

Sarah Clark

From: Laurel Waller
Sent: Monday, April 21, 2025 12:41 PM
To: Sarah Clark
Cc: David Olson; fjohnsonjlo@cni.net
Subject: Fw: Op Agmnt
Attachments: DRAFT - TOC - PUD Water Sewer System Operator Agreement v2.pdf

Hi.

Per my comments in my PUD document review... an interlocal agreement would be needed to pursue early launch of a consolidation. Attached please find the PUD's **draft** operating agreement.

I have not read the document yet as I want to get it to the council today.

Please. Thank you.

Laurel

From: Daniel Kay <dkay@wahkiakumpud.org>
Sent: Monday, April 21, 2025 12:32 PM
To: Laurel Waller <LWaller@townofcathlamet.com>
Subject: [External] Op Agmnt

V 2.0

Dan Kay, P.E.

General Manager
Wahkiakum PUD
360.795.3266

**TOWN OF CATHLAMET AND
PUBLIC UTILITY DISTRICT NO. 1
OF WAHKIAKUM COUNTY
WATER AND WASTEWATER SYSTEM OPERATOR AGREEMENT**

This agreement is made and entered into to be effective the ____ day of _____, 2025, by and between the Town of Cathlamet, a Washington state municipal corporation (“**Town**”), and the Public Utility District No. 1 of Wahkiakum County, a Washington state municipal corporation (“**PUD**”) (collectively, “the Parties”).

RECITALS

A. Pursuant to State law, the Town and the PUD are each authorized to operate water, wastewater collection and treatment systems and to enter into agreements regarding the transmission, disposal and treatment of wastewater and the operation and ownership of facilities therefore.

B. The Town currently operates a water system designated by the Washington State Department of Health as ID 11850D and a wastewater treatment facility and sewer collection system operating under Washington State Department of Ecology permit nos. WAG641009 and WA0022667, located in Wahkiakum County (collectively “Town System”).

C. The PUD and the Town currently contract for the Town’s provision and delivery of water to the PUD’s Puget Island Water System (the “PIWS Contract”).

D. The PUD has authority through RCW Ch. 54 to acquire, construct, operate, maintain, and add to water and wastewater systems.

E. The Parties have now evaluated the feasibility and economies of the PUD’s service as Operator of the Town System, together with the PUD systems. The TOC and the PUD desire to enter into this Agreement for the terms and conditions of the PUD’s operation of the Town System. The Parties are currently considering, and will continue to consider, acquisition of the Town System by the PUD.

F. The Town Council and the PUD Board of Commissioners have approved this agreement by their respective resolutions, Town Resolution No. _____ and PUD Resolution No. _____, and authorized its execution, delivery and performance.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of

which are hereby acknowledged, the Town and PUD agree as follows:

AGREEMENT

1. TERM, TERMINATION AND EFFECTIVE DATE

- 1.1. Term. This Agreement is effective _____, 2025 (“Effective Date”) through _____, 20____ (“Term”). The PUD’s operation of the Town System under this Agreement commences _____, 2025 (“Operations Date”). The Parties may mutually agree to adjust the Operations Date to ensure efficient implementation of this Agreement. Any change to the Operations Date will be processed as an Amendment, consistent with Section 9.4 of this Agreement.
- 1.2. Commencement of Services. The PUD’s obligation to provide the Operator Services under Section 2 of this Agreement commences on Operations Date through the Term. The Town’s obligation to provide the Transition Services under Section 3 of this Agreement commences on the Effective Date and terminates on the later of the Operations Date or the date the Parties mutually agree the Town has completed the Transition Services. Except as otherwise provided herein, all other respective obligations of the PUD and the Town under this Agreement commence on the Effective Date through the Term.
- 1.3. Automatic Extensions. The Term will automatically extend for additional one (1) year periods unless the Town or the PUD notifies the other Party on or before September 1 of the calendar year prior to the calendar year in which this Agreement will expire, that this Agreement will not be extended.
- 1.4. Future Transition Planning. Upon either Party’s receipt of notice that this Agreement will not be extended, the Parties shall work together to develop a mutually agreed upon transition plan.
- 1.5. Early Termination. Either Party may terminate this Agreement for a material and substantial default by the other Party, if the default has not been cured in a reasonable period of time after written notice of default.
- 1.6. Suspension of PIWS Contract. Beginning on the Operations Date through the Term, the PIWS Contract is suspended and has no force or effect for that period.

