

APPENDIX B
MAY 2002 INTERGOVERNMENTAL AGREEMENT FOR
IMPROVEMENTS AND EXPANSION OF THE
SUMNER WASTEWATER TREATMENT FACILITY;
BONNEY LAKE AND SUMNER

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INTERGOVERNMENTAL AGREEMENT FOR PHASE II IMPROVEMENTS, EXPANSION AND OPERATION OF THE SUMNER WASTEWATER TREATMENT FACILITY (WWTF)

THIS AGREEMENT is made and executed as of this 19th day of March 2012, by and between the CITY OF BONNEY LAKE WASHINGTON, (hereinafter referred to as Bonney Lake); and the CITY OF SUMNER, WASHINGTON, (hereinafter referred to as Sumner), both of which are municipal corporations organized under the laws of the State of Washington, both of which are collectively referred to as the parties to this Agreement.

WHEREAS, Bonney Lake, Pierce County and South Hill previously entered into an inter local agreement whereby they agreed to participate in the development of a regional sewerage system with BONNEY LAKE being the responsible authority for such project, which agreement was properly executed by Bonney Lake, Pierce County and South Hill in February 1977; and

WHEREAS, a Facility Plan for the regional sewerage system was reviewed and approved by the Environmental Protection Agency (EPA) by letter dated February 28, 1977, and Addendum III, which revised the Facility Plan by providing for the expansion of the Sumner Wastewater Treatment Facility (WWTF) to receive sewage from the region, was reviewed and approved by letter dated July 19, 1979; and

WHEREAS, an interlocal agreement between Bonney Lake, Pierce County, South Hill and Sumner was approved and adopted March 26, 1979, providing for the construction and management of the WWTF, with Sumner agreeing to receive, treat and dispose of the sewage transported to Sumner from the other three parties at Sumner's sewage treatment plant as expanded pursuant to contract, and all parties agreeing to enter into a more detailed contract covering the payment of costs and expenses involved in such transport, treatment and disposal; and

WHEREAS, Bonney Lake, South Hill, Pierce County and Sumner were the four Original Participants who executed a Contract dated November 21, 1984 for the purpose of providing for the expansion, operation, and maintenance of the WWTF; and

WHEREAS, the purpose of that November 21, 1984 Contract was stated to be as follows: It is the purpose of this contract to provide for an intergovernmental arrangement appropriate to carry out the improvement of the existing wastewater transmission, treatment and discharge facilities serving Bonney Lake, Pierce County and South Hill and capable of serving other territory in unincorporated and incorporated areas in the Puyallup River Basin as called for in the current Facility Plan or in the sewerage general plan, as it now exists , or as hereafter amended, and to operate and maintain such facilities; and

WHEREAS, Bonney Lake was responsible for and oversaw the cost, design and construction of the expansion of the WWTF on behalf of Bonney Lake, Pierce County, and South Hill, pursuant to the 1984 Contract; therefore, after construction, Bonney Lake, Pierce County, and South Hill

owned capacity rights in the Sewage Treatment Plant in the 1.42 M.G.D. average daily flow amount of that Plant expansion; and

WHEREAS, at the time of the November 21, 1984 Contract for the Bonney Lake expansion of the Sumner Wastewater Treatment Facility, the existing WWTF at the Sumner site was owned and operated by the City of Sumner and had a capacity of 1.2 M.G.D. average daily flow, and a 3 .0 M.G.D. peak flow; and

WHEREAS, the Bonney Lake expansion of the Sumner WWTF pursuant to the 1984 Contract included the expansion of the existing Sewage Treatment Plant to provide secondary biological sewage treatment and sludge disposal in accordance with all local, state and federal guide lines for the use of Bonney Lake, Pierce County, and South Hill. The sewage treatment plant addition was approved by the State of Washington, Department of Ecology in 1982, and it provided additional capacity of 1.42 M.G.D. average daily flow, and a peak flow of 3.56 M.G.D. for the use of Bonney Lake, Pierce County, and South Hill; and

WHEREAS, Bonney Lake has since acquired by transfer agreement in 2002 with Pierce County, in addition to its own rights and interests, all rights and interests of Pierce County and South Hill in the facilities that were constructed pursuant to the November 21, 1984 Contract, and thereafter, including, but not limited to, all of their rights and interests in the Sumner Treatment Plant as expanded, including the continuing capacity ownership rights to 1.42 M.G.D. average daily flow, and a 3.56 M.G.D. peak flow added pursuant to the 1984 Contract; and

WHEREAS, concurrently with Bonney Lake's acquisition of Pierce County and South Hill's rights and interests by a transfer agreement in 2002 with Pierce County, an intergovernmental agreement was executed on May 6, 2002 between Sumner and Bonney Lake for the improvements and further expansion of the Sumner WWTF, hereinafter referred to as "Phase I;" and

WHEREAS, pursuant to the 2002 Agreement (Phase 1 agreement), the purpose was to address how the parties will manage, finance, share costs and review the work performed by the consulting engineers/construction contractors during the design and construction of the proposed improvements. The agreement also addressed how the parties shall share operation and maintenance costs and continue the relationship into the future; and

WHEREAS, section 4.0 of the 2002 Agreement provides that the WWTF improvements will provide a permitted capacity of a minimum of 4.6 million gallons per day; Bonney Lake will be entitled to .2.3 million gallons per day of capacity in the improved and expanded plant; Sumner will be entitled to 2.3 million gallons per day of capacity in the improved and expanded plant; All costs associated with the project shall be divided in proportion of the capacity used by each party. Bonney Lake will finance 50% and Sumner will finance 50% of all project costs associated with the project; and

WHEREAS, section 2.0 of the 2002 Agreement requires ten reconciliations to occur every 2 years over a 20 year period, whereby the City that used more than 50% of the capacity would transfer

funds to the city which used less than 50% of the capacity based upon a simple arithmetic average. Since 2002 there have been two reconciliations to date and Bonney Lake has transferred funds to Sumner and,

Whereas, the parties have reviewed this history of the previous WWTF contracts and other consideration and now agree that the current shared capacity is 2.1 MGD for Sumner and 2.5 MGD for Bonney Lake; and

WHEREAS, said Phase I agreement remains in effect until terminated by the mutual agreement of both parties; and

WHEREAS, the City of Sumner holds National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit No. WA-0023353 for this facility; and

WHEREAS, Bonney Lake and Sumner desire to further expand and operate the WWTF under terms of this new Contract that will address increased WWTF capacity greater than the Phase I NPDES permit allows in order to serve increasing numbers of customers (hereinafter referred to as "Phase II"); and,

WHEREAS, the State of Washington Department of Ecology notified the City of Sumner on January 12 and February 11 of 2010, that Sumner must initiate planning to increase the WWTF capacity to process Total Suspended Solids (TSS); and,

WHEREAS, the Biological Oxygen Demand (BOD) is also nearing current plant capacity; and,

WHEREAS, each City has received a 2012 Public Works Trust Fund Loan commitment of \$4.7 million each from Washington State to construct this expansion and to make improvements to the perimeter wall and effluent pump station; and

WHEREAS, each City desires to clarify the areas to be served by each City with this expanded plant capacity; and

WHEREAS, the parties desire to enter into this contract for the primary purpose of providing for the continued treatment and disposal of sanitary sewage generated in the regional area covered by this Contract and to provide for the enhancement and expansion of the WWTF to accomplish that purpose:

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants, conditions, performances, and promises hereinafter contained, the parties agree as follows:

SECTION 1.0 - PURPOSE

Bonney Lake and Sumner agree that time is of the essence, and design and construction of improvements and expansion of the WWTF must proceed. This agreement addresses how the parties will manage, finance, share costs and review the work performed by the consulting engineers/construction contractors during the design and construction phases of the proposed capital improvements. The agreement also addresses how the parties shall share monthly operation and maintenance (O&M) costs, associated with the expanded facilities in the future. The agreement also defines the respective capacity ownership shares of each party and describes how the amount of those shares may change in response to future demands.

