

THIRD AMENDED JOINT POWERS AGREEMENT

HAYDEN AREA REGIONAL SEWER BOARD

This Third Amended Agreement is entered into this 26th day of June, 2019, pursuant to the provisions of Idaho Code Sections 67-2326 through 67-2328 and Section 67-2333, related to the joint exercise of powers by and among the following public agencies as defined in Idaho Code 67-2327:

City of Hayden (“City”)
Hayden Lake Sewer District (“District”)
Kootenai County (“County”)

(collectively “Parties” or “Members”)

WHEREAS, the purpose of this Third Amended Agreement is to amend the terms of the Second Amended Joint Powers Agreement.

NOW THEREFORE, in consideration of the mutual advantages and benefits to each of the Parties hereto, and the mutual covenants contained herein, the Parties agree as follows:

1. **ARTICLE I. Definitions.** As used in this Agreement, the following terms shall have the meaning hereinafter set forth:
 - a. AMMONIA NITROGEN (NH₃-N). A measure of the quantity of the compound ammonia present in wastewater using EPA-approved laboratory methods.
 - b. BOARD. The Board of Directors of the Hayden Area Regional Sewer Board (HARSB), which shall be the governing body of HARSB.
 - c. BIOCHEMICAL OXYGEN DEMAND (BOD). The amount of dissolved oxygen needed by aerobic biological organisms in a body of water to break down organic material present in a given water sample at certain temperature over a specific time period.
 - d. CAPACITY. The maximum ability of the HARSB Facility to treat wastewater flows and loads as defined by engineering plans approved by the Idaho Department of Environmental Quality (IDEQ).
 - e. CONNECTION FEE: The fee charged by HARSB to permit the User to have its wastewater treated, and imposes on the User an obligation to pay for its use of sewer treatment infrastructure and services. The fee shall be determined in accordance with applicable law.
 - f. EPA. United States Environmental Protection Agency.
 - g. ER. “Equivalent Residence,” as historically used with the 10-9-86 and 6-1-90 Joint Powers Agreement and funding agreement dated June 18, 2013, which

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equals 200 gallons per day for a single family residence. The conversion to Wastewater units is 1 ER = 6 Wastewater Units (WU), with WUs being subject to additional loading component maximums as set forth below (and as may later be adopted). This Agreement modifies the basis for capacity allocation from ER to WU, and updates the Facility capacity design basis.

- h. FACILITY OR FACILITIES. The Publicly Owned Treatment Works and the real and personal property and equipment owned and operated by HARSB and the related rights necessary to the collection, treatment, and disposal of sewage/wastewater from areas within the service areas of each of the Members, including the disposal of the sludge, discharge and/or land application of the effluent. These terms shall not include any lift stations, collection or interceptor lines separately owned or operated by any of the Parties to this Agreement.
- i. FLOW: The volume of wastewater attributable to each User or Member.
- j. HARSB. The Hayden Area Regional Sewer Board.
- k. IDEQ. Idaho Department of Environmental Quality.
- l. INFLOW. storm or ground water that enters the wastewater system through rain leaders, basement sump pumps or foundation drains illegally connected directly to a sanitary sewer pipe.
- m. INFILTRATION. Non-wastewater or groundwater seepage into sewer pipes through cracks, leaky pipe joints and/or deteriorated manholes.
- n. LOAD. The quantity of any constituent present in wastewater required to be measured (by concentration (mg/L) or mass (pounds per day or “PPD”)) and treated by either state or federal regulations, or which is reasonably anticipated to be regulated.
- o. MEMBERS. The public agencies, as defined in I.C. 67-2327, that are Parties to this Agreement.
- p. NON-RESIDENTIAL. Users that do not meet the definition of Residential, including public, institutional, commercial and industrial Users.
- q. POTW. Publicly Owned Treatment Works, which consists of that portion of the Facility designed to treat sewage.
- r. RESIDENTIAL. Users occupying a building or dwelling unit designed and used exclusively for housing purposes by one family, or a building or dwelling unit that houses eight (8) or fewer persons occupying the dwelling unit and living as a single housekeeping unit, or a single family dwelling as defined by the Local Land Use Planning Act, I.C. 67-6531.
- s. TOTAL PHOSPHORUS (TP). A measure of the element phosphorus present in wastewater obtained by separating particles from a water sample using a filter and employing EPA-approved measurement and testing standards.