2. PUD OPERATOR SERVICES

- 2.1. The Operator. The PUD shall serve as operator of the Town System and shall provide the operator services described in this Section 2 and any other services agreed to between the

Town and the PUD (“Operator Services”).

2.2. Asset Management Services. The PUD shall:

2.2.1. Operate the Town System.

2.2.2. Make decisions on the use or application of processes, equipment and facilities, and control other operating decisions over the Town System and integration and coordination with the PUD System.

2.2.3. Manage and implement repairs, expansions, or upgrades to the Town System for individual projects or contracts.

2.2.4. Accommodate Town expansion of or upgrades to the Town System for individual projects.

2.2.5. Request and receive Town approval for any repairs, expansions or upgrades to the Town System that require debt financing. The Town shall not unreasonably withhold or delay approval of such financing proposals if consistent with the Town’s capital planning goals.

2.2.6. Report annually to the Town and meet quarterly with the Town Public Works Director regarding Operator Services, projects, capacity of the Town System, contracts relating to the Town System and other duties and responsibilities of the PUD under this Agreement.

2.2.7. In coordination with the Town, design and construct select water and sewer system repair projects utilizing \$_____ in funding secured by the Town under the _____.

2.3. Wastewater Treatment Services. The PUD shall:

2.3.1. Collect, receive, transport and treat wastewater discharged by the Town and its residents and other users of the Town System in accordance with the standards established by Town Municipal Code and under the terms of this Agreement.

2.3.2. Coordinate actively with the Town in the receipt, transport and treatment of wastewater exceeding the capacity of the Town System or the standards established by Town Municipal Code.

2.3.3. Receive, transport and treat septage and transport and dispose of sludge.

2.4. Hiring, Personnel, Public Works, and Procurement Services. The PUD shall:

- 2.4.1. Hire and designate employees, contractors and consultants to assist the PUD in managing the Town System.
- 2.4.2. Apply federal, state and local building, land use and environmental laws applicable to the PUD in managing and implementing repairs or upgrades to the Town System.
- 2.4.3. Apply PUD personnel laws to PUD employees in carrying out the PUD's responsibilities under this Agreement.
- 2.4.4. Apply public works and procurement laws applicable to the PUD in carrying out the PUD's responsibilities under this Agreement.
- 2.4.5. Upon the approval of the Town Council, apply and exercise the powers of eminent domain applicable to the PUD in carrying out the PUD's responsibilities under this Agreement, for projects necessary for the operation, maintenance, or improvement of the Town System under this Agreement.
- 2.4.6. Apply and exercise the powers respecting surplus property applicable to the PUD in carrying out the PUD's responsibilities under this Agreement.

2.5. Billing and Bill Collection Services. The PUD shall:

- 2.5.1. Administer billing of Town rates and charges for Town System service to the Town, its residents and other users of the Town System until such time as the PUD adopts a schedule of rates and charges for Town System customers by resolution.
- 2.5.2. Upon PUD adoption of PUD rates and charges for Town System customers, administer billing of PUD rates and charges for Town System service to the Town, its residents and other users of the Town System.
- 2.5.3. Administer collection of Town rates and charges or PUD rates and charges, as the case may be, in accordance with the collection, lien and foreclosure laws applicable to Washington public utility districts.

3. TOWN TRANSITION SERVICES

3.1. Town Services. The Town shall retain ownership of the Town System and shall provide the transition services described in this Section 3 and any other services agreed to between the Town and the PUD ("Transition Services").

3.2. Operational Transition Services. The Town shall:

- 3.2.1. Assist the PUD in transitioning all support functions and operational duties and responsibilities from the Town to the PUD.

