

**HIGHLINE WATER DISTRICT  
King County, Washington**

**RESOLUTION 23-5-17C**

**RESOLUTION AUTHORIZING PARTICIPATION IN THE RETROSPECTIVE RATING PROGRAM THROUGH THE WASHINGTON ASSOCIATION OF SEWER AND WATER DISTRICTS (WASWD) AND MODIFYING EXISTING DISTRICT POLICIES TO COMPLY WITH THE PROGRAM**

**WHEREAS**, the Washington Association of Sewer and Water Districts (WASWD) is a retrospective rating group sponsoring entity under Chapter 51.18 RCW and has entered into a retrospective rating group agreement with the Department of Labor and Industries (L&I); and,

**WHEREAS**, the District is an employer that qualifies for the retrospective rating plan under Chapter 51.18 RCW and its implementing regulations, has been approved by L&I to be a participant in the plan, and has been approved for membership by WASWD; and,

**WHEREAS**, WASWD enrolls in a plan each year to enhance the safety of all Districts and to maximize refunds while minimizing potential liability to WASWD retrospective group members; and,

**WHEREAS**, WASWD has made changes to the terms and rules and requested members to execute a new agreement to continue participation in the program; and,

**WHEREAS**, the District desires to continue participation in WASWD's retrospective rating group until which time participation is no longer beneficial to the organization.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The General Manager or designee is authorized to execute the Retrospective Rating Plan Agreement with the Washington Association of Sewer and Water Districts (Attachment #1 incorporated herein) to participate in the plan.
2. The General Manager and/or the District's legal counsel are authorized to make minor changes to the Agreement if required.
3. The General Manager and/or designee is authorized to modify District policy and/or Highline Water District Code (HWDC) to comply with the terms and rules of the Retrospective Rating Program, now and throughout the duration the District participates in the program, as required.

# HIGHLINE WATER DISTRICT King County, Washington

## RESOLUTION 23-5-17C

**ADOPTED BY THE BOARD OF COMMISSIONERS** of Highline Water District, King County, Washington, at an open public meeting held this **17<sup>th</sup>** day of **May 2023**.

### BOARD OF COMMISSIONERS

DocuSigned by:

*Daniel Johnson*

**Daniel Johnson, President**

DocuSigned by:

*Polly Daigle*

**Polly Daigle, Commissioner**

DocuSigned by:

*Vince Koester*

**Vince Koester, Commissioner**

DocuSigned by:

*Kathleen Quong-Vermeire*

**Kathleen Quong-Vermeire, Secretary**

DocuSigned by:

*Todd Fultz*

**Todd Fultz, Commissioner**



**RETROSPECTIVE RATING PLAN AGREEMENT  
UPDATED APRIL 2023**

THIS AGREEMENT is made by and between the WASHINGTON ASSOCIATION OF SEWER & WATER DISTRICTS, a Washington nonprofit corporation ("WASWD") and \_\_\_\_\_, a Washington \_\_\_\_\_ ("Member").

RECITALS

- A. WASWD is a retrospective rating group sponsoring entity under Chapter 51.18 RCW and has entered into a retrospective rating group agreement with the Department of Labor and Industries ("Department").
- B. The Member is an employer that qualifies for the retrospective rating plan under Chapter 51.18 RCW and its implementing regulations, has been approved by the Department to be a participant in the plan, and has been approved for membership by the WASWD Board.
- C. WASWD enrolls in a plan each year to enhance the safety of all members and to maximize refunds while minimizing potential liability to WASWD group members. The coverage period for each plan year is July 1 through June 30 ("coverage period").
- D. The Member desires to participate in WASWD's group. WASWD and the Member desire to enter into this Agreement to state their respective duties and rights with regard to the retrospective rating plan.

