

**AMENDMENT No. 2 TO CITY OF LAKE STEVENS AND LAKE STEVENS
SEWER DISTRICT UNIFIED SEWER SERVICES AND ANNEXATION
AGREEMENT**

THIS AMENDMENT is made and entered into this 9th day of March, 2006, by and between the Lake Stevens Sewer District, a special purpose district of the State of Washington, hereinafter referred to as the "District", and the City of Lake Stevens, a municipal corporation of the State of Washington, hereinafter referred to as the "City".

- A. WHEREAS, the District and the City entered into a UNIFIED SEWER SERVICES AND ANNEXATION AGREEMENT relating to the provision of public sewer service in the Lake Stevens Urban Growth Area ("UGA"); and
- B. WHEREAS, the Agreement describes, *inter alia*, the unification of the sewerage system within the UGA and coordination of capital projects and annexations affecting the sewerage system; and
- C. WHEREAS, the District is currently in the process of planning for, designing, and obtaining permits for the construction of a new wastewater treatment plant (the "Sunnyside WWTP") with a preferred location on real property legally described in attached Exhibit A, which property is currently owned by the District (the "Sunnyside WWTP Property");
- D. WHEREAS, as of the date of this Amendment the Sunnyside WWTP Property is located in unincorporated Snohomish County, and the parties hereto believe the purposes and intent of the UNIFIED SEWER SERVICES AND ANNEXATION AGREEMENT will be fostered by annexation of the Sunnyside WWTP Property to the City, subject to the terms and conditions described in this Amendment;

NOW, THEREFORE, in consideration of the mutual covenants expressed herein and the terms and conditions set forth below, the District and the City agree that the UNIFIED SEWER SERVICES AND ANNEXATION AGREEMENT is hereby amended as follows:

1. Conveyance of Real Property for Municipal Purposes: Title to the Sunnyside WWTP Property, legally described in attached **Exhibit A**, shall be conveyed to the City by statutory warranty deed, in the form attached hereto as

Exhibit B, and shall contain a servitude and covenant running with the land, indicating that the Sunnyside WWTP Property shall be used for the provision of sanitary sewerage services to include the Sunnyside WWTP. The **Exhibit A** legal description shall be amended, if required, to reflect the legal description contained in the preliminary commitment for title insurance to be issued for this transaction. The **Exhibit B** deed shall be amended, if required, to reflect the exceptions to title contained in the preliminary commitment for title insurance to be issued for this transaction.

2. Lease of Sunnyside WWTP Property to the District: For and in consideration of annual lease payment of Ten Dollars (\$10.00), and upon conveyance of title to the Sunnyside WWTP Property to the City, the City hereby agrees to lease the subject property to the District for the purpose of constructing and operating the Sunnyside WWTP on the subject property. The form of lease shall be as set forth in **Exhibit C**. The term of the lease shall be concurrent with the District's ownership and operation of the Unified Sewer System, as described in the UNIFIED SEWER SERVICES AND ANNEXATION AGREEMENT. The facilities constructed by the District on the subject property, including without limitation all additions, alterations and improvements and all appurtenant machinery and equipment and replacements thereto installed as part of the Sunnyside WWTP project shall not be considered fixtures and shall remain the property of the District, until such time as Step 2 of the UNIFIED SEWER SERVICES AND ANNEXATION AGREEMENT is completed.

Except as otherwise expressly provided herein or in the UNIFIED SEWER SERVICES AND ANNEXATION AGREEMENT, during the term of the lease the District shall have exclusive control and possession of the Sunnyside WWTP facilities, and the City shall have no liabilities, obligations or responsibilities whatsoever with respect thereto, and during the term of the lease the District agrees to indemnify, defend and hold harmless the City from and against any and all claims arising out of or from the use of the Sunnyside WWTP Property or out of the District's activities with respect to the Sunnyside WWTP.

3. Annexation by City: Following conveyance of title to the Sunnyside WWTP Property to the City and the lease-back as described above, the City shall initiate proceedings to annex the subject property for municipal purposes into the City's corporate boundary. If such annexation is approved, the District agrees to comply with the City's permitting requirements as those requirements pertain to the construction of the Sunnyside WWTP on the subject property.

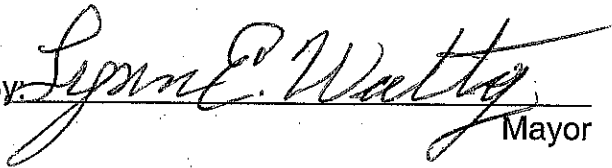
4. SEPA Review and Wetland Mitigation: The parties agree that for purposes of SEPA review for the Sunnyside WWTP project, the District will continue to serve as the Lead Agency. The parties anticipate that construction

of the Sunnyside WWTP will necessitate filling an/or altering wetlands on the subject property, and that wetland mitigation will be required as part of the permitting for the Sunnyside WWTP. It is specifically agreed that, as consideration for the mutual covenants contained herein and subject to the requirements of best available science and applicable Federal, State, County and City regulations, the City shall support application to the applicable agency(ies) to allow wetland mitigation to be performed on such sites as the parties mutually agree. Provided, however, the responsibility for said wetland mitigation shall at all times remain that of the District.

