



**North Santiam  
Sewer Authority**

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## **STAFF REPORT**

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**To** Board of Directors  
**From** Tommy Brooks and Clark Balfour, Cable Huston (Special Counsel)  
**Title** Consideration of Water Treatment Services IGA  
**Agenda Item No.** 6  
**Meeting Date** March 4, 2024

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### **Summary**

The Board retained Cable Huston, LLP to assist the NSSA with the development of an agreement that would establish the terms and conditions under which the NSSA's member cities, or a subset of the member cities, would own, operate, and use a new wastewater treatment plant that Marion County is designing and constructing in Mill City ("Treatment Plant"). The attached Water Treatment Services Agreement ("Agreement") is a draft proposal that serves that purpose.

This item is on the Board's agenda so that the Board can review and, where necessary, revise the Agreement to ensure it meets the Board's needs and policy goals. If the Board approves a final draft, that draft would be transmitted to each of the member city's governing bodies for approval.

### **Discussion**

#### **1. Agreement Goals**

A major goal of the draft Agreement is to capture the mutual desire of the NSSA's member cities to continue to work together. The IGA forming the NSSA expressly states that the NSSA was formed to plan, construct, finance, maintain, and provide wastewater services



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within the cities' boundaries. Thus, while the initial Treatment Plant is capable of serving only Gates and Mill City, the proposed Agreement establishes a role for all four cities.

Another goal of the draft Agreement is to maintain local control over the portion of the wastewater systems that are unique to each city. As one example, the operation and maintenance of each city's collection system will depend on the magnitude and type of development that occurs in that city, which could be drastically different over the long term. Further, each city regulates that development through its own land use codes. The proposed Agreement acknowledges those potential differences and allows each city to continue to regulate its own development and growth.

A third goal of the draft Agreement is to create a structure that can be replicated for a treatment plant that serves Detroit and Idanha. Although the timing of a second project to serve the upper Santiam Canyon is unknown, the NSSA's member cities are pursuing such a facility as part of their mutual goals. When such a facility becomes more likely, the NSSA's member cities can enter into a similar agreement as the one being proposed here, or even modify this draft Agreement to include an upper Santiam Canyon project to the mix.

Finally, a major goal of the draft Agreement is to establish basic ratemaking principles that all cities will agree to. The services that one city provides to another may vary over time. By establishing basic ratemaking principles, the cities will have a tool to create greater financial predictability and to assess alternatives when appropriate.

### **2. Agreement Structure**

To allow the NSSA's member cities to have different roles in this relationship, the draft Agreement creates three different "classes" of participants: (1) the General Member Class; (2) the Owner Class; and (3) the User Class.



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As proposed, all four cities are part of the General Member Class. The General Member Class acts at a higher policy level, unrelated to the ownership or use of the Treatment Facility. The General Member Class can also resolve disputes or review decisions where other cities may be adverse to each other. The primary obligations of the General Member Class appear in Article 8 of the Agreement.

Mill City would be the only member of the Owner Class. The Owner Class would own and operate the Treatment Facility. As part of those responsibilities, the Owner Class would take on the regulatory obligations associated with the ownership and operation of a treatment plant. The Owner Class is also required to provide treatment services to the User Class. The Owner Class will charge for those services, but it would do so in a manner that is prescribed in the Agreement. The primary obligations of the Owner Class appear in Article 6 of the Agreement.

Gates and Mill City would both be part of the User Class. As members of that class, those cities would be entitled to receive and pay for service from the Treatment Facility. As part of receiving that service, the member of the User Class would also maintain their collection systems in a coordinated manner, implementing rules that are consistent between the systems and compatible with the Treatment Facility. The primary obligations of the User Class appear in Article 7 of the Agreement.

The draft Agreement is also structured to be a very long-term agreement. Any city that wishes to withdraw from the agreement has to give ample notice to the other cities so that they can plan for that city's absence. The draft Agreement would prohibit Mill City from withdrawing if Gates is connected to the Treatment Facility and does not have an alternative to using that facility. At the same time, the Agreement would prohibit Gates from withdrawing if doing so would reduce effluent volumes at the Treatment Facility in a manner that prevents that facility from being operated.

