

ORDINANCE NO. 65-99

AN ORDINANCE CONSENTING TO THE APPLICATION AND ENFORCEMENT OF LAKE OSWEGO CITY CODE PROVISIONS, RELATED TO SANITARY SEWER SERVICES, IN THE CITY OF RIVERGROVE.

THE RIVERGROVE CITY COUNCIL FINDS AS FOLLOWS:

1. Sanitary sewer services in the City of Rivergrove are provided to Rivergrove residents by the City of Lake Oswego in accordance with an Intergovernmental Agreement for Sewerage Services ("IGA").
2. Under the terms of the IGA, and in exchange for the provisions of sanitary sewer services, the City of Rivergrove agreed to apply and enforce several provisions in the Lake Oswego City Code ("LOC") in the City of Rivergrove. More specifically, the City of Rivergrove agreed to the application and enforcement of the provisions related to sanitary sewer service in Chapters 38, 39, and 40 of the LOC, and Chapter 14 of the Lake Oswego Utility Design Standards.
3. Having agreed to let the City of Lake Oswego apply and enforce provision of its code in the City of Rivergrove, it is necessary and in the best interests of the City of Rivergrove to adopt an ordinance that both consents to the application and enforcement of the identified LOC provisions and provides a process under which the City of Rivergrove will adopt a recommendation in support of a proposed local improvement district ("LID") or zone of benefit ("ZOB").

NOW, THEREFORE, THE CITY OF RIVERGROVE RESOLVES AND ORDAINS AS FOLLOWS:

Section 1

The following words and phrases that are used in this ordinance shall have the following meaning:

- A. City Council means the Rivergrove City Council.
- B. Local improvement district or LID has the meaning given that phrase in Chapter 40 of the Lake Oswego City Code.
- C. Person means an individual or any legal entity, including the City of Lake Oswego.

- D. Resolution application means the information that must be submitted to the City of Rivergrove to obtain the City Council's recommendation on a proposed ZOB or LID.
- E. Zone of Benefit or ZOB has the meaning given that term in Chapter 40 of the Lake Oswego City Code.

Section 2.

The City of Rivergrove hereby adopts by reference those portions of Chapters 38, 39 and 40 of the Lake Oswego City Code ("LOC"), and Chapter 14 of the Lake Oswego Utility Design Standards, that exist on the date of the adoption of this ordinance and are related to sanitary sewer services, in the City of Rivergrove, subject to the following:

- A. Before the City of Lake Oswego may accept and take action on an application to create a local improvement district ("LID") or zone of benefit ("ZOB"), the City of Lake Oswego shall receive a resolution from the City Council that includes a recommendation in support of the proposed LID or ZOB.
- B. Any person applying to the City of Lake Oswego to form a LID or ZOB shall submit a resolution application to the City of Rivergrove requesting the City Council adopt a resolution with a recommendation in support of the proposed LID or ZOB. The resolution application shall be submitted on a form provided by the City of Rivergrove and shall include the following:
 - 1. A copy of the LID or ZOB application that will be submitted to the City of Lake Oswego; and
 - 2. An application fee equal to the amount of money the City of Rivergrove anticipates it will cost to review the proposed LID or ZOB and adopt a resolution.
- C. Upon receipt of a complete resolution application, the Rivergrove Planning Commission may review it at its next regularly scheduled meeting as a discussion item on its meeting agenda. The Planning Commission may submit to the City Council its recommendation concerning the resolution application. However, with or without the Planning Commission review and/or recommendation, the City of Rivergrove shall schedule a public hearing before the City Council at which the City Council will accept public testimony (either written or oral) from any interested party and decide whether or not to adopt a recommendation in support of the proposed LID or ZOB. Notice of such a public hearing shall be published in the monthly edition of the Rivergrove Report published immediately preceding the public hearing and posted in at least three conspicuous places within the City and at City Hall, and mailed to each resident of Rivergrove that is an owner of property to be included in the proposed LID or ZOB at least 30 days prior to the public hearing before the City Council. If the City Council finds the proposed LID or ZOB is in the collective best interests of the citizens of the City of Rivergrove, the City Council may adopt a resolution in support of the proposed LID or ZOB. In making its

public interest decision, the City Council may consider, among other matters, the potential hardship / undue financial burden that could befall one or more citizens as a result of the proposed LID or ZOB. If a resolution in support of the proposed LID or ZOB is adopted, the City Council may include as specific conditions of the expressed support any detailed parameters of the proposed LID or ZOB that the Council deems appropriate.