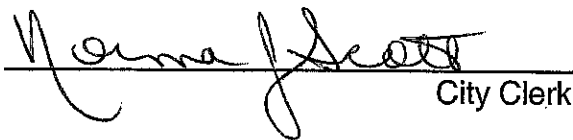
5. Incorporation by Reference: Except as set forth herein, the UNIFIED SEWER SERVICES AND ANNEXATION AGREEMENT and Amendment No. 1 thereto are hereby reaffirmed and incorporated by reference.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate as of the day first indicated above.

CITY OF LAKE STEVENS

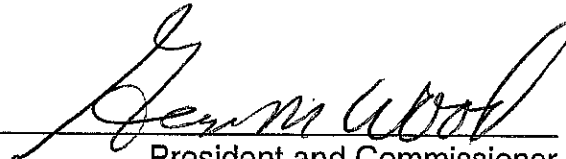
By:  Mayor

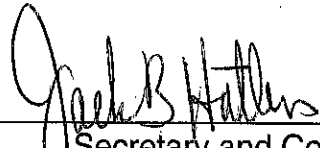
ATTESTED:


City Clerk

Date approved by City Council March 13, 2006.

LAKE STEVENS SEWER DISTRICT:

By: 
President and Commissioner

By: 
Secretary and Commissioner

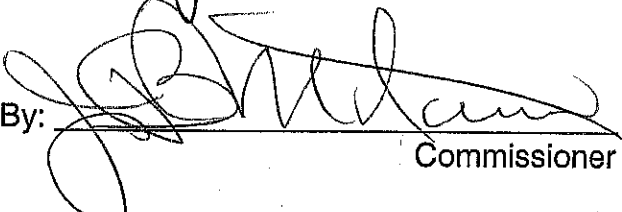
By: 
Commissioner

EXHIBIT A

LEGAL DESCRIPTION

PARCELA (tax parcel 290523-002-017-00):

Beginning at the Southwest corner of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M.;

Thence Easterly along the South line of said Northeast quarter of Section 23 for 660 feet to the West line of Tract 1 of East Everett 5 Acre Tracts;

Thence North along said West line for 429 feet to the True Point of Beginning of this description;

Thence South $89^{\circ}33'15''$ West for 1,066.14 feet to a point on the East marginal line of Pacific Highway;

Thence South $40^{\circ}00'$ West along the East marginal line of Pacific Highway for 182.96 feet;

Thence South $79^{\circ}35'07''$ East for 1204.40 feet to an existing fence line;

Thence North $0^{\circ}17'10''$ East for 368.04 feet to the True Point of Beginning EXCEPT any portion thereof lying Easterly of the West right of way line of State Highway, known as (SSH 15-A); and

EXCEPT that portion described as follows:

Beginning at the Southwest corner of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M.;

Thence Easterly along the South line of said Northeast quarter of Section 23 for 660 feet to the West line of Tract 1 of East Everett 5 Acre Tracts;

Thence North along said West line for 429 feet;

Thence South $89^{\circ}33'15''$ West for 1,066.14 feet to a point on the East marginal line of Pacific Highway;

Thence South $40^{\circ}00'$ West along the East marginal line of Pacific Highway for 182.96 feet to the True Point of Beginning;

Thence Northerly along the East margin of Old Pacific Highway 122.96 feet;

Thence North $89^{\circ}33'15''$ East 150 feet;

Thence South $40^{\circ}00'00''$ West to a point which is South $79^{\circ}35'07''$ East from the True Point of Beginning;

Thence North $79^{\circ}35'07''$ West to the True Point of Beginning.

PARCEL B (tax parcel 290523-002-016-00):

Beginning at the Southwest corner of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M.;
Thence Easterly along the South line of said Northeast quarter of Section 23 for 660 feet to the West line of Tract 1 of East Everett 5 Acre Tracts;
Thence North along said West line for 429 feet;
Thence South 89°33'15" West for 1,066.14 feet to a point on the East marginal line of Pacific Highway;
Thence South 40°00' West along the East marginal line of Pacific Highway for 182.96 feet to the True Point of Beginning;
Thence Northerly along East margin of Old Pacific Highway 122.96 feet;
Thence North 89°33'15" East 150 feet;
Thence South 40°00'00" West to a point which is South 79°35'07" East from the True Point of Beginning;
Thence North 79°35'07" West to the True Point of Beginning.

