

AGREEMENT FOR JOINT USE OF SANITARY SEWERAGE FACILITIES
BETWEEN CITY OF EDMONDS & CITY OF LYNNWOOD
TRUNKS - TREATMENT - DISPOSAL

THIS AGREEMENT, made and executed this 26th day of October, 1982, by and between the CITIES OF LYNNWOOD and EDMONDS, hereinafter referred to as "Lynnwood" and "Edmonds", both being municipal corporations of the State of Washington and located in Snohomish County, Washington.

WITNESSETH:

WHEREAS, on August 5, 1965, Lynnwood and Edmonds did enter into an agreement for the joint use of certain sanitary sewage disposal facilities, including a system of trunk sewers, a sewage treatment plant and a deep water outfall sewer line, presently owned and operated by Lynnwood; and

WHEREAS, on November 20, 1972, said agreement was modified under Amendment No. 1, by mutual agreement between Lynnwood and Edmonds to provide for additional capacity in, and use by, Edmonds of certain trunk sewers presently owned and operated by Lynnwood; and

WHEREAS, the said agreements established, among other things, the apportionment of capital costs of those certain sanitary sewage disposal facilities for which each party would be responsible, and the capacity of such facilities that would be reserved to each party; and

WHEREAS, under the said agreements Edmonds advanced the amount of approximately \$128,095.40 as Edmonds' fair share of the

capital costs of the said facilities, and certain capacities of such facilities were so reserved for the use of Edmonds as described hereinafter and as indicated on Exhibits A, C, and D attached hereto, and by this reference incorporated herein; and

WHEREAS, the Cities of Edmonds and Lynnwood have a mutual need of, and have requested from each other, sanitary sewerage service for the areas designated as:

AREA E1 - City of Edmonds area served by City of Lynnwood treatment facility and trunkage system.

AREA L2 - City of Lynnwood area served by City of Lynnwood treatment facility, and trunkage systems owned by City of Lynnwood and City of Edmonds.

AREA L3 - City of Lynnwood area served by City of Edmonds treatment facility and trunkage system.

All as described hereinafter and as indicated on Exhibits A and B, attached hereto, and by this reference incorporated herein; and

WHEREAS, service to these areas may be conveniently provided by gravity flow, or by pumping can be economically made to flow into the other respective City's existing sewer system; and

WHEREAS, the Agreement of August 5, 1965 and the Amendment No. 1 of November 20, 1972 did not provide for capacity in and use of the sewer trunks to all of these areas; and

WHEREAS, it has been determined that these areas are within the drainage basins to the respective treatment facilities, and logical extensions of existing joint sewer trunk systems thereto; and

WHEREAS, under conditions actually experienced subsequent to

the entering into of said agreements, it is now found necessary to more clearly define the limits of said drainage basins and to more clearly describe the respective cities' joint sanitary sewage disposal facilities; and

WHEREAS, under the said agreements, it has been determined that Edmonds now has sufficient capacity reserved in Lynnwood's sewage treatment plant and outfall sewer line to serve AREA E1, but that by reason of an ambiguity in the previous trunk sewer description, Edmonds has insufficient capacity in Lynnwood's system of trunk sewers to serve that portion of AREA E1 herein-after designated as AREA E1B; and

WHEREAS, LYNNWOOD's need of sanitary sewerage service to AREA L2, and EDMONDS' need of sanitary sewerage service to AREA E1B, may be conveniently provided by a mutually beneficial and equitable exchange of capacity in and joint use of certain existing systems of trunk sewers presently owned, operated and maintained by the other respective City; and

WHEREAS, on October 5, 1971, Edmonds and Mountlake Terrace did enter into an agreement for the joint use of certain sanitary sewage disposal facilities, including a system of trunk sewers, a sewage lift station, a force main, five sewage metering stations, a sewage treatment plant, and a sewer outfall, all presently owned, operated and maintained by Edmonds and Mountlake Terrace as established by said agreement and as described hereinafter and as indicated on Exhibit A and Exhibit C, Part 3, attached hereto, and by this reference incorporated herein; and

WHEREAS, under said agreement on October 5, 1971, Mountlake Terrace did recognize Edmonds' right to provide, through the

joint sewerage system, sanitary sewer service to certain areas including any other areas or agencies which had been theretofore or may be thereafter mutually agreed upon; and both parties agreed that all such areas shall be considered a part of Edmonds for purposes of that contract; and

