

**CITY OF LAKEWOOD – PIERCE COUNTY  
WOODBROOK/TILLICUM LOW FLOW SEWER SYSTEM  
OPERATION AND MAINTENANCE AGREEMENT**

**THIS AGREEMENT** made and entered into this 6 day of Sept., 2011, by and between the CITY OF LAKEWOOD, a municipal corporation of the State of Washington (subsequently referred to as the “City”), and PIERCE COUNTY, a political subdivision of the State of Washington (subsequently referred to as the “County”),

**WITNESSETH:**

**WHEREAS**, the County through its Public Works and Utilities Department (subsequently referred to as the “Department”) owns, operates, and maintains a sanitary sewer system, which includes a wastewater treatment plant, throughout portions of Pierce County, as well as within the City, pursuant to Chapter 36.94 RCW; and

**WHEREAS**, on or about June 29, 2005, the City and the County executed a Joint Agreement (subsequently referred to as the “Joint Agreement”) for a sewer extension project intended to revitalize the Woodbrook (previously referred to as “American Lake Gardens”) and Tillicum neighborhoods of the City and to ensure the health, safety and welfare of the citizens of the City; and,

**WHEREAS**, in June of 2009, the City commenced construction of this public sewer extension project, which will entail investment of more than \$18,000,000 in public facilities upgrades; and,

**WHEREAS**, under the terms of the Joint Agreement, in addition to the requirement that the City satisfactorily complete the construction of the sewer extension facilities and turn ownership thereof over to the County, it was agreed that a minimum wastewater flow must be attained in order to make this sewer extension system operational for the County; and

**WHEREAS**, the City has adopted Ordinance No. 530 which requires mandatory connection to any available sanitary sewer system; however, the Ordinance includes deferral and reconsideration options that allow property owners not to connect to the sewer system immediately under certain circumstances, and therefore the City cannot assure the County that the minimum flow required by the Joint Agreement for the Woodbrook/Tillicum sewer extension system can be attained at the time this entire system is completed and ready for formal acceptance of ownership by the County; and

**WHEREAS**, within the Tillicum neighborhood, there are new commercial developments and/or redevelopments presently in the City’s development review permit process that are pending approval subject to the sewer facilities being operational; and

**WHEREAS**, the County will agree to waive the minimum wastewater flow required by the Joint Agreement and will agree to make the Woodbrook/Tillicum sewer extension system operational as a low flow sewer system and thus available for connection by abutting properties in order to accommodate new economic development in the City, provided that the City pays the Department for the additional operation and maintenance costs required to make this low flow sewer system operational (subsequently referred to as the “Low Flow O&M Costs”) until the minimum wastewater flow required in this Agreement have been met.

**NOW THEREFORE, THE PARTIES HERETO DO HEREBY AGREE** as follows:

Section 1. Purpose of Agreement.

The purpose of this Agreement is to set forth the responsibilities and obligations of the parties related to the operation and maintenance of the Woodbrook/Tillicum sewer extension system. A list of the sewer facilities that the City either has or is about to construct under the Joint Agreement is contained in Exhibit A, which is attached hereto and incorporated by reference to this Agreement. It is understood by the parties that this Agreement does not transfer the ownership of these facilities but describes the preconditions of such transfers and depicts in general terms the sewer facilities the City will seek to turn over ownership to the County.

The other obligations and conditions of the Joint Agreement shall remain in full force and effect.

Section 2. Obligations and Conditions.