- D. After the City Council adopts a resolution in support of the proposed LID or ZOB, or decides not to adopt such a resolution, or an applicant files a written request withdrawing the application for a resolution, the City of Rivergrove will refund any portion of the application fee that exceeds the costs the City of Rivergrove incurred in processing the application for the resolution. If, at any time, the costs incurred by the City of Rivergrove in processing the resolution application exceed the amount of the application fee, the City of Rivergrove may postpone action on the application until the applicant deposits supplemental application fee(s) to cover the additional incurred and estimated costs. If, at the completion of the processing of the application, the actual costs incurred exceeded the estimated costs upon which the initial application fees were based, the applicant shall be responsible for paying to the City an amount sufficient to cover the additional incurred costs.
- E. After forwarding a resolution supporting the LID or ZOB, the City of Lake Oswego shall have exclusive jurisdiction to deal with these matters in a manner strictly consistent with the terms of the resolution of support to include any conditions contained therein, insofar as they relate to the delivery of sanitary sewer services.

YEAS 5
NAYS 0
ABSTAINED 0


Mayor Larry Barrett

12-13-99
Dated


City Recorder, Mike Collmeyer

12/13/99
Adopted

COPY

SERIAL	1635
TITLE	INTERGOV. AGMTS - SGO
RETENTION	
EXP/COMPL DATE	1/2027
DESTROY	

INTERGOVERNMENTAL AGREEMENT FOR SEWERAGE SERVICES

THIS AGREEMENT is made and entered into as of the 17th day of December, 1996, between the City of Rivergrove, hereinafter referred to as "Rivergrove", and the City of Lake Oswego, hereinafter referred to as "Lake Oswego" both municipal corporations of the State of Oregon.

The purpose of this agreement is to provide for the collection, transport, and treatment of sanitary sewage generated within Rivergrove.

WHEREAS, Lake Oswego acting by and through its Mayor and City Council, pursuant to authority granted by its City Charter and ORS 224, has authority to enter into this agreement; and

WHEREAS, Rivergrove acting by and through its Mayor and City Council, pursuant to authority granted by its City Charter and ORS 224, has authority to enter into this agreement; and

WHEREAS, Rivergrove and Lake Oswego have the authority to enter into intergovernmental agreements for the cooperative operation of service facilities under ORS Chapter 190; and

WHEREAS, it is in the best interest of Rivergrove and Lake Oswego to enter into an agreement which provides for the collection, transport, and treatment of sanitary sewage generated within Rivergrove; and

WHEREAS, Rivergrove and Lake Oswego have determined that the provisions of this Agreement are consistent with and an acceptable means of implementing the Metro Area Sanitary Sewage Wastewater Management ("208") Plan; and

WHEREAS, Lake Oswego has previously entered into an agreement with the City of Portland to provide treatment of sanitary sewage generated within Lake Oswego at the Tryon Creek Wastewater Treatment Plant (WWTP); and

WHEREAS, the Tryon Creek WWTP facilities plan also provides for the treatment of sanitary sewage generated within Rivergrove; and

WHEREAS, Lake Oswego has developed a master plan and a master plan update for sewerage collection facilities for both Lake Oswego, Rivergrove and areas within the Lake Oswego Urban Services Boundary; and

WHEREAS, this Agreement would implement these plans;

NOW, THEREFORE, it is agreed as follows:

Section 1. Definition of Terms. Unless the context indicates otherwise:

