

***APPENDIX A***  
***MARCH 2002 SANITARY SEWER SYSTEM TRANSFER***  
***AGREEMENT; BONNEY LAKE AND PIERCE COUNTY***



**SANITARY SEWER SYSTEM TRANSFER AGREEMENT  
BETWEEN PIERCE COUNTY, WASHINGTON AND  
THE CITY OF BONNEY LAKE, WASHINGTON** 01-12659

**THIS SANITARY SEWER SYSTEM TRANSFER AGREEMENT** is made and entered into this day by and between Pierce County, a political subdivision of the State of Washington (the County), and the City of Bonney Lake, a municipal corporation of the State of Washington (the City).

**FINDINGS:**

A. The City, County, the South Hill Sewer District, and the City of Sumner entered into an Intergovernmental Contract for Wastewater Facilities Management (referred to as “the 1984 WFM Agreement”) on November 21, 1984, which established an intergovernmental arrangement for improving existing wastewater transmission, treatment and discharge facilities serving Bonney Lake, Pierce County, Sumner and the South Hill Sewer District and making said facilities capable of serving other territory in unincorporated and incorporated areas within the Puyallup River Basin; and

B. The City and the County executed the “Pierce County-Bonney Lake Urban Area Agreement” on June 3, 1986, which established a process for cooperating with the City in planning for and regulating uses of land within the area designated in the agreement as Bonney Lake’s urban area; and

C. The City and the County executed a document entitled “Capacity Agreement Between the City of Bonney Lake and Pierce County” on April 25, 1989, which set forth the terms and conditions under which the City could provide sewer service to properties outside of its City limits; and

D. The City and the County entered into a "Sewage Service and Rate Agreement" on May 16, 1990, which set forth the planning and service area responsibilities for the County and the City and laid out the terms and conditions under which sewer service would be provided on the Bonney Lake Plateau; and

E. In 1990 the state legislature adopted the Growth Management Act which required all counties and cities to establish urban growth areas and to adopt comprehensive plans consistent with the Growth Management Act; and

F. The County Council designated the City of Bonney Lake's Urban Growth Areas under the authority granted to it by Chapter 36.70A RCW by Ordinance 96-111 on November 5, 1996; and

G. The City has annexed or is in the process of annexing properties within the City's designated Urban Growth Area (UGA) which have previously been within unincorporated Pierce County; and

H. In most cases, when the City has annexed property, the City has assumed all responsibility for providing sewer and other urban services to the properties within the annexed area; however in some cases, the County had already established sewer service to properties located within areas that were subsequently included within the City's UGA or annexed into the City; and

I. A portion of the wastewater generated by County customers flows through certain facilities that were jointly constructed by the City and the County (via the 1984 WFM Agreement) or through sewer facilities solely constructed by the City, prior to arriving at the Sumner Wastewater Treatment Plant for treatment; and

J. On or about December 13, 1999, the County and the City executed an interlocal agreement regarding the plat of Willow Brook within the City limits whereby the City would own

and operate the sewer facilities constructed by the developer in conjunction with the plat in exchange for the County providing capacity to the plat and consenting to the oversizing of the plat's sewer facilities in order to allow connections by adjoining properties.

K. Pursuant to Chapters 36.94 and 39.34 RCW, the County and the City are each authorized to operate wastewater collection and treatment systems, and to enter into agreements regarding the transmission, disposal and treatment of wastewater and the operation and ownership of such facilities; and

L. The City currently operates a sanitary sewer system providing sewer service both within and outside the current City limits; and

M. The County is willing to transfer ownership of certain portions of its sewer system and related assets to the City, and the City is willing to accept ownership and control of such assets and system; and

N. The transfer of the County's sewer system to the City will not materially affect the operation of any of the remaining County system; and

O. In consideration for such transfer, the City is willing to assume all ownership, operation, maintenance, planning and billing responsibility for those facilities and will agree to compensate the County; and

P. It is in the interests of the public health, safety, welfare and convenience of providing services, that this Agreement be made and performed;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and for other good and valuable consideration,

IT IS AGREED BY THE COUNTY AND THE CITY, as follows:

**SECTION 1. PURPOSE.** The purpose of this Agreement is to outline the terms and conditions of the transfer of specific portions of the County's Sewer Service Area and facilities to the City.