3.2.2. Upon the request of the PUD, provide consultation reasonably necessary for the PUD to operate the Town System in substantially the same manner as the Town has historically provided.

3.2.3. Take all other necessary actions and execute all other necessary documents to transition operational duties and responsibilities to the PUD.

3.3. Asset Utilization and Transfer Services. The Town shall:

3.3.1. Inventory and transfer, assign or cause to be assigned to the PUD all contracts and agreements and all rights, duties and responsibilities relating to the Town System.

3.3.2. Permit the PUD to utilize all items of personal property purchased by the Town for operation of the Town System, including without limitation the following items (collectively, “Personal Property”):

3.3.2.1. All laboratory equipment and supplies purchased for and stored in the on-site laboratory.

3.3.2.2. All tools and specialized equipment purchased for or required for operation and maintenance of the Town System.

3.3.2.3. All spare parts purchased for or furnished by equipment manufacturers for the Town System.

3.3.2.4. All vehicles, fixtures, furniture, furnishings, appliances, chemicals, supplies and related items purchased for or routinely used in the operation of the Town System.

3.3.3. To the extent transferable by the Town, assign to the PUD all contracts and intangibles related to the Town System pursuant to an assignment of contracts and intangibles substantially in the form attached as Schedule 1 (the “Assignment of Contracts and Intangibles”), including without limitation the following items (collectively, “Contracts and Intangibles”):

3.3.3.1. All forms of documentation associated with the operation of the Town System, including without limitation engineering contracts, consultant contracts, reports, plans, specifications, estimates, designs, drawings, maps, surveys, construction records, photos, documentation, operation and maintenance manuals and correspondence related to the Town System, any component thereof, and any existing, in-progress or proposed parts of the Town System.

3.3.3.2. All warranties and guarantees.

3.3.3.3. All permits, licenses and approvals relating to the operation of the Town System.

3.3.3.4. All rights and duties under any other existing contracts relating to the operation of the Town System.

3.4. Reserve Management Services. The Town Shall:

3.4.1. Between the Effective Date of this agreement and the Operations Date, the Town agrees not to spend any of the Town System's savings or reserve funds, unless it is necessary to pay for approved system expenses that were already owed before the acquisition. On the Operations Date, or in no event later than 10 days after the Operations Date, the Town shall (1) Give the PUD a final summary of all the water and sewer funds still on hand, showing the balances through the end of the previous month and (2) Transfer all those remaining funds to the PUD using payment instructions the Town and PUD agree upon.

These funds include, but aren't limited to, the accounts listed below.

3.4.1.1. 402 – Water O/M Fund

3.4.1.2. 403 – Sewer O/M Fund

3.4.1.3. 405 – Utility Deposits

3.4.2. Manage all remaining accounts receivable and accounts payable of the Town System incurred prior to the Operations Date but remaining outstanding after the Operations Date without reconciliation or "true up" with the unrestricted funds of the Town System transferred to the PUD under Section 3.4.1 of this Agreement.

3.5. Capital and Debt Fund Services. For the Term of this Agreement, the Town shall:

3.5.1. Manage capital funds of the Town System in accordance with the capital plan of the Town System, including without limitation the following funds:

3.5.1.1. 401 – Water Capital Reserve

3.5.1.2. 404 – Sewer Capital Reserve

3.5.2. Manage the debt service funds for bonds and other obligations of the Town secured by net revenue of the Town System in accordance with the terms and covenants of such bonds and other obligations, including without limitation:

3.5.2.1. 406 – Water Debt Service Reserve

3.5.2.2. 407 – Sewer Debt Service Reserve

3.5.2.3. The Town shall pay all bond and other obligations not the responsibility of the PUD under this Agreement.

4. AUTHORITY; COMPLIANCE WITH LAWS; LEVELS OF SERVICE.

4.1. Powers and Authority. The PUD shall have full power and authority to control the Town System, including without limitation hiring and designating of staff and consultants; entering contracts; making decisions on the use or application of processes, equipment and facilities; and, controlling other operating decisions. As part of its operational functions, the PUD will also manage and implement capital improvements to the Town System. Neither the Town, nor an individual officer of the Town, may direct the PUD to appoint or remove its staff or consultants, nor may the Town give orders to any employee or consultant working for the PUD. This restriction does not prohibit the Town from fully and freely discussing with representatives or staff of the PUD anything pertaining to appointments and removals of staff or consultants. The PUD will report periodically to the Town on the operations of the Town System.