- A. "Council" means either the City Council of Rivergrove and/or Lake Oswego.
- B. "Dwelling Unit" (DU) means a separate living unit with kitchen facilities including those in multiple dwellings, apartments, mobile homes and trailers. For nonresidential properties, a DU or Equivalent Dwelling Unit (EDU) shall be determined by Lake Oswego Ordinance, and Lake Oswego resolutions adopted thereunder.
- C. "Industrial Waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industrial or manufacturing business, or from the development or recovery of natural resources. For the purposes of this agreement, Industrial Waste shall also include any substance regulated under 33 USC Sec 1317, together with regulations adopted thereunder.
- D. "LOC" means the Lake Oswego City Code.
- E. "Operation and Maintenance" means the regular performance of work required to assure continued functioning of the sanitary sewerage system and corrective measures taken to repair facilities to keep them in operating condition.
- F. "Order" means Resolutions, Orders and Directives of Lake Oswego prescribing standards and conditions for construction or use of the sanitary sewerage facilities, and rates and charges therefor.
- G. "Permit Application and Inspection Fee" means fees charged an applicant for permits and related inspections for connections to the sanitary sewerage system.
- H. "Person" means the state of Oregon, any individual, public or private corporation, political subdivision, governmental Lake Oswego, municipality, industry, copartnership, association, firm, trust, estate or any other legal entity whatsoever.
- I. "Sanitary Sewerage System" means any combination of sewer treatment plant, pumping, or lift facilities, sewer pipe, force mains, laterals, manholes, side sewers, laboratory facilities and equipment, and any other facilities for the collection, conveyance, treatment and disposal of sanitary sewage comprising the total publicly-owned sanitary sewerage system within the jurisdiction of Lake Oswego, or, where Lake Oswego has entered into an intergovernmental agreement for use thereof, within the jurisdiction of the Unified Sewerage Agency of Washington County, the City of Portland or other governmental unit.
- J. "Sanitary Sewer Service Charge" means a regular charge to a property owner or occupant of designated premises for the use of the sanitary sewerage system.

///

- K. "Sewage Treatment Facility" means any facility designed for the purpose of the appropriate treating, holding, disposal, and discharge or reuse of sanitary sewage, including byproducts of such treatment processes.
- L. "Sewage Collection System" means any system of pipes, and pumping facilities designed for the collection of sanitary sewage for the purpose of transporting such material to a sewage treatment facility.
- M. "Standards" means the standards and conditions of use of the sanitary sewer system as specified and adopted by Lake Oswego. Standards also shall mean applicable statutes and rules of the United States of America and the State of Oregon.
- N. "System Development Charge" means the amount charged for connection to the sanitary sewer system pursuant to LOC Chapter 39.

Section 2. Operating Procedures and Relationships.

A. Rivergrove agrees to:

1. Comply with the ordinances, resolutions, orders or other rules promulgated by Lake Oswego governing operation and use of the sanitary sewerage system, and to notify Lake Oswego of apparent violations which may require Lake Oswego legal action.
2. Inform Lake Oswego in writing not less than 30 days prior to initiating or entering into any agreement for the financing or incurring of indebtedness relating to the sanitary sewerage system. Rivergrove shall not obligate any Lake Oswego sewer utility fund revenues nor shall facilities of the sanitary system be obligated for any debt.
3. Allow Lake Oswego access to lands within Rivergrove to inspect, install, repair, operate and maintain sanitary sewerage facilities within Rivergrove.
4. Grant or support the granting of permits to Lake Oswego from time to time as may be necessary for the installation of sewerage facilities in the public streets and ways of Rivergrove without imposing permit issuance fees, provided that Lake Oswego shall adhere to any conditions required pursuant to ORS 451.550(6).
5. Transfer or support transfer of the ownership of all future, publicly owned sanitary sewerage facilities and convey all sanitary sewer easements within Rivergrove to Lake Oswego without cost.
6. Authorize Lake Oswego to enforce those portions of the Lake Oswego Utility Code (LOC Chapter 38), Systems Development Charge Code (LOC Chapter 39), Improvement Procedures Ordinance (LOC Chapter 40) and Utility Design Standard (LODS Chapter 14) (attached and hereby incorporated by reference) related to sanitary sewer service within Rivergrove's boundaries, except as modified in Section 2(B)(3)

below, and consent to jurisdiction of the Lake Oswego Municipal Court over violations of such LOC Chapters.

7. If the Rivergrove City Council approves formation of a Local Improvement District (LID) or Zone of Benefit (ZOB) pursuant to Section 2(B)(3)(b) below, and the LID or ZOB is subsequently formed by the Lake Oswego City Council, Rivergrove irrevocably consents to construction of the project and assessment of the costs against the benefited property or establishment of the Zone Connection Charge pursuant to LOC Chapter 40, subject to the right of individual property owners to remonstrate, testify or pursue other remedies under LOC Chapter 40 and/or state law.

