

AGREEMENT

THIS AGREEMENT is made and entered into as of the 20th day of June, 1990, between the City of King City, a municipal corporation of the State of Oregon, hereinafter referred to as "City," and the Unified Sewerage Agency of Washington County, a municipal corporation and county service district, hereinafter referred to as the "Agency."

WHEREAS, the Agency was duly formed and organized under ORS Chapter 451, has the authority to provide sanitary sewerage treatment facilities, and to provide for storm and surface water management within its boundaries; and City is within the Agency by action of its Council and pursuant to an election duly conducted within the boundaries of the Agency; and

WHEREAS, City and Agency have the authority to enter into contracts for the cooperative operation of service facilities under ORS 451.560 and ORS Chapter 190; and

WHEREAS, Agency has developed a master plan and a master plan update for sewerage facilities, and a surface water management plan, and is in a position to coordinate and unify treatment facilities and storm and surface water, and regulation of waste water quality and quantity into an integrated system for the areas within the Agency; and

WHEREAS, City and Agency previously entered into an Agreement for the cooperative operation of sanitary sewer service facilities, and said Agreement is in need of amendment to address surface water management functions and other issues; and it would be in the best interest of the Agency and City to consolidate provisions of the original agreement, previous amendments, and additional amendments into a single document.

NOW, THEREFORE, in consideration of the covenants and agreements to be kept and performed by the parties hereto, it is agreed as follows:

Section 1. Definition of Terms

Wherever the following terms are used in this agreement they shall have the following meaning unless otherwise specifically indicated by the context in which they appear:

A. Board shall mean the Board of Directors of the Agency, its governing body.

B. Connection Charge means the amount charged for connection to the sanitary or storm and surface water system.

C. Council shall mean the City Council, governing body of the City.

D. Dwelling Unit (DU) means a separate living unit with kitchen facilities including those in multiple dwellings, apartments, mobile homes and trailers. For nonresidential properties, a DU or Dwelling Unit Equivalent (DUE) shall be determined by Agency Ordinance, and Agency resolutions adopted thereunder.

E. Equivalent Service Unit (ESU) is the unit of impervious surface area which generates the storm and surface water runoff equal to a single family residential property, as determined by Agency Ordinance, and Agency resolutions adopted thereunder.

F. Impervious Surface Area includes all areas that have been altered from their natural state such that they do not allow the infiltration and retention equivalent to that of undisturbed soil. This shall include, but is not limited to pavement, buildings, decks, parking areas, and compacted gravel areas.

G. Industrial Waste means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industrial or manufacturing business, or from the development or recovery of natural resources. For the purposes of this agreement, Industrial Waste shall also include any substance regulated under 33 USC Sec 1317, together with regulations adopted thereunder.

H. Operation and Maintenance means the regular performance of work required to assure continued functioning of the storm and surface water system and the sanitary sewerage system and corrective measures taken to repair facilities to keep them in operating condition.

I. Order means Resolutions, Orders and Directives of the Agency prescribing standards and conditions for construction or use of the storm and surface water facilities and the sanitary sewerage facilities, and rates and charges therefor.

J. Permit Application and Inspection Fee means fees charged an applicant for permits and related inspections for connections to the storm and surface water system and the sanitary sewerage system.

K. Person means the state of Oregon, any individual, public or private corporation, political subdivision, governmental agency, municipality, industry, copartnership, association, firm, trust, estate or any other legal entity whatsoever.

L. Sanitary Sewerage System means any combination of sewer treatment plant, pumping, or lift facilities, sewer pipe, force mains, laterals, manholes, side sewers, laboratory facilities and equipment, and any other facilities for the collection, conveyance, treatment and disposal of sanitary sewage comprising the total publicly-owned sanitary sewerage system within Agency jurisdiction, to which storm, surface and ground waters are not intentionally admitted.

M. Sanitary Sewer Service Charge means a regular charge to a property owner or occupant of designated premises for the use of the sanitary sewerage system.

