

CITY OF LAKE STEVENS AND LAKE STEVENS SEWER DISTRICT
SETTLEMENT AND ASSUMPTION AGREEMENT

[NTD: This Agreement is being offered as part of confidential settlement discussions and is protected from discovery pursuant to Evidence Rule 408.]

THIS AGREEMENT FOR SETTLEMENT AND ASSUMPTION (“**Agreement**”) is made and entered into this _____ day of _____, 2024 (“**Effective Date**”), by and between the LAKE STEVENS SEWER DISTRICT, a Washington special purpose district (“**District**”), and the CITY OF LAKE STEVENS, a Washington municipal corporation (“**City**”). The District and City are jointly referred to as “**Parties**” and individually referred to as “**Party**”. This Agreement for an assumption under CHAPTER 35.13A.RCW is specifically authorized by RCW 35.13A.070.

RECITALS

A. The District owns and operates a public sewerage service system within the Lake Stevens Urban Growth Area.

B. On May 23, 2005, the District and the City entered into a Unified Sewer Services Annexation Agreement, which was later amended by Amendment No. 1 dated December 20, 2005, Amendment No. 2 dated March 9, 2006, Amendment No. 3 dated March 2, 2009, and Amendment No. 4 dated September 27, 2010 (collectively, “**Unification Agreement**”).

C. The Unification Agreement provides that the City sewerage system and the District sewerage system would be merged into one system (“**Unified System**”) owned, operated, and maintained by the District in Step 1. The Unification Agreement ~~further~~ provides a process for the ultimate transfer of the Unified System to the City of Lake Stevens in Step 2 by 2033, unless the City and District mutually agree to accelerate or extend the date of unification.

D. Upon the Assumption of the District as provided for herein, the City shall operate the Unified System to provide public sewerage services and shall maintain a separate account for this public service industry per RCW 43.09.220.

E. More than sixty percent (60%) of the area of the District is within the boundaries of the City. The remaining portion of the District is within unincorporated Snohomish County and the City of Marysville. On May 11, 2021, the City entered into an Agreement with the City of Marysville, which authorizes the City upon assumption of the District to assume responsibility for operation and maintenance of the District’s property, facilities, and equipment within the City of Marysville, as authorized by RCW 35.13A.060.

F. RCW 35.13A.070 permits the City and the District, through their legislative authorities, to authorize a contract that provides for the transfer of district facilities, property, rights, and powers as provided in RCW [35.13A.030](#) and [35.13A.050](#) to a city.

G. On the terms described herein, the Parties desire to provide an accelerated effective date for the transfer of the Unified System to the City under the provisions of RCW 35.13A.030, 35.13A.060 and 35.13A.020. Collectively, those statutes allow for City assumption of the management and control of the entire District. The Parties further desire to provide a specific plan for an orderly transition assumption, and to provide for the dismissal of the pending litigation brought by the District against the City in Snohomish County Superior Court under Case Number 21-2-00455-31, without the award of costs or fees to either party.

Now, therefore, in consideration of the mutual covenants and promises expressed herein and the terms and conditions set forth below, the District and City agree as follows:

AGREEMENT

1. ASSUMPTION

- 1.1 Assumption Date.** The Assumption Date shall be the date the City assumes complete management and control of the District's property, facilities, and equipment, which shall occur no later than 24 months, from the Effective Date of this Agreement ("**Assumption Date**"). The Assumption Date shall be set forth in the ordinance or resolution of the City to assume jurisdiction required by section 2.6 of this Agreement. The delay between the effective date of this Agreement and the Assumption Date will provide sufficient time for the City to prepare for the assumption and for the District to conclude its affairs in an orderly fashion, including vendor and consultant services contracts prior to the Assumption Date, eliminating or significantly reducing the need for continuance of the District after the Assumption Date.
- 1.2 Operation Until Assumption Date.** The management and control of the Unified Sewerage System's operations, property, facilities, and equipment shall continue as set forth in the Unification Agreement until the Assumption Date.
- 1.3 Instruments of Transfer/Operation After Assumption.** On the Assumption Date, the District shall execute and deliver to the City a Bill of Sale and General Assignment of Interests that will document the transfer to and assumption by the City of all District assets, liabilities, and interests. District and the City agree that on the effective date of the assumption, pursuant to RCW 35.13A.020, RCW 35.13A.030, RCW 35.13A.060, and RCW 35.13A.070 that the City by operation of law has assumed the complete management and control of the entire District, including all real and personal property, franchises, rights, assets, taxes levied but not collected for the district for other than indebtedness, water, sewer, and drainage facilities, and all other facilities and equipment of the district. Subject to all

