

CLARK COUNTY STAFF REPORT

DEPARTMENT: Public Works / Engineering & Construction Division

DATE: Feb. 27, 2017

REQUESTED ACTION: Request that the Clark County Council authorize the County Manager to sign two Interlocal Agreements with Clark Regional Wastewater District. One agreement is for professional services and the other is for capital construction.

Consent Hearing County Manager

BACKGROUND

Clark County Public Works and Clark Regional Wastewater District have historically worked together to coordinate, plan, construct and maintain public works infrastructure. Two interlocal agreements have been prepared so that Public Works and the District can continue to cooperatively work together for efficiency and cost effectiveness.

The first agreement authorizes Public Works and the District to use each other's professional staff and consultants on a case-by-case basis. These services include design, permitting, construction, inspection and maintenance of public works infrastructure, along with property acquisition related to infrastructure. The second agreement authorizes the District to include some of its work in county construction projects, and vice versa, on a case-by-case basis.

COUNCIL POLICY IMPLICATIONS

This action is consistent with county policy to leverage partnerships for the more effective use of public funds

ADMINISTRATIVE POLICY IMPLICATIONS

This action will allow Public Works and the District to provide services and construction of public works infrastructure in a cost effective and efficient manner.

COMMUNITY OUTREACH

None

BUDGET IMPLICATIONS

YES	NO	
X		Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	X	A decrease in revenue budget is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

PW18-035

BUDGET DETAILS

Local Fund Dollar Amount	N/A
Grant Fund Dollar Amount	N/A
Account	N/A
Company Name	N/A

DISTRIBUTION:

Council staff will post all staff reports to the county website, www.clark.wa.gov/thegrid/



Tom Grange, PE
Engineering & Construction Division Manager



Heath H. Henderson, PE
Public Works Director/County Engineer

Primary Staff Contact: Kevin Tyler Ext. 4258



APPROVED:
CLARK COUNTY, WASHINGTON
CLARK COUNTY COUNCIL

DATE: Feb. 27, 2018

SR# 50-18



APPROVED: _____
Jim Rumpeltes, Interim County Manager

DATE: _____

COPY

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

THIS IS AN INTERLOCAL AGREEMENT entered into under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, between Clark County, a political subdivision of the State of Washington (County), and Clark Regional Wastewater District, a special purpose District providing wastewater services within Clark County, Washington (District).

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

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

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

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

THE PARTIES AGREE AS FOLLOWS:

1. PURPOSE. The purpose of this Agreement is to authorize one party to include in its public works project a public work of the other party on a case-by-case basis, to facilitate efficiency and cost effectiveness.
2. DEFINITIONS. Unless otherwise indicated in the text of this Agreement, the following terms are defined as set forth below:

“Contracting Party” means the party that constructs a Project, and includes in the Project the Work of the User.

“Project” means a public work as defined by RCW 39.04.010(4), which is all work, construction, alteration, repair, or improvement other than ordinary maintenance, that is executed by the Contracting Party and includes the Work requested by the User.

“User” means the party that includes Work in the Contracting Party’s Project.

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

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

3. REQUEST FOR WORK.

- 3.1. Communication. The County and the District have historically worked together to coordinate, plan, construct and maintain public works. The parties agree to use their best

efforts to keep each other informed of their respective public works projects, particularly those that could include a public works of the other party.

3.2. Request for Work.

3.2.1. If the User desires to include Work in a Project of the Contracting Party, the User shall provide to the Contracting Party a written request (electronic or paper format) for inclusion of the Work in the Contracting Party's Project.

The written request for Work shall specify the type, scope, extent, location and estimated cost of the Work, including but not limited to the elements and information described in the definition of "Work" in Section 2 of this Agreement.

3.2.2. Within seven (7) days of receipt of a request for Work, the Contracting Party shall advise the User in writing of its willingness and ability to do the Work. The parties shall as expeditiously as possible discuss the request for Work and its possible inclusion in the Project. The discussion shall include, but not be limited to, the specifications, plans and provisions for the Work and its relationship to and inclusion in the Project. The parties recognize and agree that the workload of the Contracting Party may prevent or delay inclusion of the Work in the Project. The Contracting Party shall have sole discretion to accept, accept as modified or reject the request for Work.

