of any condition, event, or circumstance existing before or after the Term commences. CCSD#1 shall have the right to contest by appropriate legal proceedings, diligently conducted in good faith, in the

name of CCSD#1 or TCSD or both, without cost or expense to TCSD, the validity or application of any Legal Requirement.

2.14 Repairs and Maintenance. Throughout the Term, CCSD#1 shall have no obligation to repair or maintain the Premises or any Phase 1 Capacity, except to the extent necessary to comply with the Legal Requirements as set forth in Section 2.11 above. As set forth in more detail in Section 4, TCSD shall be responsible for all aspects of maintaining and operating the Phase 1 Capacity at CCSD#1's apportioned cost.

2.15 Provision of Services. TCSD agrees to furnish to the Premises such utilities as necessary to allow for the proper functioning of the Phase 1 Capacity, excluding any Force Majeure event as set forth in Section 7.5. The costs of such services shall be apportioned as set forth in Section 3 hereof.

2.16 Shared Right of Action. TCSD covenants to jointly plan and coordinate with CCSD#1 regarding any right of action or cause as TCSD may have against any parties causing damage to the Phase 1 Capacity or the Tri-City Plant as a whole.

2.17 TCSD Management. TCSD shall have the full right and authority to employ all personnel and to establish, modify, and enforce reasonable rules and regulations necessary for the proper operation and maintenance of the Tri-City Plant and the Phase 1 Capacity. TCSD shall have the right to close all or any portion of the Tri-City Plant to such extent as, in the opinion of the Director or his designee, may be necessary or prudent to perform acts in and to Phase 1 Capacity or other areas of the Tri-City Plant.

2.18 Alterations, Additions, and New Phase 1 Capacity. At any time during the Term and at CCSD#1's own cost and expense, CCSD#1 may make or permit to be made any Minor Modifications, provided there is no existing and unremedied default on the part of CCSD#1, of which CCSD#1 has received notice of default, under any of the terms, covenants, and conditions of this Agreement. Major Modifications shall require the prior consent of TCSD and shall be coordinated to allow for the efficient and compliance operation of the Tri-City Plant. All salvage or other material in connection with any Modification that CCSD#1 is permitted to make shall belong to CCSD#1. The term "Modifications" means any demolition, improvement, alteration, change, or addition, of, in, or to all or any part of the Premises or the Phase 1 Capacity. The term "Minor Modifications" shall mean any Modifications for which a building permit is not required, and the term "Major Modifications" shall mean any and all Modifications other than Minor Modifications. Multiple Modifications occurring within a period of 365 days shall be deemed a single Modification for the purposes of applying the provisions contained in this section.

2.19 Title to Phase 1 Capacity. Title to the Phase 1 Capacity shall be and remain with CCSD#1.

2.20 No Assignment. CCSD#1 shall not sell, assign, or in any other manner transfer this Agreement including by operation of law, or any interest in this Agreement or the estate of CCSD#1 under this Agreement without the prior consent of TCSD.

2.21 TCSD's Right to Encumber. TCSD, during the Term, may encumber, mortgage, pledge, or otherwise hypothecate its fee simple interest in the Premises.

2.22 Nonmerger. There shall be no merger of this Agreement, or of the leasehold estate created in Section 2 of this Agreement, with the fee estate in the Premises by reason of the fact that this Agreement, the leasehold estate created hereby, or any interest in this Agreement or in any such leasehold estate, may be held, directly or indirectly, by or for the account of any person who shall own the fee estate in the Premises or any interest in such fee estate, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons having an interest in this Agreement, or in the leasehold estate created by this Agreement, shall join in a written instrument effecting such merger and shall duly record the same.

2.23 TCSD's Representations. TCSD acknowledges that its representations and warranties are material inducements for CCSD#1 to enter into this Agreement, and warrants and represents to CCSD#1 that the following matters are true and correct:

2.23.1 No Legal Proceedings. There is no suit, action, arbitration, judgment, legal, administrative, or other proceeding, claim, lien, or inquiry pending or threatened against the Property, or any portion thereof, or pending or threatened against TCSD which could affect TCSD's right or title to the Property, or any portion thereof, affect the value of the Property or any portion thereof, or subject an owner of the Property, or any portion thereof, to liability.