financial, statutory, or contractual obligations of the district for the security or performance of which the property may have been pledged.

- 1.4 Assumption of Indebtedness.** The City upon assumption shall by resolution or ordinance, assume the obligation of paying District indebtedness and of levying and of collecting or causing to be collected the District taxes, assessments, and utility rates and charges of any kind or nature to pay and secure the payment of the indebtedness, according to all of the terms, conditions and covenants incident to the indebtedness, and shall assume and perform all other outstanding contractual obligation of the district in accordance with all of their terms, conditions, and covenants. The City shall assume the obligation of causing the payment of the District's indebtedness, collecting the District's taxes, assessments, and charges, and observing and performing the other district contractual obligations. The Lake Stevens City Council shall act as the officers of the District for the purpose of certifying the amount of any property tax to be levied and collected therein, and causing service and other charges and assessments to be collected from the property or owners or occupants thereof, enforcing the collection and performing all other acts necessary to ensure performance of the District's contractual obligations in the same manner and by the same means as if the territory of the District had not been included within the boundaries of a city.

2. TRANSITION PLAN

The following transition plan (“**Transition Plan**”) describes the process by which the transition of the Unified System from the District to the City will occur. The purpose of this Transition Plan is to (1) provide for an orderly transition and (2) provide a process that builds trust with employees of the City and District, partners of the City and District, and the public. Each party shall be responsible for its own expenses it incurs as part of the transition processes.

- 2.1 Employees.** The City will offer employment to District’s operational employees pursuant to RCW 35.13A.090 upon assumption by the City to ensure undisturbed operation of the Unified Sewer System. In addition to compliance with RCW 35.13A.090, the Parties agree to the following transition plan for the potential employment by the City of District employees upon Assumption, including but not limited to the organizational structure, categories of employee, leave management and timing of employment offers .

- 2.1.1 Organizational Chart.** Prior to offering employment to District employees, the City, in consultation with the District, will prepare an organizational chart incorporating the positions to be offered the District employees. The Organizational Chart will describe the strategic alignment of District employees (represented and non-represented) within the City workforce upon Assumption.

2.1.2 District Non-Represented Employees. “District Non-Represented Employees” means the District’s General Manager, the District’s Assistant General Manager, and the District’s Human Resources manager.

2.1.2.1 Positions. Prior to the Assumption, the City shall offer employment to the District Non-Represented Employees.

2.1.2.2 Longevity. The accrual of benefits will be calculated for transferred District Non-Represented Employees based upon the initial full-time employment date of the employee with the District.

2.1.2.3 Leave. The City will comply with the sick leave retention and first year vacation provisions of RCW 35.13A.090. Administrative, sick and vacation leave options will be evaluated and offered to eligible positions in compliance with City policies and procedures.

2.1.3 District Represented Employees. “District Represented Employees” means the operational employees referred to in Section 2.1.

2.1.3.1 The District as the employer of employees represented by Local Union 2849 LS Washington State council of County and City Employees, Council 2, AFSCME, AFL CIO shall be solely responsible for any impact or other collective bargaining required of the employer under Ch. 41.56 RCW as a result of this Agreement.

2.2 Inventory and Equipment. Upon Assumption, the District shall provide the City a list of District inventory and equipment valued at \$500 or greater with a usable life of greater than one year, in accordance with District policy. Any inventory and equipment held by the District on the Assumption Date shall be transferred by Bill of Sale as reference above.