SECTION 2.0 - PREVIOUS 2002 AGREEMENT

The intergovernmental agreement dated May 6, 2002 between the parties for the Phase I improvements and expansion of the Sumner Wastewater Treatment Facility, shall remain in effect until this successor agreement is executed by both parties, with still pertinent terms merged into this agreement. (Payments required under Section 4.0 (CIP "true up") of that agreement shall terminate as of 9/30/11.) All prior WWTF agreements and/or contracts and those agreements' respective terms are, upon execution of this agreement, hereby specifically superseded and deemed null and void.

SECTION 3.0 PHASE II PROJECT

A. Capital Improvements.

The parties have agreed to proceed with design and construction of the Perimeter Wall and Effluent Pump Improvements in order to avoid potential flood related impacts on the WWTF current operation. The parties have agreed to move forward with the design of the WWTF expansion project in order to meet time lines set in order to receive the PWTF loan and to avoid plant discharges not approved by NPDES permit. Cost sharing of these expenditures and Phase II construction will be shared that are included in the 2012 Public Works Trust Fund (PWTF) loan application. Each city has received a \$4.7 million loan guarantee from Washington State. Cost sharing for design and construction shall occur as follows:

1. Perimeter Wall and Effluent Pump Improvements. The 2009 FEMA flood insurance rate maps raised the 100-year flood elevation five feet. This requires the existing WWTF perimeter flood wall be raised 3.5 feet to provide adequate flood protection. The capacity of the existing effluent pump station must also be increased to ensure that the WWTF can continue to discharge to the White River during a 100-year flood event. All costs related to the design and construction shall be split 50/50 between the two cities.
2. Phase II Plant Expansion. Increase the plant's capacity of handling BOD, TSS and MGD in accordance with the "Wastewater Treatment Plant Capacity Increase Analysis" by Gray and Osborne dated October 2009, which generally identifies construction of a third aeration basin sized larger than the two current aeration basins, a third secondary clarifier, and add a third primary clarifier. Upgrade existing influent pumps, and add equipment to increase UV treatment

capacity. Costs shall be in proportion to the capacity each city has identified it needs to meet its currently foreseeable growth as specified below.

3. PWTF Loan Utilization. Should the amount of the Capital Improvements exceed one City's PWTF loan, the parties shall cooperate to ensure that the other City shall have the benefit of any remaining funding from its PWTF loan to the extent possible. Costs exceeding the PWTF loan amount shall be funded by the benefitting City.

SECTION 4.0 - CAPACITY ALLOCATION AND CAPITAL IMPROVEMENT COST SHARE

The parties agree that Sumner currently owns capacity rights to 2.1 MGD and Bonney Lake owns capacity rights to 2.5 MGD. Sumner wants to purchase .7 additional MGD for a total of 2.8 MGD and Bonney Lake wants to purchase all of the remaining additional MGD available for a total to equal at least 4+ MGD.

A. Capacity Allocation. The WWTF improvements will increase the treatment capacity of the plant to an amount the parties expect will be sufficient to raise the MGD (million gallons per day) capacity to permit at least 6.9 MGD (at least 2.3 additional permitted MGD) maximum month average daily flow (effluent discharge into the river) capacity. The parties agree and understand that the final capacity numbers will be specified in the to-be updated NPDES Water Discharge Permit.

1. Bonney Lake will own the right to _TBD*_ __ MGD of capacity in the improved and expanded plant. (* Amount to be determined and filled into the final version of this Contract by subtracting Sumner's 2.8 MGD from the Permitted MGD.)

2. Sumner will own the right to 2.8 MGD of capacity in the improved and expanded plant.

B. Cost Sharing. All costs associated with the plant expansion generally identified in Section 3.2 including costs for contract management shall be divided in proportion to the capacity right owned by each party. Costs subject to this formula shall only include those expended for planning, design, and construction related to increased capacity. These costs shall not include property acquisition or overhead incurred by either City, and these and other associated costs shall instead be covered under Section 8.0 and shared on a 50/50 basis.

SECTION 5.0 - CONTRACT MANAGEMENT AND RESPONSIBILITIES FOR THE PHASE II EXPANSION

Sumner as the owner of the WWTF is the lead agency. Contracts for engineering design services and construction are between Sumner and the Design Firm, Equipment Supplier(s) and Construction Contractor(s). There will be a meeting each month to review progress during the design and construction of the improvements. The Directors of Public Works or their designee shall attend these meetings.

The Public Works Directors shall jointly review designs, change orders, schedules, bid awards and recommendations of the Consultant. Should changes in design and/or construction costs necessitate exceeding the bid award amounts, including a contingency if any, the parties agree to seek additional approval of each city's city council, which approval shall not be unreasonably withheld. Any cost increases shall be paid for consistent with the cost sharing provisions pursuant to section 4.0.

SECTION 6.0 - FINANCE

Sumner and Bonney Lake have received Public Works Trust Fund loans. Each City will be responsible for its own local share matching requirements and loan repayment. A supplemental agreement to this may be arranged to meet the needs of section 3.0.3.

SECTION 7.0 - REIMBURSEMENT FOR PRELIMINARY FUNDS ALREADY EXPENDED

Funds have been expended for preliminary engineering/planning, additions to the Facilities Plan to obtain approval from the Washington State Department of Ecology, and preparation of loan applications. All of these costs are associated with this project. Sumner has paid Gray & Osborne \$21,991 for this work as well as direct staff resources for preparation and design contract. Sumner shall provide Bonney Lake with a report detailing these expenses and when they occurred as Attachment 1. The Public Works Directors shall review and determine the applicability of these costs to this agreement. These costs shall be considered part of the costs of design for the expansion project, and shall be paid on a proportionate basis as provided in Section 4.0.B. Bonney Lake agrees to make a one-time payment to Sumner in the proportionate amount of these costs within 30 days of the execution of this agreement (subject to final adjustment based on the final computation of each party's proportionate share).

SECTION 8.0 - REIMBURSEMENT FOR OTHER EXPENDITURES

The cost of land acquisition or pre-existing house purchase/demolition shall be split on a 50/50 basis.

SECTION 9.0 - OPERATION AND MAINTENANCE

Sumner as the owner and operator of the WWTF shall make all reasonable efforts to operate the plant in a cost effective manner, perform the necessary maintenance to keep it in good working order, execute treatment strategies to maintain a high quality effluent and train staff to execute these goals and objectives.

Sumner shall maintain separate budgeting and accounting for the WWTF O&M costs (Fund 402.38) from sewer collection system O&M costs. The Public Works Director of Sumner shall submit a draft budget for the WWTF operations and maintenance for the following year with adequate supporting data to the Public Works Director of Bonney Lake by September 30th of each

biennial year for review and comment. Supporting data shall include details concerning allocation of costs including, but not limited to:

1. Any Operating Transfers, 402.38.597. Including Information Technology and Equipment Reserve.
2. Maintenance Costs, 402.38.535.500. Including Salary and Wages, Professional Services, Communication, Insurance, Public Utility Services (Power and Gas), Repairs and Maintenance, Training, Intergovernmental Professional Services, and Other Improvements .

An explanation on how the WWTF benefitted from these charges shall be addressed. The Directors shall meet and agree on a draft biennial budget by October 15th for submittal to their respective Mayors and Council. The approved budget by Sumner shall be delivered to Bonney Lake for their records.

Sumner shall invoice Bonney Lake for their share of the WWTF's operation and maintenance costs each month. The bills shall be submitted by the 30th day of the following month. Bills are due within 30 days after billing. Billings shall be based on the Sumner WWTF budget (Fund 402.38) divided by 24, except for the final December billing, multiplied by the percentage of use of the facility as measured by the parameters of flow, five-day biochemical oxygen demand (BOD), and total suspended solids (TSS). Sumner will adopt and follow a cost allocation study for Sumner to be used as a basis for attributing the operation and maintenance costs to the WWTF. If a dispute arises as to the final attributions, the issue shall be resolved according to Section 26.0. Each year, the final December billing will be based on the actual cost of operations less the 11 previous payments multiplied by the percentage of use in December as described above.