- t. TOTAL SUSPENDED SOLIDS (TSS). A measure of particulate weight obtained by separating particles from a water sample and employing EPA-approved measurement and testing standards.
 - u. USER/USERS.
 - i. Active Users. Property owners, persons or entities (which may include Members) that have paid for and connected to a Member's collection system.
 - ii. Inactive Users. Property owners, persons or entities (which may include Members) that have paid for the right to discharge to a Member's collection system but have not yet connected to a Member's collection system prior to the effective date of this Second Amended Joint Powers Agreement (no new Inactive Users are allowed after that date).
 - v. WASTEWATER UNIT (WU). A maximum of 1,000 gallons of wastewater Flow per month, with a maximum Load of specified constituents which are based on HARSB POTW design, regulated by federal or state agencies, or which are reasonably anticipated to be regulated, as set forth in the Wastewater Unit Reference Table.
 - w. WASTEWATER UNIT REFERENCE TABLE (WURT). A Table to be adopted and periodically amended by the Board which establishes the amount of Flow and maximum Load of various constituents for each WU. It is the intent in adopting a WURT to permit new Load constituents and Load maximums to be adopted when necessitated due to new state or federal regulations, and/or reasonably anticipated regulations, such that an amendment to this Agreement is not required every time a stricter regulation or new Load constituent requires monitoring or treatment.
2. **ARTICLE II. Creation of HARSB.** The Hayden Area Regional Sewer Board is created as a separate joint powers legal entity, separate and apart from any of its Members.
3. **ARTICLE III. Duration.** The term of this Agreement shall be perpetual so long as the Facility or any part thereof is required to provide sewer collection and treatment service of the Users in the area to be served by the Facility, or the Agreement is terminated by the Members.
4. **ARTICLE IV. Purpose and Powers.**
- a. Purpose. The purpose of HARSB shall be as follows:
 - i. To acquire, own, develop, and maintain the Facility (which includes a POTW) so as to provide cost-effective sewage/wastewater collection, treatment and disposal for the Members.
 - ii. To facilitate the Members' performance of their individual responsibilities toward their respective constituents with respect to the provision of sewer services.
 - b. Powers. Subject to the provisions of this Agreement, and such limitations as may be imposed by law HARSB shall have the following powers, acting through its

Board. Nothing contained herein shall expand the powers of HARSB beyond those of its Members.

- i. To acquire, own, develop, operate and maintain the Facility;
- ii. To conduct and operate the business of HARSB, and to execute documents and instruments relating to such business;
- iii. To negotiate agreements for the acquisition of land, improvements, equipment, easements, permits, or other interests in real or personal property which may become components or otherwise be needed for the construction, operation, and/or maintenance of the Facility;
- iv. To perform rate analysis and establish member fees, and to provide minimum standards based on federal and state requirements for member sewer use, spill control, and Member pretreatment;
- v. To establish and collect appropriate assessments, and service charges to be levied against the Members in order to cover any necessary capital improvements, replacement of capacity, repair, operation and maintenance of the Facility, and to provide for reserves;
- vi. To procure and maintain insurance covering the various risks to which HARSB, its Board, or its operations may be subjected;
- vii. To maintain bank accounts;
- viii. To pay expenses incurred in performing the business and purpose of HARSB;
- ix. To employ, discharge, and pay compensation related to staff, contractors, consultants, and other professionals whose services are required;
- x. To monitor actual Flow and Load to the Facility and amount of capacity that has been committed, and to require Members to pay additional Connection Fees (WUs) to the extent the Member's wastewater characteristics flowing from the Member exceed the maximum Load and Flow parameters according to the WURT, and to require Members to control their significant Non-Residential dischargers to be in compliance with external regulations imposed by local, state or federal regulatory agencies;
- xi. To adjust the Members' payment obligations for Operation and Maintenance expenses, as specified in Article 6, Section (b)
- xii. To sue and be sued;
- xiii. To enter into contracts with the Members for HARSB to provide maintenance and other services to the Members individual systems;
- xiv. To do all other things allowed or required and necessary, incidental, or convenient to the exercise of the foregoing powers to the accomplishment of the foregoing purpose.