B. Lake Oswego agrees to:

1. Operate and maintain the sanitary sewer system within Rivergrove and assure that the operation and maintenance of the sanitary sewer system within Rivergrove complies with the provisions of the Wholesale Sewage Treatment and Disposal Agreement between Lake Oswego and Portland.
2. Provide Rivergrove with 30 days written notice of any fee increases related to the design, construction, operation, or maintenance of the sanitary sewer system.
3. Apply provisions of the LOC sections authorized to be enforced in Rivergrove pursuant to Section 2(A)(7) as follows:
 - a. Upon application by a property owner in Rivergrove, Lake Oswego shall grant an exemption to mandatory connection to sewer otherwise required by LOC 38.18.305(1) if the property is served by an alternative sewage disposal system in good working order. The exemption shall continue until such time as the system fails or begins to fail or the property is sold to a new owner, whichever occurs first. To obtain an exemption, a property owner shall permit reasonable inspection by Lake Oswego and/or Clackamas County to ascertain that the alternative system is in good working order.
 - b. Lake Oswego shall not form[☆] or accept a petition for formation of a local improvement district (LID) or a zone of benefit (ZOB) pursuant to LOC Chapter 40 within Rivergrove unless and until the Rivergrove City Council has reviewed the petition or proposed formation and has adopted a resolution in support of the petition or proposed formation and has forwarded a certified copy of such resolution to Lake Oswego.

C. The parties agree:

1. All public sanitary sewer system facilities within Rivergrove will be designed, constructed, operated, and maintained in accordance with Lake Oswego Ordinances, Resolutions, standards, policies and procedures.

2. All applicable Lake Oswego fees related to the design, construction, operation, and maintenance of the sanitary sewer system within Rivergrove shall be billed and collected by Lake Oswego. One hundred percent of the fees collected will be retained by Lake Oswego. Rivergrove agrees that such fees may include a differential rate over and above the rate charged to Lake Oswego residents if necessary to recover any additional expenses incurred as result of providing service under this agreement.

Section 3. Other Provisions. Rivergrove and Lake Oswego agree that:

- A. Rivergrove and Lake Oswego will each obtain such insurance contracts as necessary to cover the liabilities of Rivergrove and Lake Oswego respectively for the risks and liabilities arising from activities and operations under this agreement. Each party hereto shall cause the other to be named as an additional insured on its policy or policies as to the obligations under the terms of this agreement. In the event that either party chooses to be self insured, that party shall furnish proof of separately identified and unencumbered reserves of at least \$1,000,000.
- B. Rivergrove and Lake Oswego shall each be responsible for the negligent or wrongful acts of its officers, employees, agents, and volunteers, while performing work related to this agreement. Each party shall be solely responsible for defense, costs or payments arising from legal challenge alleging improper use by that party of funds derived from this agreement, or otherwise held by that party. Each party shall be responsible for any liability arising out of its ownership of real property and interests therein, activities governed by an NPDES permit or other air or water discharge permit issued by competent authority to that party, and any conduct of that party subject to direct regulation by state or federal authority.
- C. Nothing in this agreement shall be construed as a limitation upon or delegation of the statutory and home rule powers of Rivergrove, nor as a delegation or limitation of the statutory powers of Lake Oswego. This Agreement shall not limit any right or remedy available to Rivergrove or Lake Oswego against third parties arising from illegal acts of such third parties.

Section 4. Effect of this Agreement. This Agreement shall supersede all prior agreements and amendments between the parties with respect to sanitary sewerage, provided that, except as expressly modified herein, all rights, liabilities, and obligations of such prior agreements shall continue. This agreement shall be effective upon its execution by both parties hereto, and shall continue in effect for a term of thirty (30) years from and after the date hereof, unless or until the City of Rivergrove disincorporates and/or becomes part of the City of Lake Oswego. This agreement may be amended at any time upon the mutual written consent of both parties.

Section 5. Severability. In the event a court of competent jurisdiction shall deem any portion or part of this Agreement to be unlawful or invalid, only that portion or part of the Agreement shall be considered unenforceable. The remainder of this Agreement shall continue to be valid.

///