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### 3. Other Major Terms of the Agreement

Article 3 of the Agreement addresses the Treatment Facility itself. As drafted, Mill City would own and operate the Treatment Facility and would not be able to sell or transfer an interest in the facility or the underlying property. The Agreement creates some exceptions to that limitation, for example by allowing Mill City to sell an interest in the Treatment Facility to another NSSA member city, or to pledge the Treatment Facility as an asset for purposes of a financing transaction (so long as the transaction is related to the Treatment Facility and meeting obligations under the Agreement).

Article 4 addresses collection systems. As noted above, each city will remain responsible for its own collection system. This ownership right included the right to determine how and when to repair, replace, or improve that system. Notwithstanding that right, the city that owns the collection system would be required to adopt rules and regulations governing connection to the system to ensure the system is compatible with the operation of the Treatment Facility.

Article 5 establishes certain “Ancillary Services” that one city may provide to another. This section acknowledges that a city may be able to provide more efficient and cost-effective wastewater services to its constituents by contracting with another city. A good example of where a city may benefit from this approach is customer billing. If one city already owns and implements billing software for its system, it may be more cost-effective to simply expand that software system to add the customers in another city instead of maintaining two separate billing systems.

Article 9 establishes the basic ratemaking principles that govern all services provided under the Agreement. This includes treatment services provided by the Owner Class to the User Class, collection services provided by the User Class to its own customers, and Ancillary Services provided by any city to another. All of the provisions are intended to be based on actual cost-recovery and cost-causation. That is, no service is intended to generate a profit, and rates should not be structured such that one member of the User



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Class subsidizes the services provided to another member of the User Class. Article 9 also ensures that any city subject to the rates of another city has the opportunity to review and provide comment during the development of those rates.

Article 12 contains various indemnity provisions. Rather than a single, overarching indemnity, these provisions are specific to each class of participant. The reason for structuring the indemnities this way is to expressly address the fact that not all cities will be using the Treatment Facility. Thus, Gates as a user of the facility, and Mill City as the owner and user of the facility, would specifically indemnify the other cities for any claims or damages arising out of the ownership or use of the facility, as applicable.

Other articles and Article 13 contain various standard and miscellaneous provisions. Two provisions of note are Section 13.1 and Section 13.2. These provisions tie this Agreement to the primary IGA that created the NSSA. By doing so, each city would be agreeing to implement this Agreement through the Directors that represent the City on the NSSA Board. This includes making any amendments to the Agreement. However, we have created some exceptions to that approach. First, the Agreement could not be amended to add another party unless each of the member city's governing bodies have approved that amendment. Second, given the importance that comes with ownership of the Treatment Facility, any amendment that alters the rights and obligations of the Owner Class would need to include the approval of the Owner Class.

We believe the remainder of the provisions in this Agreement are fairly standard. However, if the Board desires to have discussion about any of those, we will be prepared to address those during the Board's meeting on March 4<sup>th</sup>.

# DRAFT

## WATER TREATMENT SERVICES AGREEMENT AMONG THE MEMBERS OF THE NORTH SANTIAM SEWER AUTHORITY

This Water Treatment Services Agreement (“Agreement”) is executed and entered into as of the date last signed (“Effective Date”) by and between the cities of Detroit, Gates, Idanha, and Mill City (the “NSSA Cities”) in their capacity as the members of the North Santiam Sewer Authority (“NSSA”), an Oregon intergovernmental entity formed under ORS Chapter 190. Each of the NSSA Cities is referred to herein as a “Member City”.

### RECITALS

- A. Each Member City is an incorporated city with Home Rule authority under the Constitution of Oregon.
- B. Each Member City has the authority to own and operate, and certain of the NSSA Cities already own and operate, a wastewater collection and treatment system within its respective territorial jurisdiction.
- C. In 2020, the NSSA Cities entered into an intergovernmental agreement forming the NSSA (the “NSSA IGA”). The NSSA IGA granted to the NSSA all powers, rights, duties, and responsibilities of the NSSA Cities necessary and desirable for planning, constructing, financing, maintaining, and providing wastewater services to a defined “Authority Service Area”. The NSSA IGA also granted to the NSSA all powers, rights, duties, and responsibilities of the NSSA Cities necessary and desirable for the provision of ancillary services supporting a wastewater system, such as establishing, collecting, and enforcing fees and rules.
- D. The NSSA has pursued the implementation of two potential wastewater treatment projects; one project to serve Gates and Mill City (the “Lower Canyon Project”) and one to serve Detroit and Idanha (the “Upper Canyon Project”).
- E. Marion County (“County”) has received funding that can be used to develop the Lower Canyon Project, referred to in this Agreement as the “Treatment Facility”, and the County has begun the process for designing and constructing the Treatment Facility, based on technology using a rapid infiltration basin, that will serve that purpose.
- F. In 2022, the NSSA and the County entered into an intergovernmental agreement (the “County IGA”), through which the NSSA in part agreed to develop and implement an