PARCEL C: (tax parcel no. 290523-002-021-00):

That portion of the Southwest quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M., lying Easterly of Pacific Highway (NOW KNOWN AS Everett-Marysville County Road) and Westerly of State Highway No. 15-A (SR 204) described as follows:

Beginning at the intersection of the Easterly margin of said Pacific Highway with the South line of the Southwest quarter of the Northwest quarter;
Thence East along said South line 250 feet;
Thence North 70 feet;
Thence Northwesterly to a point on the East line of said Pacific Highway that is 210 feet North of said South line of the Southwest quarter of the Northwest quarter as measured at right angles to said South line;
Thence Southerly along East line of said Pacific Highway to True Point of Beginning;

PARCEL D: (tax parcel no. 290523-002-015-00):

Beginning at the Southwest corner of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M.;
Thence East 660 feet;
Thence North 60.96 feet;

Thence North 79°35'07" West 1,204 feet more or less to a point on the East line of the Pacific Highway (now known as Everett-Marysville County Road);
Thence Southerly along said East line to a point that is 210 feet North of the South line of the Southwest quarter of the Northwest quarter as measured at right angles to said line;
Thence Southeasterly to a point that is 70 feet North of a point on said South line that is 250 feet East of the East line of said Highway;
Thence South 70 feet to South line of the Southwest quarter of the Northwest quarter;
Thence Easterly along said South line to the Point of Beginning;

EXCEPT that portion Easterly of the Westerly line of State Highway No. 15-A (SR 204).

PARCELE: (tax parcel no. 290523-002-014-00):

All that portion of Government Lot 3 and of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M., described as follows:
Beginning at a point 429 feet North of the Southwest corner of said Southeast quarter of the Northwest quarter;
Thence East, parallel to South line of said Southeast quarter of the Northwest quarter a distance of 171 feet;
Thence North 370.5 feet to the True Point of Beginning of this description;
Thence North 75 feet;
Thence West parallel to South line of Northwest quarter of said Section 23 to East line of Marysville Highway;
Thence Southwest along said Highway, to a point 799.5 feet due North of South line of said Government Lot 3;
Thence East, parallel to said South line of Northwest quarter of Section 23 to the Point of Beginning;
EXCEPT that portion, if any, lying within County Road known as the East Everett Road.

PARCELE: (tax parcel no. 290523-002-011-00):

All that portion of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M., described as follows:
Beginning 429 feet North and 171 feet East of the Southwest corner of said Southeast quarter of the Northwest quarter;
Thence East 489 feet;

Thence North 445.5 feet;
Thence West 489 feet;
Thence South 445.5 feet to the True Point of Beginning;
EXCEPT that portion lying within County Road known as the East Everett Road;
EXCEPT that portion thereof conveyed to the State of Washington for highway purposes by deeds recorded under Auditor's file nos. 1132036 and 1140277; and
EXCEPT all that portion thereof lying Southeasterly and Northeasterly of Secondary State Highway No. 15-A as conveyed by said deeds.

PARCEL G: (tax parcel no. 290523-002-013-00):

That portion of Government Lot 3 and of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M., described as follows:
Commencing at a point 429 feet North and 171 feet East of the Southwest corner of said Southeast quarter of the Northwest quarter;
Thence North 370.5 feet;
Thence West to the East line of the Marysville Highway;
Thence Southwesterly along said East line to a point 429 feet due North of the South line of said Government Lot 3;
Thence East parallel to the South line of said Government Lot 3 and parallel to the South line of said Southeast quarter of the Northwest quarter to the Point of Beginning.

All situate in the County of Snohomish, State of Washington.

EXHIBIT B

After Recording Return to:

City Clerk
City of Lake Stevens
P.O. Box 257
Lake Stevens, WA 98258

STATUTORY WARRANTY DEED

Grantor:	LAKE STEVENS SEWER DISTRICT	
Grantee:	CITY OF LAKE STEVENS	
Legal Description:	NW¼ 23-29-05.	Add'l on p. <u>5 - 8</u>
Assessor's Tax Parcel ID#:	290523-002-011-00, 290523-002-013-00, 290523-002-014-00 290523-002-015-00, 290523-002-016-00, 290523-002-017-00 290523-002-021-00	

THE GRANTOR, LAKE STEVENS SEWER DISTRICT, a special purpose district of the State of Washington, for and in consideration of \$10.00 and other valuable consideration, in hand paid, conveys and warrants to the CITY OF LAKE STEVENS, a municipal corporation of the State of Washington, the following described real estate, situated in the County of Snohomish, State of Washington:

See **EXHIBIT A** attached hereto.

SUBJECT TO: Relinquishment of access to State Highway and of light, view and air pursuant to instruments recorded at Auditor's file numbers 1127783, 1127784, 1132036 and 1140277.

AND SUBJECT TO: Release of Damage Agreement and the terms and conditions thereof between the State of Washington and James and Orletta Long, husband and wife, recorded August 24, 1955 under Auditor's file number 1157580, releasing State of Washington from all future claims for all damages resulting from slides, drainage, maintenance and operation of, by reason of any thing done or neglected to be done by the State of Washington through its employees or contractors, in connection with construction, operation and maintenance of said Secondary State Highway No. 15-A, Cavalero's Corner to Jct. S.S.H. No. 1-A.

AND SUBJECT TO: Easement and the terms and conditions thereof to Snohomish County for bank protection and/or other flood control works recorded November 21, 1960 under Auditor's file numbers 1430586.

AND SUBJECT TO: Matters disclosed by unrecorded survey, Gray & Osborne, Inc. Job 97587, as follows:

- a. Mobile home located on easterly portion encroaches onto the SR 204 right of way;
- b. Driveway appurtenant to the subject property, serving the mobile home and a single-family dwelling, is located south of the southerly line;
- c. Encroachment of barn onto the 9th Street SW right of way;
- d. Fence lines do not conform to the boundary lines of record.

