

INTERGOVERNMENTAL AGREEMENT FOR DISPOSAL AND TREATMENT OF WASTEWATER TREATMENT SOLIDS

This Intergovernmental Agreement ("Agreement") is hereby entered into by the CITY OF SALEM ("Salem"), an Oregon municipal corporation, and CITY OF LAFAYETTE, a city service district (hereafter may be referenced individually as "party" or collectively as "parties").

Recitals:

WHEREAS, Oregon Revised Statutes ("ORS") 190.010 authorizes Salem and CITY OF LAFAYETTE to enter into an intergovernmental agreement whereby Salem provides wastewater sludge disposal services for CITY OF LAFAYETTE; and

WHEREAS, CITY OF LAFAYETTE desires another treatment plant to accept and process waste activated sludge, digested sludge, and primary sludge; and

WHEREAS, Salem has extra capacity at the Willow Lake Water Pollution Control Facility ("Willow Lake") to accept CITY OF LAFAYETTE's solids and is willing to do so.

NOW, THEREFORE, in consideration of the following mutual promises and obligations, Salem and CITY OF LAFAYETTE agree as follows:

Section 1. Salem Shall:

- A. Accept waste activated sludge, digested sludge and/or primary sludge with no objects larger than $\frac{3}{4}$ inch in diameter (hereafter "solids") for disposal at Willow Lake. The sludge shall contain no more than three percent (3%) solids. Salem agrees to accept no more than 36,000 gallons per day waste from CITY OF LAFAYETTE. Salem may accept a higher volume of solids on a case-by-case basis.
- B. Provide a location at Willow Lake for CITY OF LAFAYETTE to offload/discharge their solids. Under normal operations, the provided location will be a scum pit designated by Salem. The parties recognize that from time to time modifications may be needed to the scum pit to receive the discharge or Salem may need to designate another location for offloading/discharging. If a modification is needed or a new discharge location is so designated, Salem agrees to provide CITY OF LAFAYETTE with timely notification in accordance with paragraph 1D below.
- C. Prior to discharge of solids into Willow Lake, sample or designate a third party to sample and analyze CITY OF LAFAYETTE's solids for loading content on a daily basis. A composite metals test will be performed on a periodic basis.

- D. Notify CITY OF LAFAYETTE of modification(s) and repair (hereinafter “modification(s)”) required at Willow Lake needed to receive CITY OF LAFAYETTE’s solids, including, but not limited to, estimated costs of the modification(s) and time to construct.
 - a. For minor modification(s) having zero cost to CITY OF LAFAYETTE, such as a simple relocation of discharge, 24 hour notice by Salem is requested; however, simple directions to the CITY OF LAFAYETTE delivery driver may suffice.
 - b. For modification(s) that will need to be constructed and for which CITY OF LAFAYETTE will need to pay per Section 2C below, 30 day prior notice shall be provided. Notification shall include, but not be limited to, estimated costs of modification and time to construct or shall provide a time when same can be provided. Within 30 days of the notice, CITY OF LAFAYETTE may reject the proposed modification, in which case the agreement may be immediately terminated by CITY OF SALEM without further notice. Notwithstanding the aforementioned notice schedule, the parties do not contemplate there will be many modifications, if any, but simply wish to provide a reasonable time schedule should any arise and a reasonable opportunity to solve any associated problems cooperatively.
- E. Bill CITY OF LAFAYETTE on a monthly basis for all disposal costs of CITY OF LAFAYETTE’s solids at Willow Lake and for all tests performed as a result of CITY OF LAFAYETTE's solids. The bill shall be based on the following:
 - a. Solids delivered to Willow Lake will be charged a per gallon rate based off the attached City of Salem fee schedule. (Attachment A). Salem shall provide CITY OF LAFAYETTE with a new fee schedule of any rate changes within 30 days of adoption by the Salem City Council.
- F. Salem shall give at least a 24 hour notice and timeframe to CITY OF LAFAYETTE when there is an upset or event that will prohibit Salem from receiving solids from CITY OF LAFAYETTE. If necessary, CITY OF LAFAYETTE shall be responsible for finding an alternative recipient for its solids and bear any resultant costs.

Section 2. CITY OF LAFAYETTE Shall:

- A. Deliver and discharge its solids to the location designated by Salem, from time to time, and to off-load solids, no more than 36,000 gallons per day. Schedule to be agreed upon by the parties.
- B. Pay to Salem all costs billed by Salem, as set forth in Section 1 (E), within 30 days of the date CITY OF LAFAYETTE receives the bill.
- C. Pay for all agreed to modification(s) required at Willow Lake needed to receive CITY OF LAFAYETTE's solids; provided, CITY OF LAFAYETTE has received the notification of modification(s) set forth herein and agreed to pay for same.
- D. Provide Salem at least 24 hours advance notice for any schedule change.

