

ORDINANCE NO. 265

**AN ORDINANCE OF THE CITY OF DETROIT REPEALING ORDINANCE 263
AND RATIFYING THE CREATION OF THE NORTH SANTIAM SEWER
AUTHORITY IN ACCORDANCE WITH AN ORS 190 INTERGOVERNMENTAL
AGREEMENT AND DECLARING AN EMERGENCY**

RECITALS

WHEREAS, the communities along the North Santiam River have historical roots as logging communities, and

WHEREAS, the North Santiam Communities have experienced a series of economic setbacks that have significantly changed the sustainability of the community, and

WHEREAS, in 1998, 13,538 acres were designated as the Opal Creek Wilderness and Opal Creek Scenic Recreation Area which further altered the timber economy and community landscape, and

WHEREAS, the communities along the North Santiam River have not recovered economically since the curtailment of the available logging timber in the area and continues to struggle to find an equilibrium between the economic needs of the community and the rural timber lifestyle and character, and

WHEREAS, the community members have hosted tourists and outdoor recreation visitors to offset the financial losses from the timber industry, and

WHEREAS, the incorporated communities along the North Santiam River must continue to maintain vital city and business services to lake and recreation visitors that swell during outdoor recreation seasons, and

WHEREAS, the City of Mill City, City of Gates, City of Detroit, and the City of Idanha have strategic interests in the shared overall social and economic health of the community, the citizens and the business community, and

WHEREAS, the City of Detroit has a vital interest and is committed to providing an overall positive economic and community development climate by expanding

opportunities for businesses to thrive in the City core and maximize the availability of commercial property, and

WHEREAS, the City of Detroit would economically benefit from an increased tax base from new commercial and endeavors within the City, and

WHEREAS, the City of Detroit does not currently have adequate wastewater resources to respond to the immediate individual and business needs and future potential growth as detailed in multiple economic studies, and

WHEREAS, the City of Detroit desires to provide additional protection from harmful wastewater discharges into the waters of the North Santiam River and its watershed; and

WHEREAS, the communities of the City of Mill City, City of Gates, City of Detroit and City of Idanha, collectively known as the North Santiam River Canyon, have a shared interest in the long-term economic vitality of the North Santiam River Canyon, and the long-term cleanliness of the North Santiam Watershed for local and downstream users for current and future generations; and

WHEREAS, ORS 190.010 authorizes units of local government to enter into agreements for the performance of any functions and activities that any party to the agreement, or its officers or agents, has the authority to perform; and

WHEREAS, under ORS 190.085, each party to an intergovernmental agreement creating an intergovernmental entity must enact an ordinance ratifying the creation of the intergovernmental entity prior to the effective date of the intergovernmental agreement; and

WHEREAS the Council previously adopted Ordinance No. 263 and now desires to replace that Ordinance in its entirety with this Ordinance No. 265; and

WHEREAS, the Council desires to declare its intent to create an independent intergovernmental entity by intergovernmental agreement;

NOW THEREFORE, the City of Detroit hereby repeals Ordinance No. 263 in its entirety, replaces it with this Ordinance No. 265, and further ordains as follows:

1. Short Title. This Ordinance No. 265 shall be referred to as the “North Santiam Sewer Authority Ratifying Ordinance” and will be cited and referred to herein as this “Ordinance.”

2. Intent; Effective Date. The City Council hereby declares its intent to create the intergovernmental entity to be known as the North Santiam Sewer Authority (“the Authority”) and hereby ratifies the attached Intergovernmental Agreement establishing the Authority. The Intergovernmental Agreement is attached hereto as Exhibit A. The effective date of this Ordinance shall be January 14, 2020.

3. EMERGENCY CLAUSE: It being necessary for the peace, health, safety and sound development of the City, an emergency is hereby declared to exist. Upon adoption of the Detroit City Council and upon signature by the Mayor, Ordinance 265 shall become effective January 14, 2020.

First reading before the City Council of the City of Detroit on December 10, 2019.
 Second reading by addendum before the City Council of the City of Detroit on January 14, 2020. Third reading by title on January 14, 2020.

Passed by the Common Council of the City of Detroit, Oregon, this 14th Day of January 14, 2020.