WHEREAS, on May 12, 1982, Edmonds and Mountlake Terrace did mutually agree to Edmonds providing of such sanitary sewer service to Lynnwood's AREA L3 as hereinbefore designated; and

WHEREAS, the best interests of the residents of Edmonds and Lynnwood require that those certain trunk sewers, treatment facilities and outfall sewer lines be operated and maintained for their mutual benefit as provided herein; and

WHEREAS, it is the desire of both cities to simplify the determination of Maintenance and Operation charges to the respective cities for the joint use of said sanitary sewage facilities; and

WHEREAS, to accomplish the joint treatment and disposal of the sanitary sewage collected by the two parties, it is necessary that a contract be now entered into providing for the operation, maintenance, joint use and the payment therefore, of those certain sewerage works facilities to be so jointly used, and defining the rights, duties and obligations of the parties therein; and

WHEREAS, by reason of these and of other unforeseen circumstances and events, the said agreements of August 5, 1965 and the Amendment No. 1 of November 20, 1972, no longer are deemed suitable nor adequate to fulfill either the original intent or the present and future needs of the parties thereto;

NOW THEREFORE, and in consideration of the promises and the mutual covenants contained herein, the said parties HEREBY ENTER INTO A NEW AGREEMENT AS FOLLOWS:

SECTION 1. DEFINITION OF TERMS. The following words and phases as used in this contract shall have the meanings herein-after set forth in this section:

(a) The terms "Joint Sewerage Facilities" or "Joint Sewerage System" shall mean all of the facilities heretofore constructed or to be constructed and used jointly by Edmonds and Lynnwood for transporting, treatment and/or disposal of sanitary sewage wastes, all as more particularly described hereinafter and as indicated on Exhibits A and C, attached hereto, and by this reference incorporated herein.

(b-1) The terms "Joint Sewerage Service Area" or "Joint Service Area" shall mean the area ultimately contemplated to be served through the joint sewerage facilities, as described hereinafter and as indicated on Exhibit A, attached hereto, and by this reference incorporated herein.

(b-2) The terms "Edmonds service area" and "Lynnwood service area" shall mean those certain areas lying within the respective corporate limits of each City which will contribute sanitary sewage to the "joint sewerage system" as hereinbefore described. (See also Section 7.)

(c) The term "construction cost" or "capital cost" shall mean all costs of actual construction including the cost of acquisition of real property and/or rights-of-way, engineering design and inspection fees, legal costs, preparation of construction contract documents, disposition of claims incident

to construction, financing costs, including discounts, and other miscellaneous expenses directly attributable to the cost of acquiring and constructing the facilities hereinbefore described and included in the "joint sewerage system", less applicable state and federal grant monies.

(d) The term "operation and maintenance expense" shall mean all expenses for labor, power, light, water, heat, chemicals, materials, supplies, insurance premiums, contract services, tools, equipment, and other miscellaneous expenses directly and properly chargeable to the operation and maintenance of the "joint sewerage system" facilities.

(e) The term "sanitary sewage" or "sewage" shall mean all water-carried wastes that occur as a result of human occupancy or occupation and is normally required to be given special treatment and disposal by the State Regulatory Agencies before being discharged to public waters, and shall not include such wastes as may require other than normal transmission and treatment as is now provided by the "joint sewerage system" facilities. (See also Section 6).

(f) The term "Treatment Plant" or "Sewage Treatment Plant" shall mean the existing sewage treatment plant of the City of Edmonds, or of the City of Lynnwood, as applicable, together with any additions thereto and improvements thereof which may be hereafter constructed or installed.

(g) The term "Outfall Sewer" shall mean the existing sewer and submarine pipeline transporting liquid effluent from Edmonds or Lynnwood sewage treatment plant, as applicable, to point of discharge into deep water in Puget Sound, and any additions

thereto and improvements thereof which hereafter may be constructed or installed.

(h) The abbreviation "MG" shall mean million gallons of sewage or water quantity.

(i) The abbreviation "MGD" shall mean a rate of flow which would result in one million gallons per day of sewage or water quantity.

(j) The term "annual average daily flow" shall mean the total flow of sewage in millions of gallons during a full calendar year in which the joint sewer facilities shall have been used, divided by the number of days in such year, and shall be expressed in MGD.

(k) The term "maximum daily flow" shall mean the total flow of sewage in millions of gallons during that day in each calendar year in which the greater volume of flow in one day occurs, and shall be expressed in MGD; provided, that should an abnormal flow occur on any one day due to temporary conditions which are subsequently corrected, then such abnormal flow shall not be considered.