**SECTION 2. DEFINITIONS.** For the purpose of this Agreement, the definitions provided in Pierce County Code Title 13, Public Sanitary Sewer Systems, as it currently exists, shall apply to terms used within this Agreement. For those terms not included in Title 13, the following words and terms shall have the meaning indicated:

- A. *1984 WFM Agreement* shall mean the Intergovernmental Contract for Wastewater Facilities Management between the City of Bonney Lake, the City of Sumner, Pierce County, and South Hill Sewer District, dated November 21, 1984.
- B. *City* shall mean the City of Bonney Lake, Washington.
- C. *City's Expanded System* shall mean the entire City sewer system which includes that portion of the County's Sewer System and Service Area that will be transferred to the City pursuant to this Agreement.
- D. *City Sewer Service Area* shall mean the area within the corporate limits of the City and its designated UGA as shown in Exhibit "A" and as hereafter amended by annexation or by County Council adopted revision to the City's UGA.
- E. *City Sewer System* shall mean all of the sanitary sewer collection, transmission and interceptor facilities and treatment plant capacity rights owned by the City.

- F. *Connection Charges* shall mean those charges imposed on new City or County customers in order to purchase collection and treatment capacity in the City or County sewer system.
- G. *County* shall mean Pierce County, Washington.
- H. *County Sewer Service Area* shall mean the areas identified in Exhibit "B" attached hereto and incorporated by this reference.
- I. *County Sewer System* shall mean all of the sanitary sewer collection, transmission and interceptor facilities and treatment plant capacity rights owned by the County, together with any additions or betterments to it, which are connected to, tributary to, or served by the Sumner Wastewater Treatment Plant, including all interests in any real property upon or under which such facilities are located. The County Sewer System includes but is not limited to those facilities set out in attached Exhibit "C" which is incorporated by this reference. The phrase *County Sewer System* as used herein shall not include any County sewer facilities other than those set out above in Exhibit "C" or any private sewer systems not owned by the County.
- J. *Effective Date* shall mean the date upon which this Agreement shall become legally binding on all parties, and which shall be the date upon which all of the following conditions have been met: (1) this Agreement is fully executed by all parties; (2) the City of Sumner approves the assignment of the County's rights and obligations under the 1984 WFM Agreement to the City of Bonney Lake pursuant to Section 16 of the 1984 WFM Agreement; and, (3) this Agreement is filed with the Pierce County Auditor as required by RCW 39.34.040.

K. *Existing County Customers* shall mean those properties which are connected to the County Sewer System prior to full execution of this Agreement; or property owners who have applied for and been granted a sewer line extension permit or a sewer service permit and have paid the applicable connection charges but have not connected by the date of full execution of this Agreement; or individual lots that are not receiving County sewer service but are within formal subdivisions that are connected to County sewer facilities as of the Effective Date this Agreement.

L. *Joint Facilities* means those facilities jointly constructed and funded pursuant to the 1984 WFM Agreement.

M. *Sewer Service Rates* means those monthly or bi-monthly charges imposed on County or City customers for operation and maintenance of sewer facilities.

### **SECTION 3. COUNTY'S OBLIGATIONS.**

A. Transfer of County Sewer System and Related Assets to the City. In exchange for good and valuable consideration received from the City, the County Sewer System facilities, consisting of all pipes, lines, and pumps and other facilities appurtenant thereto depicted in Exhibit "C", attached hereto and made a part hereof, shall be conveyed to the City, including without limitation all associated County rights and obligations under the 1984 WFM Agreement. The date of said transfer shall be the Effective Date of this agreement.



Within 60 working days of the Effective date, the County shall formally convey to the City by appropriate means of conveyance, all deeds, easements, franchises, contracts, and grants. Costs and expenses of all such transfers, if any, including the recording of any such documents necessary to transfer ownership of facilities or rights in real or personal property, shall be borne equally by the County and City respectively. Both parties agree to take all actions, seek all necessary approvals, bear individual costs, and execute all documents necessary to effectuate the intent and purpose of this Agreement.