Sumner shall submit quarterly expenditure reports to Bonney Lake Public Works Director for review. The 3rd Quarterly report will include an estimate of the total expenditures for the fiscal year. If an unexpected expenditure arises that will increase the budget requiring approval of a budget amendment, the Joint Council Advisory Committee will be convened and briefed by the Public Works Directors on the need prior to submittal of budget amendments to their respective City Councils.

SECTION 10.0 - PAYMENT IN LIEU OF TAXES (P.I.L.O.T. FEE)

As compensation for impacts to Sumner due to the siting of the WWTF within the municipal boundaries of Sumner, Bonney Lake will remit to Sumner a P.I.L.O.T. fee in the amount of 5% of the O&M direct costs charged to Bonney Lake. Said fee will be included in the monthly invoices to Bonney Lake. This section shall be discontinued and "sunset" as of 12/31/2022.

SECTION 11.0 - SALES TAX ON CONSTRUCTION

The parties agree that Sumner's local portion of sales (currently at .85%) received on the construction of current Phase II improvements identified in Section 3.0.A.2 to the WWTF shall,

for purposes of this section, be split among the two cities in proportion to each party's respective share of project costs as defined in Section 4.0.B above. Based on this computation, Sumner agrees to pay Bonney Lake an amount equal to Bonney Lake's proportionate share as specific consideration for the Section 34 dismissal and waiver regarding Sumner's land use/UGA modification identified in that Section.

SECTION 12.0 - Audit Review

Any member of the Advisory Committee or a representative of such member may examine the books and records of any party which relate to the Joint Facilities, the administration thereof, or of this contract. Such books and records may be examined at any reasonable time during business hours of that party so long as a reasonable opportunity is given to that party to assemble such books and records and provide for a convenient location for such examination. The Advisory Committee may appoint an advisor or accountant to review such books and records. The party requesting the review shall pay its own costs for such review.

SECTION 13.0 - HAZARDOUS MATERIAL DISCHARGES TO SYSTEM

Both parties to this agreement have sewer use ordinances prohibiting the discharge of certain flammable, corrosive, toxic and other wastes and materials that are detrimental to the WWTF or the waste process. Each party shall enforce its ordinance and it shall be responsible for any damages or cost incurred from the discharge of such wastes or materials from its sewer collection system to the plant. Both parties to this agreement have ordinances covering the requirements for pretreatment of certain wastes at the source before discharge to the public systems. Any waste loads with pollutants or concentration of pollutants that are significantly different than domestic waste shall require pretreatment. Both parties to this agreement shall enforce its pretreatment ordinance to comply with the requirements set forth in the WWTF 's NPDES permit.

SECTION 14.0 - POINTS OF CONNECTION

The parties have connected collection lines to the WWTF. Should future WWTF improvements or modifications require the relocation of the existing points of connection or additional points of connection, each party necessitating the relocation or additional connection point shall submit suitable plans and specifications for review and approval by the other party. All costs of design and construction will be borne by the City benefiting from the modification.

SECTION 15.0 - FLOW METERING AND MONITORING.

Sumner shall maintain the flow monitoring equipment and facilities to measure and record daily wastewater flow to the WWTF from both Sumner and Bonney Lake. Sumner shall calibrate the meters at least once each calendar year. Sumner shall monitor the amount of wastewater flowing to the Sumner's main from the Bonney Lake sewer collection system (flow data) and the Sumner sewer collection system. If Sumner becomes aware of any anomalies in the flow data or other unusual occurrences by either City, Sumner shall communicate the same to Bonney Lake.

SECTION 16.0 - INFLOW & INFILTRATION

Both Cities shall create a wastewater Capacity, Management, Operations, and Maintenance (CMOM) program or other appropriate program designed to reduce Inflow and Infiltration (I&I). This program shall be based on guidelines developed by the U.S. Environment Protection Agency to prevent Sanitary Sewer Overflows (SSO). Many of the elements of this program are already incorporated into the respective Cities O&M and Best Management Practices.

Both Cities agree that extraneous storm water and groundwater that enter their respective collection system uses plant capacity and adds a cost to treatment. Both parties agree to continue all reasonable efforts to keep I&I to a minimum. Each party is responsible for identifying the sources of its Inflow and Infiltration and taking the necessary corrective measures to eliminate it, including but not limited to: Replacing or rehabilitating the defective sewer pipe, lateral and/or manhole; Pipe grouting/sealing - using a cement-based or other material to fill a hole or crack in a pipe or manhole; Pipe relining - inserting a flexible liner into a defective sewer pipe or sewer service lateral which hardens into an impervious surface; Disconnecting known inflow sources, such as cross-connected catch basin drains, footing drains or downspouts; Installing drainage systems that will allow cross-connected sewers to be separated; Backflow valve (or other plumbing upgrade) installation.

The annual report shall include those actions taken by both cities to implement CMOM or other appropriate practices and reduce I&I, and the estimated cost thereof.

SECTION 17.0 - INDUSTRIAL PRETREATMENT

Sumner shall be responsible for regulation and control of any industrial wastewater that is delivered to the WWTF. Sumner shall adopt suitable pretreatment regulations for industrial wastewater. The parties shall develop an addendum to this agreement as necessary to address industrial wastewater pretreatment to carry out and satisfy all applicable federal and state pretreatment regulations.

SECTION 18.0 - CAPACITY LIMIT

A. The Joint Advisory Committee shall consist of the Mayor of each city, one Council member from each city as appointed by their respective Council, the City Administrator of each City or their designee, and the Public Works Director of each City.

B. Each year the Joint Advisory Committee shall meet in October to review the operations of the plant, consider any major improvements that may be required, consider any budget issues, and review each party's compliance with this agreement. Each party will present projected growth and the waste loading associated therewith for the next two years for consideration of the impact on the plant. Both parties agree that they will not exceed their respective shares of the permitted capacity of the WWTF, without the express written authorization of the other. The parties agree to

cooperate to remediate any legal restrictions placed on the use of the WWTF by the Department of Ecology.

SECTION 19.0 - RESPONSIBILITY SEWER SERVICE AREA

This agreement is intended to address each city's sewer treatment needs through at least the year 2062. It is the desire of each city to use its share of WWTF capacity to primarily support properties located within their current jurisdiction and their service area. However, since neither city can predict future changes to the growth management act, water quality regulations, state and federal mandates, governance structures, etc., this agreement is not intended to constrain either city from using its capacity rights to serve those areas each city deems appropriate, consistent with state law, or are legally required to serve in the future.

The primary service areas supported by this Agreement are as shown by Attachment 2 (Sumner RSSA) and Attachment 3 (Bonney Lake RSSA) of this agreement, and the combined WWTF RSSA in Attachment 4. WWTF sewer services shall not be provided to the area generally referred to as Cascadia or Tehaleh without the prior approval of Sumner. Any request for sewer service outside of these areas shall be reviewed by both parties to this agreement prior to any commitment of service. Prior review does not ensure the future use of the WWTF capacity unless the parties mutually agree to such future use, provided that, as long as the requesting party is underutilizing its possible capacity under Section 31, such future use of the WWTF will be approved.

SECTION 20.0 - ANNUAL REPORT

Sumner shall submit to Bonney Lake on or before March 1 of each year, beginning with March 1, 2013, a report showing, at a minimum: the aggregate annual flow data to the WWTF, including a breakdown of flow generated by Bonney Lake and Sumner users for the previous calendar year ended December 31. The annual operation and maintenance costs of the WWTF for the same period will be submitted by June 1st of the following year in such detail as the party's agree. Additionally, Sumner shall copy Bonney Lake on any correspondence received from or sent to the Washington Department of Ecology (DOE), U.S. Environmental Protection Agency, or any other governmental entity having jurisdiction over the operation of the WWTF. To the extent practicable, Sumner shall endeavor to forward copies of said correspondence to Bonney Lake via email or other electronic delivery.