(l) The "total annual sewage flow" shall mean the total flow of sewage in millions of gallons during a full calendar year in which the joint sewerage facilities shall have been used; and shall be expressed in MG.

(m) The term "total annual water consumption" shall mean the total cubic feet of water billed to a City's users of the joint sewer facilities during a one-year billing cycle, multiplied by 7.48 gallons per cubic foot and divided by one million; and shall be expressed in MG.

(n) The term "sewage flow ratio" or "SFR" shall mean the total annual sewage flow divided by the sum of the total annual water consumptions of the entities using the joint sewer facilities. In AREA L3, the SFR derived for the Lynnwood treatment plant shall be multiplied by the total annual water consumption of the Lynnwood users in AREA L3 to obtain a total annual sewage flow into the Edmonds treatment plant for the purpose of apportioning maintenance and operating expense for such a year.

(o) The term "originating party" shall mean the City in which sewage flow commences, or is produced.

(p) The term "serving city" shall mean that City which provides joint sewerage system service to the other City.

SECTION 2. DELIVERY AND ACCEPTANCE OF SEWAGE. Each party hereto agrees to deliver to the joint sewerage system facilities of the other such sanitary sewage that the originating party deems most economically feasible for the maximum benefits of the customers in its service area, and the other agrees to accept such sewage for transmission, treatment and disposal through the joint sewerage system facilities. Any additional facilities as may be needed to collect and transmit the sewage from the point or points where it is produced to the point of connection to the joint sewerage system facilities shall be constructed, maintained and operated at the sole expense of the originating party. All facilities so constructed by such originating party as well as any additions, extensions, and betterments constructed by and for the other in its service area shall be not less than equal to the

minimum standards as are required by the other.

SECTION 3. PAYMENT FOR USE OF JOINT SEWERAGE SYSTEM FACILITIES. The payment by each party hereto to the other for its use of the joint sewerage system facilities now owned and operated by the other, shall be computed on a fair and reasonable basis as is herein provided for through this contract and which will result in each party bearing its pro rata share of the total costs attributable to the construction, acquisition and operation of the joint sewerage system facilities.

Such payments shall be divided into two parts: (a) Operation and Maintenance charge, and (b) Capital Reimbursement charge. In any and all billings for these charges, they shall be separately stated. Each party will bill the other monthly for the Operation and Maintenance charge and each will remit within thirty (30) days after submittal of the bill. Year-end billing for operation and maintenance expense adjustments, as hereinafter provided, shall be made in April of the following year. Payment by Edmonds to Lynnwood, or by Lynnwood to Edmonds, for Capital Reimbursement charges may be made in a lump sum, sixty (60) days after the signing of this contract by both parties or on either an annual or monthly basis, all as hereinafter provided in Exhibit "E", attached hereto, and by this reference incorporated herein. Total payments for these charges shall include accrued interest at the rate of 8.00% per annum beginning with the date of signature of this agreement by both parties. There shall be no interest on the Operation and Maintenance charge.

(a) Operation and Maintenance Charge:

For the balance of the calendar year of 1982 and through the April 1, 1983 billing, each party will pay the other an Operation and Maintenance charge as hereinafter provided in Exhibit "F", attached hereto, and by this reference incorporated herein.

By March 15, commencing with the year 1983, each party will tabulate the actual operating and maintenance expenses of their own joint sewerage system facilities for the preceeding calendar year. These costs will establish the basis for charges for the current year, which charges shall be changed each year as of April 1. Each party will furnish the other with an itemized listing of all costs along with a tally of the total annual water consumption of all customers being served by such party through the joint sewerage system facilities, and these shall be tabulated on a revised Exhibit "F". The total annual costs as so determined shall be used as the basis of charge for the current year as of April 1, and this figure divided by 12 shall be the rate per month charged by the respective cities.

In April of each year, each City shall bill or credit the other for any differences between total actual billings for preceeding calendar year and billings based on actual cost incurred.

(b) Capital Reimbursement Charges:

In order to reimburse the serving City for a share of the construction cost of the joint sewerage system facilities, the other City shall pay to the serving City a sum which represents a prorata portion of the joint sewerage system unit facility capacity based upon present or future sewage flows, as may be applicable.