2.23.2 Clear Title; Mechanics and Other Liens. TCSD holds clear title to the Property. No work on the Property has been done or will be done, or materials provided, giving rise to actual or impending mechanic's liens, private liens, or any other liens, against the Property or any portion thereof.

2.24 Return of Rent. The Parties acknowledge that the components of the Rent are calculated and paid with the condition that CCSD#1 will have full use of the Premises and ability to utilize the Phase 1 Capacity for its benefit. To the extent this Agreement is terminated at a date earlier than the end of the Term, TCSD agrees to return to CCSD#1 a pro-rated portion of the Rent plus interest accrued on such amounts during the span of this Agreement.

SECTION 3. COST SHARING – OPERATIONS AND MAINTENANCE.

3.1 Shared Operations and Maintenance. The Parties agree that the staff of the Tri-City Plant shall operate both the Phase 1 Capacity and the remainder of the Tri-

City Plant as a functional whole, to provide the greatest efficiency and insure NPDES Permit compliance. In operating and maintaining the Tri-City Plant, TCSD will incur costs for the benefit of CCSD#1. To apportion such costs, the Director or his designee will use the Allocation Percentage as defined below and apply it to the total costs expended on the operations and maintenance of the Tri-City Plant. For the purposes of this Agreement, the "Allocation Percentage" shall be defined by a supplemental agreement of the Parties, to be completed and added as an amendment to this Agreement within six months of the date hereof.

3.2 Special Allocation. To the extent there are additional training burdens or other operating expenses uniquely required by the Phase 1 Capacity, and such expenses can be clearly identified by the Director or his designee, a separate charge in addition to the shared operations and maintenance expenses described in Section 3.1 shall be paid by CCSD#1 in an amount equal to the unique expenses less any derivative value received by the TCSD by having more qualified staff operating the Tri-City Plant.

SECTION 4. DISPOSITION OF ASSETS.

4.1 TCSD Right of Purchase. TCSD shall have the option but not the obligation to purchase the Phase I Capacity as of January 1, 2031 (the "Option of Purchase"). To exercise this right, TCSD must obtain the concurrence of the Board of County Commissioners and deliver notice of such concurrence and its intent to exercise such right to CCSD#1 no later than January 1, 2027. The price to be paid for the Phase I Capacity shall be calculated as set forth in Section 4.2. The Parties hereby agree that if TCSD exercises the Option of Purchase, the Parties shall create and execute all necessary documents to effect such a transfer of ownership.

4.2 Methodology. If the Option of Purchase is exercised, the methodology applied to value the assets to be purchased shall be a formula whereby the Original Cost of the Phase 1 Capacity shall be inflated from the date of construction to the date of prospective ownership transfer by the Construction Cost Index, less the accumulated Depreciation of such assets. For the purposes of this section, the following terms shall have the following meanings: "Original Cost" shall mean the total dollars expended to construct the Phase I Assets as of the date of completion. "Construction Cost Index" shall mean the Construction Cost Index as published in the Engineering News Record or similar publication as mutually agreed by the Parties. "Depreciation" shall mean a straight line depreciation over the life of assets as established by industry standard.

4.3 Disposition of Additional Assets. The valuation methodology set forth in Section 4.2 shall also be applicable to the calculation of disposition value for any new assets constructed jointly by the Parties during the Term of the Agreement.

SECTION 5. FINANCIAL OBLIGATIONS AND COVENANTS.

5.1 System Development Charges. The Parties will work cooperatively in sharing information for each to develop revised system development charges as established

in ORS 223.297 through ORS 223.314 (“SDCs”) to assure consistent application of existing capacity and system expansion costs across the districts SDCs will be used to finance in whole or in part (i) the construction or buyback of the Phase 1 Capacity or (ii) applied to repayment of qualified debt.

5.2 External Financial Review. The Parties may engage a duly licensed and qualified certified public accounting firm to provide an annual report to the Director or his designee at the request of the applicable district advisory committee regarding the flow of funds and adequacy of supporting documentation to insure that each transfer is consistent with the terms of this Agreement.

5.3 Cooperation with Underwriters. To the extent underwriters or bondholders’ representative reasonably demands additional financial assurances for the issuance of the bonds necessary to finance the construction of the Phase 1 Capacity, the Agreement may be amended to reflect such assurances pursuant to Section 7.4 and in compliance with Section 7.12.