SECTION 21.0 - TERMINATION

It is the intent of the parties, that this agreement outlines both the Phase II construction project and the Cities' relationship in sharing the use of the WWTF. Both parties agree that this agreement is a model for continued cooperation in sharing the facility, and for planning future expansion if needed, and may, with or without modification, continue into the future until terminated by mutual agreement. The net proceeds from the sale of any real estate that was acquired with funds from both parties, shall be shared by the parties in direct proportion to their

respective shares of the costs incurred when acquired. The net proceeds from the sale of any other property shall be shared equally.

SECTION 22.0 - HEIRS, SUCCESSORS AND ASSIGNS

The obligations imposed by this Agreement shall be a covenant between Bonney Lake and Sumner and shall be binding upon both cities and their heirs, successors and assigns. Neither party may assign any part or all of its rights or obligations under this agreement without the express written consent of the other party, which consent shall not be unreasonably withheld.

SECTION 23.0 - INDEMNIFICATION AND DEFENSE

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

SECTION 24.0 - INSURANCE COVERAGE

Bonney Lake and Sumner shall maintain at all times during the course of this Agreement a general liability insurance policy or other comparable coverage as currently provided in 2012 by WCIA coverage.

SECTION 25.0 - NOTICE

Any formal notice or communication to be given by Bonney Lake to Sumner under this Agreement shall be deemed properly given, if delivered, or mailed postage prepaid and addressed to:

City of Sumner
Attn: City Administrator
1104 Maple Street
Sumner, WA 98390

Any formal notice or communication to be given by Sumner to Bonney Lake under this Agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

City of Bonney Lake
Attn: City Administrator
9002 Main Street E.
P.O. Box 7380
Bonney Lake WA 98391

The name and address to which notices and communications shall be directed may be changed at any time, and from time to time, by either party giving notice thereof to the other party as herein provided.

SECTION 26.0 - DISPUTES

The laws of the State of Washington shall govern this Agreement. Disputes regarding this Agreement shall be resolved as follows:

1. Alternative Dispute Resolution. If a dispute arises from or relates to the terms of this Agreement or the breach thereof, or to the O and M biennial budget amounts charged to the WWTF, and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution (or other mutually agreeable alternative dispute resolution service) service rules or policies before resorting to arbitration. The mediator will be selected by agreement of the parties.

2. Arbitration. Following mediation, or upon written agreement of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through binding arbitration either by an arbitrator selected by the parties, or if the parties cannot agree to an arbitrator, by a single arbitrator appointed by the American Arbitration Association under its Commercial Dispute Resolution Procedures. All fees and expenses shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

SECTION 27.0 - WAIVER

No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or any subsequent breach, whether of the same or a different provision of this Agreement.

SECTION 28.0 - AMENDMENT

Provisions within this Agreement may be amended with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing, formally approved and executed by duly authorized agents of both parties.

SECTION 29.0 - SEVERABILITY

If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.

Section 30.0 THIRD PARTIES

The parties do not intend to create any third-party beneficiaries to this Agreement, including the attachments. No third-party cause of action is created by virtue of this Agreement or any attachment for any person or entity.

Section 31.0 FUTURE EXPANSION OF WWTF

A. The parties agree to prepare a Feasibility Study that determines the ability of the current WWTF site to meet a total demand of both cities of 9.3 MGD (6.5 MGD Bonney Lake and 2.8 Sumner). However, both Parties recognize and agree that this estimate of future capacity needs is based upon a good faith effort and has been made without detailed analysis.

B. This Feasibility Study may be done as part of the Phase II design by the selected engineering firm in 2012 but such study shall not delay the Phase 2 expansion. The study shall include a planning level cost estimate of the expansion options, broken down into 0.5 MGD increments. The Study shall include, but not be limited to tertiary treatment and use of MBR technology as two of the alternatives for future expansion of capacity. The costs of this Feasibility Study will be borne solely by Bonney Lake as Sumner's future capacity needs will be satisfied with the Phase 2 plant expansion.

C. The Feasibility Study of future capacity needs will be based upon and limited strictly to the WWTF Future Demand Estimate of 6.5 MGD by Bonney Lake. Should Bonney Lake's needs expand and result in an increase of the associated and identified estimated RE of 6.5 MGD, the parties agree to negotiate the reallocation of the capacity, if available, based on reimbursements to Sumner of the actual costs per MGD paid by Sumner at the time of the Phase 2 expansion. An accounting of the costs shall be added as an attachment to this agreement as Attachment 5.

D. If sufficient reallocation of capacity is not available from Sumner, and if it is feasible to expand the WWTF, the parties agree that Bonney Lake may pay for the construction of the future expansion of the WWTF to meet the needs of Bonney Lake, in cooperation with Sumner, provided that any future Bonney Lake increase in WWTF capacity above 9.3 MGD will require the mutual agreement of both parties.

SECTION 32.0 FUTURE COOPERATION TO RESOLVE TRAFFIC ISSUES


The parties agree to work jointly to propose and lobby for consistent transportation projects to alleviate the impacts of current and future planned development that affects either party. Specifically, the projects include:

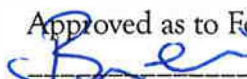
1. Improvements to SR 410 including its interchanges;
2. Improvements to SR 167
3. Cascadia/Tehaleh
4. 214th/218th corridor

SECTION 33.0 PENDING LITIGATION - DISMISSAL

It is further agreed between the parties that, in consideration of the City of Sumner's approval and adoption by the Sumner City Council of the terms and conditions contained herein, and specifically the payment due under Section 11, that Bonney Lake will dismiss with prejudice the appeal filed on behalf of Bonney Lake with the Growth Management Hearings Board in the action commonly known as Friends of Pierce County, et al. v. Pierce County No. 12-3-0002c. Additionally, Bonney Lake further agrees not to challenge or file any appeal or cause of action related to the annexation of the Orton Junction area or any future City or County approval of decisions or actions which are made or taken in accordance or consistent with Pierce County Comprehensive plan amendments commonly known as C-5, U-3A, and U-3B adopted pursuant to ordinance no 2011-60s2, provided said decisions or actions are consistent with said amendments and Exhibit O to Ordinance No. 2011-60s2 (Seven Principles Agreement).

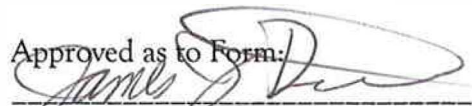
CITY OF SUMNER

By: 
Mayor Date

Approved as to Form:

City Attorney

CITY OF BONNEY LAKE

By: 
Mayor Date

Approved as to Form:

City Attorney

ATTACHMENTS

1. Report of funds already spent on G&O and staff (Section 7.0)
2. Map of Sumner RSSA (Section 19.0)
3. Map of Bonney Lake RSSA (Section 19.0)
4. Map of Combined RSSA (Section 19.0)
5. Actual average cost per M.G.D. paid for Phase II construction (Section 31.0)

ATTACHMENT 1

**ENGINEERING SERVICES
SCOPE AND ESTIMATED COST**

City of Sumner - Wastewater Treatment Plant Capacity Increase Study

Tasks	Principal Hours	Project Eng. Hours	CADD Tech. Hours
1 Review Existing Information	1	16	
2 Develop Sampling/Testing	1	8	
3 Evaluate Alternatives	4	40	
4 Compare/Recommend Options	2	40	
5 Prepare Report	2	24	24
6 Meetings and Reviews	2	12	
QA/QC	2	4	
Hour Estimate:	14	144	24
Estimated Hourly Rates:	\$56	\$38	\$28
Direct Labor Cost	\$784	\$5,472	\$672