N. Sewage Treatment Facility means any facility designed for the purpose of the appropriate treating, holding, disposal, and discharge or reuse of sanitary sewage, including byproducts of such treatment processes.

O. Sewage Collection System means any system of pipes, and pumping facilities designed for the collection of sanitary sewage for the purpose of transporting such material to a sewage treatment facility.

P. Standards means the standards and conditions of use of the storm and surface water system and the sanitary sewer system as specified and adopted by the Agency. Standards also shall mean applicable statutes and rules of the United States and the State of Oregon.

Q. Storm and Surface Water Service Charge means a regular charge to a property owner or occupant of designated premises for the contribution of runoff or pollution, (as defined in ORS 468.700), or both to the storm and surface water system.

R. Storm and Surface Water System means any combination of publicly owned storm and surface water quality treatment facilities, pumping, or lift facilities, storm drain pipes and culverts, open channels, creeks and rivers, force mains, laterals, manholes, catch basins and inlets, detention and retention facilities, laboratory facilities and equipment, and any other publicly owned facilities for the collection, conveyance, treatment and disposal of storm and surface water comprising the total publicly owned storm and surface water system within Agency jurisdiction, to which sanitary sewage flows are not intentionally admitted.

S. Storm and Surface Water System Development Fee is a charge for construction or other activity that causes or is likely to cause, an increase from the natural state of storm water runoff quantity or pollution, (as defined in ORS 468.700), or both, to the storm and surface water system. Such fee is for capital improvements associated with such construction or other activity, and may be a reimbursement fee or a fee for improvements to be constructed.

Section 2. Operating Procedures and Relationships

A. The City agrees to:

1. Follow the orders promulgated by the Agency governing the use of the storm and surface water system, and the sanitary sewerage system, and to notify Agency of apparent violations which may require Agency legal action.
2. Inform the Agency in writing not less than 30 days prior to initiating or entering into any agreement for the financing or incurring of indebtedness relating to the storm and surface water system or the sanitary sewerage system. City shall not obligate any Agency revenues of the sewer fund or storm and surface water fund, nor shall facilities of the sanitary or storm and surface water system be obligated for any debt.
3. Allow the Agency access within the City to inspect, install, repair, operate and maintain storm and surface water facilities, and sanitary sewerage facilities within the City.
4. Grant the Agency permits from time to time as may be necessary for the installation of storm and surface water facilities and sewerage facilities in the public streets and ways of the City without imposing permit issuance fees, provided that the Agency shall adhere to any conditions required pursuant to ORS 451.550(6).
5. The City hereby transfers the ownership of all existing, and agrees to transfer the ownership of all future, publicly owned sanitary sewerage facilities within the City to the Agency. The City shall retain the ownership of all publicly owned storm and surface water facilities.
6. The City previously transferred to Agency certain real and personal property of the sanitary sewerage system. City further transfers to Agency all easements, rights-of-way and permits held by the City for the storm and surface water facilities and sanitary sewer facilities, but subject to the terms and provisions thereof, to all of which the Agency shall be bound and conform and shall save, hold harmless and indemnify the City from any failure to conform thereof, to the extent allowed by law. City and Agency shall execute all documents necessary to transfer title to any real property interests by December 31, 1990.

With respect to all transfers of fee title to real property, each party shall have the right, at its expense, to perform an environmental assessment prior to accepting title to property. Any terms and conditions prescribing cleanup of the property shall be subject to negotiation of the parties and included in the instrument of transfer of the property.

7. To issue no new permit for the construction within, or modification to a wetland, floodway, or floodplain without first receiving the written approval by the Agency to do so. This paragraph shall not apply to permits issued by City pursuant to a current permit under 33 USC Section 1344(e), (a section 404 general permit), and within the scope of such permit.
8. To pursue when feasible and appropriate the conversion of storm and surface water facilities from private to public ownership, through the acquisition of easements and other property rights as necessary, for those privately owned storm and surface water facilities which are identified as being necessary or appropriately a part of the public system.