3.2.3. If the Parties agree upon the specifications, plans and provisions for the Work, the Administrators, as identified in Section 10, shall confirm the inclusion of the Work in the Project, and the terms and conditions thereof, in writing, and shall

include therein a date for issuance of the bid advertisement. Thereafter, the Administrator for the Contracting Party may change the date for issuance of the bid advertisement by giving notice thereof to the Administrator of the User. The Contracting Party shall include the Work as agreed to by the Administrators in the bid package for the Project. Unless agreed otherwise by the Administrators, the Work shall be in a separate schedule of work on the Project proposal form in the bid package. The Administrator for the Contracting Party shall deliver to the Administrator for the User a copy of the bid package prior to issuance of the bid advertisement.

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

3.2.5. The party responsible for exclusion of the Work under Section 3.2.4 of this Agreement shall reimburse the other party for all actual direct and related indirect expenses and costs, including design, survey, engineering work, mobilization, construction engineering, contract administration and overhead costs associated with the Work, that are incurred up to the date of exclusion, as well as the cost of non-cancelable obligations, including any redesign, re-engineering or re-estimating, if necessary, to delete the Work.

4. BID ADVERTISEMENT AND AWARD.

4.1. Responsibilities during Bid Process. The Contracting Party will be the User's representative during the bid advertisement and award period. When requested by the Contracting Party, the User shall timely assist the Contracting Party in answering bid questions and resolving any design issues related to the Work. All comments and clarifications related to the bidding process must go through the Contracting Party. The Contracting Party shall provide the User with written notification of the bid price for the Work specifically and the Project generally within twenty-four (24) hours after the bid opening.

4.2. Bid Consideration and Award. The parties acknowledge and agree that the Contracting Party will review, accept, reject and award the bids for the Project in accordance with applicable competitive bidding requirements, rights and obligations of state law and the plans, specifications and provisions of the bid package. The parties further acknowledge and agree that the User's Work will be considered an integral part of the Project and will not be treated differently or separately for competitive bidding purposes, unless agreed otherwise by the Administrators.

4.3. Elimination of Work. The User may within twenty-four (24) hours of receiving the bid results for the Work request the Contracting Party to eliminate the Work from the Project and/or reject the bid for the Project. The Contracting Party may, but is not required to, eliminate the Work from the Project, taking competitive bidding laws, regulations and case authority into account.

5. CONSTRUCTION, INSPECTION, AND ACCEPTANCE.

5.1. Construction and Administration Responsibility. The Contracting Party shall construct and administer the Work on behalf of the User as specified in the bid package.

5.2. Communication during Project. All formal communications between the User and the Contracting Party's contractor shall be through the Contracting Party's representatives; provided that the User may have informal communications with the Contracting Party's contractor if approved by the Contracting Party.

5.3. Construction Observation. Any employee of the User, upon prior notice to the Contracting Party, may observe construction of the Work.

5.4. Documentation. Upon the request of the User, the Contracting Party shall provide to the User all inspection documentation, including but not limited to inspection reports, backfill test results, closed circuit TV reports, pre-paving record drawings, and submittals of a material and substantial nature.

5.5. Completion and Acceptance. Upon substantial completion of the Work, the Contracting Party shall provide notice of substantial completion to the User. The User shall, within (fourteen (14) calendar days of being notified that the Work is substantially complete, perform any necessary walk-through or inspection of the Work and either (a) deliver to the Contracting Party a written letter of acceptance, or (b) deliver to the Contracting Party a written explanation in punch list format, detailing the reasons why the Work does not comply with the approved specifications and plans. The User and the Contracting Party will work diligently and in good faith to resolve any issues relating to the Work so as not to delay the Contracting Party's acceptance of the Project. If issues raised by the User are resolved, the User shall immediately deliver to the Contracting Party a letter of acceptance.

If the User does not respond within fourteen (14) calendar days as required by Section 5.5, the Work and the administration thereof shall be deemed accepted by the User, and

the Contracting Party shall be released from all future claims and demands related to the Work.

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

5.7. As-Builts. The Contracting Party will prepare the final construction documentation in general conformance with the Contracting Party's construction practices. The Contracting Party shall maintain one set of plans as the official "as-built" set, then make notations of all plan revisions typically recorded per standard practice of the Contracting Party. Once the User has accepted the Work per Sections 5.5 or 5.6, the Contracting Party will provide one copy of the as-builts plans to the User upon request.