4.2. Compliance with Laws. The PUD shall provide the Operator Services and other services of this Agreement in accordance with the statutes and regulations applicable to Washington public utility districts and all other applicable laws, regulations and operating permits.

4.3. Levels of Service and Operating Standards. The PUD shall comply with the minimum levels of service and basic operating standards adopted by the Town in the Town Municipal Code. The minimum levels of service and standards adopted by the Town shall be consistent with customary practices for water and wastewater facilities in Washington State of the type comprising the Town System.

5. PERFORMANCE OF NON-TOWN SERVICES BY THE PUD

Upon the approval of the Town, the PUD may perform retail and wholesale services with respect to the Town System that are not in conflict with the services provided to the Town and its residents and other users of the Town System or in conflict with the PUD's responsibilities under this Agreement. This Section 5 does not limit the PUD from carrying out the purposes of Title 54 RCW in its discretion with respect to non-Town facilities or activities.

6. DISPUTE RESOLUTION; REMEDIES

6.1. Meet and Confer. The Parties shall first attempt to resolve any dispute under this Agreement by discussions between representatives of the Town and the PUD.

- 6.2. Mediation. If the discussions under Section 6.1 are not successful, either Party may demand mediation and the Parties shall select a third party to mediate a resolution of the dispute. The cost of mediation shall be divided equally between the Town and the PUD.
- 6.3. Arbitration. Disputes relating to the dollar amount of (but not the authority to impose) rates and charges established for Town System services or relating to the amount of any payment between the Town and the PUD with respect to the Town System not resolved by meetings or mediation will be resolved exclusively by arbitration. Arbitration under this Section will be governed by the laws of the State of Washington, in accordance with the Commercial Arbitration Rules of the American Arbitration Association with a single arbitrator (who need not be a lawyer), except the American Arbitration Association will not administer or otherwise have any involvement in arbitration matters between the Parties.
- 6.4. Other. Disputes not resolved by meetings or mediation, and not subject to arbitration, may be advanced by either Party to the Wahkiakum County Superior Court.
- 6.5. Costs. Unless otherwise provided in this Agreement, each Party bears its own costs for disputes arising under or related to this Agreement.

7. INSURANCE AND INDEMNIFICATION

- 7.1. General. The Town shall insure, at replacement cost value (not less than \$10,000,000), the Town System for fire and casualty. The PUD shall obtain and maintain insurance, or equivalent self-insurance risk pool coverage, for its acts and omissions under this Agreement, with the scope, coverage and limits provided herein. Upon request of the Town, the PUD shall provide evidence of insurance, or self-insurance risk pool coverage in a form acceptable to the Town. The PUD shall furnish the Town with original certificates and a copy of the amendatory endorsements, including but not limited to, the additional insured endorsements, evidencing the insurance requirements of the PUD before commencement of this Agreement.
- 7.2. Term. The PUD shall procure and maintain insurance, as required in this Section 7, without interruption from the Operations Date through the Term and for thirty (30) days after the Term or earlier termination, unless otherwise indicated herein.
- 7.3. Limitation of Liability Relative to Insurance. The PUD shall maintain insurance in the types and amounts set forth in Section 7.8, and shall name the Town as an additional insured as specified therein. The PUD's maintenance of insurance shall not be construed to expand its liability beyond the coverage provided by such insurance, nor shall it waive or limit any defenses available to the PUD under applicable law. Notwithstanding the foregoing, if the PUD maintains higher limits of coverage under its Commercial General

Liability or Excess/Umbrella policies than those required by this Agreement, such higher limits shall not apply to the Town or this Agreement unless the PUD expressly agrees in writing. Nothing in this section shall limit the Town's right to pursue available remedies in the event of willful misconduct or gross negligence by the PUD.