B. Ownership of Revenues. All County sewer system revenues and expenditures that originate from the transferred facilities prior to the Effective Date shall be owned by and become the obligation or responsibility of the County, including any anticipated revenues derived from pending foreclosure proceedings or other legal action initiated by the County. From and after the Effective Date, the City shall own and shall be responsible for the maintenance and operation of the facilities constituting the former County Sewer System, which shall be made a part of the City Sewer System, and shall be entitled to receive all such revenues as may be derived from the former County sewer system except with respect to special assessments levied against properties located within the County's Utility Local Improvement District 90-1 (214<sup>th</sup> ULID). In accordance with state law, the County will continue to collect special assessments levied related to ULID 90-1 in order to pay the indebtedness associated with the ULID which will be retained by the County.

C. No Expressed or Implied Warranties. The County makes no express or implied warranty as to the condition of the County's sewer system that is being purchased by the City. The City accepts the County's sewer system "as is" from the County with all faults whether known or unknown.

D. Transfer of Information on Effective Date. On or before the Effective Date of this Agreement, the County shall have provided to the City all of the following information relating to the County Sewer System, which the County warrants to be true, accurate and complete in all respects to the best of its ability.

1. Names, addresses, and full account information regarding all customers who have connected and are currently being served by the County Sewer System described in Exhibit "C", and who are receiving bi-monthly sewer billings for said sewer service.

2. A full listing of all persons or entities which have binding agreements as defined by the County-wide Planning Policies within the County's Service Area as shown in Exhibit "B" and copies of all documents evidencing or relating in any way to these agreements.

To the extent any of the required information is provided before the Effective Date of this Agreement, the County shall provide the City with any updated information as of the Effective Date so that the City is in possession of complete, accurate and current

information regarding the items listed above. The County warrants that such updated information will be true, accurate and complete in all respects to the best of its ability.

E. Transfer of Information within 60 days of Effective Date. Within 60 working days of the Effective Date of this Agreement, the County shall have provided to the City all of the following information relating to the County Sewer System, which the County warrants to be true, accurate and complete in all respects to the best of its ability. County agrees to attempt to provide specific items of information listed below sooner than otherwise required by this subsection E upon City request, where reasonably required in order for the City to perform its obligations consistent with this Agreement.

1. As-built drawings of all improvements to the County sewer system, if available;
2. Full information regarding all sewer system extensions and improvements under review or under construction as of the Effective Date this Agreement;
3. Full listing of all customers who have previously paid sewer connection charges but who are not connected to the County sewer system as of the Effective Date that this Agreement (i.e., property owners who have applied for and been granted a sewer line extension or sewer service permit to connect to the County sewer system being conveyed and have paid the applicable connection charges, but have not connected by the Effective Date of this Agreement); and,

4. A full listing of individual lots that are not receiving County sewer service as of the Effective Date but are within formal subdivisions that are connected to County sewer facilities as of the Effective Date.

F. Franchise for Use of County Rights-of-Way. Upon transfer of ownership of the County sewer system located within County right-of-way, the County will either expand any existing franchise agreement the City has with the County, or will take appropriate steps to obtain County Council approval to issue a new franchise to the City authorizing it to operate a utility in County right-of-way concurrently with this agreement.

G. Relinquishment of Planning Responsibility. Upon the Effective Date, the County will relinquish to the City, the obligation to conduct sewer service planning to the County's sewer service area as shown in Exhibit "B". The County will transfer to the City a copy of all relevant current planning information that is not already in the City's possession.

#### **SECTION 4. CITY'S OBLIGATIONS.**

A. City Shall Transfer Purchase Price. In consideration for the transfer of County sewer facilities the City will pay the sum of \$1,030,000.00 which represents the purchase price to be paid by the City to the County. The purchase of the system shall be paid in full within 60 days of the Effective Date.

B. City Responsible for Operation and Maintenance of County Sewer System Upon Transfer. Upon and after the Effective Date and subject to existing laws, the City will assume the County's prior responsibility for all planning, billing, permitting, maintenance and operation responsibilities, and for wastewater collection and treatment capacity to the properties within the designated service area of the County sewer system, as shown on Exhibit "B".

1. Service to Existing County Customers. The City shall provide sewer service to all properties that are connected to the County's sanitary sewer system which is being conveyed whether said connection occurred prior to or after the date of execution of this Agreement. These former County customers shall not be discriminated against on the basis of their location outside the City's municipal boundaries or UGA. Like all other City customers, former County customers will be required to comply with the most current statutes, ordinances, rules and regulations governing sewage pretreatment, discharges, monthly sewer service rates, connection charges and other matters governing sewer service as mandated by City Code, and other applicable State and Federal laws and regulations, as they currently exist and as they may be amended from time to time.