2.3 Contracts, Purchasing, and Real Estate. The District and City anticipate the preparation of the transfer of contracts and real estate agreements to be one of the most time-intensive projects leading up to Assumption. Existing District contracts need to be evaluated to determine the appropriate action to ensure that necessary services and projects are maintained during and after transition and that District real estate rights are effectively transferred to the City.

2.3.1 Contracts. Prior to the Assumption Date, the District shall provide the City with a list of District service and construction contracts, the date the contracts were entered into, the termination date, and any assignment requirements or

limitations. The District and City shall collaborate to determine which contracts should continue past the Assumption Date and which should be terminated prior to the Assumption Date.

- 2.3.2 Purchasing.** The City shall identify and evaluate how the District purchasing practices differ with City practices and how they may impact Assumption. The City shall develop appropriate actions to address any differences, if any exist.
- 2.3.3 Real Estate.** Prior to the Assumption Date, the District shall provide the City with an inventory of its documented real estate interests, after having conducted a reasonable search for such documents of record. Thereafter, the District and City shall execute the appropriate legal documentation for recording with Snohomish County, giving record notice of the transfers of such real estate interests of the District to the City as a matter of law upon the Assumption Date.
- 2.4 Boundary Review Board.** Consistent with RCW 36.93.090, the Parties shall file a notice of intent with the Boundary Review Board after the adoption of this Agreement by both the District and the City. The parties will jointly support the City’s assumption of the District in any proceedings before the Boundary Review Board.
- 2.5 Code Provisions.** Prior to the Assumption Date, the City shall draft and prior to the effective date of assumption, adopt necessary and appropriate code provisions addressing the operation of the Unified System. Prior to adoption the parties will jointly review the draft code provisions and the City will consider the District’s recommendations.
- 2.6 Resolution or Ordinance to Assume Jurisdiction.** Prior to the Assumption Date, the City shall draft and adopt a resolution or ordinance to assume jurisdiction over all the District, as required by RCW 35.13A.030 and consistent with the terms of this Agreement. Such resolution or ordinance shall include the City’s assumption of the obligation of paying the District’s indebtedness, collecting the District’s taxes, assessments, and charges, and observing and performing the other District contractual obligations.
- 2.7 Information.** Following execution of this Agreement, the District shall provide the City with any information upon request. This includes, but it not limited to, contracts, data, personnel, financial and property information, and documentation.

3. Transitional Public Utility Board

Upon Assumption, the City shall establish a Transitional Public Utility Board (“**Board**”) whose primary responsibility is to advise and make recommendations to the City Council regarding the

Public Works Utility Division's programs, services, and rates. The City Council shall take such recommendations under advisement. The Board shall consist of five members who reside in the area serviced by the Unified System. The City shall appoint to the Board each member of the LSSD Board of Commissioners who are serving at the time of unification should they agree to serve, and the Councilmembers assigned to the Utility Committee; otherwise, vacancies will be filled using the standard City board and commission process. The Board shall meet at least quarterly for a period of one year after the unification. After one year, from the date of unification, the Board will automatically be dissolved unless extended by resolution of the Lake Stevens City Council.

4. DISSOLUTION OF DISTRICT

Prior to the Assumption Date, the Parties shall cooperate in jointly drafting a Petition for Dissolution, meeting the requirements of RCW 35.13A.080, and consistent with the terms of this Agreement. The Petition shall contain the following: (i) a statement that the Petition is authorized by both the City and the District; (ii) a statement that title to the property, facilities, and equipment of the District has passed to the City pursuant to action taken by the City and District pursuant under RCW 35.13A.070; (iii) a statement that all indebtedness and local improvement district or utility local improvement district assessments of the District have been discharged or assumed by and transferred to the City; (iv) a statement of the distribution of assets and liabilities; and (v) a copy of this Agreement. Once the assumption is effective, the City shall file the Petition for Dissolution with the Snohomish County Superior Court. The City shall be responsible for the filing fee and any other court costs of the dissolution.