The sum to be paid to the serving City by the other City shall be based upon a reimbursement percentage to be computed in the following manner:

$$\frac{\text{Other City Flow}}{\text{Other City Flow} + \text{Serving City Flow}} = \text{Reimbursement Percentage}$$

The sewage flows used in the computation shall be in units of M.G.D. from measurements or derived from present or projected water consumption as hereinbefore described. The reimbursement percentage shall be calculated for each of the separate facilities of the joint sewerage system and when multiplied times the cost of such separate facilities will determine the other City's fair share of the serving City's capital costs expended in constructing such facilities, all as shown on Exhibits "D" and "E", attached hereto. The reimbursement percentage figure when computed based upon either present or estimated future flows shall be used in determining that portion of the design capacity measured in MDG of each of the separate facilities that, with payment of the capital cost, will be reserved to the other City.

In order to amortize a City's share of the capital cost over the remaining specified life of joint sewerage system facilities, said City may elect, as an alternate, to pay the total amount shown on Exhibit "E", in one lump sum payment sixty (60) days after the acceptance and signing of this contract by both parties hereto. In the event this alternate is so selected and declared in writing prior to the 60-day termination date, there shall be added to the lump sum due interest computed at the rate of 8.00% per annum from date of contract signing by both parties to the

payment date.

At such time in the future as it may become necessary for a serving City to provide additional sewerage facilities to increase the capacities of the joint sewerage system, a review of the reserve capacities purchased by the other shall be made with respect to the share of total design capacities of each unit then being used. If, at that time, the other City is using more than its reserve capacity, it shall either purchase additional capacity in the new facilities to be constructed, or in some manner reduce its contributing flows to the level of the reserve capacities purchased under this contract. In the event that the other City is found to be using less than the reserve capacities purchased hereunder, then it may elect to maintain its position and not be required to purchase additional capacities in the new facilities planned, or it may elect to purchase additional capacity as added future reserve, or may elect to sell its excess reserve capacity purchased hereunder and the serving City agrees to purchase same at the original cost to the other. No interest will be included in this buy-back agreement so as to compensate for the depreciation that will have accrued during the other City's holding period. In the event the serving City is required to replace, improve or upgrade any of the joint sewerage system facilities as required to meet State or Federal regulations, then both parties agree to share in such costs in the manner provided for sharing capital costs on the now existing joint sewerage system facilities. In the event the serving City is required to replace any joint sewerage system facilities as a result of a loss in excess of the coverage required in Section 9, then both

parties agree to share in the replacement costs in the manner provided for sharing capital costs on the now existing joint sewerage system facilities.

SECTION 4. RECIPROCAL SERVICE AGREEMENT. In the event any area, presently or in the future, lying within the City limits of either City is most advantageously served through sewerage facilities owned and operated by the other that discharges sewage into the joint sewerage system, the City requesting service is hereby granted the right to use such facilities for the transmission of its sewage. The costs due the serving City from the other for such service and the use of such facilities shall be calculated and regulated in the same manner and style as herein provided for Edmonds' use of Lynnwood's facilities, or Lynnwood's use of Edmonds' facilities. Lynnwood sewage flows through Ballinger Pump Station No. 8 shall be subject to approval by Mountlake Terrace. (See also Section 7.)

SECTION 5. MEASUREMENT OF SEWAGE FLOWS. For the purpose of determining the MGD flow of each City as is being discharged through the joint facilities, the total annual water consumption in MG, of all customers as determined by the use of the most recent amendment to Exhibit "F" as hereinbefore provided, shall be divided into the total flows measured at the treatment plant, a part of the joint sewerage system facilities, and multiplied by each City's average annual water consumption expressed in MGD. Additional metering throughout the joint sewerage system facilities may be performed at the request of either party hereto

and the results of such added metering shall be accepted by both parties. The costs of performing such additional metering shall be borne by the City requesting same.

SECTION 6. CONTROL OF SEWAGE QUALITY. Each of the parties hereto shall be responsible for control of the quality and character of sewage delivered into the joint sewerage system, and to this end shall adopt and enforce suitable rules and regulations to prevent entry into the joint sewerage system of septic sewage, petroleum waste, tar, creosote, naptha, or other chemicals and/or waste detrimental to the proper functioning of the sewage treatment plant and/or elements of the joint sewerage system. Both parties will take whatever means necessary to exclude storm water, roof and surface drainage connections to the sanitary sewers which drain into the joint sewerage system and will not permit entry of sewage waste which had a B.O.D. concentration in excess of that normally found in domestic sewage.