2. Monthly Sewer Service Rates and Billings to Former County Customers. In conjunction with providing service to existing County customers, the City shall assume the right and authority to bill all said County customers for sanitary sewer

service in the same manner as it bills customers currently receiving service through the City. The former County customers will be treated in an identical fashion as all other City customers including being required to pay monthly sewer service rates equal to those imposed on properties within the City. Sewer service rates for former County customers including taxes or surcharges shall be based on the same criteria and methodologies as for customers within the City.

3. **Initial Sewer Service Rate Increase.** To facilitate equal treatment, the parties understand that, upon the Effective Date or within a reasonable time thereafter, the monthly sewer service rates charged by the City to former County customers will increase such that they are equal to the current sewer service rates charged to other City customers, such sewer service rate increase hereafter referred to as the “Initial Sewer Service Rate Increase”.

In conjunction with obtaining legislative approval from the County Council for this Agreement, the County shall notify it’s customers of the transfer of the County sewer system to the City. The County will inform its customers of the City of Bonney Lake’s initial rate increase and will inform them of when to expect a bill from the City. It shall be the City’s responsibility to submit and collect all bills involving the initial rate increase. Thereafter, if the City proposes to increase existing or enact new fees or sewer service rates, taxes or surcharges on the provision of sewer service by the City, the City will provide advance notice of

such proposal to the former County customers in a manner that complies with all applicable laws. As the service provider, the City shall have full jurisdiction and authority allowed by statute to impose and enforce liens for the purpose of collecting sewer service rates, charges, fees and assessments against properties within unincorporated County receiving service.

4. New Customers Seeking Connection. Developers of property located within the City's expanded sewer service area seeking to connect to the City sewer system shall be responsible for extending the City's expanded collection system to the properties to be serviced in accordance with the City's Comprehensive Sewer Plan and associated regulations. The City is authorized to collect sanitary sewer connection charges from County residents seeking to connect to the City's expanded sewer system in accordance with applicable City ordinances and regulations. Sanitary sewer capacity shall be made available without discrimination between County and City residents with the same connection charge structure applying to both. The City agrees that it will not apply separate surcharges to County customers unless supported by a cost analysis, nor will it unlawfully prohibit County residents from obtaining sewer service if capacity is available, facilities are in place, all City regulations have been complied with, and appropriate fees have been paid. The County agrees that the City shall have enforceable liens for collection of connection charges and sewer service charges within the designated service area of the County sewer system.

The City shall use its best efforts to accommodate the timely plan review needs of the residents and developers within the County's former sewer service area that may seek to connect to the City's expanded sewer system.

5. City/County Coordination of Land Use Applications and Building Permits. The County shall not grant final approval of any land use application nor issue a building permit for a parcel or building within the County's former sewer service area that proposes to connect to the City's expanded sewer system until the City through its Public Works Departments has reviewed and approved the sanitary sewer plans.

Both the City and the County recognize that there exist in the County code, certain land use applications which do not involve sewer issues and which the City does not need to review. As such, the City and the County will work cooperatively to identify those land use applications which the City shall review and implement a procedure to exclude non-sewer related land use applications from City review.

If work is required in the County right-of-way, the City agrees that it will not issue any sewer hook-up permits for any private party to connect to the sanitary sewer system until the party has obtained a County right-of-way permit.



6. Sewer Planning and Acquisition of Necessary Capacity for Expanded Planning Area. The City agrees to provide all future sewer infrastructure planning for its expanded sewer service area as shown in Exhibit "B". The City will identify and include any necessary sewer infrastructure improvements to accommodate growth in its sewer general plan and six-year capital facility plan. The City will participate in the County's Unified Sewer Plan to the extent that all basin issues are resolved for its service area. The City will acquire, as necessary and reasonably available, capacity in the joint use facilities and wastewater treatment plant to provide sewer service within the City's expanded sewer service area.

**SECTION 5. SANITARY SEWER SERVICE TO PROPERTIES WITHIN THE CITY'S URBAN GROWTH AREA AND FUTURE ANNEXATION AREAS.** Nothing in this Agreement shall preclude future annexations to the City. Any future annexations to the City will automatically come under this agreement as of the date the annexation is approved by the City Council.

