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**CITY OF BAINBRIDGE ISLAND AND KITSAP COUNTY SEWER DISTRICT NO. 7  
INTERLOCAL AGREEMENT FOR WASTEWATER TREATMENT**

THIS AGREEMENT is made and entered into this 24<sup>TH</sup> day of SEPTEMBER 2003, by and between the CITY OF BAINBRIDGE ISLAND, Washington ("City") and KITSAP COUNTY SEWER DISTRICT NO. 7, Kitsap County, Washington ("District"), both municipal corporations of the State of Washington.

RECITALS

A. The District operates a wastewater treatment plant that serves a portion of the south end of the City.

B. By interlocal agreement dated October 3, 1997, the District reserved for the City and accepted for treatment 80 equivalent residential units ("ERUs") of capacity in the District's wastewater treatment plant for the purpose of reducing existing water pollution problems in the Lynwood Center area of the City.

C. In 1998, the City commenced the first flows of wastewater from the Lynwood Center area to the wastewater treatment plant.

D. By amendment dated August 8, 2002, the District and the City deleted paragraph 6 and amended paragraph 5 of the interlocal agreement to clarify the monthly service charge to be paid per equivalent resident unit.

E. By Ordinance No. 2001-43, effective December 24, 2001, the City Council expanded the sewer service area in the south part of the City to include, generally, Rockaway Beach, Pleasant Beach, Emerald Heights, Point White Drive and Blakely School, in addition to Lynwood Center.

F. The City has commenced the process for forming local improvement districts to construct sewer facilities in most of the expanded sewer service area approved by Ordinance No. 2001-43.

G. The City needs to treat the wastewater from 231 residential connections in the local improvement district areas. The District is willing and able to provide wastewater treatment for 250 residential connections to serve the expanded sewer service area, in addition to the 80 ERUs under the interlocal agreement.

H. The parties desire to enter into a new interlocal agreement regarding the treatment of wastewater and the payment of connection and service charges for the south end of the City, which will supersede and replace the existing interlocal agreement.

## AGREEMENT

The parties agree as follows:

1. Reservation of Service and Acceptance for Treatment--Lynwood Center. The District shall reserve service for the City and accept for treatment the wastewater of 80 ERUs in the Lynwood Center area of the City, as described in Section 4 of City Ordinance No. 2001-43 (SSP 2.3 of the Water Resource Element of the City's Comprehensive Plan, Figure 2B) ("Lynwood Center Area"). The 80 ERUs are allocated in accordance with Exhibit A. An ERU shall be the equivalent of a "residential connection." The City may authorize the transfer of any or all of the 80 ERUs among the parcels within the Lynwood Center Area. Within 30 days of an ERU transfer, the City shall give notice of the transfer to the District.

2. Connection Fee--Lynwood Center. The City has paid for the 80 ERUs allocated to the Lynwood Center Area pursuant to Paragraph 1 of this Agreement.

3. Reservation of Service and Acceptance for Treatment--Local Improvement District Areas and South Island Sewer Area. In addition to the wastewater treatment service reserved and wastewater accepted for treatment under Paragraph 1 of this Agreement, and if the City creates the local improvement districts described in Exhibit B ("LID Area"), the District shall reserve service for the City and accept for treatment the wastewater from 231 residential connections in the LID Area (Blakely School shall be allocated 14 of the 231 residential connections), and 19 additional residential connections in the City sewer service area for the South End described in Section 4 of City Ordinance No. 2001-43 (SSP 2.3 of the Water Resource Element of the City's Comprehensive Plan, Figure 2B), which includes the Lynwood Center area ("South Island Sewer Area"). A "residential connection" shall mean a single-family residence, including its related accessory dwelling unit as defined in City Code. The allocation and use of the 19 additional residential connections shall be determined by the City. Within 30 days of the connection of a residence, the City shall give notice of the connection to the District.

4. Connection Fee--Sewer Area. The City shall pay \$5,991.00 per connection for the 250 residential connections allocated to the South Island Sewer Area pursuant to Paragraph 3 of this Agreement. Within the first two months of any year, and following 30 days' advance notice to the City, the District may increase the connection fee by the same amount of any increase in District connection fees pursuant to RCW 57.08.005(10). The connection fees for the 250 residential connections shall be paid as follows:

a. For real property located within the LID Area that elects to include and finance the cost of a side sewer or grinder pump system through a local improvement district ("LID"), the connection fee shall be due and payable within 30 days of City receipt of the proceeds of LID bonds, if the LID improvements are financed through proceeds of LID bonds, or within 30 days of confirmation of the LID final assessment roll, if the LID improvements are financed through City funds and grant and loan proceeds; and

b. For real property that does not elect to include and finance the cost of a side sewer or grinder pump system through a LID, the connection fee shall be due and payable on the next June 1 or January 1 after completion of the side sewer or grinder pump system; provided, that the City may at its option pay such connection fees at any time, regardless of completion of the side sewer or grinder pump system.