AGREEMENT

The parties agree as follows:

- 1. Plan administration.
  - 1.1 WASWD shall provide for administration of the retrospective rating plan ("plan") through either a Third Party Administrator (TPA) or WASWD employees, at the discretion of WASWD.
  - 1.2 The Member shall cooperate with the Department of Labor & Industries, TPA staff members or their representatives, and any others authorized by the WASWD Retro Committee (Committee) to assist the group in claims review, claims management, claims appeal and adjudication, and any other reasonable request that will reduce claims costs.
- 2. Payment for plan administration. For plan administration during a coverage period, the Member shall pay five percent (5%) of its Department composite premium for the four quarters immediately preceding the coverage period. Within the first 2 months of a coverage period, WASWD shall send to the Member an invoice for the administration payment, which shall be due within 60 days of the date of the invoice.

3. Group refunds and additional assessments.

- 3.1 Approximately 10 months after a coverage period, and twice annually thereafter, the Department will evaluate the group's losses for the coverage period, and will notify WASWD of a group refund or additional assessment for the coverage period. The Member is encouraged to track its own positive loss ratio reports, which are prepared by the Department. WASWD may protest or appeal the evaluation decision within 60 days of the date of the notice. The Committee shall hold a meeting at least 7 business days before the deadline for filing a protest or appeal, and submit its recommendation, together with analysis and documentation, to WASWD at least 5 business days before the deadline for filing a protest or appeal. The WASWD Executive Director shall determine whether to file a protest or appeal based on the best interests of WASWD.
- 3.2 If a protest or appeal of an evaluation decision is filed, the Member shall be responsible for its prorated share of the costs of the protest or appeal, including attorneys' fees and interest, based upon the Member's percentage of the total premiums paid by all Members participating in the plan during the coverage period.
- 3.3 The Member and WASWD agree that the total amount of refund issued by the Department will be distributed at the discretion of the WASWD Retro Committee consistent with the following guidance:
  - 3.3.1 The timing and amount of program distributions will be based on the WASWD Retro Committee's evaluation of potential future retrospective adjustments for the Plan Year and the objective to return as much as possible of the retrospective premium return. Refunds not returned in a given year will be held in the Retro bank account to be distributed as early as is practical.
  - 3.3.2 The timing and amount of distributions to each Member will be determined in accordance with a formula established by the Committee based on the following:
    - 3.3.2.1 Each Member's percentage of the Plan's total Standard Premium for the Plan Year, and
    - 3.3.2.2 Each Member's individual loss record for the Plan Year, and
    - 3.3.2.3 Each Member's compliance with programs designed to maximize the Plan's returns, and
    - 3.3.2.4 Compliance with the terms of this Agreement, and
    - 3.3.2.5 The Committee will determine the relative weight given each of these factors.
- 3.4 Distributions will be made as follows:

- 3.4.1 Distributions are made only to members who, at the time of the distribution, are in good standing with WASWD, and who have complied with all terms of this Agreement.
    - 3.4.2 All distributions will be made to the Member under the Department's account number, including subaccounts, and the Member must maintain a relationship with WASWD under such account number during the term of this Agreement including all Adjustment Periods.
    - 3.4.3 Member authorizes the WASWD Retro Committee to withhold from any premium refund distribution to the Member, and to pay to WASWD any and all amounts due and payable from Member to WASWD including any assessments for failure to comply with the rules contained in this Agreement.
  - 3.5 Whenever there is enough return to do so, all participants will receive an amount equal to the service fee they paid to participate.
  - 3.6 WASWD reserves the right to withhold from the Member refund or net refund any plan administration fee and any costs of a protest or appeal that are due and owing.
  - 3.7 WASWD reserves the right to withhold from the Member refund or net refund any debt owed by the Member to the Department that the Department has withheld from the group refund.
  - 3.8 WASWD reserves the right to pay the additional assessment to the Department in installments as authorized by statute and regulation.
  - 3.9 The additional assessment for the Member for a coverage period shall be the group additional assessment for that year, multiplied by the Member's percentage of the total premiums paid by all Members participating in the plan during the coverage period.
  - 3.10 WASWD shall distribute refunds as soon as is practical. WASWD shall send an invoice for an additional assessment or net additional assessment, together with the costs of the protest or appeal if any, to the Member within 60 days of receipt of the group notice, or within 30 days of the final decision on a WASWD appeal of the notice, whichever occurs last. The Member shall pay the invoice within 45 days of receipt. Delinquent invoices shall accrue interest at the rate of 12 percent per year.
4. Selection of additional Members. The Member acknowledges that the Retrospective Rating Committee may admit to the group WASWD members of any kind which satisfies the requirements of Chapter 51.18 RCW and Chapter 296-17B WAC, and their amendments, and any rules adopted by the Retrospective Rating Committee. WASWD reserves the right to enter into an agreement with such qualified Member that is materially and substantially similar to this Agreement.
  5. Other Responsibilities of Member.