**SECTION 6. RELATION OF THE TRANSFER AGREEMENT TO THE 1984 WFM AGREEMENT.** Upon the Effective Date, the City shall assume all rights and responsibilities of the County under the 1984 WFM Agreement including, but not limited to, the County's wastewater treatment capacity in the Sumner Wastewater Treatment Plant and in the joint facilities identified in the 1984 WFM Agreement.

All other prior agreements between the City and the County cited in the "Findings" portion of this Agreement shall terminate as of the Effective Date of this Agreement.

**SECTION 7. INSURANCE; LIABILITY.**

The City and the County shall each secure and maintain with responsible insurers (and/or insure) all such insurance as is customarily maintained with respect to sewer systems of like character against loss of or damage to the sewer facilities operated and maintained by the City and by the County, and against claims of injury or damage by third parties and other liabilities to the extent that such insurance can be secured and maintained at reasonable cost. The parties acknowledge that the County is fully self-insured as of the date of this Agreement. The County agrees to save harmless and fully indemnify the City against damage to the County Sewer System facilities or economic loss incurred before the Effective Date, environmental remediation required prior to the Effective Date, or claims by third parties for personal injury, death, or property damage arising from the operation, maintenance and construction activities of the County. The City from and after the Effective Date agrees to save harmless and fully indemnify the County against all claims by third parties for personal injury, death or property damage arising from performance of the City's maintenance and operation activities and administrative duties under this Agreement.

**SECTION 8. DISPUTE RESOLUTION.** Disputes regarding any matter contained herein shall be referred to the City's Public Works Director and the County's Public Works and

Utilities Director for mediation and/or settlement.

**SECTION 9. VENUE.** This Agreement shall be governed by the laws of the State of Washington. Venue for any lawsuit arising out of this agreement shall be Pierce County Superior Court.

**SECTION 10. ENTIRE AGREEMENT.** This Agreement represents the entire agreement between the parties. No change, termination or attempted waiver of any of the provisions of the Agreement shall be binding on a party unless executed in writing by authorized representatives of each party. The Agreement shall not be modified, supplemented or otherwise affected by the course of dealing between the parties.

**SECTION 11. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the successors and assigns of the City and of the County, including successor municipalities and other successor local governmental entities or special purpose districts. Prior to the Effective Date, no part of this Agreement or any rights, duties or obligations described in it shall be assigned or delegated to another without the express written consent of both parties.

**SECTION 12. MUTUAL COOPERATION.** The City and the County recognize that to realize the full benefits that are contemplated by the understandings and undertakings memorialized in this Agreement, it will be necessary for both parties to cooperate with each other in good faith, looking to the public interest and purposes to be achieved by the efficient

performance of this Agreement. They therefore agree to cooperate fully in order to realize the greatest good for the publics they serve.

**SECTION 13. FORCE MAJEURE.** The parties shall not be liable for failure to perform pursuant to the terms of this Agreement when such failure to perform was due to an unforeseeable event beyond the control of any party to this Agreement.

**SECTION 14. WAIVER.** Failure by any party to this Agreement to enforce any provision of this Agreement or to declare a breach shall not constitute a waiver thereof, nor shall it impair any party's right to demand strict performance of that or any other provision of this Agreement any time thereafter.

**SECTION 15. THIRD-PARTY BENEFICIARY.** The County and the City do not intend to create any third-party beneficiaries to this Agreement. No cause of action is created by virtue of this Agreement for any person or entity other than the named parties hereto.

**SECTION 16. NOTICE.** In every case where, under any of the provisions of this Agreement, or in the opinion of either the City or the County, it shall or may become necessary or desirable to make, give, or serve any declaration, demand, or notice of any kind or character or for any purpose whatsoever, the same shall be in writing, and it shall be sufficient to either: (1) deliver the same or a copy in person to the Public Works Director of the City personally, if given by the County, or to the Director of the Pierce County Public Works and Utilities Department

personally, if given by the City; or (2) mail the same or a copy by registered or certified mail, postage prepaid, addressed to the other party at such address as theretofore may have been designated in writing by such party, and until and unless some other address shall have been so designated, the address of the City for purposes of mailing such notices shall be as follows:

Public Works Director  
City of Bonney Lake  
19306 Bonney Lake Boulevard  
P.O. Box 7380  
Bonney Lake, Washington 98390-0944