- A. The Joint Agreement provides that **“Upon completion of constructed sewer facilities and attainment of the agreed upon minimum flow of 180,000 gallons/day of average dry weather flow and formal County acceptance of the project work, the County will own, operate and maintain the sanitary sewer facilities.”** (Section 4D.) The parties agree that the basis of the minimum wastewater flow of 180,000 gallons/day was predicated on certain design assumptions of the sewer force main which ran from the Tillicum/Woodbrook area to the County’s existing sewer line in Pacific Highway SW in the Ponders area. In actuality, the City constructed dual force mains instead of the assumed single force main. Therefore, the new agreed upon minimum flow necessary to flush the entire Woodbrook/Tillicum sewer extension system three times a day is 70,400 gallons/day of average dry weather flow or the sum of 320 Residential Equivalent (RE) Units in service connections, where one RE Unit equals 220 gallons/day of average wastewater generated and is the unit of measurement the Department uses for sewerage service measurement.
- B. In lieu of the City having to attain the 70,400 gallons/day or 320 RE Units of minimum wastewater flow for the entire Woodbrook/Tillicum sewer extension system prior to the County acceptance of this system or any portion thereof for ownership, operation, and maintenance, the County is willing to waive said minimum flow requirement, provided that the Department is fully compensated by the City for the actual amount of Low Flow O&M Costs until this minimum flow requirement is met. The City acknowledges that the Department has estimated the Low Flow O&M Costs (including makeup water) for this

system to be \$4,600 per month but further acknowledges that the Low Flow O&M Costs may vary on a monthly basis, but the City agrees to compensate the Department for its actual costs to operate and maintain said system. Both parties acknowledge that the Low Flow O&M Costs should be reduced as the number of sewer service connections to this sewer extension system increase over time. In conjunction with the Department's monthly invoice to the City for reimbursement of Low Flow O&M Costs, the Department shall provide the City with a continuing monthly report of the number of RE Units and the amount of water usage for this system.

The Department shall submit a monthly invoice to the City for reimbursement of all Low Flow O&M Costs incurred in the previous month. The City shall pay for these costs within 25 days from the billing date, after which time the payment of these costs shall be delinquent. Delinquent charges shall accrue interest on the unpaid balance from the date of delinquency until paid, at an interest rate of 1% per month.

- C. The City also acknowledges there are certain capital improvements required in order to make the Woodbrook/Tillicum sewer extension system operational under these low flow conditions (subsequently referred to as the "Low Flow Capital Improvements"), which the Department has estimated the cost to be \$164,000. The City shall complete the Low Flow Capital Improvements within 90 days of formal County acceptance and ownership of these sewer line extension facilities. No connections to these facilities will be permitted until said Low Flow Capital Improvements are installed and approved by the Department. The Department may waive the construction of the Low Flow Capital Improvements for any portion of this sewer extension system if the Department determines that such improvements are no longer necessary based on the number of confirmed sewer service connections to these facilities.

The City shall not proceed with the construction of the Low Flow Capital Improvements until the design plans are reviewed and approved in writing by the Department. The Department shall be fully compensated by the City for its actual costs to review the design plans and to inspect the Low Flow Capital Improvements installation. The Department shall invoice the City for such actual costs and the City shall pay such costs within 25 days from the billing date, after which time the payment of such costs shall be delinquent. Delinquent charges shall accrue interest on the unpaid balance from the date of delinquency until paid, at an interest rate of 1% per month.

- D. The County recognizes that in order for the City to accommodate potential new development while it simultaneously constructs other portions of the sewer facilities contained in Exhibit A, the City may request the Department to accept connections from adjacent properties and begin operation and maintenance of certain portions of this sewer extension system in advance of other portions based on when the Low Flow Capital Improvements are complete and acceptable to the Department. For example, the City anticipates that the order of operational readiness might be as follows:

1. The Tillicum area sewer system including the pumping stations (PS) at Spruce Street SW/Portland Avenue SW and at Boundary Street SW/Portland Avenue SW along with

their respective force mains and appurtenances; the gravity sewer lines and their related appurtenances in Portland Avenue SW from the Boundary Street SW/Portland Avenue SW PS to the Spruce Street SW/Portland Avenue SW PS; in Berkeley Street SW from Portland Avenue SW to Union Avenue SW; in Union Avenue SW from Berkeley Street SW to Spruce Street SW; and in Spruce Street SW from Portland Avenue SW to Union Avenue SW.