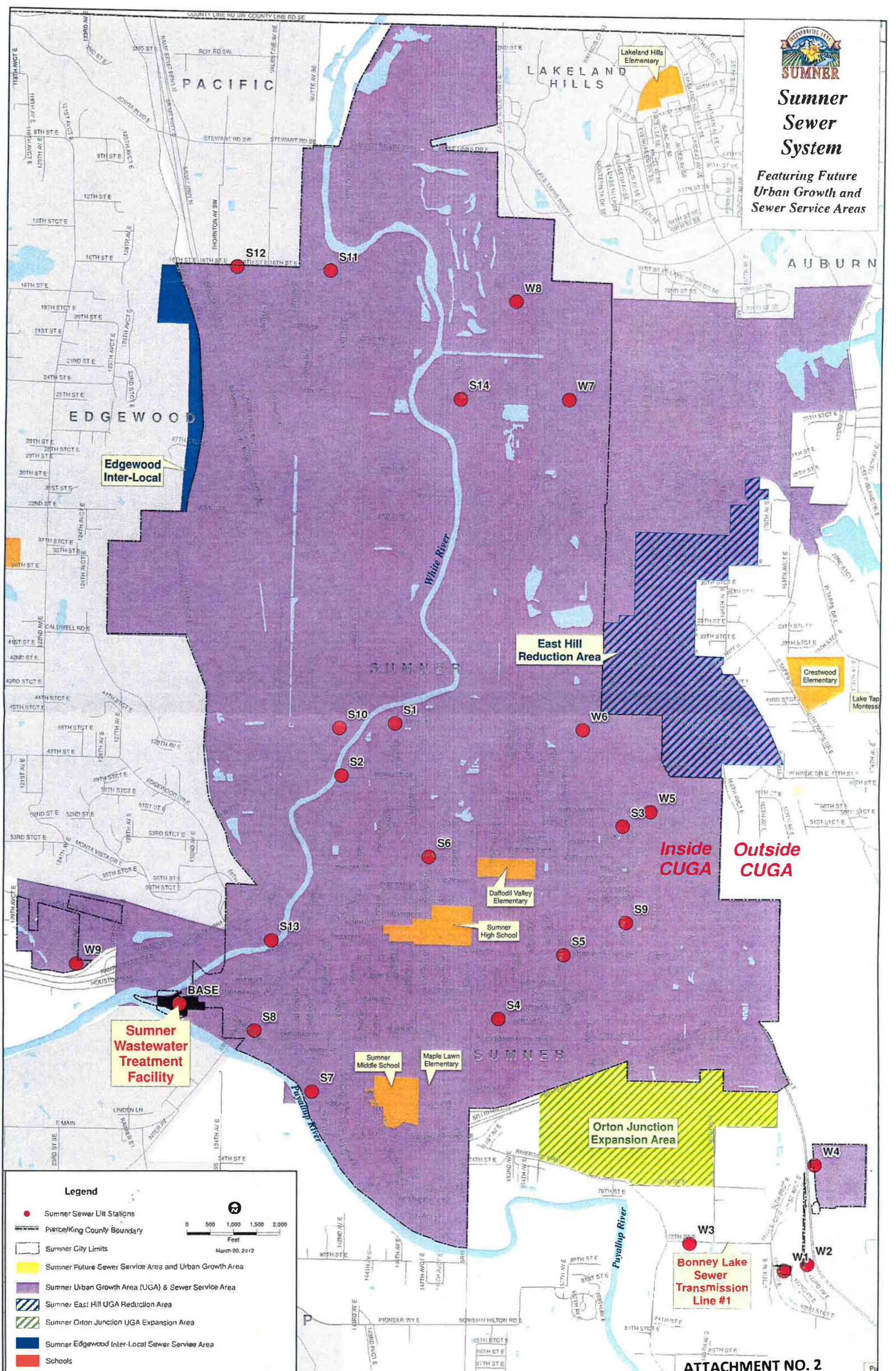
Subtotal Direct Labor:	\$ 6,928
Indirect Costs (171%):	\$ 11,847
Total Labor Cost:	\$ 18,775
Fee (15%):	\$ 2,816
Subtotal Labor & Fees:	\$ 21,591
Direct Non-Salary Cost:	
Mileage & Expenses (Mileage @ \$0.55/mile)	\$ 200
Printing	\$ 200
TOTAL ESTIMATED COST:	\$ 21,991

CIP 09-08 WWTF Capacity Increase Study		
Check #	Date	Amount
74843	9/8/2009	\$2,000.38
74996	9/21/2009	\$18,517.06
75466	11/16/2009	\$1,473.56
TOTAL		\$21,991.00



Sumner Sewer System

Featuring Future Urban Growth and Sewer Service Areas



Legend

- Sumner Sewer Lift Stations
- ▬ Pierce/King County Boundary
- ▭ Sumner City Limits
- Sumner Future Sewer Service Area and Urban Growth Area
- Sumner Urban Growth Area (UGA) & Sewer Service Area
- ▨ Sumner East Hill UGA Reduction Area
- ▨ Sumner Orton Junction UGA Expansion Area
- Sumner Edgewood Inter-Local Sewer Service Area
- Schools

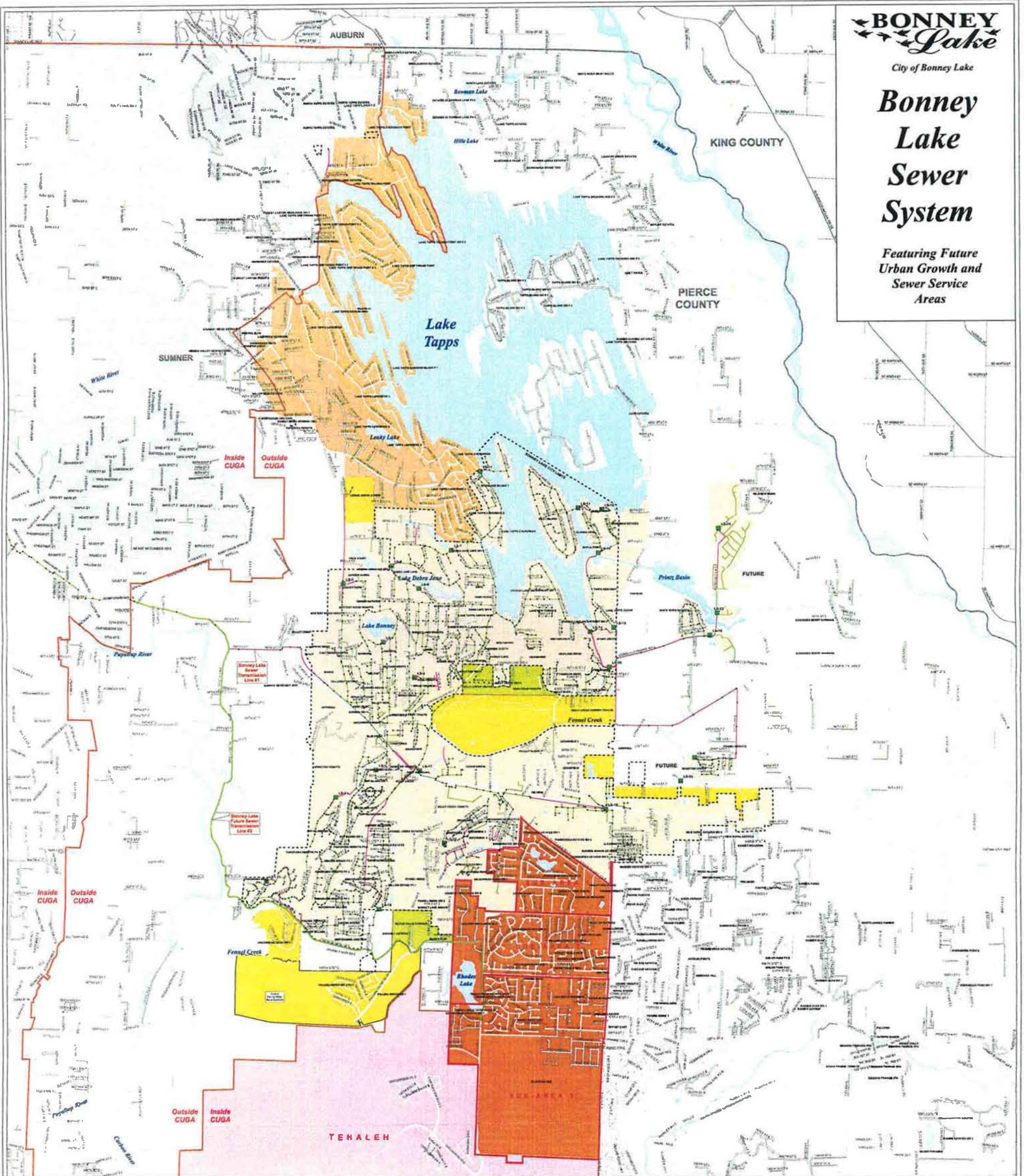
0 500 1,000 1,500 2,000
Feet
March 20, 2012