6. BILLING METHOD AND PROCESS.

6.1. User Payment Requirement. The User shall pay for the Contracting Party's actual direct and related indirect cost of the Work, including any design, survey, engineering work, mobilization, construction engineering, contract administration and overhead costs for the Work. The Contracting Party shall send invoices to the User, providing with each invoice sufficient documentation and information to justify the costs. If requested by the User, the Contracting Party shall send any information or records in its possession that relate to and support any invoice. The User shall pay the invoice within thirty (30) calendar days of receipt; provided that if the User disagrees with all or part of the

invoice, the User shall notify the Contracting Party in writing of the disagreement within twenty (20) calendar days of receipt of the invoice. The notice shall include an explanation of the disagreement and shall be supported by documentation and information, if any. The User shall pay all parts of an invoice that are not contested within the thirty-day period. The User shall pay a contested portion of an invoice within thirty (30) calendar days after the parties resolve the disagreement.

6.2. Billing and Payments. Billing for services will be monthly until the Project is complete.

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

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

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

7. CHANGE IN WORK OR COST INCREASE.

7.1. Increase in Cost. Upon learning that the cost of the Work will exceed the contract amount or a change order approved amount (including sales tax, engineering, and contingencies) by more than ten percent (10%), the Contracting Party shall notify the User of such increase within five (5) working days of the date the Contracting Party learns of such cost increase.

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

7.3. Change in Work for Emergency. When the Contracting Party determines that a change in the Work is required to respond to or mitigate a Project emergency or safety threat, the Contracting Party has authority to implement the change without the User's prior approval. The Contracting Party shall notify the User of such change and the basis for the emergency or safety threat as soon as possible thereafter. The User agrees to pay all costs associated with emergency or safety threat changes to the Work.

7.4. Changes or Additions to Work. The User may request in writing changes or additions to the Work, providing the necessary plans and specifications for the change or addition. The Contracting party shall implement the requested change or addition, as requested by the User or as agreed to by the Contracting Party and the User, as long as the change or addition does not negatively impact the Contracting Party's Project and does not materially delay the Project Schedule, and the Contracting Party's Contractor agrees to carry out the change or addition. The Contracting Party shall respond to the request

within five (5) working days, and if the change or addition is approved (as requested or amended by agreement), shall include in the response the terms and conditions of the approved change or addition, including the cost, if any. The User agrees to pay for the increases in Project cost, if any, for the approved changes or additions in accordance with Section 6 (Billing Method and Process).

7.5. Change Order Documentation. The Contracting Party shall make available to the User all change order documentation related to the modified Work.

7.6. Different Materials or Structures. The Contracting Party shall provide to the User within twenty-four (24) hours any request of the Project contractor to use different materials or structures for the Work. The User shall within five (5) working days advise the Contracting Party as to whether it accepts the different material or structure. If the User fails to respond within five (5) working days, the Contracting Party's construction engineer will make a determination on the User's behalf.

8. PERMITS AND APPROVALS. The User shall be responsible to apply for and obtain all required permits and approvals for the Work. The User shall provide a copy of all permits and approvals to the Contracting Party at least forty-five (45) calendar days prior to the bid advertisement date for the Project or as agreed to by the Contracting Party.

9. RIGHT OF ENTRY. If necessary to carry out the Work, the User shall obtain rights of entry for the Contracting Party and its contractors upon all privately owned lands. The rights of entry may include reasonable entry and use restrictions. The User shall provide copies of the rights of entry to the Contracting Party within five (5) working days prior to the date of Notice to Proceed to the Contracting Party's contractor.

10. ADMINISTRATORS OF AGREEMENT. The County Manager and the District General

Manager, or their respective designees identified in writing (individually, “Administrator,” and collectively “Administrators”), shall administer this Agreement. Unless provided otherwise in this Agreement, all notices shall be delivered to the Administrators.

11. DISPUTE RESOLUTION. The Administrators shall attempt to resolve any dispute informally.

11.1. Mediation and Arbitration. Any dispute that cannot be resolved by the Administrators may be submitted to mediation. If the dispute is not resolved through mediation, it may be submitted to binding arbitration in accordance with the rules and procedures set forth in Chapter 7.04A RCW.

11.2. Legal Actions or Proceedings. In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in the Superior Court of Clark County, Washington. Each Party shall be responsible for its own attorneys’ fees and costs.

12. INDEPENDENT CONTRACTOR. Both Parties shall be deemed independent contractors for all purposes, and the employees of each party and any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be the employees of the other Party. Each party shall retain all authority for provision of services, standards of performance, discipline and control of employees, and other matters incident to its performance of services pursuant to this Agreement. Nothing in this Agreement shall make any employee of the County an employee of the District or any employee of the District an employee of the County for any purpose, including but not limited to, withholding

of taxes, payment of benefits, workers' compensation pursuant to Title 51 RCW, or any other rights or privileges accorded to the employees by virtue of their employment.