AND SUBJECT TO: Easement and the terms and conditions thereof for water main in area within 1 foot of east line of Parcel G, recorded at Auditor's file no. 1085797.

AND SUBJECT TO: Easement in favor of Olympic Pipe Line Company, a Delaware corporation, for pipe line or pipe lines, recorded February 27, 1964 under Auditor's file number 1678618, affecting Parcels F and G.

AND SUBJECT TO: Easement and the terms and conditions thereof for pipe line affecting a 5-foot strip along the highway, disclosed by instrument recorded at Auditor's file no. 1187845, affecting Parcel F.

This conveyance is conditioned upon the subject property's use for the provision of sanitary sewerage services including, but not limited to, location of a waste water treatment plant on said property to be constructed and operated by Grantor in compliance with all terms and conditions of the Unified Sewer Services and Annexation Agreement, and Amendments 1 and 2, between Grantor and Grantee. This condition shall be construed as a servitude and a covenant running with the land, and shall be binding upon the Grantee, its heirs, successors and assigns, in perpetuity.

DATED this _____ day of _____, 2006.

LAKE STEVENS SEWER DISTRICT

By _____
GEORGE M. WOOD, President and Commissioner

By _____
JACK B. HATLEN, Secretary and Commissioner

By _____
JAMES B. MITCHELL, Commissioner

STATE OF WASHINGTON)
)ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that GEORGE M. WOOD is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President and Commissioner of LAKE STEVENS SEWER DISTRICT to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 2006.

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

STATE OF WASHINGTON)
)ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that JACK B. HATLEN is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Secretary and Commissioner of LAKE STEVENS SEWER DISTRICT to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 2006.

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

STATE OF WASHINGTON)
)ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that JAMES B. MITCHELL is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Commissioner of LAKE STEVENS SEWER DISTRICT to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 2006.

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

ACCEPTED:

CITY OF LAKE STEVENS

By _____
LYNN WALTY, Mayor

EXHIBIT A

LEGAL DESCRIPTION

PARCELA (tax parcel 290523-002-017-00):

Beginning at the Southwest corner of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M.;

Thence Easterly along the South line of said Northeast quarter of Section 23 for 660 feet to the West line of Tract 1 of East Everett 5 Acre Tracts;

Thence North along said West line for 429 feet to the True Point of Beginning of this description;

Thence South 89°33'15" West for 1,066.14 feet to a point on the East marginal line of Pacific Highway;

Thence South 40°00' West along the East marginal line of Pacific Highway for 182.96 feet;

Thence South 79°35'07" East for 1204.40 feet to an existing fence line;

Thence North 0°17'10" East for 368.04 feet to the True Point of Beginning EXCEPT any portion thereof lying Easterly of the West right of way line of State Highway, known as (SSH 15-A); and

EXCEPT that portion described as follows:

Beginning at the Southwest corner of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M.;

Thence Easterly along the South line of said Northeast quarter of Section 23 for 660 feet to the West line of Tract 1 of East Everett 5 Acre Tracts;

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Thence South 40°00' West along the East marginal line of Pacific Highway for 182.96 feet to the True Point of Beginning;

Thence Northerly along the East margin of Old Pacific Highway 122.96 feet;

Thence North 89°33'15" East 150 feet;

Thence South 40°00'00" West to a point which is South 79°35'07" East from the True Point of Beginning;

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Thence Northerly along East margin of Old Pacific Highway 122.96 feet;
Thence North 89°33'15" East 150 feet;
Thence South 40°00'00" West to a point which is South 79°35'07" East from the True Point of Beginning;
Thence North 79°35'07" West to the True Point of Beginning.

PARCEL C: (tax parcel no. 290523-002-021-00):

That portion of the Southwest quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M., lying Easterly of Pacific Highway (NOW KNOWN AS Everett-Marysville County Road) and Westerly of State Highway No. 15-A (SR 204) described as follows:

Beginning at the intersection of the Easterly margin of said Pacific Highway with the South line of the Southwest quarter of the Northwest quarter;
Thence East along said South line 250 feet;
Thence North 70 feet;
Thence Northwesterly to a point on the East line of said Pacific Highway that is 210 feet North of said South line of the Southwest quarter of the Northwest quarter as measured at right angles to said South line;
Thence Southerly along East line of said Pacific Highway to True Point of Beginning;

PARCEL D: (tax parcel no. 290523-002-015-00):

Beginning at the Southwest corner of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M.;

Thence East 660 feet;
Thence North 60.96 feet;
Thence North 79°35'07" West 1,204 feet more or less to a point on the East line of the Pacific Highway (now known as Everett-Marysville County Road);
Thence Southerly along said East line to a point that is 210 feet North of the South line of the Southwest quarter of the Northwest quarter as measured at right angles to said line;
Thence Southeasterly to a point that is 70 feet North of a point on said South line that is 250 feet East of the East line of said Highway;
Thence South 70 feet to South line of the Southwest quarter of the Northwest quarter;

Thence Easterly along said South line to the Point of Beginning;

EXCEPT that portion Easterly of the Westerly line of State Highway No. 15-A (SR 204).