Section 3. Other Provisions

A. The City and the Agency further agree that:

1. The Agency will not extend sewer service to areas outside the City except with prior approval of the City where such areas are included in the Urban Planning Area Agreement between the City and the appropriate county or counties.
2. The City and the Agency will each obtain such insurance contracts as necessary to cover the liabilities of the City and the Agency respectively for the risks and liabilities arising from activities and operations under this agreement. Each party hereto shall cause the other to be named as an additional insured on its policy or policies as to the obligations under the terms of this agreement. In the event that either party chooses to be self insured, that party shall furnish proof of separately identified and unencumbered reserves of at least \$1,000,000.

3. They will establish a Committee made up of one representative from Washington County and one representative from each member City within the Agency, which will meet quarterly, or more frequently if needed, to review and advise the Agency on the standards, regulations and specifications, work programs, capital improvement programs, rates and charges, long range planning, and other matters covered by the Agreements with the member Cities.
4. The City and the Agency may each need extra help from time to time that might be supplied by the other. In such a case, either City or the Agency in utilizing the services of an employee of the other shall pay the lending government the employee's salary rate plus direct salary overhead currently in effect for the time worked.
5. City and Agency shall each be responsible for the negligent or wrongful acts of its officers, employees, agents, and volunteers, while performing work related to this agreement. Each party shall be solely responsible for defense, costs or payments arising from legal challenge alleging improper use by that party of funds derived from this agreement, or otherwise held by that party. Each party shall be responsible for any liability arising out of its ownership of real property and interests therein, activities governed by an NPDES permit or other air or water discharge permit issued by competent authority to that party, and any conduct of that party subject to direct regulation by state or federal authority.
6. Nothing in this agreement shall be construed as a limitation upon or delegation of the statutory and home rule powers of the City, nor as a delegation or limitation of the statutory powers of the Agency. This Agreement shall not limit any right or remedy available to City or Agency against third parties arising from illegal acts of such third parties.

Section 4. Compensation

- A. Agency will remit to the City on an annual basis, not later than December 31 of each year, with a report on Agency designated forms, five percent (5%) of all service charges collected within the City, excepting that portion of the service charges required for the payment of Agency revenue bonds.
- B. Interest shall accrue on late payments at a rate of three-quarters of one percent (0.75%) per month on the unpaid balance.

Section 5 Effect of this Agreement

This Agreement shall supersede all prior agreements and amendments between the parties with respect to sanitary sewerage, and storm and surface water management; provided that, except as expressly modified herein, all rights, liabilities, and obligations of such prior agreements shall continue. This agreement shall be effective upon its execution by both parties hereto, and shall continue in effect for a term of thirty (30) years from and after the date hereof. This agreement may be modified only by written amendment.

Section 6 Severability

In the event a court of competent jurisdiction shall deem any portion or part of this Agreement to be unlawful or invalid, only that portion or part of the Agreement shall be considered unenforceable. The remainder of this Agreement shall continue to be valid.

IN WITNESS WHEREOF, this instrument has been executed in duplicate by authority of lawful actions by the City Council and Agency Board of Directors.

UNIFIED SEWERAGE AGENCY
OF WASHINGTON COUNTY, OREGON

CITY OF KING CITY, OREGON

By Donnie L. Hays
Chairman, Board of Directors

By Stephen J. McShane
Mayor

Approved as to Form:

Attest: Bethie Scurry
City Recorder

Kertha Skindahl
Attorney for Agency

Lucas March
City Attorney

APPROVED UNIFIED SEWERAGE AGENCY
BOARD OF DIRECTORS

Date June 21, 1990

MINUTE ORDER # 90-114

DATE 6/26/90

BY Pam Riphart
CLERK OF THE AGENCY