If the District determines that District funds, including the connection fees paid by the City under this Paragraph and Paragraph 9 of this Agreement, are insufficient to pay for the planning, design, construction and inspection of District upgrades and improvements that the District or DOE determines are necessary to provide some or all of the 250 residential connections, the District shall give notice to the City of the portion of the balance due for the 250 connections that is necessary to meet the District's funding needs ("Necessary Funds"). Within 18 months of receipt of the notice, the City shall pay to the District the Necessary Funds. If requested by the City, the District shall assist the City in obtaining grants and loans to obtain the Necessary Funds. After the City has paid to the District connection fees for 250 connections under this Paragraph, the City shall keep any connection charges paid by property owners to City at the time of actual connection .

5. Meetings. Each year in February, at least one representative of the City and of the District shall meet to discuss issues and matters relating to this Agreement and the District's provision of sewer service under this Agreement, including but not limited to the status of the 250 authorized connections, increases in and payment of connection and service charges and assistance in applying for grants and loans.

6. Service Charges. At execution of this Agreement, the District has a service charge per "residential connection" of \$35.00 per month. The District may amend the monthly service charge to cover changes in operation and maintenance costs, so long as the charge is uniform for class of customer, whether located within or without the District. The District shall not impose a surcharge or similar additional charge due solely to the fact that the customer is located outside of the District. The City shall pay the monthly service charges for properties served by, but located outside of, the District as follows:

a. For the Lynwood Center Area, the City shall pay a service charge per ERU for the parcels described on Exhibit A in accordance with Exhibit A. For purposes of calculating service charges, an ERU shall be equal to one "connection," also known as a "residential connection."

b. For the South Island Sewer Area, except the Lynwood Center area, the City shall pay a service charge for each residence (which includes an accessory dwelling as defined in City Code) connected to the sewer system. Blakely School shall be allocated 14 residential connections.

Within 30 days of connection of a residence in the South Island Sewer Area, or connection of an ERU in the Lynwood Center Area, the City shall notify the District of the change in status. The District shall send to the City a monthly bill for all service charges, which shall be due 30 days from the date of mailing of the bill. All charges remaining unpaid after 30 days shall bear interest at the rate of one percent per month until paid in full. The City and the District shall maintain

appropriate books and accounts regarding the number of connections made and the number of connections available.

7. Construction and Operation Standards. All City sewer facilities shall be constructed, installed, operated and maintained in accordance with federal, state and local laws and regulations, and City and District policies and procedures. Each party shall cooperate in the development, implementation and administration of pre-treatment procedures and limitations on quality and quantity of wastewater, to the extent necessary to allow the facilities of the City and District to satisfy federal, state and local laws and regulations and City and District policies and procedures. The City shall operate its facilities in a manner that will prevent the entry of excessive water, turbidity, and grit into the facilities. If the District believes that City wastewater contains substances that will or have damaged the facilities or will or have caused the District's treatment plant to violate federal, state or local laws and regulations, it shall immediately notify the City. If the City agrees that City wastewater has so damaged the facilities or treatment plant, or if an arbitrator or court (issuing a final decision) determines that the City's wastewater has caused such damage, in whole or in part, the City shall pay for the damages it has caused.

8. Sewer Availability. For the additional 19 connections authorized by paragraph 3 of this Agreement, and any additional connections that may be authorized pursuant to Paragraph 9 of this Agreement, a City official may execute a letter of sewer availability to such owner with such conditions and terms as the City official shall deem appropriate. The letter shall also contain the signature of the President of the District Board of Commissioners, or the President's designee.

9. Additional Connections. If the District has sufficient capacity in the District's wastewater treatment plant to treat the wastewater from more than the number of ERUs and residential connections provided for in Paragraphs 1 and 3 of this Agreement, and additional sewer connections are consistent with District policies and amendments to the City's comprehensive plan and development regulations, the City Council and the District's Board of Commissioners may by a new Exhibit E to this Agreement identify the real property to receive additional connections and determine the connection fees and service charges for the additional connections.

10. Operation and Maintenance of Sewer Facilities. The City shall own, operate and maintain the sewer facilities located north of, and including, the manhole in the south 160 feet of the parcel described in AF #9502060195 ("Terminus Manhole"), except the existing meter manhole. The Terminus Manhole is also known as "Manhole No. F-1" in the 1995 plans by A.D.A. Engineering for Lynwood Center Wastewater Pump and Forcemain. The District shall own, operate and maintain the treatment plant, the gravity lines from the Terminus Manhole to the wastewater treatment plant and the meter manhole approximately nine feet north of the Terminus Manhole.

11. Insurance. The District and the City shall maintain in full force and effect comprehensive general liability, public official liability and property insurance policies, with coverage and limits at least equal to the coverage and limits in effect under their respective insurance policies at the execution of this Agreement. Current certificates of insurance for the District and the City are attached as Exhibits C and D, respectively.