PARCELE: (tax parcel no. 290523-002-014-00):

All that portion of Government Lot 3 and of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M., described as follows:

Beginning at a point 429 feet North of the Southwest corner of said Southeast quarter of the Northwest quarter;

Thence East, parallel to South line of said Southeast quarter of the Northwest quarter a distance of 171 feet;

Thence North 370.5 feet to the True Point of Beginning of this description;

Thence North 75 feet;

Thence West parallel to South line of Northwest quarter of said Section 23 to East line of Marysville Highway;

Thence Southwest along said Highway, to a point 799.5 feet due North of South line of said Government Lot 3;

Thence East, parallel to said South line of Northwest quarter of Section 23 to the Point of Beginning;

EXCEPT that portion, if any, lying within County Road known as the East Everett Road.

PARCELE: (tax parcel no. 290523-002-011-00):

All that portion of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M., described as follows:

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Thence East 489 feet;

Thence North 445.5 feet;

Thence West 489 feet;

Thence South 445.5 feet to the True Point of Beginning;

EXCEPT that portion lying within County Road known as the East Everett Road;

EXCEPT that portion thereof conveyed to the State of Washington for highway purposes by deeds recorded under Auditor's file nos. 1132036 and 1140277; and

EXCEPT all that portion thereof lying Southeasterly and Northeasterly of Secondary State Highway No. 15-A as conveyed by said deeds.

PARCEL G: (tax parcel no. 290523-002-013-00):

That portion of Government Lot 3 and of the Southeast quarter of the Northwest quarter of

Section 23, Township 29 North, Range 5 East, W.M., described as follows:
Commencing at a point 429 feet North and 171 feet East of the Southwest corner of said Southeast quarter of the Northwest quarter;
Thence North 370.5 feet;
Thence West to the East line of the Marysville Highway;
Thence Southwesterly along said East line to a point 429 feet due North of the South line of said Government Lot 3;
Thence East parallel to the South line of said Government Lot 3 and parallel to the South line of said Southeast quarter of the Northwest quarter to the Point of Beginning.

All situate in the County of Snohomish, State of Washington.

EXHIBIT C

LEASE

THIS LEASE is made this ____ day of _____, 2006, by and between CITY OF LAKE STEVENS, a municipal corporation of the State of Washington, (hereinafter called "Lessor"), and LAKE STEVENS SEWER DISTRICT, a special purpose district of the State of Washington, (hereinafter called "Lessee").

IN CONSIDERATION of the rent provided for, and the covenants and agreements herein, Lessor and Lessee agree as follows:

1. **PROPERTY LEASED:** Lessor leases to Lessee the premises located on Sunnyside Blvd SE, in Everett, Snohomish County, Washington, said premises being legally described as:

See **EXHIBIT A** attached hereto

Assessor's Tax Parcel ID#s: 290523-002-011-00, 290523-002-013-00, 290523-002-014-00,
290523-002-015-00, 290523-002-016-00, 290523-002-017-00,
290523-002-021-00

2. **LEASE TERM:** The term of this lease shall commence upon full execution of this lease and end consistent with the terms of the Unified Sewer Services and Annexation Agreement between Lessor and Lessee, and all amendments thereto.

3. **RENT:** Lessee shall pay rent in the sum of TEN DOLLARS (\$10.00) per annum or any portion thereof. As additional rent, Lessee shall perform all terms and conditions required of Lessee under that certain Unified Sewer Services and Annexation Agreement, and Amendments 1 and 2 thereto, pertaining to construction and operation of a new waste water treatment plant on the lease premises. Lessee's breach of any term or condition of the Unified Sewer Services and Annexation Agreement, and/or Amendments 1 and 2 thereto, shall constitute a breach of this lease.

4. **UTILITIES:** Lessee shall be solely responsible for and promptly pay all charges for utilities to the leased premises, including water, sewer, garbage and electricity. Lessee shall be responsible for and promptly pay all charges for telephone and any other utility not herein mentioned which may be used by Lessee on the leased premises.

5. **ACCEPTANCE OF CONDITION OF PREMISES:** Lessee is the prior owner of the premises and is fully familiar with the condition of the same. Lessor makes no

representations whatsoever as to the condition of the subject premises. Lessee accepts the subject premises "as is," including all defects known or unknown, patent or latent.

6. **INSURANCE/CASUALTY:** All property of Lessee, whether real or personal, located on said leased premises shall be at the risk of Lessee. Each party hereto waives any and every claim which arises, or may arise, in its favor and against the other party hereto during the term of this lease for all loss of, or damage to, any of its property located within or upon, or constituting a part of, the premises leased to Lessee hereunder, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies to the extent such loss or damage is recoverable under said insurance policies. Said mutual waivers shall be in addition to, and not a limitation or derogation of, any other waiver or release contained in this lease with respect to any loss of, or damage to, property of the parties hereto. Inasmuch as the above mutual waivers will preclude the assignment of any such claim by way of subrogation to an insurance company (or any other person), each party hereby agrees immediately to give each insurance company which has issued to it policies of fire and extended coverage insurance written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent invalidation of said insurance coverages by reason of said waivers.