- 7.4. Insurance Priority and Coordination. The PUD's Commercial General Liability and Automobile Liability policies shall name the Town as an additional insured for liability arising out of the PUD's performance under this Agreement and shall apply on a primary and non-contributory basis to the extent of the PUD's negligence. Any insurance, self-insurance, or self-insured pool coverage maintained by the Town shall apply on an excess basis, but only to the extent of the PUD's liability and in proportion to its fault. This provision shall not be construed to alter any statutory or common law rights of contribution or subrogation between insurers.
- 7.5. Subcontractor Insurance. The PUD shall require its subcontractors performing work under this Agreement to carry Commercial General Liability insurance and, to the extent reasonably available in the commercial insurance market, to name the Town as an additional insured for liability arising out of their work. Such coverage shall be provided on a form at least as broad as ISO CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (completed operations), or their equivalent, where applicable. The PUD shall have discretion to determine the appropriate limits of subcontractor coverage based on the scope and nature of the work performed. The PUD shall not be in breach of this Agreement if a subcontractor is unable, after commercially reasonable efforts, to obtain the required endorsements for the Town, provided that the PUD either (a) seeks alternative risk mitigation, or (b) assumes responsibility for such subcontractor's performance to the extent of any resulting uninsured liability.
- 7.6. Cancellation Notice. The PUD shall provide the Town and all additional insureds for the Operator Services with written notice of any policy cancellation within two business days of its receipt of such notice.
- 7.7. Insurance Maintenance. Failure by the PUD to maintain insurance as required by this Agreement shall constitute a material breach. In such event, the Town shall provide written notice to the PUD describing the deficiency and allow a reasonable cure period of not less than fifteen (15) business days, unless coverage has been affirmatively cancelled by the insurer. If the PUD fails to cure within the applicable period, the Town may, at its option: (a) Procure or renew such insurance and require reimbursement from the PUD for the actual and reasonable costs incurred, provided that the Town makes good faith efforts to consult with the PUD regarding such procurement before incurring the expense; or (b) Offset such amounts against any undisputed amounts otherwise due to the PUD under this Agreement. Termination of the Agreement for failure to maintain insurance shall not

occur unless such failure persists beyond thirty (30) calendar days and materially impairs the PUD's ability to perform its obligations under this Agreement.

7.8. PUD Minimum Scope and Amounts of Coverage. The following insurance types, coverage and limits shall be maintained by the PUD:

7.8.1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

7.8.2. The PUD shall maintain Commercial General Liability insurance, written on an occurrence basis, with limits not less than \$2,000,000 per occurrence and \$5,000,000 general aggregate, or such other limits as may be mutually agreed upon by the Parties. Coverage shall include premises/operations, independent contractors, products-completed operations, personal and advertising injury, and contractual liability. When available and applicable to the work being performed, the Town shall be named as an additional insured using ISO Additional Insured endorsement CG 20 10 10 01 and CG 20 37 10 01 or equivalent forms providing coverage no narrower than these endorsements. The PUD shall make commercially reasonable efforts to avoid policies that exclude explosion, collapse, or underground property damage.

7.8.3. Workers Compensation coverage as required by the Industrial Insurance laws of the State of Washington and federal Law.

7.8.4. The PUD shall maintain Pollution Liability insurance for losses caused by pollution conditions arising directly from its operations under this Agreement, with limits of not less than \$1,000,000 per occurrence and aggregate, where such coverage is reasonably available and applicable to the services performed. Coverage may be provided under standalone environmental policies or endorsements to Commercial General Liability policies. If pollution liability is written on a claims-made basis, the PUD shall maintain coverage with a retroactive date no later than the Effective Date of this Agreement and continuous coverage or an extended reporting period for at least three (3) years following termination of services. The Town shall be named as an additional insured by endorsement where commercially available and applicable. The PUD shall not be responsible for procuring Pollution Liability insurance on behalf of third-party disposal sites not owned or operated by the PUD.