Section 3. General Provisions.

- A. *Third-Party Beneficiaries.* There are no intended third-party beneficiaries to this Agreement. Salem and CITY OF LAFAYETTE are the only parties to this Agreement and are intended to be the only entities entitled to exercise and enforce the rights and obligations created by this Agreement.
- B. *Compliance with Applicable Laws.* Both parties shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement.
- C. *Force Majeure.* Neither party shall be held responsible for delay nor default caused by fire, riot, acts of God, war or any other cause beyond the reasonable control of either party, respectively; provided, however, that in no event shall force majeure affect any party's payment obligation hereunder. Each party shall, however, make all reasonable efforts to remove or eliminate any cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. The parties in the exercise of good faith shall agree upon adjustments to the schedule and compensation for any additional direct and indirect costs resulting from such delays under this Agreement.
- D. *Survival.* All rights and obligations of the parties shall cease upon termination or expiration of this Agreement, except for the rights and obligations of a party for payment, indemnity, dispute resolution, maintenance of insurance, and those provisions, including, but not limited to, provisions governing laws which, by their nature, must survive termination to accomplish the intent of the parties as expressed in this Agreement.
- E. *Notice and Communication.* Any communications between the parties or notices to be given shall be given in writing by personal delivery, by mailing the same, postage prepaid, or by electronically confirmed facsimile transmission to the following:

City of Lafayette

Preston Polasek, City Administrator

P.O. Box 55

486 3rd St, Lafayette, OR 97127

Phone 503-864-2451 Email prestonp@ci.lafayette.or.us

City of Salem

Peter Fernandez, Director of Public Works

555 Liberty Street SE, Room 325, Salem OR 97302

Phone 503.588.6008 Fax 503.588.6387

Any communication or notice so addressed and mailed shall be deemed to be given five (5) calendar days after mailing. Any communication or notice delivered by facsimile or email shall be deemed to be given when receipt of the transmission is generated by the transmitting machine or emailed response acknowledging the receipt of communication or notice. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

- F. *Independent Contracting Parties.* The parties intend that the relationship created by this Agreement is that of independent contracting parties. Neither party hereto shall be deemed an agent, partner, joint venture, or related entity of the other by reason of this Agreement. Each party agrees that its employees and contractor(s) are not the employees of the other party and are not eligible for any benefits from the other party,

including without limitation, federal social security, health benefits, and workers compensation, unemployment compensation and retirement benefits.

- G. *Successors and Assigns.* No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement. Salem and CITY OF LAFAYETTE each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Agreement.
- H. *Severability.* The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- I. *Legal Review and Rules of Construction.* Each party has had the opportunity to have an attorney of their choosing review this Agreement and advise the Party of the benefits and consequences of signing this Agreement. This Agreement shall not be construed against either party regardless of which party drafted it. Other than as modified by this Agreement, the applicable rules of contract construction and evidence shall apply.
- J. *Governing Law; Venue; Consent to Jurisdiction.* This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Salem and CITY OF LAFAYETTE that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County.
- K. *Merger Clause; Waiver.* This Agreement, including all attachments and law, rules and regulations incorporated herein or to which the Agreement is subject, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by such party of that or any other provision.
- L. *Indemnification.* CITY OF LAFAYETTE shall defend, indemnify, and hold harmless Salem from all liability for personal injury or damage to life or property related to or arising out of CITY OF LAFAYETTE's transport, delivery, or discharge of solids to Willow Lake, save and except for liability arising out of the negligence or intentional acts of Salem, its officers, employees, and/or agents.

- M. *Insurance.* Each party agrees to maintain insurance levels or self-insurance in accordance with the Oregon Tort Claims Act for the duration of this Agreement at levels necessary to protect the public body from liability. Each party shall notify the other if a claim is made against the other pertaining to matters related to this Agreement.
- N. *Execution of Agreement.* This Agreement may be executed in two or more counterparts each signed by their respective parties, each of which shall constitute an original, and all of which together shall constitute one and the same Agreement.
- O. *Term and Termination.* The term of this Agreement shall start on the date of the last signature hereon. In addition to the provisions of Section 1, paragraph D, Salem or CITY OF LAFAYETTE may terminate this Agreement by written mutual consent of the parties or upon either party providing not less than thirty (30) days written notice to the other party and specifying the termination date.

IN WITNESS WHEREOF, the parties have, by approval of their respective governing bodies, caused this Agreement to be executed:

CITY OF SALEM

By: _____
Steve Powers, City Manager

Date

APPROVED AS TO FORM


Dan Atchison, City Attorney

City of Lafayette

By: 
Preston Polasek, City Administrator

3-28-17
Date

APPROVED AS TO FORM


Wallace W. Lien, City Attorney