Operational Plan that sets the action steps and decisions the NSSA will take to establish the active management, ownership and operational structure of the Treatment Facility.

- G. The NSSA Cities desire to establish the terms and conditions under which the NSSA Cities will use the Treatment Facility and related facilities as the Lower Canyon Project to provide wastewater services consistent with the purposes of the NSSA.

Based on the foregoing, the NSSA Cities agree as follows:

### **AGREEMENT**

Capitalized words in this Agreement have the following meanings:

Agreement means this Water Treatment Services Agreement, including any Exhibit attached hereto, as may be amended from time to time.

County means Marion County.

County IGA means the intergovernmental agreement between the County and the NSSA, dated June 23, 2022.

Effective Date means the latest date each Member City has approved and executed this Agreement.

Event of Default means the failure of a Member City to keep, perform, or observe any promise, covenant or agreement set forth in this Agreement for which another Member City may have a remedy as set forth in Article 11.

Force Majeure Event means an event listed in Section 13.11.1 that causes a delay or default for which a Member City will be excused from performance under this Agreement.

General Member Class means each Member City identified in Section 2.2 as a “General Member”.

Lower Canyon Project means the wastewater treatment plant the Member Cities anticipate will be designed and constructed to treat wastewater generated in Gates and Mill City.

NSSA means the North Santiam Sewer Authority, an intergovernmental entity formed by the NSSA Cities.

NSSA Board means the Board of Directors of the NSSA as established in Section 4.1 of the NSSA IGA.

NSSA Directors means the members of the NSSA Board as appointed by each of the Member Cities.

NSSA Cities means, collectively, Detroit, Gates, Idanha, and Mill City.

NSSA IGA means the intergovernmental agreement, executed by each Member City, effective on or about May 22, 2020.

Owner Class means each Member City identified in Section 2.2 as an “Owner Class”.

Property means the real property, defined in Section 3.2.1, to be acquired by the County and transferred to the Owner Class on which the Treatment Plant is to be constructed.

Term means the period of time beginning on the Effective Date and concluding when this Agreement is terminated as set forth in Article 1.

Termination Date means the date a Member City’s withdrawal from and interest in this Agreement terminates, as set forth in Article 1.

Termination Notice means the notice required by Section 1.3 indicating a Member City’s intent to withdraw from and terminate its interest in this Agreement.

Treatment Facility means the wastewater treatment facility using rapid infiltration basin technology, as defined in Section 3.1, to be designed and constructed by the County and that serves as the Lower Canyon Project.

Upper Canyon Project means the wastewater treatment plant the Member Cities anticipate will be designed and constructed to treat wastewater generated in Detroit and Idanha.

User Class means each Member City identified in Section 2.2 as a “User Class”.

## **Article 1. Term and Termination**

- 1.1. This Agreement’s term commences upon the Effective Date and continues until the Agreement is terminated as set forth herein (“Term”).
- 1.2. The NSSA Cities may terminate this Agreement at any time by mutual, written agreement.
- 1.3. A Member City may withdraw from and terminate its interest in this Agreement by providing notice (“Termination Notice”), in writing, to the other NSSA Cities stating the date of termination (“Termination Date”).
  - 1.3.1. The Termination Date shall be June 30<sup>th</sup> of the year of termination, and no sooner than five (5) years from the date of the Termination Notice.
  - 1.3.2. If a Member City provides a Termination Notice pursuant to Section 1.3, that Member City may not withdraw the Termination Notice without the consent of the remainder of the NSSA Cities.
- 1.4. Effect of Termination.
  - 1.4.1. Upon termination of this Agreement pursuant to Section 1.2, the members of the Owner Class and the members of the User Class shall mutually determine the terms and conditions under which the Owner Class will



continue to provide wastewater treatment services from the Treatment Facility to the User Class.