13. HOLD HARMLESS/INDEMNIFICATION.

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

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

13.3. Worker's Compensation. This indemnity and hold harmless provision shall include any claim made against either party by an employee, officer, contractor, subcontractor or agent of the other party, even if the other party is thus otherwise

immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the sole negligence of the first party. Both parties specifically acknowledge that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that each party provide the other party with the broadest scope of indemnity permitted by RCW 4.24.115.

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

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

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

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

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

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

17. WAIVER. No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or different provision.
18. TERM. The term of this Agreement is for a period of five (5) years, from the date of this Agreement set forth at the end of the Agreement.
19. EXTENSIONS. The term of this Agreement shall automatically be extended in one (1) year increments, up to a maximum of ten (10) additional years, without further authorization of the legislative bodies of the parties.
20. TERMINATION. Either party may choose to terminate this Agreement by notifying the other party in writing ninety (90) days prior to termination.
21. INTERLOCAL COOPERATION ACT COMPLIANCE. This is an Agreement entered into pursuant to Chapter 39.34 RCW. Its purpose is as set forth in Section 1. Its duration is as specified in Sections 18 (Term), 19 (Extensions), and 20 (Termination). Its method of termination is set forth in Section 20. Its manner of financing and of establishing and maintaining a budget therefore is described in Sections 6 (Billing Method and Process) and 7 (Change in Work or Cost Increase). No separate entity shall be created with this Agreement. No property shall be acquired pursuant to this Agreement which will need to be disposed of upon partial or complete termination of this Agreement.
22. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the parties with respect to the subject matter covered or mentioned therein, and no prior agreements shall be effective to the contrary.
23. AMENDMENT. The provisions of this Agreement may be amended with the mutual

consent of the parties. No additions to, or alterations of, the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized legislative bodies of both parties, except as provided in previous Sections.

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

25. **DOCUMENT EXECUTION AND FILING.** The County and the District agree that there shall be two (2) duplicate originals of this Agreement procured and distributed for signature by the necessary officials of the County and the District. Upon execution, the County Administrator shall cause one executed original of this Agreement to be filed with and retained by the County Clerk, and the District Administrator shall cause one executed original of this Agreement to be filed with and retained by the District Clerk. The District Clerk shall post a copy of this Agreement on the District website pursuant to RCW 39.34.040. Upon execution of the originals and posting of a copy on the District's website, each such duplicate original shall constitute an agreement binding upon both parties.

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

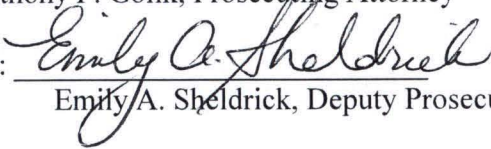
27. SEVERABILITY. If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

IN WITNESS WHEREOF, the County and the District have caused this Agreement to be executed in their respective names by their duly authorized officers and have caused this Agreement to be dated as of the _____ day of _____, 2018.

CLARK COUNTY

By: _____
Jim Rumpeltes, Interim County Manager

Approved as to form:

Anthony F. Golik, Prosecuting Attorney
By: 
Emily A. Sheldrick, Deputy Prosecuting Attorney

CLARK REGIONAL WASTEWATER DISTRICT

By: _____
John M. Peterson, District General Manager

Approved as to form:

By: _____
Rod P. Kaseguma, Attorney for the District

COPY

**INTERLOCAL AGREEMENT
BETWEEN CLARK COUNTY
AND CLARK REGIONAL WASTEWATER DISTRICT
REGARDING SPECIALIZED SERVICES**

THIS IS AN INTERLOCAL AGREEMENT entered into under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, between Clark County, a political subdivision of the State of Washington (County), and Clark Regional Wastewater District, a special purpose District providing wastewater services within Clark County, Washington (District).

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

WHEREAS, the County and the District each have employees with highly specialized expertise related to the design, permitting, construction, inspection, and maintenance of public works infrastructure, and acquisition of real property interests related to such infrastructure; and

WHEREAS, on occasion efficiency and economy may be achieved by one Party utilizing employees of the other Party with such highly specialized expertise;

NOW, THEREFORE, pursuant to Chapter 39.34 RCW and in consideration of the terms, conditions, covenants, and performances contained herein, as well as the attached Exhibits which are incorporated and made a part hereof,

THE PARTIES AGREE AS FOLLOWS:

1. PURPOSE. The purpose of this Agreement is to permit one Party to use the employees of the other Party to provide highly specialized services related to public works infrastructure, upon mutual agreement of the Parties on a case-by-case basis, following the procedures set forth in this Agreement.