And the address of the County shall be as follows:

Pierce County Public Works and Utilities Department  
9116 Gravelly Lake Drive  
Lakewood, WA 98499  
Attn: Wastewater Utility Manager

**SECTION 17. SEVERABILITY AND INVALIDATION.** In the event that any portion of this Agreement is determined by a final order of a court or regulatory agency of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions of this Agreement. However, if at any time and for any reason, the transfer of the County sewer system to the City pursuant to this Agreement is invalidated by a court or regulatory agency of competent jurisdiction, the parties agree to immediately enter into negotiations regarding continued operation of the County Sewer System and the potential for correcting any procedural problems or deficiencies regarding the transfer to bring the transfer into compliance with the findings of the court or regulatory agency.

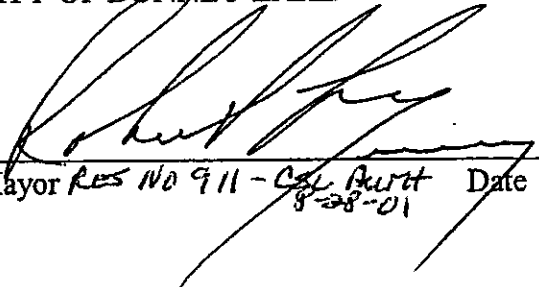
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PIERCE COUNTY CONTRACT SIGNATURE PAGE

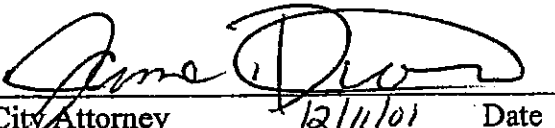
CONTRACT NAME: CITY OF BONNEY LAKE SANITARY SEWER SYSTEM TRANSFER AGREEMENT, CONTRACT NUMBER 01-12659

IN WITNESS WHERE OF, the parties have executed this Agreement this 27<sup>th</sup> day of March, 2001. 2002.

CITY OF BONNEY LAKE

  
Mayor Res No 911 - City Court Date  
8-28-01

Approved as to Form

  
City Attorney 12/11/01 Date

**Mailing Address:**

City of Bonney Lake  
PO Box 7380  
Bonney Lake, Washington 98390-0944

**Street Address, if different:**

City of Bonney Lake City Hall  
19306 Bonney Lake Boulevard  
Bonney Lake, Washington 98390

Contact Name: Mayor Bob Young  
Contact Phone: 253.862.8602, Extension 619

Business Tax ID Number: 277 000 893 000

PIERCE COUNTY

M. Peter Phelan 03/26/02  
DEPUTY PROSECUTING ATTY Date  
(as to form only)

P. Kenny 3-26  
BUDGET AND FINANCE Date



Approved:

Bill A. Gray 3-25-02  
DEPARTMENT DIRECTOR Date  
(less than \$250,000)