7.9. Indemnification.

7.9.1. Indemnification by PUD. The PUD shall defend, indemnify, and hold harmless the Town, its officers, officials, employees, and volunteers from and against all claims,

injuries, damages, losses, or suits, including attorney fees, arising out of or resulting from the acts, errors, or omissions of the PUD, its employees, agents, or subcontractors in the performance of this Agreement, except to the extent caused by the sole negligence of the Town. If a court of competent jurisdiction determines that this Agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury or property damage resulting from the concurrent negligence of the PUD and the Town, the PUD's liability shall be only to the extent of its own negligence. This indemnity constitutes the PUD's waiver of immunity under Title 51 RCW solely for purposes of this provision and only as to claims brought by the Town. This waiver has been mutually negotiated.

7.9.2. Indemnification by Town. The Town shall defend, indemnify, and hold harmless the PUD, its commissioners, employees, and agents from and against all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or resulting from the acts, errors, or omissions of the Town, its officers, employees, or volunteers in the performance of this Agreement, except to the extent caused by the sole negligence of the PUD. If a court of competent jurisdiction determines that this Agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury or property damage resulting from the concurrent negligence of the Town and the PUD, the Town's liability shall be only to the extent of its own negligence. This indemnity constitutes the Town's waiver of immunity under Title 51 RCW solely for purposes of this provision and only as to claims brought by the PUD. This waiver has been mutually negotiated.

7.9.3. Survival. The provisions of this section shall survive the termination or expiration of this Agreement with respect to any claims arising from performance prior to such termination or expiration.

8. REPRESENTATIONS AND WARRANTIES

8.1. Representations and Warranties of Town. Town represents and warrants to the PUD as follows:

8.1.1. Organization and Authority. Town is a Washington municipal corporation duly organized, validly existing and in good standing under the laws of the State of Washington. The Town has the right, power and authority to enter into this Agreement, to execute all documents and instruments contemplated by this Agreement, to consummate this transaction and to perform all other obligations to be performed by Town under this Agreement. The execution, delivery and performance of this Agreement and all agreements, documents and instruments contemplated by this Agreement have been duly authorized by all necessary action on the part of Town.

8.1.2. Title to Assets. Except as otherwise disclosed to the PUD in writing, as of the Effective Date, Town has good and marketable title to the Town System, the Personal Property and the Contracts and Intangibles.

8.1.3. No Litigation. There are no suits, claims, proceedings, judgments or pending actions against Town relating to its interest in or operation of Town System, the Personal Property or the Contracts and Intangibles.

8.1.4. No Violation. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the performance by Town of, and compliance by Town with, this Agreement will violate federal, state or local laws, regulations, approvals or permits.

8.1.5. Hazardous Materials. To the Town's knowledge: there are no Hazardous Materials on, under, or about Town System; no Hazardous Materials have at any time been generated, manufactured, released or disposed of on, under or about Town System; there are no past, current, or threatened Hazardous Materials Claims. For the purposes of this paragraph, "Hazardous Materials" includes, but is not limited to, any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic, or radioactive substance, or other similar term, by any federal, state, or local environmental statute, regulation or ordinance presently in effect (collectively, "Hazardous Material Laws"). For the purposes of this paragraph, Hazardous Materials Claims means any enforcement, cleanup, removal, remedial or other governmental or regulatory notices, actions, agreements or orders threatened, instituted or completed pursuant to any Hazardous Materials Laws, together with any and all claims made or threatened by any third party against Town or the property relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials.

8.1.6. Representations and Warranties True at Closing. The representations and warranties made by Town in this Agreement will be correct as of the Operations Date with the same force and effect as though such representations and warranties had been made as of the Operations Date.