7. **INSURANCE/LIABILITY:** Lessee shall, during the entire term, keep in full force and effect a policy, or policies, of public liability and property damage insurance with respect to the leased premises and the business operated thereat by Lessee, in which the limits of public liability shall be not less than \$1,000,000 per person and \$2,000,000 per accident, and in which the property damage liability shall be not less than \$500,000. Said policy, or policies, shall contain a clause that the insurer shall not cancel or change the insurance without first giving Lessor 10 days' prior written notice.

8. **INDEMNIFICATION:** Lessee will indemnify Lessor and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon, or at the leased premises, or the occupancy or use by Lessee of the leased premises, or any part thereof, or Lessee's construction of sewage treatment plant improvements upon the leased premises, occasioned by any act or omission of Lessee, its agents, contractors, subcontractors, employees, customers and invitees.

In connection with Lessee's construction of improvements on the lease premises, Lessee shall comply with all laws and regulations of applicable governmental authorities, shall acquire all required permits, shall employ only licensed and bonded contractors and shall complete construction in compliance with good construction practices.

Lessee shall allow no liens to attach to the leased premises. Lessee shall pay any and all costs associated with design, permitting and construction of the improvements on the lease premises.

In the event Lessor shall be made a party to any litigation commenced by or against Lessee, then Lessee shall proceed and hold Lessor harmless, shall pay all costs, expenses and

reasonable attorney's fees incurred, and shall reimburse Lessor for any attorney's fees and costs incurred and paid by Lessor in connection with such litigation.

9. **MAINTENANCE OF THE PREMISES:** Lessee shall be responsible for all maintenance of the lease premises and all improvements located thereon, without limitation, at Lessee's sole cost and expense. Lessee's maintenance duties shall include, but not be limited to the following:

- (a) Lessee shall at all times keep the interior of all structures situated on the leased premises and all partitions, doors, floor covering, interior and exterior glass, lighting, interior plumbing and other fixtures, and other equipment and appurtenances thereof in good order, condition and repair, including repair of damage by unavoidable casualty.
- (b) Lessee shall maintain the structural portions of the premises, including exterior walls, the roof, and air-conditioning and heating equipment, in good order, condition and repair, including repair of damage by unavoidable casualty.
- (c) Lessee shall maintain the waste water treatment plant facilities in good working order, condition and repair, including repair of damage by unavoidable casualty.
- (d) Lessee shall maintain all outdoor areas of the lease premises including sidewalks, landscaping, service areas, and automobile parking areas, in good, safe, attractive condition. Further, Lessee shall be liable for the removal of ice and snow from the sidewalks and parking areas on and about the premises.
- (e) Lessee shall be responsible for all janitorial services to the leased premises.

If Lessee refuses or neglects to repair and maintain the premises as required herein to the reasonable satisfaction of Lessor as soon as reasonably possible after written demand, Lessor may make such repairs and do required maintenance without liability to Lessee for any loss or damage that may accrue to Lessee's fixtures or other property, or to Lessee's business by reason thereof, and upon completion thereof, Lessee shall pay Lessor's costs for such work, plus 10% for overhead.

10. **ALTERATIONS:** Lessee is specifically authorized to construct a new waste water treatment plant ("the Sunnyside WWTP") and all sewer utility related improvements, consistent with the terms and conditions of the Unified Sewer Services and Annexation Agreement, and Amendments 1 and 2 between the parties. Lessee shall not construct or make any other alterations, additions or improvements in or to the lease premises without the prior written consent of Lessor. Such consent shall not be unreasonably withheld.

The facilities constructed by Lessee on the lease premises, including without limitation all additions, alterations and improvements and all appurtenant machinery and equipment and replacements thereto installed as part of the Sunnyside WWTP project shall not be considered fixtures and shall remain the property of the Lessee, until such time as Step 2 of the Unified Sewer Services and Annexation Agreement is completed.

11. **RESTRICTIONS ON USE:** Lessee shall not use the leased premises for any purpose other than construction and operation of a sewage treatment plant and provision of sanitary sewerage services. Lessee shall not cause or permit any waste, damage or injury to the premises. Lessee covenants and agrees to fully and promptly comply with all statutes, ordinances and regulations of governmental agencies having jurisdiction. Lessee will not use or permit the use of the premises in any such manner as will tend to create a nuisance.

12. **HAZARDOUS SUBSTANCES:** Lessee shall not conduct any action or permit any action or condition which creates any hazardous substance, or leaves deposits of any hazardous substance in, on or under the lease premises or within the structures or upon the lease premises. For purposes of this paragraph, the definition of the term "hazardous substance" shall be as used in the Superfund Act or any other federal and/or state legislation regarding hazardous substances, provided that the definition of the term "hazardous substance" shall include petroleum and related byproducts and hydrocarbons. Lessee shall indemnify and hold Lessor harmless from any costs or damages incurred as a consequence of such hazardous substances, including costs of remedying such hazardous substances and damages incurred as a consequence of the existence of such hazardous substances on the property. This provision shall survive the expiration of the lease term.