Ayes____ Nays____ Absent____

Attest:

Signed: _____

By: _____

James R. Trett, Mayor

Kelly Galbraith, City Recorder

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT CREATING THE NORTH SANTIAM SEWER AUTHORITY

It is mutually agreed by, between and among the undersigned to adopt this IGA for the creation of the North Santiam Sewer Authority (“the Authority”). The Parties further agree to the terms and conditions below:

1. PARTIES; CREATION OF THE NORTH SANTIAM SEWER AUTHORITY

1.1 The parties to this Agreement are the cities of: 1) Detroit; 2) Gates; 3) Idanha; and 4) Mill City; (“the Parties”). Additional Parties may be added by amending this Agreement as provided in Section 11, below. Any additional Parties must agree to and sign an amended Agreement or addendum.

1.2 The Parties hereby create the North Santiam Sewer Authority as an intergovernmental public entity formed by this intergovernmental agreement under the auspices of ORS Chapter 190, specifically ORS 190.010, and declare that it will be known as the North Santiam Sewer Authority (referred to in this Agreement as “the Authority”). The Parties hereby agree and acknowledge that the Authority shall exist and operate as an independent government under ORS 190; separately and independently from the Parties’ governing bodies, except as expressly limited herein. The Authority Board, as more specifically described below, shall act in the best interests of the Authority and shall independently establish Authority rules, and priorities; but may take into consideration the Parties’ collective needs, environments, and timelines.

2. TERM; WITHDRAWAL; TERMINATION

2.1 Term. The Term of this Agreement is perpetual and the Authority shall continue to exist indefinitely from year to year unless dissolved as provided below. A Party’s withdrawal from the Agreement shall not, of itself, dissolve the Authority or terminate the Agreement. Termination of the Agreement and dissolution of the Authority shall occur only as provided in Sections 2.2.2 and 21, below.

2.2 Withdrawal; Termination.

2.2.1 Withdrawal by a Party: A Party may withdraw from this Agreement and terminate its participation, responsibilities and duties under this Agreement upon providing five (5) year's advance written notice to the Board President. Notwithstanding the above, a Party may withdraw without such written notice if all Parties consent in writing.

2.2.1 a. If the Withdrawing Party secured an Authority grant or funding of any type, the withdrawing Party and the Authority Board shall work together to ensure the continued funding on behalf of the Authority and the Authority shall agree in writing to adhere to all grant or funding requirements. If the withdrawing Party incurred any Authority-authorized debt on behalf of the Authority, the Authority shall assume the debt obligations. (However, if the Withdrawing Party incurred any unauthorized debt or costs, the Withdrawing Party shall remain responsible for such debts or costs.)

2.2.1 b. A Withdrawing Party hereby agrees to authorize the Authority, at no additional cost, to keep, construct, replace, service, or maintain any Authority sewer infrastructure or facilities within the withdrawing Party's boundaries, subject to applicable City laws and regulations pertaining to sewer services and use of City rights of way.

2.2.2 Termination of Agreement and Dissolution of the Authority by Unanimous Vote: This Agreement may be terminated and Authority dissolved upon a unanimous vote of the Authority Board. Such dissolution shall be as provided in Section 21 of this Agreement.

3. POWERS; SCOPE OF SERVICES

3.1 Subject to any limitations expressly provided for in this Agreement, the Authority is hereby vested with all powers, rights, duties and responsibilities of the Parties necessary and desirable for planning, constructing, financing, maintaining, and providing sewer services to the Authority Service Area (which is further described in Exhibit A and by

this reference is incorporated into this Agreement), as well as the provision of ancillary services necessary for supporting the establishment of a sewer system, such as establishing, collecting, and enforcing fees and rules for the provision of sewer services (collectively referred to in this Agreement as “the Services”). In performing the Services, the Authority shall abide by applicable provisions of ORS 223 and 224, and any other applicable state statutes and regulations pertaining to the provision of the Services.

- 3.2 The Authority is also vested with the power to contract to provide the Services, subject to Board approval and direction.
- 3.3 The Authority will perform the Services and shall have the sole discretion to establish and determine the Authority’s processes, rules, and priorities; taking into consideration the Parties’ collective needs, environments, timelines, as provided in Section 1, above.
- 3.4 The Authority is a governmental Authority and must act in compliance with all applicable Oregon law, including but not limited to Oregon public meetings and public records law, and Oregon budget law. The Board may follow and may amend Oregon’s public contracting rules.