8.2. Representations and Warranties of the PUD.

8.2.1. Organization and Authority. The PUD is a Washington public utility district organized, validly existing and in good standing under the laws of the State of Washington. The PUD has the right, power and authority to enter into this Agreement, to execute all documents and instruments contemplated by this Agreement, to consummate this transaction and to perform all other obligations to be performed by the PUD under this Agreement. The execution, delivery and performance of this

Agreement and all agreements, documents and instruments contemplated hereby have been duly authorized by all necessary action on the part of the PUD.

8.2.2. No Violation. Neither the execution and delivery of this Agreement, the consummation of the transaction contemplated hereby, nor the performance by the PUD of, and compliance by the PUD with, this Agreement will violate federal, state or local laws, regulations, approvals or permits.

8.2.3. No Litigation. There are no suits, claims, proceedings, judgments or pending actions against the PUD relating to its interest in or operation of Town System, the Personal Property or the Contracts and Intangibles.

8.2.4. Representations and Warranties True at Closing. The representations and warranties made by the PUD in this Agreement will be correct as of the Operations Date with the same force and effect as though such representations and warranties had been made as of the Operations Date.

9. GENERAL

9.1. Cooperation. The Parties shall cooperate fully in executing documents that are necessary for the PUD to provide services under this Agreement.

9.2. Records. The PUD shall maintain accounts and records that sufficiently and properly document its services and charges under this Agreement. Upon reasonable notice, each Party shall have the right to inspect and copy, without charge, all non-privileged records held by the other Party relating to this Agreement.

9.3. Notices. All notices and other communications under this Agreement shall be in writing by facsimile, regular U.S. mail or certified mail, return receipt requested. Either Party may notify the other Party in writing of changes in the persons to whom notices are to be delivered. Notices shall be deemed given upon delivery or, if mailed, upon the earlier of actual receipt or three (3) business days after the date of mailing.

9.4. Entire Agreement; Amendment. This Agreement contains the entire written understanding of the Parties and supersedes all prior discussions and agreements. This Agreement may be amended only in writing, signed by both Parties.

9.5. Successors and Assigns. All of the provisions, terms, conditions and requirements contained in this Agreement are binding upon the successors of the Parties. A Party may not assign its rights and duties under this Agreement without the consent of the other Party, which may not be unreasonably withheld.

9.6. No Third-Party Rights. This Agreement is solely for the benefit of the Parties and does

not grant any right to any other party or person.

- 9.7. No Joint Venture. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one Party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees of the other Party.
- 9.8. Jurisdiction and Venue. This Agreement is governed by and construed according to the laws of the State of Washington. As against the other Party, each Party may file suit to enforce this Agreement only in the Superior Court of Washington for Wahkiakum County.
- 9.9. Enforcement; No Waiver; Prevailing Party Costs. In addition to the remedies provided by law, this Agreement shall be specifically enforceable by either Party. If either Party incurs attorney fees, costs, or other legal expenses to enforce the provisions of this Agreement against the other Party, all such fees, costs, and expenses shall be recoverable by the prevailing Party. The failure of a Party to exercise any right or enforce any provision of this Agreement shall not be considered a waiver of such right or enforcement remedy.
- 9.10. Independent Contractor. The PUD is and shall be at all times during the Term of this Agreement an independent contractor and not an employee of the Town. PUD employees are not and, at all times during the Term of this Agreement, shall not be considered Town employees.
- 9.11. Severability. The provisions of this Agreement are separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, holds any provision of this Agreement invalid or unenforceable as to any person or circumstance, the offending provision, if feasible, is modified to be within the limits of enforceability or validity. If the offending provision cannot be modified, it is null and void with respect to the particular person or circumstance. All other provisions of this Agreement in all other respects, and the offending provision with respect to all other persons and all other circumstances, remain valid and enforceable.
- 9.12. Captions. Captions given to the various provisions of this Agreement are for convenience only and are not intended to modify or affect the meaning of any provision.
- 9.13. Counterparts. This Agreement may be executed and delivered in counterparts, each of which is considered an original and all of which together constitute one and the same agreement.