City of Bonney Lake

Bonney Lake Sewer System

Featuring Future Urban Growth and Sewer Service Areas



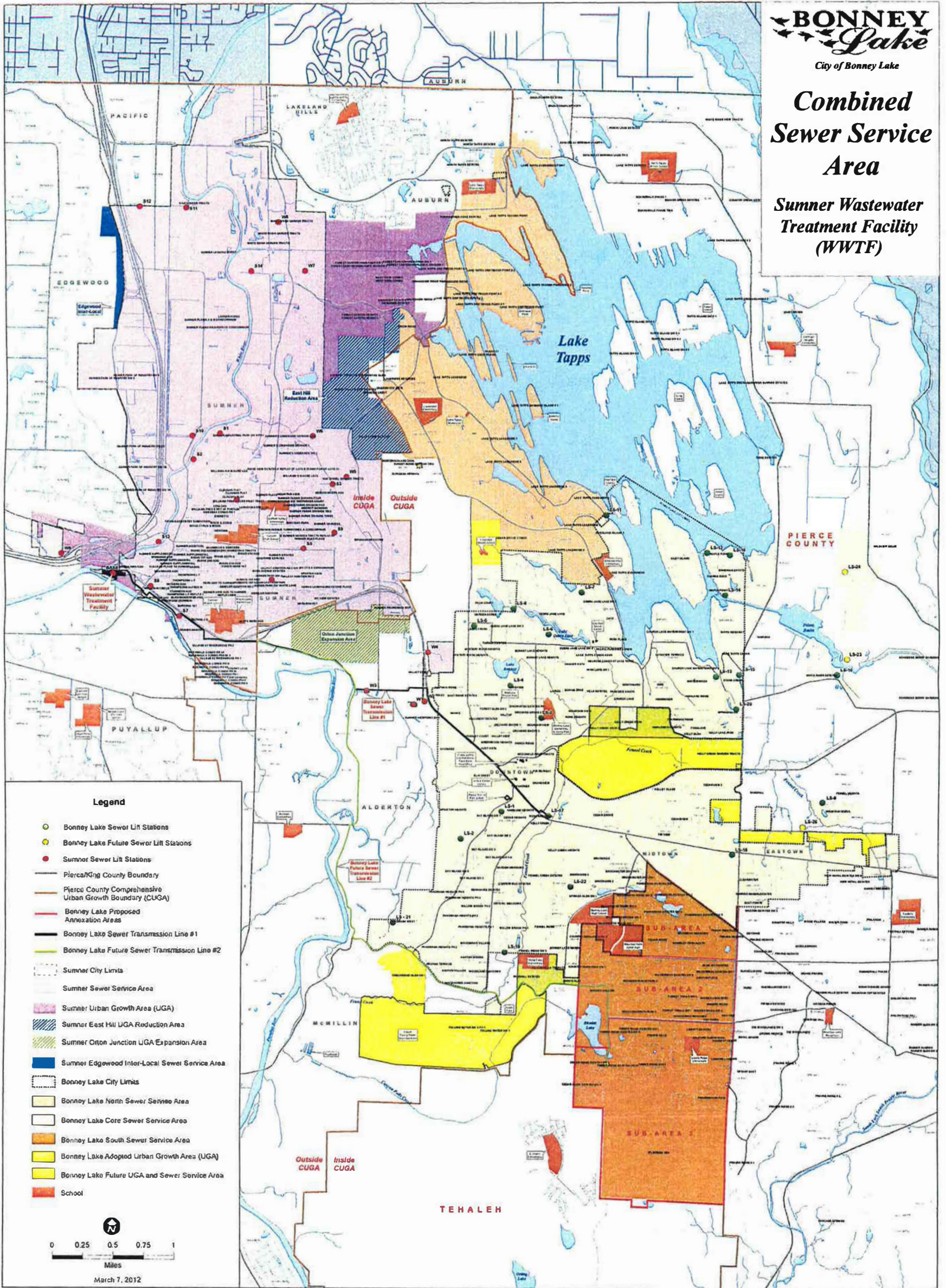
- Sewer Manhole
- Sewer Lift Station
- Sewer Force Main
- Sewer Gravity Main
- Pierce County Boundary
- Public Road
- Private Road Edge
- North Sewer Service Area
- Core Sewer Service Area
- South Sewer Service Area
- Tax Parcels
- Bonney Lake City Limits
- Bonney Lake Adopted Urban Growth Area (UGA)
- Bonney Lake Future UGA and Sewer Service Area
- Pierce County Comprehensive Urban Growth Boundary (CUGA)
- Pierce County Comprehensive Urban Growth Area (CUGA) Tehaleh (Cascadia)
- Bonney Lake Proposed CUGA Annexation Area



March 16, 2012

Combined Sewer Service Area

Sumner Wastewater Treatment Facility (WWTF)



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ORIGINAL NO. 1

**INTERGOVERNMENTAL AGREEMENT
FOR
IMPROVEMENTS AND EXPANSION
OF
THE SUMNER WASTEWATER TREATMENT FACILITY**

THIS AGREEMENT made and executed as of this 6th day of May, 2002, by and between the CITY OF BONNEY LAKE WASHINGTON, (hereinafter referred to as BONNEY LAKE); and the CITY OF SUMNER, WASHINGTON, (hereinafter referred to as SUMNER), both of which are municipal corporations organized under the laws of the State of Washington, do hereby agree;

WHEREAS an intergovernmental contract for Wastewater Facilities Management was executed between BONNEY LAKE, PIERCE COUNTY, SOUTH HILL SEWER DISTRICT and SUMNER, dated November 21, 1984, providing for an intergovernmental arrangement appropriate to carry out the improvement of the existing wastewater transmission treatment and discharge facilities shared by two or more parties to the agreements, including improvements to the Sumner Wastewater Treatment Facility, and

WHEREAS, PIERCE COUNTY assumed the facilities and obligations of the SOUTH HILL SEWER DISTRICT and incorporated the SOUTH HILL SEWER DISTRICT facilities into its Chambers Creek Sewerage System in 1991, and

WHEREAS, BONNEY LAKE and PIERCE COUNTY have signed a Sanitary Sewer Transfer Agreement which outlines the terms and conditions of the transfer of specific portions of the Pierce County Sewer Service Area and facilities to BONNEY LAKE, and

WHEREAS, the STATE OF WASHINGTON DEPARTMENT OF ECOLOGY issued Order No. DE 92WQ-S370 to the City of Sumner on July 28, 1994 requiring that SUMNER make necessary improvements to the Wastewater Treatment Facility, hereafter WWTF, to address effluent limits for chlorine, ammonia, copper and mercury and SUMNER submitted a schedule for the design and construction of improvements to achieve compliance by the summer of 1999, and

WHEREAS, SUMNER requested a three-year extension to the compliance schedule mentioned above in a letter to the DEPARTMENT OF ECOLOGY (DOE) dated January 22, 1999, and because the WWTF was meeting permit standards, the order was allowed to expire with the 1994 permit and the requirements of said order were incorporated into the new NPDES permit received from DOE, dated, July 1, 2001, and

WHEREAS, The Summer WWTF holds National Pollutant Discharge Elimination System Waste Discharge Permit No. WA-0023353,

WITNESSETH

NOW, THEREFORE, in consideration of the mutual covenants, conditions, performances, and promises hereinafter contained, the parties agree as follows:

SECTION 1.0 - PURPOSE

BONNEY LAKE and SUMNER agree that time is of the essence, and design and construction of improvements and expansion of the WWTF must proceed. The two parties have agreed to proceed with design of the proposed facilities and to share the cost in proportion to the capacity each city needs to meet its projected growth within the planning horizon in a letter agreement, dated May 23, 2001.