- 1.4.2. Upon withdrawal and termination pursuant to Section 1.3.1. by a Member City that is a member of the Owner Class, the withdrawing Owner Class member shall continue to provide wastewater treatment services to each member of the User Class in accordance with Section 3.4, Section 3.5, Section 6.1, and Article 9 unless and until that member of the User Class notifies the withdrawing Owner Class member that it no longer desires or requires such services.
- 1.4.3. Upon withdrawal and termination pursuant to Section 1.3.1. by a Member City that is a member of the User Class, the withdrawing User Class member shall continue to receive and pay for wastewater treatment services from the Owner Class in accordance with Article 7 unless and until the withdrawing User Class member is able to demonstrate to the General Member Class that the Treatment Facility can treat the volume of wastewater that will remain if the withdrawing User Class member no longer sends wastewater to the Treatment Facility.

## **Article 2. Participant Classes**

- 2.1. For purposes of this Agreement, each Member City shall be in one or more of the following Participant Classes:
  - 2.1.1. General Member Class. The General Member Class shall consist of any Member City designated as a General Member in Section 2.2. The General Member Class shall have all the rights and obligations created under this Agreement that are not specifically granted to another class.
  - 2.1.2. Owner Class. The Owner Class shall consist of any Member City designated as an Owner in Section 2.2. The Owner Class shall have ownership rights and obligations with respect to the Treatment Facility, together with any rights and obligations created under this Agreement that are specifically granted to the Owner Class.
  - 2.1.3. User Class. The User Class shall consist of any Member City designated as a User in Section 2.2. The User Class shall have the rights and obligations associated with the use of the Treatment Facility, together with any rights and obligations created under this Agreement that are specifically granted to the User Class.

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- 2.2. As of the execution of this Agreement, each Member City shall be in the Participant Class designated below:

<b>Member City</b>	<b>Participant Class</b>
Detroit	General Class
Gates	General Class; User Class
Idanha	General Class
Mill City	General Class; Owner Class; User Class

**Article 3. Treatment Facility**

- 3.1. Treatment Facility Defined. *[TBD – this will need to be informed by technical staff, to include the treatment plant itself, any part of a collection system that combines wastewater from more than one city, pump stations, force mains, etc]. [The Treatment Facility will be depicted on Exhibit 1.]*

- 3.2. Treatment Facility Ownership.

- 3.2.1. Real Property. The Owner Class shall own the real property on which the Treatment Facility is constructed (“Property”) and shall always retain sole ownership. The Property is depicted on Exhibit 2, attached hereto and incorporated by reference. So long as this Agreement is in effect, the Owner Class shall not sell, transfer, lease, exchange or make other disposition of the Property, except to another City Member that becomes a member of the Owner Class. The Owner Class may mortgage, pledge, encumber or refinance the Property if the Owner Class deems it necessary to perform under this Agreement, and so long as the usage rights of the User Class are preserved in compliance with this Agreement.
- 3.2.2. Facility. The Owner Class shall own the Treatment Facility. So long as this Agreement is in effect, the Owner Class shall not sell, transfer, lease or make other disposition of the Treatment Facility, except to another Member City that becomes a member of the Owner Class. The Owner Class may mortgage, pledge, encumber or refinance the Treatment Facility if the Owner Class deems it necessary to perform this Agreement, and so long as the usage rights of the User Class are preserved in compliance with this Agreement.
- 3.2.3. Nothing in this Agreement shall be construed to transfer any rights or obligations of ownership of the Property or Treatment Facility to any Member City that is not a member of the Owner Class.