2. REQUEST FOR SERVICES. A Party (REQUESTING PARTY) may request the services of the employees of the other party (PROVIDING PARTY) who are highly qualified by experience or educational background to design, permit, construct, inspect, or maintain public works infrastructure, or acquire real property interests related to such infrastructure. Examples of highly specialized services include but are not limited to engineering, land surveying, environmental permitting, construction management, and property acquisition. The REQUESTING PARTY shall request such services by sending a notice to the PROVIDING PARTY, describing the proposed scope and schedule for the services.

Upon receipt of the request, the PROVIDING PARTY shall promptly evaluate the request. The PROVIDING PARTY may request the REQUESTING PARTY to provide additional information or details regarding the type, schedule, and budget for the services. The PROVIDING PARTY shall promptly give notice of its response to the REQUESTING PARTY, stating whether it can or cannot provide the services as requested, or proposing modified services. The notice shall include details regarding the type, schedule and cost (direct and indirect) for the services, and, if requested by the REQUESTING PARTY, shall identify the employees who will provide the services. The PROVIDING PARTY shall have sole discretion to determine whether to provide any services to the REQUESTING PARTY.

If the REQUESTING PARTY agrees with the type, schedule and cost (direct and indirect)

for the services, the REQUESTING PARTY shall promptly give notice of its acceptance to the PROVIDING PARTY. The PROVIDING PARTY shall prepare a Reimbursable Work Request for the agreed upon services (SERVICES), in a general form agreed to by the Administrators of this Agreement identified below, and containing the type, schedule, budget, and cost (direct and indirect) for the SERVICES. The Administrators shall sign the final Reimbursable Work Request. Upon mutual execution, the PROVIDING PARTY shall commence the SERVICES; provided, that the PROVIDING PARTY'S performance shall be subject to availability of employees, equipment, and materials necessary to perform the SERVICES without unduly disrupting the normal operations and functions of the PROVIDING PARTY. As soon as possible, the PROVIDING PARTY shall notify the REQUESTING PARTY of any postponement or re-scheduling of the SERVICES. After the Reimbursable Work Request is executed, either Party may request a change to the Reimbursable Work Request. The Parties shall discuss and consider the request, and may, through their Administrators or designees, amend or replace the Reimbursable Work Request.

3. BILLING METHOD AND PROCESS. The REQUESTING PARTY agrees to pay the PROVIDING PARTY for the actual direct and related indirect cost of the SERVICES, as set forth in the signed Reimbursable Work Request, including any amendments. The PROVIDING PARTY shall send invoices to the REQUESTING PARTY with sufficient documentation and information to justify the charges. The REQUESTING PARTY shall pay the invoice within thirty (30) calendar days of receipt; provided that if the REQUESTING PARTY disagrees with all or part of the invoice, it shall notify the PROVIDING PARTY in writing of the disagreement within fourteen (14) calendar days of receipt of the invoice. The

notice shall include an explanation of the disagreement and shall be supported by documentation and information, if any. The REQUESTING PARTY shall pay all parts of an invoice that are not contested within the thirty-day period. The REQUESTING PARTY shall pay the contested portion of an invoice within thirty (30) calendar days after the Parties resolve the disagreement.

Billing for SERVICES will be monthly until the SERVICES are completed. Costs that are not paid within the applicable periods in this Section 3 shall be delinquent. Delinquent charges shall accrue interest from the date of delinquency until paid, at an interest rate of one percent (1%) per month.

Payments shall be remitted to the following address:

Clark Regional Wastewater District
P.O. BOX 8979
Vancouver WA 98668-8979
Attention: Accounts Payable

Clark County
P.O. Box 9810
Vancouver, WA 98666-9810
Attention: Accounts Payable

If the REQUESTING PARTY fails to pay an invoice according to the terms of this Agreement, the PROVIDING PARTY shall have the right to terminate the SERVICES and this Agreement, charging the REQUESTING PARTY for its associated costs of termination.

4. ADMINISTRATION/COMMUNICATIONS. The County Manager and the District General Manager, or their respective designees identified in writing (individually, "Administrator," and collectively, "Administrators"), shall administer this Agreement and oversee and monitor the SERVICES.