- 5.1 Member agrees to be bound by all rules and regulations governing Group Retrospective Rating Plans in the State of Washington, and by all Committee decisions and actions.
- 5.2 Member agrees to develop and maintain the following programs to facilitate the return of injured employees to the workplace:
  - 5.2.1 To develop and maintain a formal transitional light duty return to work program as required by the Committee in order to facilitate the early and timely return of injured employees to the workplace. Member agrees to provide light duty for at least 150 days from the day the injured worker is provided restrictions or modified duties by the injured worker's health care provider, unless the worker is able to return to job of injury sooner. Member understands and acknowledges that transitional light duty programs are a primary means and the expected responsibility of Member to assist with managing its workers' compensation claims effectively.
  - 5.2.2 To adopt a Kept on Salary (KOS) back-up procedure to Member's transitional light duty programs.
  - 5.2.3 In the event Member fails or decides not to engage in transitional light duty programs to facilitate returning an injured employee to work, Member agrees to maintain the individual on full wages and benefits for up to one hundred and fifty (150) days through a KOS Program. The 150-day KOS period will begin from the day the injured worker is provided restrictions or modified duties by the injured worker's health care provider, upon verification by the TPA staff that Member has failed or decided not to return the individual to work under its light duty programs.
  - 5.2.4 Failure to implement or utilize transitional light duty programs, and/or a KOS Program, will be considered material noncompliance by the Member and may result in additional assessments against Member, reduced individual premium return distributions, and/or required returns of previously distributed premium refunds, invoiced fees if the individual return is non-existent or insufficient and/or denying participation in subsequent plan years, as determined by the WASWD Retro Committee.
- 5.3 The Member will allow TPA staff members or their representatives to perform safety and health inspections for review of the safety procedures and practices, frequency and severity of illnesses and accidents, etc., of Member, and to follow all recommendations that result from those safety and health inspections.
- 5.4 The Member will cooperate fully with the Department, TPA staff members or their representatives, and any others authorized by the Committee to assist the group in claims review, claims management, claims appeal and adjudication, and any other reasonable request that will reduce claims costs.
- 5.5 The Member agrees that decisions regarding all aspects of claims management including but not limited to claim allowance, claim rejections, and the nature and scope of benefits paid, decisions to protest or appeal any Department action, and any decisions made regarding the status and

resolution of any claim shall be made by TPA with input from the Member, the WASWD Retro Committee, and WASWD, if those entities so desire. The Member also agrees to cooperate fully with the TPA in any proceedings before the Department, the Board of Industrial Insurance Appeals, or any reviewing court in the event there is an appeal, filed by any aggrieved party in any matter in which the Member is a party or a potential party.

6. Member withdrawal from Plan.

6.1 The Member may withdraw from the plan only at the end of a coverage period (July 1 through June 30). If the Member desires to withdraw from the plan at the end of a coverage period, it shall notify WASWD in writing by May 31<sup>st</sup> of the coverage period of its intent to withdraw from the plan. WASWD shall file a notification of the withdrawal with the Department by June 30<sup>th</sup> of the coverage period.

6.2 If a Member leaves active participation in the Retro program, in order to maintain rights to future refunds the Member will have to pay 10% of the premium for the past four quarters for each of the three years of remaining refund potential. This service fee will be invoiced and must be paid upon exiting the program. Refusal to pay will result in forfeit of any future refund Member may have earned. In the event of an assessment during the Member's participation in a plan year, the Member shall be responsible for their portion of the assessment, pursuant to the terms of this Agreement.

7. Statute and rule compliance. The Member and WASWD agree to be subject to and comply with Chapter 51.18 RCW and its implementing regulations, Chapter 296-17B WAC, and their amendments.