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- 3.3. Treatment Facility Construction.
- 3.3.1. The Owner Class shall be solely responsible for contracting with or otherwise coordinating with the County to complete the transfer of ownership of the Treatment Facility to the Owner Class following the County's completion of the design and construction of the Treatment Facility.
- 3.3.2. Notwithstanding the foregoing, the Owner Class shall have no responsibility to complete the transfer of ownership of the Treatment Facility to the Owner Class if the General Member Class determines that the Treatment Facility cannot be constructed in conformance with applicable regulatory requirements.
- 3.4. Treatment Facility Operation and Maintenance. The Owner Class shall be solely responsible for the operation, maintenance, repair and replacement of the Treatment Facility, including the following:
- 3.4.1. The provision of budget, accounting and financial management and services and day to day management of the Treatment Facility.
- 3.4.2. The provision of adequate staffing necessary to keep the Treatment Facility operating in conformance with prudent utility practices.
- 3.4.3. Subject to Section 8.1.2, the adoption of rules and regulations governing the quality or quantity of wastewater that will be received by the Treatment Facility.
- 3.4.4. The adoption of rules or policies regulating the safety or security of the Treatment Facility.
- 3.4.5. Acquiring and maintaining all regulatory permits necessary for the continued operation of the Treatment Facility.
- 3.4.6. Nothing in this Agreement shall prohibit the Owner Class from meeting its obligations in this Section 3.4 through service contracts, contractors, vendors, suppliers, or consultants.
- 3.5. Treatment Facility Rates. Subject to Section 7.1.3, the Owner Class shall charge reasonable and prudent rates for the treatment of all wastewater accepted at the Treatment Facility.

#### **Article 4. Collection System**

- 4.1. Collection System Defined.

- 4.1.1. *[TBD – this will need to be informed by technical staff, to include a reference point that demarks the place where the collection system connects to the Treatment Facility]*
- 4.2. Collection System Ownership. Each Member City in the User Class shall own the Collection System in its territorial jurisdiction. In the event any portion of a Member City’s Collection System lies within the territorial jurisdiction of another Member City, or a portion of a collection system is used by more than one Member City, the applicable Member Cities shall mutually determine which Member City owns that portion of the Collection System.
- 4.3. Unless provided as an Ancillary Service under Article 5, each Member City in the User Class shall be solely responsible for the following:
  - 4.3.1. Issuing all permits, and collecting any associated fees, required for any connection to the Member City’s Collection System.
  - 4.3.2. Performing locates, inspections, or repairs necessary to keep the Member City’s Collection System in good working condition consistent with prudent utility practices.
  - 4.3.3. Performing all billing and collection activities for customers taking service from the Member City’s Collection System.
  - 4.3.4. Communicating with customers and resolving any customer disputes.
  - 4.3.5. Adopting rules and regulations governing connections to the Collection System that are consistent with any rules and regulations adopted by the Owner Class pursuant to Section 3.4.3.
  - 4.3.6. Enforcing all rules and regulations applicable to the Member City’s Collection System.
  - 4.3.7. Complying with all regulatory requirements applicable to a Collection System.
  - 4.3.8. Nothing in this Agreement shall prohibit the User Class from meeting its obligations in this Section 4.3 through service contracts, contractors, vendors, suppliers, or consultants.
- 4.4. Each Member City in the User Class shall establish rates to be charged to each user of the Collection System:
  - 4.4.1. Collection System rates shall be sufficient to pay for the operation, maintenance, repair and replacement of the Collection System consistent with prudent utility practices.

- 4.4.2. Collection System rates shall be in addition to any rates charged by the Owner Class pursuant to Section 3.5.

## **Article 5. Ancillary Services**

- 5.1. For purposes of this Agreement, Ancillary Services shall include one or more of the following:
  - 5.1.1. Operation, maintenance, and repair of a Collection System, including, but not limited to, the provision of certified staff to perform such services when required.
  - 5.1.2. Customer billing.
  - 5.1.3. Long range planning relating to the use of a Collection System or the Treatment Facility, including the development of any capital improvement projects.
  - 5.1.4. Regulatory reporting.
  - 5.1.5. Administration of low-income rate relief programs.
- 5.2. Any of the NSSA Cities may agree to provide an Ancillary Services to a member of the User Class.
- 5.3. Subject to Section 8.1.3, a Member City providing Ancillary Services shall charge reasonable and prudent rates for all such services.

## **Article 6. Owner Class Obligations**

- 6.1. In addition to the obligations set forth in Article 3, the Owner Class shall:
  - 6.1.1. At all times make the Treatment Facility available to the User Class, provided that the User Class meets all of its obligations under this Agreement.
  - 6.1.2. Develop a capital improvement plan that identifies major capital replacement and repair projects or future improvements.
  - 6.1.3. Raise capital, whether through public funding, grants, private funding, or rates, for Treatment Plant assets.
  - 6.1.4. Provide the User Class with reasonable notice and an opportunity to comment on any proposed changes to rates to be charged for treatment services.