This agreement addresses how the parties will manage, finance, share costs and review the work performed by the consulting engineers/construction contractors during the design and construction of the proposed improvements. The agreement also addresses how the parties shall share operation and maintenance costs, hereafter O&M, and continue the relationship into the future.

SECTION 2.0 – SUPERSEDES 1984 AGREEMENT

With the execution of the “Sanitary Sewer System Transfer Agreement Between Pierce County, Washington and the City of Bonney Lake, Washington”, SUMNER and BONNEY LAKE are the only remaining parties to the, “Intergovernmental Contract For Wastewater Facilities Management”, dated November 21, 1984. This agreement supersedes that agreement. This agreement shall be executed concurrently with the, “Sanitary Sewer System Transfer Agreement Between Pierce County, Washington and the City of Bonney Lake, Washington.

SECTION 3.0 – PROJECT

The Consulting engineering firm of Gray & Osborne, Inc. of Seattle, Washington has been retained by SUMNER to design improvements to the WWTF. Gray & Osborne, Inc. was selected for the work after SUMNER requested proposals and conducted interviews in accordance with Chapter 39.80 RCW. The Wastewater Treatment Facility Final Comprehensive Facility Plan Addendum No.1 prepared by Gray & Osborne, Inc., dated February 2000, provides the estimated costs and scope of work that is the subject of this agreement. This document, together with the Comprehensive Facility Plan, Summer Wastewater Treatment Facility prepared by Kennedy/Jenks Consultants, dated January 1999, is the approved plan for improvements to the wastewater treatment facility. The Washington State Department of Ecology approved the plan on May 29, 2000.

SECTION 4.0 – COST SHARE

The improvements to the wastewater treatment plant shall include expansion to the plant's capacity. The WWTF improvements will provide a permitted capacity of a minimum of 4.6 million gallons per day. Permitted WWTF flow capacity is defined as the maximum month average daily flow. All WWTF flow capacity referred to hereafter in this agreement shall mean maximum month average daily flow. BONNEY LAKE will be entitled to 2.3 million gallons per day of capacity in the improved and expanded plant. SUMNER will be entitled to 2.3 million gallons per day of capacity in the improved and expanded plant. All costs associated with the project identified in Section 3 shall be divided in proportion to the capacity used by each party. BONNEY LAKE will finance 50.0% and SUMNER shall finance 50.0% of all project costs associated with the scope of work identified in Section 3. If the sewer plant is permitted for more or less capacity than the expected 4.6 million gallons per day, SUMNER and BONNEY LAKE will share the capacity according to the cost share percentages established in this section.

After two years following plant startup at project completion, there shall be a reconciliation. The amount of wastewater, as defined in Exhibit "A" to this agreement, contributed by each party shall be calculated from the measured and recorded data at the plant. The percentage contribution of each party to the total amount of wastewater treated during the two previous years shall be based on a simple arithmetic average. There shall be a transfer of funds from the party who contributed more than 50% of the total wastewater treated in the previous two years to the party with less than 50%. The amount of these funds shall be calculated by taking the larger percentage minus the benchmark percentage of 50% times 10% of the total project cost. There shall be a second reconciliation after four years following plant startup. The percentage contribution of each party to the total amount of wastewater treated during the four previous years shall be based on a simple arithmetic average. There shall be a transfer of funds from the party who contributed more than 50% of the total wastewater treated in the previous 4 years to the party with less than 50%. The amount of these funds shall be calculated by taking the larger percentage minus the benchmark percentage of 50% times 20% of the total project cost less the credit or debit from the first reconciliation. This reconciliation shall occur every two years until the final and tenth reconciliation at the time of the last debt service payment in twenty years. A sample calculation is presented in Exhibit "B".

SECTION 5.0 – CONTRACT MANAGEMENT AND RESPONSIBILITIES

SUMNER as the owner of the WWTF is the lead agency. Contracts for engineering design services and construction is between SUMNER and the Design Firm, Equipment Supplier(s) and Construction Contractor(s). There will be a meeting each month to review progress during the design and construction of the improvements. The Directors of Public Works or their designee shall attend these meetings. The Public Works Directors shall jointly approve designs, change orders, schedules, bid awards and recommendations of the Consultant for presentation to their respective Councils for adoption.

The Public Works Directors for SUMNER and BONNEY LAKE shall convene a meeting with the Joint Advisory Committee quarterly as a minimum during design and construction and at

points in the process that are mileposts. The Joint Advisory Committee shall consist of the Mayor of each city, a Council member of each city as appointed by their respective Council, the City Administrator of each City or their designee and the Public Works Director of each City. The purpose of the meetings are to brief the elected officials and managers on the progress of the work, report on schedules, costs and budgets, review design decisions and change orders and other related matters as deemed appropriate by the Committee.

SECTION 6.0 – FINANCE

SUMNER and BONNEY LAKE have received Public Works Trust Fund loans. Each City will be responsible for its own local share matching requirements and loan repayment.

SECTION 7.0 – REIMBURSEMENT FOR FUNDS EXPENDED

Funds have been expended for preliminary engineering, additions to the Facilities Plan to obtain approval from the Washington State Department of Ecology, and preparation of loan applications. All of these costs are associated with this project. SUMNER has paid Gray & Osborne \$91,615.00 for this work. BONNEY LAKE agrees to pay their 50% share within 30 days of the execution of this agreement.

SECTION 8.0 - REIMBURSEMENT FOR PREVIOUS EXPENDITURES

SUMNER purchased land to be used to site facilities in this expansion. SUMNER's purchase price was \$214,942.00. SUMNER's cost for demotion of the old houses on this property was \$39,566.00. SUMNER paid the installation of effluent pumps, including piping, electrical, and appurtenances to assure treatment during periods of high river flows. This equipment has and will continue to serve the entire plant. Its original cost was \$177,906.00. The total cost is \$432,414.00 for the land purchase; demolition of houses and the effluent pump station. BONNEY LAKE agrees that these are shared costs. Their 50% share or \$216,207 shall be made in three annual payments of \$72,069 beginning with the first payment due and payable on March 1, 2002 within 30 days of execution of this agreement. The third and final payments shall be due on April 1, 2004 plus interest in the amount of 4.5% annum paid on the unpaid balance beginning as of January 1, 2001.

SECTION 9.0 - OPERATION AND MAINTENANCE

SUMNER as the owner and operator of the WWTF shall make all reasonable efforts to operate the plant in a cost effective manner, perform the necessary maintenance to keep it in good working order, execute treatment strategies to maintain a high quality effluent and hire and train adequate staff to execute these goals and objectives.

The Public Works Director of SUMNER shall submit a draft budget for the WWTF operations and maintenance for the following year with adequate supporting data to the Public Works Director of BONNEY LAKE by September 1st of each year for review and comment. The Directors shall meet and agree on a draft budget by September 15th for submittal to their

respective Mayors and Council. The approved budget by SUMNER shall be delivered to BONNEY LAKE for their records.