8. Release and waiver of liability. The Member releases WASWD, its officers, board of directors, employees and consultants, from any liability whatsoever arising from any claim, damage or loss asserted by the Member due to the Member's participation in the plan.

9. Retrospective Rating Committee. The Member acknowledges that to carry out the plan consistent with this Agreement, WASWD has established a Retrospective Rating Committee as follows:

9.1 Membership. The Committee consists of 9 Members elected by the Members of the group; provided that if there are less than 9 Members of the group, the Committee will consist of an odd number of Members that is equal to or less than the number of Members in the group. Of the 9 seats, up to 3 can be held by non-general members, but at least one of those 3 seats shall be held by a non-district utility member. If there are no candidates for the one non-district utility member position, the Committee may appoint any other type of member to fill that position. A member is a commissioner, Director or employee of a Member participating in WASWD's retrospective rating plan. Each Member can have only one member on the Committee.

- 9.2 Committee meetings. The meetings of the Committee are open to all members of WASWD, as defined in the WASWD Bylaws.
  - 9.3 Terms of Members. The terms of the members are 2 years, with the initial terms of 4 members being 1 year and 5 members being 2 years.
  - 9.4 Quorum. If there are 9 Committee members, a quorum is 5 Committee members. If there are less than 9 Committee members, a quorum is a majority of the Committee members. A Committee member must appear in person or remotely at a meeting, and cannot be replaced by a representative or delegate.
  - 9.5 Committee rules. Consistent with this Paragraph, the Committee is authorized to adopt its own rules of procedure, a copy of which must be filed with WASWD staff within 14 business days of adoption. The rules may include criteria and requirements for admission of new members to the group, readmission of former members to the group, and removal of members of the group. A copy of the current rules is attached to this Agreement. If the Committee amends the rules, WASWD staff will send a copy of the amended rules to the Members. The Member acknowledges and agrees to the Retrospective Rating Program Group Rules, herein incorporated by reference.
10. Effective date and termination.
    - 10.1 This Agreement shall be effective on July 1, 2023 and shall be effective until terminated by either party as stated in this paragraph.
    - 10.2 If the Member elects to terminate its membership in WASWD, this Agreement shall terminate at the end of the coverage period.
    - 10.3 Either party may terminate this Agreement by notice of termination personally delivered or sent to the other in writing, by May 31<sup>st</sup> of a coverage period, to be effective at the end of the coverage period.
    - 10.4 If the Member withdraws from the plan at the end of a coverage period, this Agreement shall be terminated.
11. Attorney's fees. In the event of any conflict, claim or dispute between the parties arising out of or relating to this Agreement, the prevailing party shall be entitled to receive from the non-prevailing party all reasonable costs and expenses of every sort whatsoever including, but not limited to, mediation fees and actual attorneys' fees incurred or expended, whether incurred or expended in arbitration or trial or on appeal.
  12. Entire agreement. This Agreement contains all terms, conditions and provisions agreed upon by the parties, and shall not be modified except by written amendment of the parties.



- 13. Venue and jurisdiction. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.
- 14. Successors in interest. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors in interest and assigns of the parties.