- 6.1.5. Provide the User Class no less than thirty (30) days notice prior to implementing any change in rates to be charged for treatment services.
- 6.1.6. Develop and implement system development charges for the Treatment Plant consistent with the requirements of state law and in a manner sufficient to equitably fund the Treatment Facility in conformance with prudent utility practices.

**Article 7. User Class Obligations**

- 7.1. In addition to the obligations set forth in Article 4, each member of the User Class shall:
  - 7.1.1. Raise capital, whether through public funding, grants, private funding, or rates, for that Member City’s Collection System assets.
  - 7.1.2. Notify the Owner Class of any proposed new connections or changes in use to the Member City’s Collection System so that the Owner Class can determine if pretreatment services are required. In the event pretreatment services are required, each member of the User Class shall ensure all applicable requirements of the Oregon Department of Environmental Quality are satisfied before allowing the new connection or change in use.
  - 7.1.3. Provide timely feedback to the Owner Class regarding any proposed change in rates to be charged by the Owner Class for treatment services.
  - 7.1.4. Timely remit all amounts due to the Owner Class for treatment services and any applicable system development charges required by Section 6.1.6.
  - 7.1.5. Develop and implement system development charges for the Member City’s Collection System consistent with the requirements of state law and in a manner sufficient to equitably fund the Collection System in conformance with prudent utility practices.

**Article 8. General Member Class Obligations**

- 8.1. The General Member Class shall:
  - 8.1.1. Timely resolve any dispute presented to the General Member Class pursuant to Section 10.2.
  - 8.1.2. Review and approve proposed rules and regulations developed pursuant to Section 3.4.3 and Section 4.3.5.
  - 8.1.3. Review, but not approve, and provide comment on any rates established for

Ancillary Services pursuant to Article 5.

- 8.1.4. Review the regulatory feasibility of the Treatment Facility pursuant to Section 3.3.2.
- 8.1.5. Pursuant to Section 1.4.3, review any claim by a User Class member seeking to withdraw from this Agreement that the Treatment Facility can treat the volume of wastewater that will remain if the withdrawing User Class member no longer sends wastewater to the Treatment Facility.
- 8.1.6. Advocate for, and seek out opportunities for, funding sources to assist in the development and implementation of low-income assistance for wastewater ratepayers in the NSSA Cities. The General Member Class shall have the authority, but not the obligation, to directly receive and administer such funds.

## **Article 9. Rate Methodology and Cost Allocation**

- 9.1. Whenever this Agreement requires or allows a Member City to establish rates for a service, the rates shall be developed as set forth in this Article 9.
- 9.2. All rates shall be reasonable and prudent, based on cost-causation principles standard in the municipal utility industry.
- 9.3. All rates should reflect an allocation of the actual costs of providing the service to which the rate applies.
- 9.4. The actual cost of operations may be determined using one or more of three billing determinants. When more than one determinant is required to allocate costs consistent with industry standards, a combined allocation based on multiple determinants may be used. These determinants are:
  - 9.4.1. Equal shares. For actual costs that vary by the number of Parties rather than usage or Capacity, an equal share per Party may be used to allocate actual costs.
  - 9.4.2. Usage. Where costs vary based on the quantity of wastewater used and/or delivered, a charge per unit of use may be used to allocate the actual costs.
  - 9.4.3. Capacity. Where costs vary based on the size of an asset being serviced, the Capacity owned by a Party may be used to allocate the actual costs.
- 9.5. A Member City may include in rates the recovery of costs for capital assets required to provide the service based on the useful life of the asset and a depreciation schedule.
- 9.6. A Member City may include in rates the recovery of costs related to debt financing required to provide the service.

- 9.6.1. Notwithstanding the foregoing, a Member City shall not include in any rates established under this Agreement the recovery of costs related to debt financing unless the debt was incurred: (1) after the effective date of this Agreement and (2) used solely to fund the Member City's obligations under this Agreement.
- 9.6.2. The foregoing shall not act as a limit on any Member City's authority to include the recovery of costs related to debt financing in other rates that Member City establishes and charges to its own customers.
- 9.7. A Member City may include in rates the recovery of indirect costs allocated to the service being provided.
- 9.8. A Member City may include in Collection System rates the recovery of costs related to the funding of low-income rate relief programs for ratepayers the Member City serves.
- 9.9. All rates shall be established by resolution of the Member City's governing body.