13. **DESTRUCTION OF PREMISES:** In the event the leased premises are destroyed or damaged by fire, earthquake or other casualties, Lessee may rebuild and restore the premises, or such part thereof as may be damaged. No rent shall be abated as a result of such destruction or damage.

14. **RIGHT OF INSPECTION:** Lessee will allow Lessor, or Lessor's agents and employees, free access at all reasonable times to said premises for the purpose of inspection or making repairs, additions or alterations to the leased premises, or any property owned by or under the control of Lessor, but such right shall not be construed as an agreement by Lessor to make such repair, additions or alterations.

15. **ASSIGNMENT AND SUBLETTING:** Lessee shall not sublease, sublet or assign the leased premises, or any portion thereof, except by the written permission and consent of Lessor.

16. **DEFAULT:**

- (a) **Lessee:** If Lessee shall fail to perform any of the covenants and agreements herein contained within 30 days after written notice of default, then Lessor may cancel this lease upon giving the notice required by law, and re-enter said premises; but notwithstanding such re-entry by Lessor, the liability of Lessee for the rent provided for herein shall not be extinguished for the balance of the term of the lease, and Lessee covenants and agrees to make good to Lessor any deficiency arising from re-entry and reletting of the premises at a lesser rental than herein agreed to. Lessee shall pay such deficiency each month as the amount thereof is ascertained by Lessor. In computing such deficiency, Lessee shall be charged with the average monthly rental that Lessee has paid up to the time of default.

In the event of any entry in, or taking possession of, the leased premises, Lessor shall have the right, but not the obligation, to remove from the leased premises all personal property located thereon, and may place the same in storage at a public warehouse, at the expense and risk of the owners.

If at any time Lessor waives any breach or default, or any right or option, such waiver shall not be construed to be a waiver of any other right or option, or any other past, existing or future breach or default.

- (b) **Lessor:** In the event Lessor shall neglect or fail to perform or observe any of the covenants, provisions or conditions contained in the foregoing lease on its part to be performed or observed within 30 days after written notice of default (or if more than 30 days shall be required because of the nature of the default, if Lessor shall fail to proceed diligently to cure such default after notice), then, in that event, Lessor shall be responsible to Lessee for any and all damages sustained by Lessee as a result of Lessor's breach. Further, after such default, Lessee shall have the right to cure any such default at Lessor's expense, including in such expenditure all costs and attorney's fees incurred to cure such default or breach of lease, and may offset the costs of curing such default against rents and additional rents next due.

17. **COSTS OF LITIGATION:** Should either party bring a legal action to enforce any of the terms and conditions of this lease, then the party prevailing in such action shall have the right to a judgment against the other party for reasonable court costs, costs of preparation, and reasonable attorney's fees.

18. **SUCCESSORS:** All of the covenants, agreements, terms and conditions contained in this lease shall apply to, and be binding upon, Lessor and Lessee and their respective heirs, executors, administrators, successors and assigns.

19. **NOTICES:** Any notice required to be served in accordance with the terms of this lease shall be sent by registered or certified mail, return receipt requested, to the addresses for the parties set forth below:

Lessor: City of Lake Stevens
ATTN: City Clerk
P.O. Box 257
Lake Stevens, WA 98258

Lessee: Lake Stevens Sewer District
ATTN: Darwin C. Smith, Manager
1106 Vernon Road Suite A
Lake Stevens, WA 98258

STATE OF WASHINGTON)
)ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that GEORGE M. WOOD is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President and Commissioner of LAKE STEVENS SEWER DISTRICT to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 2006.

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

STATE OF WASHINGTON)
)ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that JACK B. HATLEN is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Secretary and Commissioner of LAKE STEVENS SEWER DISTRICT to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 2006.

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

STATE OF WASHINGTON)
)ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that JAMES B. MITCHELL is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Commissioner of LAKE STEVENS SEWER DISTRICT to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 2006.

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

EXHIBIT A LEGAL DESCRIPTION

PARCELA (tax parcel 290523-002-017-00):

Beginning at the Southwest corner of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M.;

Thence Easterly along the South line of said Northeast quarter of Section 23 for 660 feet to the West line of Tract 1 of East Everett 5 Acre Tracts;

Thence North along said West line for 429 feet to the True Point of Beginning of this description;

Thence South 89°33'15" West for 1,066.14 feet to a point on the East marginal line of Pacific Highway;

Thence South 40°00' West along the East marginal line of Pacific Highway for 182.96 feet;

Thence South 79°35'07" East for 1204.40 feet to an existing fence line;

Thence North 0°17'10" East for 368.04 feet to the True Point of Beginning EXCEPT any portion thereof lying Easterly of the West right of way line of State Highway, known as (SSH 15-A); and EXCEPT that portion described as follows:

Beginning at the Southwest corner of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M.;

Thence Easterly along the South line of said Northeast quarter of Section 23 for 660 feet to the West line of Tract 1 of East Everett 5 Acre Tracts;

Thence North along said West line for 429 feet;

Thence South 89°33'15" West for 1,066.14 feet to a point on the East marginal line of Pacific Highway;

Thence South 40°00' West along the East marginal line of Pacific Highway for 182.96 feet to the True Point of Beginning;

Thence Northerly along the East margin of Old Pacific Highway 122.96 feet;

Thence North 89°33'15" East 150 feet;

Thence South 40°00'00" West to a point which is South 79°35'07" East from the True Point of Beginning;

Thence North 79°35'07" West to the True Point of Beginning.