WASHINGTON ASSOCIATION OF  
SEWER & WATER DISTRICTS

\_\_\_\_\_

By \_\_\_\_\_  
Its President

By \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Its Secretary

Dated: \_\_\_\_\_

**Washington Association of Sewer and Water Districts  
Retrospective Rating Group Rules  
Updated April 2023**

- 1) Retrospective Rating Committee—Establishment, Election, and Terms.
  - a) The Committee shall consist of 9 members, elected by members of the Retrospective Rating Group (Retrospective Members).
  - b) Of the 9 seats, up to 3 can be held by non-general members, but at least one of those 3 seats shall be held by a non-district utility member. If there are no candidates for the one non-district utility member position, the Committee may appoint any other type of member to fill that position.
  - c) A member may be a Commissioner, Director or employee of a Retrospective Member.
  - d) There shall be only 1 member from a Retrospective Member.
  - e) The term of a member shall be 2 years, commencing on October 1.
  - f) The terms of the members shall be in 2 groups of 4 and 5, respectively.
  - g) There shall be no term limits for the members.
  - h) If a member is unable to serve for any reason, or notifies the Committee that the member no longer desires to serve on the Committee, the remaining members shall fill the vacancy by appointing a new member (that is, a Retrospective Member cannot replace the member, temporarily or permanently). The appointee shall serve for the unexpired term of the replaced member.
  - i) In August of each year, WASWD staff shall notify all Retrospective Members of all member positions that are up for election that year by mail or email. In August, any Retrospective Member may nominate 1 candidate from itself and 1 candidate from another Retrospective Member for any member position up for election; provided, that if a Commissioner, Director or employee of a Retrospective Member holds a member position that is not being elected that year, such Retrospective Member cannot nominate a candidate from itself. By the end of August, WASWD staff shall send to all Retrospective Members ballots for each member position up for election by mail or email. On or before September 15, each Retrospective Member may vote for only one candidate for each member position up for election.
  - j) The candidate receiving the most votes for a member position shall be elected as the new member.
  
- 2) Retrospective Rating Committee—Rules, Meetings, Procedures and Specific Duties.
  - a) The WASWD Board of Directors has authorized the Committee to adopt its own Rules, consistent with the terms of the agreement between WASWD and the Retrospective Districts, currently called “Retrospective Rating Plan Agreement.” The Committee must file any amendments to the Rules with the WASWD staff within 14 business days of adoption.
  - b) The Committee shall meet at least once a calendar year, and at such other times as determined by the Committee.
  - c) A quorum for the conduct of business shall be 5 members. If there are less than 9

Committee members, a quorum is a majority of the Committee members.

- d) A member may participate in a meeting remotely.
  - e) A member cannot be replaced at any meeting by a representative or delegate of the member.
  - f) The members may take action by unanimous consent of all members, as evidenced by any method or form that clearly describes the action taken and shows the consent of all members, including but not limited to email communications and ballots.
  - g) Committee meetings shall be open to all WASWD members as defined by the WASWD Bylaws.
  - h) The Committee shall give a recommendation on the Third Party Administrator to the WASWD Board of Directors to retain a Third Party Administrator to administer the retrospective rating plan.
- 3) Retrospective Rating Group—Eligibility and Acceptance.
- a) Membership in the Retrospective Rating Group shall be determined by the Committee.
  - b) General members, Non-District Utility members and Retro-only WASWD members may apply for membership in the Retrospective Rating Program by submitting an application to the Committee in a form approved by the Committee, with a copy to the WASWD Executive Director.
  - c) The Applicant must meet or satisfy at least the following requirements in order to be considered for membership, in addition to any others identified by the Third Party Administrator and the Committee:
    - i) The Applicant is in an acceptable risk class as defined by the Department of Labor & Industries.
    - ii) The Applicant has a positive loss ratio (more premium dollars paid than developed losses) for 2 of the last 3 years as reported by the Department of Labor & Industries.
    - iii) The Applicant is in good standing with and current in all obligations of the Department of Labor & Industries.
    - iv) The Applicant has signed the WASWD standard form agreement for inclusion in the WASWD Retrospective Rating Plan.
    - v) The Applicant has completed and signed, if required, all documents required by any applicable Department of Labor and Industries rules, WASWD rules, or Committee rules.
    - vi) The Applicant has paid any fees assessed by WASWD or the Committee.
    - vii) The Applicant has been accepted into the Group Retrospective Rating Plan by the Department of Labor & Industries.
- 4) Retrospective Rating Group--Continuing Eligibility.
- a) To continue as a member of the Retrospective Rating Group, the Retrospective Member must continue to meet or satisfy the following requirements:
    - i) Be a WASWD member. Be in an acceptable risk class as defined by the Department of Labor & Industries.
    - ii) Pass all continuous underwriting requirements of WASWD Retro committee and their TPA that will include factors such as history of claims,

safety programs and compliance with the agreement, Be in good standing with and current in all obligations of the Department of Labor & Industries.

iii) Have paid any fees assessed by WASWD or the Retrospective Rating Committee.