5. **ARTICLE V. Duties of the Board.** The affairs of HARSB shall be managed by the Board, subject to the following:

a. Board Membership.

i. Each Member shall designate one person to serve as the Member's representative on the Board, and may also designate an alternate to serve in the designee's absence. HARSB will be given written notification when a change of representative occurs. Both the person designated to serve on the Board and the alternate may attend Board meetings and participate in discussions. The primary representative makes all motions, and votes on all HARSB Board issues; however, in their absence the alternate representative acts on the Member's behalf.

ii. All decisions require a simple majority vote, except "Major Decisions" (as further defined below) and personnel decisions relating to the engagement or termination of the Administrator or Board Secretary, which requires a unanimous decision.

b. Major Decisions. The following major decisions shall require the written approval of the governing body of each of the Members prior to being voted on by the Board, and unanimous consent of the Board:

i. Modification or amendment of this Agreement (which can only be modified by the Members and not the Board);

ii. Adoption or revision of an operational budget for the Board, or the incursion or payment of any obligation or contract, not specifically contemplated in the approved budget Meetings;

iii. Changes to the WURT that are not based on existing federal or state regulatory requirements, but which are proposed based on reasonably anticipated federal or state regulatory requirements.

c. HARSB will follow Idaho Code pertaining to meeting requirements, notice requirements, copying and other public entity administrative activities.

d. Regular Meetings. Regular meetings of the Board shall be conducted at least monthly at such time and place as may be fixed by the Board.

e. Special Meetings. Special meetings of the Board may be called by any Member.

f. Open Meetings. All meetings shall be conducted in compliance with the open meeting laws, including posting of agendas.

g. Quorum. The attendance of either the representative or alternate for two of the members shall constitute a quorum for the purpose of conducting business.

h. Chairman. The Chairman and Vice-Chairman will be elected annually by the representatives of the Members, on the first regular board meeting after the first of the calendar year. The Chairman will conduct the meetings, and in the chairman's absence the Vice-Chairman will conduct the meeting.

6. ARTICLE VI. Sewer Service Charges.

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- a. Connection Fees.
- i. Each Member shall have the right to expand its service area without the consent of the Board or the other Members. Each Member shall also have the right to expand its number of Active Users, provided Capacity exists at the time of hook up.
 - ii. When a User of any Member hooks up and pays a Connection Fee, the Member shall pay to HARSB the Connection Fee, which shall be equivalent to the maximum capacity in the HARSB system that is being made available for use by that User as outlined in the WURT, and adopted by the Board. The WUs shall be uniformly adopted by all Members.
 1. All Residential Users will be assessed a minimum of six WUs.
 2. All Non-Residential Users will be assessed a minimum of three WU's with any incremental amount over the minimum being assessed in 1,000 gallon increments (i.e. 4,001 gallons to 5,000 gallons/month is 5 WUs). Non-Residential Users will be charged the maximum number of WUs in order to achieve compliance with the Load constituents set forth by the WURT.
 3. Payment of a Connection Fee to HARSB shall not be applicable to capacity assigned by one Member to another Member as provided in Article 6(a)(x).
 - iii. Connection Fee Equalization: In order to assure that each Member pays its fair share of the cost of the Facility that it and its Users are using, each Member shall be assessed for WUs based on the maximum of all WU constituent components of Flow and Load.
 1. If any Member's Loading or Flow goes over the maximum permissible limit based on the number of Active Users and the maximum Loading parameters of the WU, the Member will be assessed additional WUs until it is in compliance (i.e., if the Member reports 5,000 WUs are in use, and the Loading reflects the use of 5,500 WUs due to exceeding one of the Loading component criteria, the Member will be charged and pay for an additional 500 WUs).
 2. Connection Fee Equalization shall occur every 6 months, and shall be based upon the prior 12 months' Load and Flow measurements.
 3. It shall be the obligation of HARSB to measure the Flows and Loads of the wastewater coming from each Member's collection systems. The frequency and methodology for testing loads shall meet federal and state standards, unless the Board unanimously agrees to a less stringent method for the relevant testing period.
 - iv. The Connection Fee related to the HARSB system shall be based on a uniform method of assessment for all Member Users.