SUMNER shall invoice BONNEY LAKE their share of the WWTF's operation and maintenance cost each month. Sumner will not include their city utility tax. The bills shall be submitted by the 10th day of the following month. Bills are due within 30 days after billing. Billings shall be based on the WWTF budget (Fund 402.38) divided by 12, except for the December billing, multiplied by the percentage of use of the facility as measured by the parameters of flow, five-day biochemical oxygen demand (BOD₅), and total suspended solids (TSS). The definition of these parameters, method of testing and the formula used incorporating these parameter to calculate the percentage is more fully described in Exhibit "C" of this agreement and incorporated herein by reference. The December billing will be based on the actual cost of operations for the year less the 11 previous payments multiplied by the percentage of use in December as described above.

SUMNER shall submit quarterly expenditure reports to BONNEY LAKE for their review and records. The 3rd Quarterly report will include an estimate of the total expenditures for the fiscal year prepared by the Public Works Director or his designee.

If an unexpected expenditure arises that will increase the budget requiring approval of a budget amendment, the Joint Council Advisory Committee will be convened and briefed by the Public Works Directors on the need prior to submittal of budget amendments to their respective City Councils.

The operations and maintenance cost sharing procedures shall become effective as of January 01, 2002.

SECTION 10.0 – PAYMENT IN LIEU OF TAXES (P.I.L.O.T. FEE)

As compensation for impacts to SUMNER due to the siting of the WWTF within the municipal boundaries of SUMNER, BONNEY LAKE will remit to SUMNER a P.I.L.O.T. fee in the amount of 5% of the O&M cost charged to BONNEY LAKE. Said fee will be included in the monthly invoices to BONNEY LAKE. Said funds shall be deposited in the General Fund of SUMNER.

SECTION 11.0 – OWNERSHIP OF EFFLUENT AS WATER

Each party shall retain ownership of its water supplied to the system for purposes of water rights.

SECTION 12.0 – HAZARDOUS MATERIAL DISCHARGES TO SYSTEM

Both parties to this agreement have sewer use ordinances prohibiting the discharge of certain flammable, corrosive, toxic and other wastes and materials that are detrimental to the WWTF or the waste process. Each party shall enforce its ordinance and it shall be responsible for any damages or cost incurred from the discharge of such wastes or materials from its sewer collection system to the plant.

Both parties to this agreement have ordinances covering the requirements for pretreatment of certain wastes at the source before discharge to the public systems. Any waste loads with pollutants or concentration of pollutants that are significantly different than domestic waste shall require pretreatment. Both parties to this agreement shall enforce its pretreatment ordinance to comply with the requirements set forth in the WWTF's NPDES permit.

SECTION 13.0 – INFLOW & INFILTRATION

Both parties agree that extraneous storm water and groundwater that enter their respective collection system uses plant capacity and adds a cost to treatment. Both parties agree to continue all reasonable efforts to keep Inflow and Infiltration (I&I) to a minimum. Each party is responsible for identifying the sources of its Inflow and Infiltration and taking the necessary corrective measures to eliminate it.

SECTION 14.0 – CAPACITY LIMIT

Each year the Joint Advisory Committee shall meet in July to review the operations of the plant, consider any major improvements that may be required, consider the coming year budget, and review the party's compliance with this agreement. Each party will present projected growth and the waste loading associated therewith for the next two years for consideration of the impact on the plant.

Both parties agree that they will not exceed 55% of the permitted capacity of the WWTF, without the express written authorization of the other.

SECTION 15.0 – SERVICE AREA

It is the intent of the parties that the use of the WWTF is for the property located within their jurisdiction or responsibility. The area of service of each party is shown in Exhibit C1 and C2 of this agreement. Any request for sewer service outside of these areas shall be reviewed by both parties to this agreement prior to any commitment of service.

SECTION 16.0 - TERMINATION

It is the intent of the parties, that this agreement outlines the relationship in sharing the use of the WWTF until another expansion or upgrade is required. Both parties agree that this agreement is a model for continued cooperation in sharing the facility and may, with or without modification, continue into the future.

The net proceeds from the sale of any real property that was acquired with funds from both parties, shall be shared by the parties in direct proportion to their contribution when acquired.

This Agreement may terminate in 2037 - or upon mutual consent by the parties to this Agreement. There are no other written or expressed termination dates associated with this Agreement.

SECTION 17.0 – HEIRS, SUCCESSORS AND ASSIGNS

The obligations imposed by this Agreement shall be a covenant between BONNEY LAKE and SUMNER and shall be binding upon both cities and their heirs, successors and assigns. Neither party may assign any part or all of its rights or obligations under this agreement without the express written consent of the other party, which consent shall not be unreasonably withheld.

SECTION 18.0 – INDEMNIFICATION AND DEFENSE

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

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

SECTION 19.0 – INSURANCE COVERAGE

BONNEY LAKE and SUMNER shall maintain at all times during the course of this Agreement a general liability insurance policy or other comparable coverage with self-insured retention of no more than \$2,000,000 and a policy limit of no less than \$5,000,000.

SECTION 20.0 -- NOTICE

Any formal notice or communication to be given by BONNEY LAKE to SUMNER under this Agreement shall be deemed properly given, if delivered, or mailed postage prepaid and addressed to:

City of Sumner
1104 Maple Street
Sumner, WA 98390
Attn: City Administrator

Any formal notice or communication to be given by SUMNER to BONNEY LAKE under this Agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

City of Bonney Lake
19306 Bonney Lake Blvd.
P.O. Box 7380
Bonney Lake WA 98390

The name and address to which notices and communications shall be directed may be changed at any time, and from time to time, by either party giving notice thereof to the other party as herein provided.

SECTION 21.0 - DISPUTES

The laws of the State of Washington shall govern this Agreement. Disputes regarding financial obligations arising out of Sections 4,5,7,8 and 9 of this Agreement shall be resolved through binding arbitration, either by an arbitrator selected by the parties, or if the parties cannot agree on an arbitrator, by an arbitrator appointed by the American Arbitration Association under its Commercial Dispute Resolution Procedures. All other disputes shall be resolved through such means as the parties may agree upon, or else by lawsuit filed in Pierce County Superior Court. The prevailing party in any arbitration or lawsuit shall be entitled to an award of reasonable attorney and consultant fees and costs.

SECTION 22.0 -- WAIVER

No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or any subsequent breach, whether of the same or a different provision of this Agreement.

SECTION 23.0 - AMENDMENT

Provisions within this Agreement may be amended with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing, formally approved and executed by duly authorized agents of both parties.

SECTION 24.0 - SEVERABILITY

If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.

CITY OF SUMNER

CITY OF BONNEY LAKE

By: *Barker Schinner*
Mayor

By: *[Signature]*
Mayor

Date: 5-20-02

Date: 5-30-02

Attest:
Susan B. Clary
City Clerk

Attest:
Gayle Butcher
City Clerk

Date: 5/20/02

Date: 6-3-02

Approved as to Form: *Pat Bosman*
City Attorney

Approved as to Form: *[Signature]*
City Attorney

Date: 5/20/02

Date: 6-3-02
Res 994 - April 30, 2002

ORIGINAL No 1


May 10, 2002


LETTER OF UNDERSTANDING

**Regarding the
INTERLOCAL AGREEMENT FOR IMPROVEMENTS AND EXPANSION OF THE
SUMNER WASTEWATER TREATMENT FACILITY**

To clarify the intent of Section 8:

The parties agree that BONNEY LAKE will pay one-third of the amount owing no later than June 10, 2002 (30 days after contract execution), one-third on April 1, 2003, and one-third on April 1, 2004. The second and third payments will include interest in the amount of 4.5 percent annum paid on the unpaid balance beginning as of January 1, 2002.


Seth Boettcher
Bonney Lake Public Works Director


William Hoopes
Sumner Public Works Director