- 5) Notice of and Disqualification from Retrospective Rating Group.
- a) If any Retrospective Member fails to achieve an annual positive developed loss ratio, the WASWD staff, after notice to and consultation with the Chair of the Committee, shall give notice to the Commissioners or Directors, as applicable, and general manager (or chief executive officer) of the Retrospective Member by mail or email, stating that a second consecutive year without a positive developed loss ratio may result in removal of the Retrospective Member from the Retrospective Rating Group and Plan.
  - b) If the Retrospective Member has a second consecutive year without a positive developed loss ratio, the WASWD staff, after notice to and consultation with the Chair of the Committee, shall give notice to the Commissioners or Directors, as applicable, and general manager (or chief executive officer) of the Retrospective Member by mail or email, stating that the Member has had a second consecutive year without a positive developed loss ratio, that the Member may be removed from the Retrospective Rating Group and Plan by the Committee, and that the Committee will consider removal at a meeting, the date, time, and location of which is stated in the notice.
    - i) The date of the Committee meeting must be at least 15 calendar days after the date of the notice.
  - c) The Retrospective Member may submit written comments and information to the Committee before or at the meeting, and shall have an opportunity to address the Committee at the meeting.
  - d) The Committee's vote on the Retrospective Member's removal from the Retrospective Rating Group and Plan must include a brief explanation of the reason(s) for the decision and must be approved by a majority of all members of the Committee holding office at the time of the vote.
  - e) The WASWD staff, after consultation with the Chair of the Committee, shall give notice of the decision to the Commissioners or Directors, as applicable, and general manager (or chief executive officer) of the Retrospective Member.
  - f) The Committee's decision shall be WASWD's final decision on the removal of the Retrospective Member from the Retrospective Rating Group and Plan.

EXHIBIT 1

| <b>Committee Member</b> | <b>Organization</b>                  | <b>Term Expiration Date</b> |
|-------------------------|--------------------------------------|-----------------------------|
| Jessica Williams        | Silverdale Water District            | September 30, 2023          |
| Robert Fulton           | Valley Water District                | September 30, 2023          |
| Sam Amira               | King County Water District 90        | September 30, 2023          |
| J.R. Erickson           | Mukilteo Water & Wastewater District | September 30, 2023          |
| Mike West               | Valley View Sewer District           | September 30, 2023          |
| Curt Brees              | Silver Lake Water & Sewer District   | September 30, 2024          |
| Kelly Boswell           | Olympic View Water & Sewer District  | September 30, 2024          |
| Larry Jones             | Firgrove Mutual Inc.                 | September 30, 2024          |
| Robert Russell          | Coal Creek Utility District          | September 30, 2024          |



## Washington Association of Sewer & Water Districts

EDUCATE ■ ADVOCATE ■ COLLABORATE

DATE: April 20, 2023

TO: WASWD Retro Members

FROM: Judi Gladstone, Executive Director

### **RE: Updated Retrospective Rating Plan Agreement and Retrospective Rating Group Rules**

In 2022, the Retro Committee decided it would be beneficial for the Retro program and WASWD to try to grow the program by expanding the membership to other types of organizations. In addition, the Third Party Administrator identified some changes to the program to improve performance of the group. It was prudent to consider those changes before efforts are undertaken to expand membership of the group.

Over the course of the year, with member input and legal counsel, several provisions of the Retro Agreement were modified. These include adding flexibility for the timing of refunds, light duty and kept on salary requirements, performance based refunds, membership requirements for receiving refunds, criteria for continuing or disqualification from the program, committee composition, and allowable new members. The Board approved the revised Agreement and Rules at a special meeting on April 14, 2023.

Please find attached for your review and approval the revised Agreement and Rules. Please sign both copies (on the signature line on the right side of the agreement) and return them to WASWD **no later than Friday, June 23, 2023, to be enrolled in the next plan year beginning on July 1, 2023**. We will sign and date them and return a fully executed document for your records.

If you would like a redline copy of the changes we would be happy to provide them to you. If you have any questions, please contact [Tami@waswd.org](mailto:Tami@waswd.org).

The Retro Program has been very successful. Last year we had over \$1.1 million in refunds to our members. Thank you for your participation in this program.