5. DISPUTE RESOLUTION. In the event of a dispute between the Parties, the Administrators shall attempt to resolve the dispute informally. If the Administrators cannot resolve the dispute informally, they may agree to submit the dispute to formal mediation as agreed to by the Administrators. Either Party may institute legal action or proceedings to enforce any right or obligation under this Agreement. In that event, the Parties agree that any such action or proceedings shall be brought in the Superior Court of Clark County, Washington, and that Each party shall be responsible for its own attorney's fees and costs.
6. COMPLIANCE WITH LAW. The Parties agree that in the performance of this AGREEMENT they shall comply with all applicable local, state and federal laws.
7. INDEPENDENT CONTRACTOR. The Parties shall be deemed independent contractors for all purposes, and the employees of each Party and any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be the employees of the other Party. Each Party shall retain all authority for provision of SERVICES, standards of performance, discipline and control of employees, and other matters incident to its performance of SERVICES pursuant to this Agreement. Nothing in this Agreement shall make any employee of the County an employee of the District or any employee of the District an employee of the County for any purpose, including but not limited to, withholding of taxes, payment of benefits, workers' compensation pursuant to Title 51 RCW, or any other rights or privileges accorded to the employees by virtue of their employment.
8. THIRD PARTY CONSULTANT. The PROVIDING PARTY may contract with a third party to provide all or any of the SERVICES . Before executing a contract or a task

assignment on an existing contract for the SERVICES, the PROVIDING PARTY shall provide the proposed scope of work and cost to the REQUESTING PARTY. The REQUESTING PARTY shall promptly review the work and cost and submit comments, if any, to the REQUESTING PARTY.

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

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

This indemnity and hold harmless provision shall include any claim made against either Party by an employee, officer, contractor, subcontractor or agent of the other Party, even if

the other Party is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the sole negligence of the first Party. Both Parties specifically acknowledge that the provisions contained herein have been mutually negotiated by the Parties and it is the intent of the Parties that each Party provide the other Party with the broadest scope of indemnity permitted by RCW 4.24.115.

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

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

12. NOTICE. Any notices to be given under this Agreement shall at minimum be delivered, postage prepaid and addressed to:

To the District:

CLARK REGIONAL WASTERWATER DISTRICT
P.O. Box 8979
Vancouver, Washington 98668-8979
Attention: District General Manager

To the County:

CLARK COUNTY
P.O. Box 9810
Vancouver, WA 98666-9810
Attention: County Manager

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

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

14. TERM. The term of this Agreement is for a period of five (5) years commencing on the date stated at the end of this Agreement.

15. EXTENSIONS. The term of this Agreement shall automatically be extended in one-year increments, up to a maximum of ten (10) additional one-year terms, without further authorization of the legislative bodies of the Parties.

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

17. INTERLOCAL COOPERATION ACT COMPLIANCE. This is an Agreement entered into pursuant to Chapter 39.34 RCW. Its purpose is as set forth in Section 1. Its duration is as specified in Sections 12 (Term), 13 (Extensions), and 14 (Termination). Its method of termination is set forth in Section 14. Its manner of financing and of establishing and maintaining a budget therefore is described in Section 3 (Billing Method and Process). No separate entity shall be created with this Agreement. Any property acquired by the PROVIDING PARTY for the REQUESTING PARTY shall be paid for and owned by the REQUESTING PARTY. No property shall be acquired pursuant to this Agreement which will need to be disposed of upon partial or complete termination of this Agreement.

18. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the Parties with

respect to the subject matter covered or mentioned therein, and no prior agreements shall be effective to the contrary.

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

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

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

Clerk shall post a copy of this Agreement on the District website pursuant to RCW 39.34.040. Upon execution of the originals and posting of a copy on the District's website, each such duplicate original shall constitute an agreement binding upon both Parties.

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

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

IN WITNESS WHEREOF, the County and the District have caused this Agreement to be executed in their respective names by their duly authorized officers and have caused this Agreement to be dated as of the _____ day of _____, 2018.

CLARK COUNTY

By: _____

Jim Rumpeltes, Interim County Manager

Approved as to form:

Anthony F. Golik, Prosecuting Attorney

By: 

Emily A. Sheldrick, Deputy Prosecuting Attorney

CLARK REGIONAL WASTEWATER DISTRICT

By: _____

John M. Peterson, District General Manager

Approved as to form:

By: _____

Rod P. Kaseguma, Attorney for the District