4. GOVERNANCE

- 4.1 The Authority shall be independently and solely governed by a Board of Directors (“the Board”). The Board may, at its sole discretion, establish and be advised by advisory groups as it determines necessary.
- 4.2 The Authority Board of Directors shall act in accordance to the best interests of the Authority *as a whole* and according to the collective Authority best interests. Directors will at all times seek to use collaborative and inclusive strategies to deliberate and decide Authority matters, taking into account the good of the entire Authority Service Area and System and the residents within the entire Authority Service Area. At no time may an individual Party govern, promise, contract, or speak on behalf of the Authority.

5. BOARD OF DIRECTORS

- 5.1 Board of Director Membership. The Board shall be comprised of two representative Directors from each Party: the first Director shall be a City

Councilor, subject to Section 5.2, below. The second Director may either be a City Councilor or a resident elector from within the Party's City boundaries, subject also to Section 5.2, below.

5.2 If, due to vacancies on a Party's City Council or due to a lack of available resident electors, a Party is unable to appoint a City Councilor or resident elector, then that Party may at its discretion appoint residents from within the Party's City boundaries. For the purposes of this provision, a Party has complete discretion to determine the definition of the term "resident."

5.3 All Authority Directors serve at the pleasure of the appointing Party, subject to the Board member terms as provided below.

6. BOARD QUORUM AND VOTING

Each Director shall have one vote. A majority of all the Directors on the Board shall constitute the quorum required for deliberation and decision-making. All decisions of the Board, unless otherwise provided herein, shall require at least a majority of Directors voting in favor or against any motion.

7. BOARD OFFICERS

The Board shall annually elect Officers. The Officer positions shall be Chair and a Vice-Chair, Secretary, and Treasurer. The election process, duties, and terms for Board Officers shall be as provided in the Board Rules.

8. BOARD RULES AND BOARD DUTIES

8.1 The Board shall adopt, and may amend from time to time, written Board Rules. Adoption or amendment of the Board Rules shall require at least 75 percent ($\frac{3}{4}$) vote of all Board members. The Board Rules shall provide reasonable rules regarding the time, place, and manner in which the Board conducts its business, as further described below. In the event of a conflict between the Board Rules and this Agreement, this Agreement shall prevail.

8.2 The Board of Directors, at its first organizational meeting after the adoption of this IGA, or as soon thereafter as reasonable, shall adopt the written Board Rules, which shall govern both Board procedures, including at a minimum:

- 8.2.1 the time, place, and notice for regular meetings, which shall be held at least four times per year and shall be held at rotating locations so that the Parties each have ample opportunity to host the meetings;
 - 8.2.2 the method and manner of calling regular and special meetings;
 - 8.2.3 the method, terms and manner of election of Board Officers;
 - 8.2.4 procedures for executing documents and signing checks on behalf of the Authority, including any limits on the Authority staffs' spending Authority;
 - 8.2.5 procedures regarding filling Board vacancies as long as such procedures comply with this Agreement, especially Section 5.1-5.3;
 - 8.2.6 the delegation of a designated Board member responsible for supervising the Authority Manager, if such a position is created; and
 - 8.2.7 other such rules which promote the efficient operation of the Board.
- 8.3 The Board shall be responsible for:
- 8.3.1 Meeting at least four times per year as further specified in the Board Rules.
 - 8.3.2 Adopting and amending from time to time the Board Rules.
 - 8.3.3 Approval and adoption of the Authority Strategic Plan and Master Plans and when necessary Wastewater Treatment Facilities Plans.
 - 8.3.4 Adoption of personnel policies and performance standards for Authority service levels, as needed.
 - 8.3.5 Adoption of the Authority's annual budget.
 - 8.3.6 Approval of all Authority contracts.

- 8.3.7 If necessary or desired, selecting and supervising an Authority Manager and approving the contract, employment terms, and conditions of employment for the Authority Manager.
- 8.3.8 Establishing subcommittees or advisory committees as needed.
- 8.3.9 Discussing and acting upon items placed on the Board's agenda.
- 8.3.10 Performing other duties in conformance with the Authority's Authority as the Board sees fit to accomplish.