SECTION 7. NONRESIDENT CONNECTIONS. No person or organization shall be permitted to connect to or otherwise make direct use of the joint sewerage system, if said person or organization is not located within the boundaries of one of the parties to this agreement, without the written consent of the parties to this agreement, provided that municipal corporations may so connect with the permission of the City to which facilities it directly connects. For the purpose of allocating operation costs and future expansion of the joint sewerage system facilities as provided hereinbefore, any connection made under

this Section shall become a part of the service area of the City to which it directly connects. Lynnwood sewage flows through Ballinger Pump Station No. 8 shall be subject to approval by Mountlake Terrace. (See also Section 4.)

SECTION 8. AUDIT. Either party to this agreement shall have the right to audit the financial records of the other relevant to this agreement by making written notice at least 30 days prior to said audit. The cost of any such audit shall be at the expense of the party making the request.

SECTION 9. INSURANCE AND LIABILITY DAMAGES. Each City shall maintain insurance on their treatment plants and sewage lift stations in an amount sufficient to enable replacement or restoration of any such facilities damaged or destroyed as a result of casualty or loss normally insured against by sewer utilities operated in a reasonable and prudent manner. The proportionate share of the cost of said insurance applicable to the joint sewerage system shall be included as a part of the operation and maintenance expense and charged to the other. Each of the parties hereto shall also maintain public liability insurance with bodily injury limitations of not less than \$500,000 per occurrence and \$500,000 aggregate, and property damage limitations of not less than \$250,000 per occurrence and \$250,000 aggregate.

SECTION 10. ASSIGNMENT. Neither of the parties hereto shall have the right to assign this agreement or any of its rights and

obligations hereunder, nor to terminate its obligations hereunder by dissolution or otherwise, without first securing the written consent of the other party, and this agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

SECTION 11. NOTICE. Whenever in this agreement notice is required to be given, the same shall be given by registered mail addressed to the party at the following addresses:

City of Edmonds
Civic Center
Edmonds, Washington 98020

City of Lynnwood
City Hall
Lynnwood, Washington 98036

unless a different address shall be hereafter designated in writing by either of such parties.

The date of giving such notice shall be deemed to be the date of mailing thereof. Billings for and payments of operation and maintenance costs may be made by regular mail.

SECTION 12. EXECUTION OF DOCUMENTS AND ADOPTION OF RESOLUTIONS AND ORDINANCES. Each party agrees that it will execute any and all instruments, documents and resolutions or ordinances necessary to give effect to the terms of this contract.

SECTION 13. EFFECTIVE DATE. The provisions of this contract shall become effective on the date hereof, and the charges provided for herein commence on the effective date, unless other

provisions have been made.

SECTION 14. WAIVER. No waiver by either party of any term or condition of this agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or a different provision of this agreement.

SECTION 15. REMEDIES. In addition to the remedies provided by law, this contract shall be specifically enforceable by either party.

SECTION 16. ENTIRETY. This agreement merges and supersedes all prior negotiations, representations, and agreements between the parties hereto relating to the subject matter hereof, and constitutes the entire contract between Edmonds and Lynnwood concerning the disposal of sewage by either City and the acceptance of such sewage by the other for disposal and treatment.

SECTION 17. TERMINATION. This agreement shall remain in effect until its termination is mutually agreed upon by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

CITY OF LYNNWOOD

By:

MAYOR

ATTEST:

CITY CLERK

CITY OF EDMONDS

By:

MAYOR

ATTEST:

CITY CLERK

STATE OF WASHINGTON)

COUNTY OF SNOHOMISH)

On this 26 day of October, 1982, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared

Harve H. Harrison

and

Gene Varney Moran

to

me known to be the Mayor and the City Clerk, respectively, of the City of Edmonds, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument and that the seal affixed is the official seal of said municipal corporation.

WITNESS my hand and official seal hereto affixed the day and
year first above written.

Jacqueline G. Parrett

Notary Public in and for the
State of Washington, residing at
Edmonds

STATE OF WASHINGTON)

COUNTY OF SNOHOMISH)

On this 26th day of October, 1982, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared

M. J. Hrdlicka

and

R. W. Noack

to

me known to be the Mayor and the City Clerk, respectively, of the City of Lynnwood, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument and that the seal affixed is the official seal of said municipal corporation.

WITNESS my hand and official seal hereto affixed the day and
year first above written.

Emma Ellis

Notary Public in and for the
State of Washington, residing at

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