2. The gravity sewer line and its related appurtenances in Grant Avenue SW from Berkeley Street SW to Orchard Street SW.
  3. The Woodbrook area sewer system including the PS at Spring Street SW/146<sup>th</sup> Street SW along with its respective force main and appurtenances including the I-5 under-crossing; the gravity sewer lines and their related appurtenances in 146<sup>th</sup> Street SW from Murray Road SW to the Spring Street SW/146<sup>th</sup> Street SW PS; and in Spring Street SW from 150<sup>th</sup> Street SW to 146<sup>th</sup> Street SW and in 150<sup>th</sup> Street SW from Spring Street SW to the easterly terminus of the gravity sewer line (approximately 1550 linear feet of 150<sup>th</sup> Street SW).
  4. The gravity sewer line and its related appurtenances in 146<sup>th</sup> Street SW from the 146<sup>th</sup> Street SW/Spring Street SW PS to the easterly terminus of the gravity sewer line (approximately 1400 linear feet of 146<sup>th</sup> Street SW).
- E. When the total number of sewer service connections to the entire Woodbrook/Tillicum sewer extension system has reached 320 RE Units, which shall be contingent upon the final acceptance (or final inspection approval) of the sewer service permits for said connections, the County shall bear complete responsibility and liability for the ownership, operation, and maintenance of this sewer system, including being solely obligated and responsible for all costs and expenses thereof including but not limited to any capital costs.

### Section 3. Continuation of Performance.

In the event that any dispute or conflict arises between the parties as a result of performing tasks under this Agreement, both parties agree that, notwithstanding such dispute or conflict, they shall continue to make good faith efforts to cooperate and continue work toward successful completion of assigned duties and responsibilities.

### Section 4. Indemnification and Defense.

- A. The County shall defend, indemnify, and save harmless the City, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the County, its officers, employees, or agents associated with this Agreement. In executing this Agreement, the County does not assume liability or responsibility for or release the City from any liability or responsibility to the extent that such liability or responsibility arises from the existence or effect of City ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule, regulation, resolution, custom, policy, or practice is at issue, the

City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and attorney's fees.

- B. The City shall defend, indemnify, and save harmless the County, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the City, its officers, employees, or agents associated with this Agreement. In executing this Agreement, the City does not assume liability or responsibility for or release the County from any liability or responsibility to the extent that such liability or responsibility arises from the existence or effect of County ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability and/or validity of any such County ordinance, rule, regulation, resolution, custom, policy, or practice is at issue, the County shall defend the same at its sole expense and if judgment is entered or damages are awarded against the County, the City, or both, the County shall satisfy the same, including all chargeable costs and attorney's fees

#### Section 5. City and the County as Independent Contractors.

The City is, and shall at all times be deemed to be, an independent contractor. The County is, and shall at all times be deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the City and the County or their agents or employees. The City and the County shall each independently retain all authority for the rendition of services, standards of performance, control of personnel, and other matters incidental to the performance of services by the City and the County pursuant to this Agreement.

Nothing in this Agreement shall make any employee of the City a County employee or any employee of the County a City employee for any purpose, including, but not limited to, the withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded the City or the County employees by virtue of their employment.

#### Section 6. Insurance.

The City shall maintain at all time during the course of this Agreement a general liability insurance policy or other comparable coverage with a policy limit of not less than \$2,000,000 coverage per occurrence and not less than \$4,000,000 aggregate limits.

The County shall maintain at all times during the course of this Agreement a general liability insurance policy with a self-insured retention of no more than \$2,000,000 and a policy limit of not less than \$5,000,000 per occurrence and not less than \$5,000,000 aggregate limits.

#### Section 7. Administration of Agreement.

This Agreement shall be administered by the Public Works Director, or designee, on behalf of the City, and by the Wastewater Utility Manager of the Department, or designee, on behalf of the County. Any written notices required by this Agreement shall be served on or mailed to the following addresses:

City of Lakewood

Lakewood City Hall  
6000 Main Street SW  
Lakewood, WA 98499-5027  
Phone: (253) 983-7795  
Fax: (253) 512-2268  
Attn: Public Works Director

Pierce County

Public Works and Utilities  
9850 64th Street West  
University Place, WA 98467-1078  
Phone: (253) 798-4050  
Fax: (253) 798-2570  
Attn: Wastewater Utility Manager

Section 8. Notices.