This Agreement is executed by each Party as set forth below:

TOWN OF CATHLAMET

PUBLIC UTILITY DISTRICT NO. ONE
OF WAHKIAKUM COUNTY

By: _____

Its: _____

Date: _____

By: _____

Its: _____

Date: _____

Schedule 1: Assignment of Contracts and Intangibles

This ASSIGNMENT OF CONTRACTS AND INTANGIBLES (“Assignment”) is entered into as of the _____ day of _____, 2025, by THE TOWN OF CATHLAMET, WASHINGTON, a Washington municipal corporation (“Town”), in favor of PUBLIC UTILITY DISTRICT NO. 1 OF WAHKIAKUM COUNTY, a Washington municipal corporation (“PUD”) (each a “Party” and collectively the “Parties” to this Assignment). The Parties agree as follows.

1. Town System. The “Town System” means the water system and system of sewerage of the Town, including collection, transport and treatment facilities and appurtenances.

2. Contracts and Intangibles. “Contracts and Intangibles” means the following legally transferrable papers of any sort, other tangible things or electronically stored information related to the Town System, and the rights, obligations and contents thereto: (i) all forms of documentation associated with the operation of the Town System, including without limitation engineering contracts, consultant contracts, reports, plans, specifications, estimates, designs, drawings, maps, surveys, construction records, photos, documentation, operation and maintenance manuals and correspondence related to the Town System, any component thereof, and any existing, in-progress or proposed parts of the Town System; (ii) all warranties and guarantees; (iii) all permits, licenses and approvals relating to the operation of the Town System; and, (iv) all rights and duties under any other existing contracts relating to the operation of the Town System.

3. Assignment. For good and valuable consideration received by the Town, the receipt and sufficiency of which is hereby acknowledged, the Town hereby grants, transfers and assigns to the PUD the entire right, title and interest of the Town in and to the Contracts and Intangibles. The Town shall continue to be responsible for, and shall perform and satisfy its obligations under, the Contracts and Intangibles insofar as such obligations relate to the period on or before the date of this Assignment. The assignment of warranties shall be on a non-exclusive basis, and the Town reserves the right to pursue warranty claims in the event claims are brought against the Town which might give the Town claims under such warranties.

4. Assumption. The PUD hereby assumes the covenants, agreements and obligations of the Town under the Contracts and Intangibles which are applicable to the period and required to be performed from and after the date of this Assignment, but not otherwise. No person or entity other than the Town is a beneficiary of the provisions of this Section 4.

5. Indemnification. The Town indemnifies the PUD from and against all obligations of the Town under the Contracts and Intangibles to the extent such obligations were applicable to the period and required to be performed prior to the date of this Assignment. The PUD indemnifies the Town from and against all obligations assumed by the PUD under the Contracts and Intangibles to the extent that such obligations are applicable to the period and required to be performed from and after the date of this Assignment.

6. Return. In the event the Town Water and Wastewater System Operator Agreement, effective _____, 2025, as may be amended, is terminated, the Contracts and Intangibles

will transfer back to the Town, provided, however, that any proprietary systems, documentation, or improvements developed independently by the PUD during the term of this Agreement shall remain the property of the PUD unless otherwise agreed in writing.

7. Governing Law. This Assignment is governed by and construed according to the laws of the State of Washington. As against the other Party, each Party may file suit to enforce this Assignment only in the Superior Court of Wahkiakum County, Washington.

8. Successors and Assigns. All of the provisions, terms, conditions and requirements contained in this Assignment are binding upon the successors of the Parties.

9. Authority. Each Party represents and warrants to the other that it is fully empowered and authorized to execute and deliver this Assignment. The individuals signing below represent and warrant that they have the requisite authority to bind the Parties on whose behalf they are signing.

10. Counterparts. This Assignment may be executed and delivered in counterparts, each of which is considered an original and all of which together constitute one and the same agreement.

This Agreement is executed by each Party as set forth below:

TOWN OF CATHLAMET

PUBLIC UTILITY DISTRICT NO. ONE
OF WAHAKIAKUM COUNTY

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____