In the event the City and the District fail to jointly initiate dissolution proceedings as provided for above, either the City or the District may petition for dissolution as provided for in RCW 13.13A.080 following the effective date of the assumption.

5. ABANDONMENT

This Agreement for Plan of Assumption may be abandoned upon the mutual consent of the respective governing boards of the District and City Assumption Date. In the event of the abandonment of this Agreement, this Agreement shall be void and have no effect and no liability shall be incurred hereunder on the part of either the District or the City or any of its commissioners, council members, officers, directors, or employees.

6. DISPUTE RESOLUTION

It is the intent of the Parties in entering into this Agreement to provide for a cooperative process for the identification of issues and the solution of those issues, allowing for the successful assumption of the Lake Stevens Sewer District by the City of Lake Stevens, without disruption of sewerage service to the customers of the District and the employment of District employees with the City following the assumption. It is expected that the Parties will exercise their responsibilities and commitments in good faith and with due diligence. Should at any time during the term of this Agreement either party have disagreement or objection as to the other party's performance or compliance with their responsibilities under the provisions of this Agreement, the complaining party through their designated dispute resolution representative shall provide written notice and shall address the issue with the other party's dispute resolution representative, and the two of them shall meet and use good faith efforts to resolve the issue to their mutual satisfaction. The designated dispute resolution representatives are:

For the City: Its City Administrator or their designee

For the District: Its General Manager or their designee

In the case that the designated dispute resolution representative cannot agree to a remedy of an identified disagreement, the Parties may use a mutually agreed professional mediator or mediation service to resolve the dispute as to the specific Party's performance or responsibilities under the Agreement.

7. CURRENT LITIGATION

Upon full execution of this Agreement, the City will rescind Ordinance No. 1108, adopted on December 8, 2020, rescind Ordinance No. 1120 adopted on May 25, 2021, and withdraw the Notice of Intent filed with the Boundary Review Board regarding Ordinance No. 1108 on approximately February 22, 2021. After the Ordinances are rescinded, the District and the City shall jointly stipulate and file a motion with the Snohomish County Superior Court for the dismissal of Cause No. 21 2 00455 31 without the award of costs to either party.

8. MISCELLANEOUS

8.1 Modification; Assignment. No modification or amendments shall be valid unless evidenced in writing, properly agreed to, and signed by both parties. Neither party shall assign its rights in this Agreement.

8.2 Supersede. To the extent there is any conflict between the terms and conditions of this Assumption Agreement and the Unification Agreement, the terms and conditions of this Assumption Agreement will govern and control. It is the specific intent of the Parties that the provisions of this Agreement supersede and replace the provisions of Article 5 of the Unification Agreement.

8.3 No Third-Party Rights. This Agreement is intended to govern only the rights and responsibility of the parties hereto. Nothing in this Agreement shall be construed or interpreted to create any third-party rights or create a cause of action in favor of a third party. This Agreement shall not be construed or interpreted to create a standard of performance or care for the purpose of any claim initiated by a third party.

8.4 Authority. The persons who have executed this Agreement represent and warrant that this Agreement has been unanimously approved by their respective board of commissioners (for the District) or city council (for the City).

8.5 Recording. Upon execution of this Agreement, each party shall either post the executed Agreement online or file it with the County auditor.

WHEREFORE, the Parties have executed this Agreement on the dates set forth below.

CITY OF LAKE STEVENS

LAKE STEVENS SEWER DISTRICT

Brett Gailey, Mayor
Date: _____

Kevin Kosche, Commission President
Date: _____

Gene Brazel, City Manager
Date: _____

Mariah Low, General Manager
Date: _____

Approved as to Form:

Approved as to Form:

Greg Rubstello, City Attorney
Date: _____

Jordan Stephens, District Attorney
Date: _____

Attest:

Kelly Chelin, City Clerk
Date: _____