#### **Article 10. Dispute Resolution**

- 10.1. In the event of a dispute concerning the performance of duties under this Agreement, the disputing Member Cities will make a reasonable effort to reach an informal resolution of the dispute that is fair and equitable to both.
- 10.2. If the disputing Member Cities are unable to resolve a dispute informally, despite reasonable efforts, the disputing Member Cities shall present the dispute to the General Member Class for resolution by a majority of the General Member Class.
- 10.3. If any aspect of the dispute is not settled by the General Member Class, or if a Member City is not satisfied with the resolution by the General Member Class, the Member City shall be entitled to pursue any legal proceeding.
- 10.4. Each Member City is responsible for its own attorney fees and expert fees arising from the resolution of any dispute.

#### **Article 11. Default/Remedies/Limits of Liability**

- 11.1. Events of Default. There is an event of default ("Event of Default") if a Member City fails to keep, perform, or observe any promise, covenant or agreement set forth in this Agreement.
- 11.2. Notice and Opportunity to Cure. Upon an Event of Default, the non-defaulting Member Cities may cancel and terminate this Agreement upon giving 30 days' advance written notice to the defaulting Member City of the intention to terminate, at the end of which time this Agreement shall terminate, unless the Event of Default, which must have been stated in the notice, has been cured within such 30 days. If the defaulting Member City cannot reasonably cure any alleged default



within 30 days, such cure period shall be extended for such further period as the defaulting Member City reasonably requires, provided that during such extended period the defaulting Member City endeavors to cure such alleged default diligently and with reasonable continuity.

- 11.3. Remedies. If an Event of Default occurs and is continuing or is not timely cured, the non-defaulting Member Cities may pursue any and all remedies available at law or in equity.

## **Article 12. Indemnities**

- 12.1. General Indemnity. Except as may otherwise be provided in this Agreement or in any contractual agreement among the NSSA Cities, and to the extent permitted by the Oregon Constitution and subject to the limitations of the Oregon Tort Claims Act (ORS 30.260-30.300), each Member City agrees to indemnify and hold harmless each other Member City, its governing body, employees and agents, from any and all claims, demands, damages, actions, losses, expenses and costs, including attorney fees, arising out, and to the extent of, the indemnifying Member City's acts or omissions of action under this Agreement.
- 12.2. Owner Class Indemnity. Notwithstanding Section 12.1 and Section 12.3, the Owner Class specifically agrees to indemnify and hold harmless each Member City that is not part of the Owner Class, its governing body, employees and agents, from any and all claims, demands, damages, actions, losses, expenses and costs, including attorney fees, arising out, the Owner Class's ownership, operation, and maintenance of the Treatment Facility.
- 12.3. User Class Indemnity. Notwithstanding Section 12.1 and Section 12.2, the User Class specifically agrees to indemnify and hold harmless each Member City that is not part of the User Class, its governing body, employees and agents, from any and all claims, demands, damages, actions, losses, expenses and costs, including attorney fees, arising out, the User Class's use of the Treatment Facility.

## **Article 13. Miscellaneous**

- 13.1. Relationship to NSSA IGA. The NSSA Cities enter into this Agreement in furtherance of their commitments, rights, and obligations as set forth in the NSSA IGA. Each Member City shall implement this Agreement acting by and through the two NSSA Directors that represent the Member City on the NSSA Board.
- 13.2. Amendments. This Agreement may be amended by an affirmative vote of a majority of the NSSA Directors, provided that:
  - 13.2.1. Any amendment modifying the rights or obligations of the Owner Class shall not be approved unless the approval includes the affirmative vote of the NSSA Directors representing the Owner Class and;
  - 13.2.2. Any amendment that adds a new party to this Agreement shall first be

approved by the governing body of each Member City.