- v. No Member shall be entitled to more use (based on both Flow and Load maximums) of the Facility than the total maximum Flows and Loads authorized by the Member, based on the WUs for which the Member has paid.
- vi. HARSB may adjust WU cost assessments based on an annual financial analysis or financial plan that is adopted by the Board.
- vii. Capacity in the Facility shall be available to the Members on a first come, first served basis.
 - 1. Expansion Exception: If a Member has provided funding for capacity replacement through some means *other than through the payment of connection fees for replacement of capacity used*, the Member providing the additional funding shall be entitled to have the additional capacity generated by that funding reserved for that Member's use, unless agreed otherwise by the Member.
- viii. June 18, 2013 Funding Agreement: A June 18, 2013 "Agreement" was entered into between the Parties and HARSB ("Funding Agreement") in order to fund certain improvements that are required to meet heightened wastewater treatment and regulatory requirements. The Funding Agreement also set forth a cost-share allocation for certain "common costs" (including regulatory upgrades and replacement costs), as well as payment for expansion of the facility to create additional capacity, which was a cost only shared between HARSB and the City of Hayden, as they deemed appropriate.
 - a. Construction Funding Allocation Adjustment based on WUs. The Funding Agreement provided that the Parties' proportionate share of the costs of construction for the treatment plant regulatory upgrades and replacement were to be paid according to each Parties' proportionate share of Committed ERs using the total plant capacity as of January 1, 2013 as the denominator (10,061), with a "true up" to occur at the conclusion of the construction of Phase 2 which would account for the change or difference in proportional ownership between the "Beginning Percentage" and the "Ending Percentage" based on ERs owned. See Funding Agreement, Section 2(a)-(f). The Parties agree that the Phase 2 "true up" will now be based on WUs instead of ERs, and shall be the difference between the "Beginning Percentage" and the "Ending Percentage" of WUs as defined and as may be adjusted under this Agreement.
- ix. A Capacity Replacement Fund shall be established according to law.
- x. Redistribution of WUs:

1. HARSB may refund monies received for WU's from Members, but is under no obligation to do so. The buyback determination and price shall be determined in conjunction with the annual HARSB budget by a unanimous agreement of the HARSB Board.
2. When HARSB has unallocated WU's equivalent to 350 residential connections or less, an assignment of unconnected WU's from one Member to another Member may be negotiated between the Members, but the assignment may not take effect until the unallocated HARSB connections reaches zero. The assigning Member may charge a reasonable assignment fee negotiated between the two Members, taking into account the fees and other financial obligations associated with the WU's being assigned. In no event shall the assignment fee exceed the HARSB connection fee in effect at the time of the assignment. The Members doing the assignment shall report to HARSB in writing on the first business day of the month following the assignment the number of WU's assigned that month.
3. If HARSB has unallocated WU's equivalent to more than 350 residential connections and a Member desires to assign WU's directly to another Member entity, the Members shall submit the proposal to the HARSB Board specifying the number of WU's proposed to be assigned. If the Board makes a unanimous finding that the assignment will not create a hardship to HARSB the Members may proceed with the assignment. The Members shall report to HARSB in writing on the first business day of the month following the assignment the number of WU's assigned that month.

b. Operation and Maintenance.

- i. The Board shall be responsible for assessing and collecting from each Member a fee for the operation and maintenance (O&M) of the Facility. The O&M fee shall be collected from the Member, who shall collect for the O&M fee based on its own fee structure from the Member's Active Users.
- ii. The basis for calculating the O&M fee shall be uniform for all Members, and shall be based on the number of WUs attributable to each Member using the Connection Fee Equalization process as described above in Section 6(a)(iii).
- iii. It is the intent in establishing these fees to allocate costs equitably between the Members. Each Member will pay a percentage of the repair, operation, maintenance and replacement of the Facility, based on Flow and Load.
- iv. Operations and maintenance fees (O&M Fees) shall be used to pay for supplies, materials, utilities, equipment, parts, chemicals, labor, employee

benefits and other expenses for the Facility to comply with any conditions or requirements imposed by state or federal regulatory agencies relating to the daily operation of the Facility.

- v. Any funds collected for O&M that have not been expended for that purpose at the end of the fiscal year may be refunded or rolled into the Replacement/Depreciation account by the Board.
- c. Replacement/Depreciation.
- i. A Replacement/Depreciation rolling account shall be established by HARSB to fund replacement and depreciation of capital items in accordance with generally accepted engineering and accounting practices.
 - ii. The basis for calculating the Replacement/Depreciation fee shall be uniform for all Members, and shall be based upon the number of WUs attributable to each Member using the Connection Fee Equalization process as described above in Section 6(a)(iii).
- d. Member connection and user fees. Nothing in this Agreement is intended to address the connection and user fees a Member assesses to its customers for lift stations, collection lines and interceptor lines separately owned or operated by any of the Members.
- e. Pre- payment for capacity. Except as provided in Article 6(a)(vii)-(viii), no Member shall be allowed to pre-pay for capacity in the Facility.
- i. Capacity may only be committed for the purpose of serving a specific property and may not be assessed and held independent of being associated with a specific property, nor may it be transferred from one property to another, except as provided in Article 6(e)(ii)-(iii).
 - ii. Additional WUs assessed to a Member that cannot be attributed to the activities of a specific User (e.g., inflow, infiltration, and unidentified Users causing heavy Loading) may be held by the Member independent of being associated with a specific property.
 - iii. Within a Member's own jurisdiction, said Member may reassign WU's previously associated with a property to a different property also within the Member's jurisdiction. A Member may also assign WU's held by said Member which have not been previously associated with a specific property.