All notices or communications permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or deposited in the United States mail, postage prepaid, for mailing by Certified Mail, Return Receipt Requested, and addressed to the representative set forth in Section 7, or if to a person not a party to this Agreement, to the address designated by a party to this Agreement in the foregoing manner.

Any party may change its address by giving notice in writing, stating its new address, to the other party, all pursuant to the procedure set forth in this section of the Agreement.

Section 9. Assignment.

Neither party to this Agreement shall assign any right or obligation hereunder, in whole or in part, without the prior written consent of the other party. No assignment or transfer of any interest under this Agreement shall be deemed to release the assignor from any liability or obligation under this Agreement, or to cause any such liability or obligation to be reduced to a secondary liability or obligation.

Section 10. Amendment, Modification or Waiver.

No amendment, modification, or waiver of any condition, provision, or term of this Agreement shall be valid or of any effect unless made in writing, signed by both parties' duly authorized representative(s) identified in Section 7, and specifying with particularity the nature and extent of such amendment, modification, or waiver. Any waiver by any party of any default of the other party shall not effect or impair any right arising from any subsequent default. Nothing in this section shall limit the remedies or rights of the parties under and pursuant to this Agreement.

Section 11. Parties in Interest.

This Agreement shall be binding upon, and the benefits and obligations provided for herein shall inure to and bind, the parties hereto and their respective successors and assigns, provided that

this section shall not be deemed to permit any transfer or assignment otherwise prohibited by this Agreement. This Agreement is for the exclusive benefit of the parties hereto, and it does not create a contractual relationship with or exist for the benefit of any third party.

#### Section 12. Costs to Prevailing Party.

In the event of litigation or other legal action, to enforce any rights, responsibilities, or obligations under this Agreement, the prevailing party shall be entitled to receive its reasonable costs and attorney's fees.

#### Section 13. Applicable Law.

This Agreement and the rights of the parties hereunder shall be governed by the interpreted in accordance with the laws of the State of Washington and venue for any action hereunder shall be Pierce County, State of Washington.

#### Section 14. Captions, Headings, and Titles.

All captions, headings, or titles in the paragraphs or sections of this Agreement are inserted for convenience or reference only and shall not constitute a part of this Agreement or act as a limitation of the scope of the particular paragraph or sections to which they apply. As used herein, where appropriate, the singular shall include the plural and vice versa. Interpretation or construction of this Agreement shall not be affected by any determination as to who is the drafter of this Agreement, this Agreement having been drafted by mutual agreement of both parties.

#### Section 15. Severable Provisions.

Each provision of this Agreement is intended to be severable. If any provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

#### Section 16. Entire Agreement.

This Agreement contains the entire understanding of the parties in respect to the obligations and responsibilities of the parties and supersedes all prior agreements and understandings between the parties with respect to such subject matter.

#### Section 17. Terms of the Agreement.

This Agreement shall terminate when the total number of service connections to the entire Woodbrook/Tillicum sewer extension system has reached 320 RE Units, at which point any and all City obligations and responsibilities denoted herein shall terminate unless otherwise amended. The Department shall provide the City with written documentation demonstrating satisfaction of the 320 RE Unit requirement, and this condition shall be deemed satisfied upon acceptance in writing by the City.


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective the day and year first set forth above.

**CITY OF LAKEWOOD**

**PIERCE COUNTY**

Approved as to legal form only:


 7-27-11  
Andrew E. Neiditz, City Manager Date

 8-18-2011  
Deputy Prosecuting Attorney Date

Attest:


Recommended:

 7-27-11  
Alice M. Bush, CMC/AAE, City Clerk Date

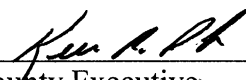
 8/24/11  
Budget and Finance Date

Approved as to Form:

Approved:

 17581 7-22-11  
Heidi Wachter, City Attorney Date

 8/12/11  
Department Director Date

 9-6-11  
~~County Executive~~ Deputy Executive Date