9. AUTHORITY MANAGER

- 9.1 The Board may at its sole discretion select, appoint and supervise (including hiring, firing, and disciplining) an Authority Manager based upon qualifications and competence as deemed appropriate by the Board.
- 9.2 If an Authority Manager is hired, the Board shall appoint one of the Directors to serve as the Authority Manager's primary communication contact. The Board will adopt policies, rules, or procedures regarding the Authority Manager's job description, duties, responsibilities, and performance monitoring as needed.

10. FUNDING

- 10.1 The Authority shall be funded in part from User Fees. Such User Fees shall be based on a User Fee Formula adopted by the Board in a public meeting in compliance with Oregon law.
- 10.2 The Board or its authorized designee may seek additional funding from other sources as desired.

11. AMENDMENTS

This Agreement may only be changed, modified, or amended upon three-fourths (3/4) vote of all signed Parties to the Agreement.

12. EFFECTIVE DATE

This IGA shall become effective when signed by all Parties and upon the latest effective date of the Parties' ordinances adopting the IGA. By signing, the signatory affirms that he or she has the requisite Authority to enter into this Agreement on behalf of the Party's governing body.

13. PRIOR AGREEMENTS

This Agreement, upon its effective date, supersedes and replaces any verbal or written contracts or agreements pertaining to the creation of the Authority or the Parties' collective Authority to provide sewer services.

14. SEVERABILITY

The terms of this Agreement are individually severable and a determination by an appropriate body having jurisdiction over the subject matter of this Agreement that results in the invalidity of any part or segment, shall not affect the remainder of the Agreement.

15. INTERPRETATION

The terms and conditions of this Agreement shall be liberally construed in accordance with the general purposes of this Agreement.

16. GOVERNING LAW

This Agreement shall be governed in all respects by Oregon law.

17. INDEMNIFICATION AND WAIVER

To the extent limited by the tort claims limits in Oregon Law (ORS 30.260 through 30.300 and the Oregon Constitution, Article XI, Section 7), the Parties agree to defend and indemnify each other and the Authority (including all Party and Authority authorized employees, agents, or contractors) against any and all third-party liabilities, causes of action, suits, claims, damages, or costs or fees (including attorney fees) for injury or damage to life or property related to or arising from this Agreement or related to or arising from actions or failures to act under this Agreement (collectively, "Claims"). The Parties also hereby waive all such Claims against each other. However, this indemnification and waiver shall not apply to willful misconduct or substantial breach of this Agreement by the Authority, the Parties, or their respective employees, agents, or contractors. The obligations assumed hereunder shall survive the termination or expiration of this Agreement.

18. INSURANCE

The Parties and the Authority each agree to individually maintain comprehensive general liability insurance coverage or sufficient self-insurance reserves to cover the reasonable risks of damage or loss in the form of personal injury, bodily injury, or property damage for acts or omissions done in the course and scope of this Agreement in at least the coverage amounts for which public entities are liable under Oregon Revised Statutes and the Oregon Constitution, as those laws now exist or as they may be amended. The Authority shall name the Parties as additional insured. Notwithstanding anything in this Agreement to the contrary, the Board may, by majority vote and without amending this Agreement, require additional insurance coverage, limits, and terms.

The Authority Board shall secure all necessary and desirable insurance coverages, which shall include Errors and Omissions coverage.

19. EMPLOYEES

Employees or volunteers of the Parties shall be at all times employees and/or volunteers of their original employer for the purposes of this Agreement. No employment or business relationships between the Parties shall be imputed by the creation of this Agreement. Employees and volunteers remain subject solely to the personnel policies, rules, and regulations of their employer. The intent of this provision is to prevent the creation of any "special employer" relationships under Oregon workers' compensation law, PERS regulations, or other state or federal laws.