5.4 Bond Issuance. CCSD#1 and TCSD each retain its rights to issue bonds and other obligations in accordance with applicable law, but shall not act in such a manner as to impair the rights of the holders or owners of bonds issued by the other party.

5.5 Books and Accounts. TCSD shall keep full and complete books of accounts showing the maintenance and operation costs incurred in connection with the Tri-City Plant, and the portion thereof applicable to CCSD#1. The costs of keeping those books shall be considered an operational cost to TCSD. Audits of the books shall be performed annually. More frequent audits, if requested by CCSD#1, shall be charged to CCSD#1.

5.6 Rehabilitation Standards. Reconstruction, rehabilitation, expansion, or upgrading of the Tri-City Plant shall be in accordance with applicable federal, state, and local laws and regulations. Additions, betterments and improvements to the Tri-City Plant shall be installed and constructed in accordance with generally recognized engineering standards at least equal to the standards of TCSD and in accordance with all applicable federal, state and local laws and regulations.

5.7 Insurance. TCSD shall procure and maintain insurance sufficient to pay for all loss or damage to the Tri-City Plant including the Phase 1 Capacity resulting from operation in a normal and prudent manner, and CCSD#1 shall be charged a percentage of the cost of such insurance equal to the Allocation Percentage. CCSD#1 shall purchase and maintain insurance sufficient to pay for all loss or damage to the conveyance infrastructure relating to the Phase 1 Capacity.

SECTION 6. TERM AND TERMINATION.

6.1 Term. This Agreement shall commence upon execution hereof and terminate at the end of the Term unless terminated earlier pursuant to Section 6.2 hereof.

6.2 Early Termination. This Agreement may be terminated prior to the Termination Date upon the mutual written consent of the parties.

6.3 Community Partnership. The Parties hereto acknowledge that this Agreement may be terminated and replaced by an agreement negotiated amongst the parties and other governmental agencies for the provision of regional wastewater treatment services (the "Partnership Agreement"). If the Partnership Agreement is ratified and adopted by the Parties, they each hereby agree to terminate this Agreement as of the effective date of the Partnership Agreement and replace its terms with the terms of such agreement.

6.4 End of Term Negotiation. If the Option of Purchase described in Section 4 is not exercised, the Parties agree to meet and negotiate regarding the disposition of the assets and/or the financial terms for a continuing relationship between the Parties.

SECTION 7. ADDITIONAL PROVISIONS.

7.1 Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

7.2 Severability and Waiver. In case any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired in any way. One or more waivers by either Party of any provision, term, condition or covenant shall not be construed by the other Party as a waiver of subsequent breach of the same by the other Party.

7.3 Employee Protection Provision. Employees shall be protected under the provisions of Oregon Revised Statutes 236.610.

7.4 Amendment. The Agreement may be amended at any time by mutual written agreement.

7.5 Force Majeure. In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delays or default is due to war, insurrection, terrorism, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the Parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance which is not within reasonable control of the party to be excused (collectively, a "Force Majeure Event").

7.6 No Third-Party Beneficiaries. The parties to this Agreement are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give,

or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons.

7.7 Nonwaiver. Failure by any party at any time to require performance by any other party or parties of any of the provisions hereof shall in no way affect such party's rights hereunder to enforce the same, nor shall any waiver by any party or parties of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

7.8 Governing Laws. This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Venue in connection with any legal proceeding affecting this Agreement shall be in the Circuit Court of the State of Oregon for Clackamas County.

7.9 Number and Gender. Whenever applicable, the use of the singular number shall include the plural, the use of the plural number shall include the singular, and the use of any gender shall be applicable to all genders.

7.10 Successors and Assigns. This Agreement is to be binding on the successors and assigns of the Parties hereto and is not to be assigned by either Party without first obtaining the written consent of the other. No assignment of this Agreement shall be effective until the assignee assumes in writing the obligations of the assigning Party, and delivers such written assumption to the original Party to this Agreement.

7.11 Amendment Notice. No amendment or modification of this Agreement shall be made without 30 days prior written notice to the advisory boards as set forth below:

CCSD No. 1 Advisory Council
c/o Water Environment Services
Attn: Director
150 Beavercreek Road, 4th Floor
Oregon City, Oregon 97045

TCSD Advisory Committee
c/o Water Environment Services
Attn: Director
150 Beavercreek Road, 4th Floor
Oregon City, Oregon 97045

Upon receipt of notice, the advisory boards shall have an opportunity to comment on any proposed amendments at their regular public meetings and further by providing comments to:

Water Environment Services
Attn: Director
150 Beavercreek Road, 4th Floor

Oregon City, Oregon 97045

The Director shall communicate these comments to the governing body of the districts.