12. Indemnification. The District shall protect, defend, indemnify and save the City, its officers, employees and agents, harmless from any and all costs, claims, judgments or awards of damages, arising out of or in connection with the negligent acts or omissions of the District, its officers, employees or agents. The City shall protect, defend, indemnify and save the District, its officers, employees and agents, harmless from any and all costs, claims, judgments or awards of damages, arising out of or in connection with the negligent acts or omissions of the City, its officers, employees or agents.

13. Mediation. If a party disagrees with an interpretation or application of this Agreement by the other party, the party may file a notice requesting a meeting to discuss the dispute. The meeting shall be held within seven days between two representatives of each party designated by the Mayor and the Secretary of the Board of Commissioners. If the parties are unable to resolve the dispute at the meeting or any continued meetings, they may, by mutual consent, initiate mediation. If the dispute involves the calculation or timing of payment of connection fees or service charges, the City shall pay the amount claimed by the District to the District pending resolution of the dispute. The mediator(s) shall be selected based on expertise in the nature of the matter in dispute and ability to facilitate settlement. The parties agree to provide all documentation and information requested by the mediator(s) and in all other regards to cooperate fully with the mediator(s). If mediation is unsuccessful in providing a mutually acceptable solution to the dispute within 30 days after commencement of the mediation, unless extended by mutual agreement of the parties, the parties may pursue any other form of relief. The costs for mediation shall be equally shared between the parties. Unless arbitration is requested pursuant to Paragraph 14, the City or the District shall pay or refund, as applicable, the difference between the amount paid by the City and the amount agreed at mediation.

14. Arbitration. Within 14 days after completion of the meeting under Paragraph 13, or after the mediation under Paragraph 13, either party may file a notice requesting arbitration under this Paragraph. If the dispute involves the calculation or timing of payment of charges, the City shall continue to pay the amount claimed by the District to the District pending resolution of the dispute. The parties shall attempt to agree upon a person with appropriate expertise in the subject matter to be arbitrated. If the parties are unable to select an arbitrator, they shall obtain from Municipal Research Services Center the names of five persons who have some expertise in the subject matter to be arbitrated. From the list of five names, the parties will attempt to agree on one person to serve as arbitrator. If the parties are unable to agree on which of the five shall be the arbitrator, the parties shall alternately eliminate the name of one person on the list until only one name remains. The person remaining shall be the arbitrator. The arbitrator shall commence the arbitration hearing as soon as possible. The decision of the arbitrator shall be binding upon the parties and is subject to confirmation and review only as provided in Chapter 7.04 RCW. The arbitrator shall not be empowered to impose any remedy that has the effect of altering the terms of this Agreement. All costs of the arbitration proceeding shall be shared equally by the parties. The City or the District shall pay or refund, as applicable, the difference between the amount paid by the City and the amount awarded by the arbitrator.

15. Litigation Costs. If either party commences litigation against the other party relating to this Agreement, the prevailing party shall be entitled to all costs, including attorneys' fees incurred, relating to such litigation.

16. Notices and Payments. All notices shall be in writing and may be delivered or mailed to the following respective addresses or to such other respective addresses as either party may designate in writing:

To the City:                   City of Bainbridge Island  
                                      280 Madison Avenue North  
                                      Bainbridge Island, Washington 98110

To the District:               Kitsap County Sewer District No. 7  
                                      P.O. Box 400088  
                                      Bellevue, Washington 98015

Notices sent by certified or registered mail shall be deemed to have been given when and if properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing. All notices shall be sent to the attention of the City Public Works Director and the District Manager; all payments and bills shall be sent to the attention of the City Finance Director and the District Manager.

17. Severability. Invalidation of any of the provisions of this Agreement or of any section, sentence, clause, phrase, or word in this Agreement, or the unenforceability of the Agreement in any circumstance, shall not affect the validity of the remainder of this Agreement or the application of this Agreement in any other circumstance.

18. Amendment. This Agreement shall remain in force until mutually amended or terminated.

CITY OF BAINBRIDGE ISLAND

By   
Mayor

KITSAP COUNTY SEWER DISTRICT NO. 7

By   
President of Board of Commissioners

## EXHIBIT A

1. Lynwood Center Building parcel (tax parcel no. 042402-1-014-2004): 14 ERUs. The City shall pay for all ERUs.
2. Serenity House parcel (tax parcel nos. 042402-1-002-2008; 042402-1-003-2007; and 042402-1-006-2004): 23 connections. The City shall pay for all ERUs.
3. Pleasant Beach Village parcel (Pleasant Beach Village Plat, Auditor's File No. 3035993): 10 ERUs. Each condominium unit shall be one ERU, and the City shall pay for any condominium unit that is actually connected to the sewer system.
4. Pleasant Beach Grill parcel (tax parcel no. 042402-1-004-2006): 10 ERUs. The City shall pay for all ERUs when any building on the parcel is connected to the sewer system.
5. Blossom parcel (tax parcel nos. 042402-1-12-2006; 042402-1-047-2005; 042402-1-048-2004; 042402-1-049-2003 and 042402-1-050-2002): 23 ERUs. The City shall pay for all ERUs.