20. DISPUTE RESOLUTION PROCESS.

- 20.1 In the event there are disputes or claims by the Parties related to this Agreement, the Authority's actions under this Agreement, or the Board Rules, the following dispute resolution process will be followed. The disputing Parties agree that this process will serve as the sole dispute resolution process regarding such disputes or claims.
- 20.2 The disputing Parties shall address disputes in the below order. Dispute resolution will be documented by a mutually-signed memorandum.
 - 20.2.1 File complaint with Authority Manager or Board President describing the matter in detail specifically citing any alleged violations of the IGA.
 - 20.2.2 The Board President shall inform the Board and the Board shall schedule a meeting to hear the matter. All Board decisions are final.
 - 20.2.3 In the event the dispute is not resolved using the above process, either disputing Party may proceed to mediation. To begin the mediation process, the disputing Parties will each submit three (3) names of potential mediators and shall agree upon a mutually acceptable mediator from the list of names. The costs of mediation shall be borne equally between the disputing parties.
 - 20.2.4 In the event the dispute is not resolved using the above mediation process, the dispute shall be subject to final and binding arbitration. Arbitration shall be conducted pursuant to the rules of the Arbitration Service of Portland and shall be conducted in Marion County, Oregon, unless otherwise agreed by the disputing parties.
 - 20.2.5 In the event of any arbitration arising out of or relating to this Agreement or the enforcement thereof, the prevailing disputing Party in such action shall be entitled to recover its reasonable arbitration and attorney fees, costs, and expenses from the non-prevailing disputing Party.

20.2.6 The laws of the State of Oregon shall be applied in the interpretation, execution, and enforcement of this Agreement.

21. DISSOLUTION AND WIND UP

In the event that the Parties agree to terminate this Agreement and dissolve the Authority as provided in Section 2.2.2 above, the dissolution motion shall provide an estimated timeline for the dissolution and shall name two Board members, each from two different Parties (called "Dissolution Managers" in this Agreement), who shall be responsible for overseeing the dissolution process. The Dissolution Managers may retain professional assistance as needed and shall take immediate steps to begin to permanently terminate and dissolve the Authority. Such dissolution steps shall include but are not limited to the following:

- 21.1 Providing written notice to all Authority elected officials, employees, agents, or contractors of the pending dissolution, including the proposed timeline for a final dissolution and the Authority's expected process for ending employment relationships.
- 21.2 Notification to all neighboring governments, all necessary State and federal agencies, and all Authority partners of such dissolution.
- 21.3 Creation of a budget document which shall account for all Authority funds, revenues, and assets and all Authority debts and financial responsibilities.
- 21.4 Satisfaction of all Authority debts and financial responsibilities, including a final financial and accounting of all debts and resources.
- 21.5 Any funds or revenues remaining in Authority accounts after satisfying all Authority debts and financial responsibilities shall be distributed to the Parties in proportion to their funding contributions or number of sewer hookups over the Authority's final twelve (12) months; or as may be otherwise reasonably determined by the Dissolution Managers. Such distribution plan shall be documented in writing and shall be provided to all Parties prior to distribution.
- 21.6 Authority personal property, equipment and furnishings not identified for return to a third party or a Party shall be sold in accordance with

applicable public contracting and procurement law; after ensuring payment or satisfaction of all Authority debts or financial responsibilities, the funds from such sale shall be distributed to the Parties in proportion to their funding contribution to the Authority or number of sewer hookups over the Authority's final twelve (12) months; or as may be otherwise reasonably determined by the Dissolution Managers. Such distribution plan shall be documented in writing and provided to all Parties prior to distribution.

- 21.7 Any other actions or decisions required to fully dissolve the Authority, as determined by the Authority Manager or the Dissolution Managers, including specifically a plan for either maintaining or abandoning the Authority infrastructure.

22 MISCELLANEOUS

22.1 Limitation of Financial Obligations of the Parties. No Party to this Agreement shall be responsible or liable for the financial decisions or obligations of the NSSA or any project(s) undertaken by it, nor for any expenses or liabilities thereof, except as that Party explicitly agrees in writing and as otherwise authorized by law.

22.2 Non-Appropriation Clause. Notwithstanding anything to the contrary herein, each Party's obligation to pay any amounts, perform any activities, or provide any services or goods under this Agreement is conditioned upon that Party's receiving adequate funding, budgetary, or appropriations expenditure authority sufficient to allow the Party, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement.

AGREED UPON AND ENTERED INTO by the appropriate officer(s) who are duly authorized by resolution to execute this Agreement on behalf of the governing body of the below-named unit of local government.

Dated: _____
_____ City of Detroit

Dated: _____
_____ City of Gates

Dated: _____
_____ City of Idanha

Dated: _____
_____ City of Mill City