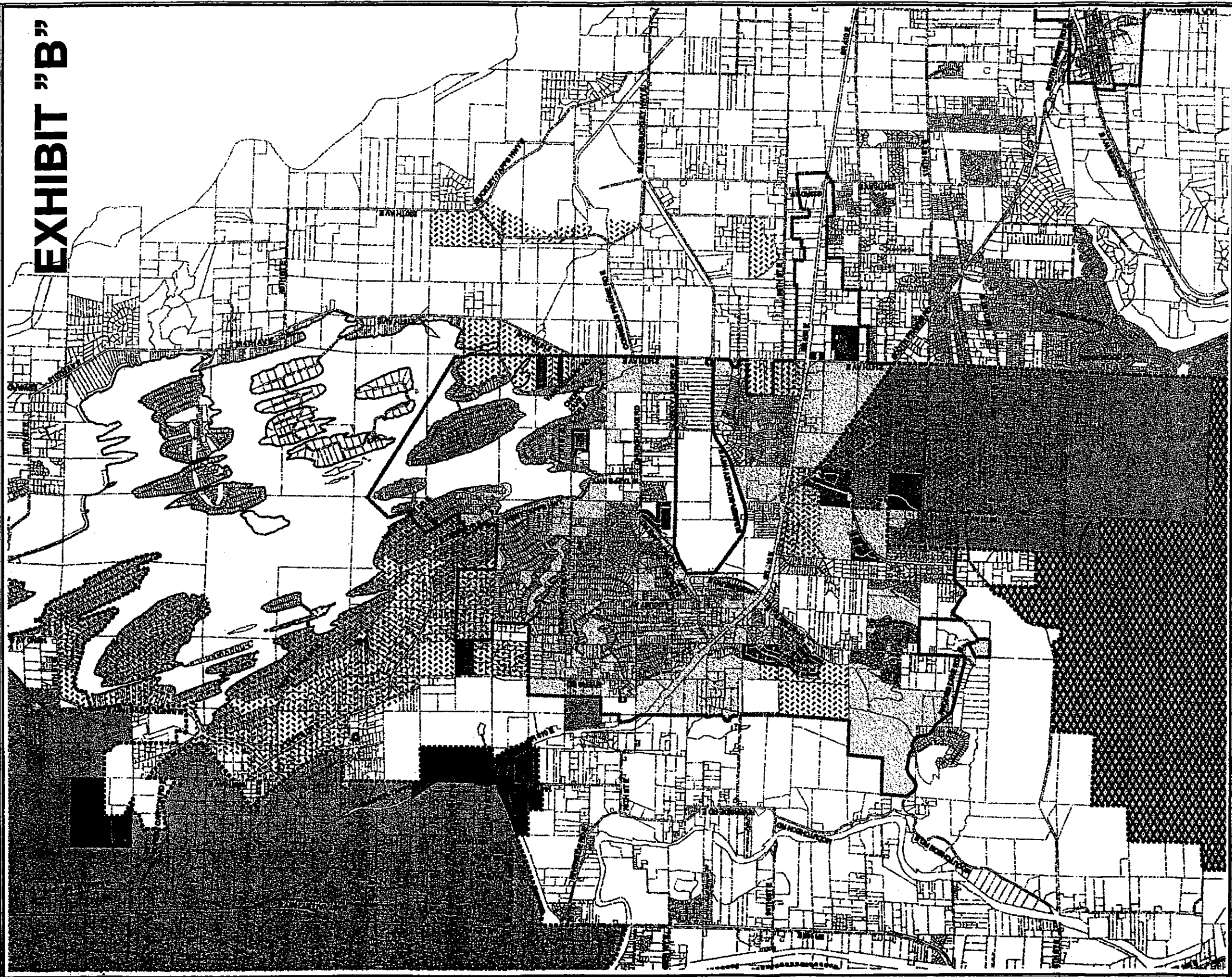
John Leland 3/29/02  
COUNTY EXECUTIVE Date  
(\$250,000 or more)



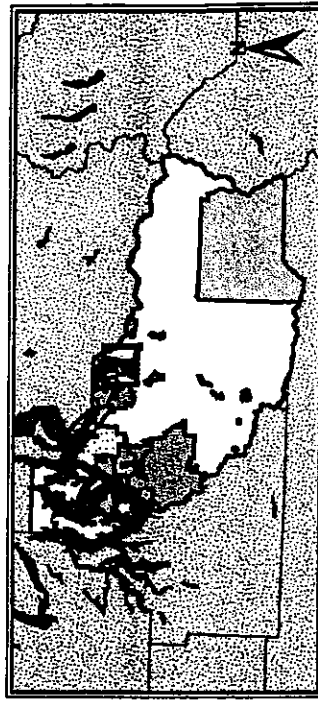
City of Bonney Lake  
**EXHIBIT A**

**LEGEND**  
 City Limit   
 UGA Limit 

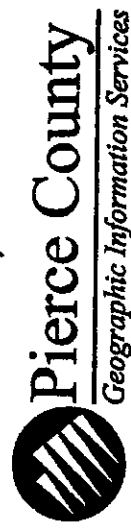
# EXHIBIT "B"



- County Sewer Service Areas
- 1984 Agreement Areas
- Binding Sewer Agreement Areas
- Parcels Served
- Area Within Pierce County CUGA
- Non County Service Areas
- Cascadia
- Town of South Prairie
- City of Bonney Lake
- City of Sumner
- Sumner Sewer Service Area Within CUGA
- Auburn Sewer Service Area Within CUGA
- Urban Growth Boundaries
- County's Urban Growth Area Boundary
- City's Urban Growth Area Boundary



Public Works & Utilities  
 Environmental Services Division  
 June, 2001





# Exhibit "C"

## County Facilities to Be Transferred