7. ARTICLE VII. Pre-Treatment and Discharge Restrictions

- a. The Members shall, at all times, now and in the future, abide by, and require their Users to abide by, all applicable Federal, State and local laws and regulations pertaining to the discharge of wastewater to be treated in a POTW. Infiltration and In-flow shall be managed by each Member so as not to substantially adversely affect the quality of treatment efforts undertaken at the Facility.

- b. Each Member shall restrict and prohibit the introduction by its Users of wastewater, toxins, wastes and undesirable chemicals into the Facility that will harm the system or cause a violation of regulations imposed by state or federal regulatory agencies. Each Member will enforce all applicable discharge restrictions mandated by State and Federal regulatory agencies, which will include adoption of an EPA/IDEQ approved treatment program if mandated by the EPA/IDEQ.

8. ARTICLE VIII. Termination of Agreement or Membership; Distribution of Assets

- a. Termination of Agreement or Membership.
 - i. Partial Termination. Any Member of HARSB may terminate its membership in HARSB by providing the other Members one hundred eighty (180) day's written notice of the intent to terminate. Such notice shall be hand-delivered, or sent certified mail, return receipt, to the governing body of the other Members and to the HARSB Board.
 - ii. Termination. This Agreement may be terminated by agreement of all Members or upon the entry of a court order requiring termination.
- b. Allocation of Members' Interest in Property Upon Withdrawal of One Member from Agreement.
 - i. If the Members cannot not reach a unanimous agreement as to the allocation of interests within one hundred eighty (180) days after any Member delivers written notice of the intent to terminate its membership, the method of allocation of assets to the terminating Member in the Facilities, if any, shall be submitted to a court of competent jurisdiction for determination.
 - ii. The termination resolution shall include a determination of the method by which Users will be provided continued service after the termination.
- c. Distribution of Property Upon Termination of Agreement and Dissolution of HARSB.
 - i. The Parties shall negotiate in good faith the method by which the system will be distributed to the Members or sold and the proceeds distributed. If a mutually acceptable distribution cannot be reached, the system shall be offered for sale to any interested Member at fair market value. The price to be paid will be offset by the purchasing Member's interest in the system, plus the purchasing Member's interest in the available capacity.
 - ii. If more than one Member is interested in purchasing the system, and the Members cannot reach mutual agreement as to which Member will be entitled to purchase the system, any Member or HARSB may initiate a court action to determination a fair distribution.


9. ARTICLE IX. Miscellaneous.

- a. Fiscal Year. Fiscal year shall be October 1 thru September 30, unless otherwise agreed by the HARSB Board.
- b. Transfers. No Member may directly or indirectly sell, transfer, assign, pledge or encumber all or any part of, or its rights or obligations, in HARSB or the Facility.
- c. Venue. Venue for any cause of action shall be in Kootenai County Idaho.
- d. Authority. The representative of the Member executing this Agreement shall do so only after having first obtained approval of this Agreement by the Member's governing body.
- e. Effective Date. This Agreement shall be effective upon the execution by representative of each of the Members.

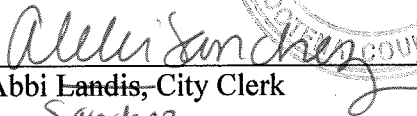
CITY OF HAYDEN


 Steven J. Griffiths, Mayor


HAYDEN LAKE SEWER DISTRICT


 Carole Stringer, Chair

ATTEST:


 Abbi Landis, City Clerk

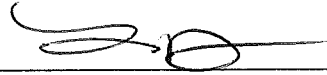
ATTEST:



 Lynn Hagman, Board Secretary

KOOTENAI COUNTY


 Chris Filios, Commissioner


 Bill Brooks, Commissioner


 Leslie Duncan, Commissioner

ATTEST:

 Jim Brannon, County Clerk