PARCELB (tax parcel 290523-002-016-00):

Beginning at the Southwest corner of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M.;

Thence Easterly along the South line of said Northeast quarter of Section 23 for 660 feet to the West line of Tract 1 of East Everett 5 Acre Tracts;

Thence North along said West line for 429 feet;

Thence South 89°33'15" West for 1,066.14 feet to a point on the East marginal line of Pacific Highway;

Thence South 40°00' West along the East marginal line of Pacific Highway for 182.96 feet to the True Point of Beginning;

Thence Northerly along East margin of Old Pacific Highway 122.96 feet;
Thence North 89°33'15" East 150 feet;
Thence South 40°00'00" West to a point which is South 79°35'07" East from the True Point of Beginning;
Thence North 79°35'07" West to the True Point of Beginning.

PARCEL C: (tax parcel no. 290523-002-021-00):

That portion of the Southwest quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M., lying Easterly of Pacific Highway (NOW KNOWN AS Everett-Marysville County Road) and Westerly of State Highway No. 15-A (SR 204) described as follows:

Beginning at the intersection of the Easterly margin of said Pacific Highway with the South line of the Southwest quarter of the Northwest quarter;
Thence East along said South line 250 feet;
Thence North 70 feet;
Thence Northwesterly to a point on the East line of said Pacific Highway that is 210 feet North of said South line of the Southwest quarter of the Northwest quarter as measured at right angles to said South line;
Thence Southerly along East line of said Pacific Highway to True Point of Beginning;

PARCEL D: (tax parcel no. 290523-002-015-00):

Beginning at the Southwest corner of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M.;

Thence East 660 feet;
Thence North 60.96 feet;
Thence North 79°35'07" West 1,204 feet more or less to a point on the East line of the Pacific Highway (now known as Everett-Marysville County Road);
Thence Southerly along said East line to a point that is 210 feet North of the South line of the Southwest quarter of the Northwest quarter as measured at right angles to said line;
Thence Southeasterly to a point that is 70 feet North of a point on said South line that is 250 feet East of the East line of said Highway;
Thence South 70 feet to South line of the Southwest quarter of the Northwest quarter;
Thence Easterly along said South line to the Point of Beginning;

EXCEPT that portion Easterly of the Westerly line of State Highway No. 15-A (SR 204).

PARCEL E: (tax parcel no. 290523-002-014-00):

All that portion of Government Lot 3 and of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M., described as follows:
Beginning at a point 429 feet North of the Southwest corner of said Southeast quarter of the Northwest quarter;

Thence East, parallel to South line of said Southeast quarter of the Northwest quarter a distance of 171 feet;

Thence North 370.5 feet to the True Point of Beginning of this description;

Thence North 75 feet;

Thence West parallel to South line of Northwest quarter of said Section 23 to East line of Marysville Highway;

Thence Southwest along said Highway, to a point 799.5 feet due North of South line of said Government Lot 3;

Thence East, parallel to said South line of Northwest quarter of Section 23 to the Point of Beginning;

EXCEPT that portion, if any, lying within County Road known as the East Everett Road.

PARCEL E: (tax parcel no. 290523-002-011-00):

All that portion of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M., described as follows:

Beginning 429 feet North and 171 feet East of the Southwest corner of said Southeast quarter of the Northwest quarter;

Thence East 489 feet;

Thence North 445.5 feet;

Thence West 489 feet;

Thence South 445.5 feet to the True Point of Beginning;

EXCEPT that portion lying within County Road known as the East Everett Road;

EXCEPT that portion thereof conveyed to the State of Washington for highway purposes by deeds recorded under Auditor's file nos. 1132036 and 1140277; and

EXCEPT all that portion thereof lying Southeasterly and Northeasterly of Secondary State Highway No. 15-A as conveyed by said deeds.

PARCEL G: (tax parcel no. 290523-002-013-00):

That portion of Government Lot 3 and of the Southeast quarter of the Northwest quarter of Section 23, Township 29 North, Range 5 East, W.M., described as follows:

Commencing at a point 429 feet North and 171 feet East of the Southwest corner of said Southeast quarter of the Northwest quarter;

Thence North 370.5 feet;

Thence West to the East line of the Marysville Highway;

Thence Southwesterly along said East line to a point 429 feet due North of the South line of said Government Lot 3;

Thence East parallel to the South line of said Government Lot 3 and parallel to the South line of said Southeast quarter of the Northwest quarter to the Point of Beginning.

All situate in the County of Snohomish, State of Washington.