All notices as to plant operations or system management shall be sent to:

Tri-City Plant Manager
15981 South Agnes Road
Oregon City, Oregon 97045

Kellogg Plant Manager
11525 SE McLoughlin Blvd.
Milwaukie, Oregon 97232

7.12 No Waiver. No failure by TCSD or CCSD#1 to insist on the strict performance of any agreement, term, covenant, or condition of this Agreement or to exercise any right or remedy consequent on a breach, and no acceptance of full or partial Rent during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by either Party, and no breach by either Party, shall be waived, altered, or modified except by a written instrument executed by the non-breaching Party. No waiver of any breach shall affect or alter this Agreement, but each and every agreement, term, covenant, and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach.

7.13 Cumulative Remedies. Each right and remedy provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by TCSD or CCSD#1 of any one or more of the rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise.

SECTION 8 INDEMNIFICATION.

8.1 Mutual Notification and Indemnity. The Parties agree to provide each other with written notice of any condition of which they are or become aware of that may violate this Agreement or applicable laws, regulations, or permits. A written report on the nature and amount of the violating discharge will be prepared and provided to the other Party within 5 business days of the time the violating discharge is identified. If the Party has the capability but does not correct such a condition within a reasonable time of written notice thereof, the offending Party shall pay any reasonable and necessary costs and expenses incurred by the other Party in connection with such condition. To the extent the violation is

a result of a Force Majeure Event or an action by a person other than the Parties hereto, the Parties shall work collaboratively to resolve the issue as expeditiously as possible. If either Party discharges into the Tri-City Plant any solids, liquids, gases, toxic substances, or other substances which is reasonably believed to cause or will cause damage to the Tri-City Plant, or is creating a public nuisance or a hazard to life or property, that Party shall discontinue the discharge of such substances. Because substandard conditions of sewage may cause serious damage to the Tri-City Plant, both Parties shall comply with generally accepted standards regarding the composition of sewage, and after compliance, may thereafter allocate the costs associated with necessary corrective actions as may be agreed.

8.2 Hold Harmless. Each Party shall indemnify and hold harmless the other from any and all claims, demands, damages or actions, including attorney fees arising from the errors, omissions or acts attributable to that Party or their employees, agents, officers or advisors. The Parties shall cooperate with each other to determine the source of possible violations of applicable law, regulations and permits (including applicable NPDES Permits). In the event TCSD is fined or otherwise penalized by local, state or federal agencies for failure to operate or maintain the Tri-City Plant in accordance with the requirements of any such agency, and it is demonstrated that such failure is due, in whole or in part, to either Party's discharge of sewage in violation of this Agreement, then that Party shall pay its allocated share of the costs of such fines or penalties as determined by the Director or his designee, including its share of the associated administrative, legal, and engineering costs incurred by TCSD in connection with the fines or penalties.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date stated above.

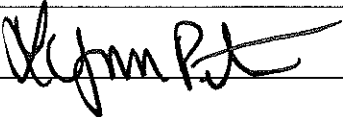
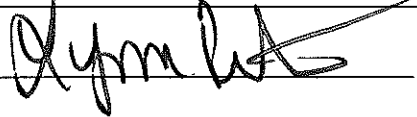
CLACKAMAS COUNTY BOARD OF COMMISSIONERS, GOVERNING BODY OF THE	CLACKAMAS COUNTY BOARD OF COMMISSIONERS, GOVERNING BODY OF
TRI-CITY SERVICE DISTRICT	CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
By: <u></u>	By: <u></u>
Title: Chair <u>12-18-08 IX.3</u>	Title: Chair <u>12-18-08 IX.3</u>
ATTEST: <u>Mary Raethke</u>	ATTEST: <u>Mary Raethke</u>

EXHIBIT A

Description of Premises

See Attached Map for Depiction of Premises.

IGA BETWEEN CCSD#1 & TCSD-EXHIBIT A

IGA BETWEEN CCSD#1 AND TCSD, PAGE 18 OF 18