- 13.3. Compliance with Laws. Each Member City shall comply with all federal, state, and local laws applicable to its operations and obligations under this Agreement.
- 13.4. Good Faith and Fair Dealing. The performances required by the provisions of this Agreement shall be undertaken in good faith, with each Member City dealing fairly with the other.
- 13.5. Further Assurances. At any time and from time to time after the Effective Date, the NSSA Cities shall cooperate with each other to execute and deliver any other documents, instruments of transfer or assignment, files, books and records, and do all further acts and things as may reasonably be required to carry out the intent of the NSSA Cities under this Agreement.
- 13.6. Applicable Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws, rules, or doctrines. A Member City shall file any lawsuit regarding the interpretation or enforcement of this Agreement in the Circuit Court for Marion County.
- 13.7. Non Waiver. Failure by a Member City to enforce a provision of the Agreement shall not constitute a continuing waiver, shall not constitute a relinquishment of the Member City's right to performance in the future, and shall not operate as a waiver of the Member City's right to enforce any other provision of the Agreement.
- 13.8. Assignment and Delegation. Except as expressly provided in this Agreement, a Member City shall not assign, sell, subcontract, dispose of or transfer rights or delegate its duties under the Agreement, either in whole or in part, without the prior written consent of the other Member Cities.
- 13.9. Binding Effect. All covenants, conditions, and terms of this Agreement shall extend to and be binding upon, and inure to the benefit of, the successors and assigns of the NSSA Cities, if any.
- 13.10. Merger. This Agreement, including any attached exhibits, constitutes the entire and integrated agreement between the NSSA Cities and, except for the IGA, supersedes all prior contracts, negotiations, representations or agreements, either written or oral.
- 13.11. Severability. If any term or provision, or portions of any term or provision, is determined to be illegal, invalid, void, or unenforceable, the remaining terms and provisions of the Agreement shall remain in full force if the essential terms and conditions of the Agreement for each Member City remain valid, binding, and enforceable.
- 13.12. Notice. Any notice required or permitted under this Agreement shall be made in

writing and shall be (i) delivered in person or (ii) sent by certified mail, return receipt requested, deposited in a United States Post Office with postage charges prepaid. The date on which notice is deemed complete is upon delivery if delivered in person or, if sent by mail, upon five days after mailing. Notice must be delivered to:

If to City of Detroit:	If to City of Gates:
If to City of Idanha:	If to City of Mill City:

13.13. Force Majeure.

13.13.1. Force Majeure Event Defined. No Member City shall be held responsible for delay or default caused by war, insurrection, acts of terrorism, strikes, lockouts, labor disputes, riots, terrorist acts or other acts of political sabotage, volcanoes, floods, earthquakes, fires, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priorities, severe weather, or any other uncontrollable or unforeseeable act or circumstance beyond a Party’s reasonable control and without fault or negligence of the Party (“Force Majeure Event”).

13.13.2. Reasonable Efforts to Remove or Eliminate Force Majeure Event. A Member City affected by the Force Majeure Event shall make all reasonable efforts to remove or eliminate the cause of the Force Majeure Event and shall diligently pursue performance of its obligations under the Agreement after the Force Majeure Event ceases.

13.13.3. Written Notice; Effect of Delay. If there is a delay as a result of a Force Majeure Event, the Member City delayed shall give written notice of the delay and the reason of the delay to the non-delayed Party within thirty days after the Member City delayed learns of the Force Majeure Event. The Member City delayed may request an extension of time up to the length of time of the delay due to a Force Majeure Event.

13.14. Waiver. Unless expressly provided in this Agreement, no provision of this Agreement may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the Member City against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such writing.

13.15. Counterparts. This Agreement may be executed in one or more counterparts and by the different NSSA Cities on separate counterparts, each of which when so executed and delivered shall be an original, that all of which shall together constitute one and same instrument. Each copy of the Agreement so executed shall constitute an original. The exchange of signed copies of the Agreement by

electronic mail in Portable Document Format, or its equivalent, shall constitute effective execution and delivery of the Contract. Signatures on the pages sent through electronic mail shall be deemed to be their original signatures for all purposes.

13.16. No Third-Party Beneficiaries. The NSSA Cities are the only parties to the Agreement and are the only parties entitled to enforce its terms. Nothing in the Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, either directly, indirectly, or otherwise, to third parties unless such third parties are expressly described in the Agreement as intended beneficiaries.

**City of Detroit**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**City of Idanha**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**City of Gates**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**City of Mill City**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_