# INTERLOCAL AGREEMENT BETWEEN PIERCE COUNTY AND THE CITY OF UNIVERSITY PLACE RELATING TO SANITARY SEWER SERVICES – CONTRACT NO. 99-9980

THIS INTERLOCAL AGREEMENT is entered into this day by and between PIERCE COUNTY, a political subdivision of the State of Washington (herein referred to as "County") and the CITY OF UNIVERSITY PLACE, a municipal corporation of the State of Washington (herein referred to as "City").

WHEREAS, the City has incorporated within an area which had previously been unincorporated Pierce County; and

WHEREAS, the City officially incorporated on August 31, 1995 and upon that date commenced operations as a city; and

WHEREAS, the County operates a system of sanitary sewers that serves portions of both incorporated and unincorporated Pierce County; and

WHEREAS, prior to incorporation the County had established sanitary sewer service to a significant number of properties located within the City; and

WHEREAS, it is in the interests of the City and its citizens that the County provide sanitary sewer planning and continue operation and maintenance of sanitary sewer facilities located within the City under an Interlocal Agreement granting the County a franchise pursuant to RCW 35A.47.040; and

WHEREAS, the County has the resources necessary and is willing to continue to provide the services contemplated herein;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, it is mutually agreed by and between the County and the City as follows:

SECTION 1. PURPOSE. The purpose of this agreement is to define the terms and conditions under which the County will provide sanitary sewer services to properties located within the City.

SECTION 2. DEFINITIONS. The definitions provided in Pierce County Code Title 13, Public Sanitary Sewer Systems, as it currently exists or is hereafter amended shall apply to terms used within this agreement.

- SECTION 3. COUNTY RESPONSIBILITIES. The County shall provide sanitary sewer service to properties located within the incorporated boundaries of the City and the City's urban service areas as those boundaries exist today or are hereafter amended.
  - 3.1 <u>Maintenance and Operation</u>. The County shall retain responsibility for the maintenance and operation of all public sanitary sewer facilities within the corporate boundaries of the City. Sewer maintenance and operation practices shall be: prescribed by the County; consistent with standard engineering practices; in accordance with the City of University Place Public Works Standards as they relate to maintenance and management of the City right-of ways; and in compliance with all applicable state and federal laws or regulations. The County shall submit to the City for review and comment all industry standards that the County will apply within the City.
  - 3.2 Sanitary Sewer System Design and Construction Standards. To ensure that future connections to the sanitary sewer facilities within the City are compatible with the County's current sanitary sewer system, the design and construction of public and private sanitary sewer facilities constructed within the City shall be reviewed by the County and required to conform either to the County's written specifications, codes, and methods required for construction in unincorporated Pierce County or to the City's Public Works Standards, whichever is more restrictive as determined by the City's Public Works Director. The County shall submit to the City for review and comment all written specifications, codes and methods which the County will apply within the City. The County agrees to incorporate into its specifications by reference any City ordinances, policies or other regulations regarding construction practices within and restoration of City streets and rights-of-ways. Provided, however, at no time will the City impose regulations which prevent the County from operating, maintaining or constructing sewer lines and facilities within City rights-of-ways.
  - 3.3 <u>Customer Service</u>. The County shall continue to provide service to all properties within the City that are connected to the County's sanitary sewer system whether said connection occurs prior to or after the date of incorporation by the City. Customers within the City shall be treated in an identical fashion as all other County customers. Like all other County customers, customers within the City will be required to comply with the most current statutes, ordinances, rules and regulations governing sewage pretreatment, discharges, rates, charges and other matters governing sewer service as mandated by the Pierce County Code, and other applicable County, State, and Federal laws and regulations, as they currently exist and as they may be amended from time to time. The County shall administer and respond to all questions, requests, and comments from City residents, staff and officials relating to any expansion, modification, and extension to that system occurring within the City limits or the City's Urban Growth Areas.

- Rates and Billings. The County shall continue to bill all customers within the City for sanitary sewer service in the same manner as it bills customers within unincorporated Pierce County for sewer service. Rates for customers within the City shall be based on the same criteria and methodology as for customers in unincorporated Pierce County. Any tax or surcharge levied by the State of Washington or by the Federal Government which is applicable to County sewer customers shall be added to the sewer service charge billings for properties within the City and shown on the sewer billing statement. If the County proposes to enact new fees, taxes or surcharges on the provision of sewer service by the County, the City and County agree to re-open this agreement to address the terms affected by the proposed change. The County will allow the City to add any fliers, announcements, etc, which the City wishes, to sewer bills mailed by the County to addresses located within the City. The City agrees to pay any additional postage or other incremental costs associated with such a mailing.
- 3.5 <u>Connection Charges</u>. The County will collect sanitary sewer connection charges from City residents in accordance with applicable Pierce County Sanitary Sewer Administrative Code sections, as presently constituted or hereinafter amended, and any other applicable County connection charge related ordinances. City customers will be treated in the same manner as County customers.

To assist the County in calculating and managing sewer connection charges, the City agrees to make its business license applications available to the County. The County may review sewer discharge characteristics of new businesses and make appropriate adjustments in fees consistent with the County's sewer use regulations.

- 3.6 Service Charge Increases. The County shall notify the City of any proposed sewer service rate changes prior to their approval by the Pierce County Council and the City shall be offered the opportunity to provide the County with recommendations concerning the proposed rate changes. With new sewer connections, billing shall begin from the date the connection is made and approved for use by the County. The County shall have full jurisdiction and authority to impose and enforce liens within the City for the purpose of collecting rates, charges, fees and assessments.
- 3.7 <u>Comprehensive Sanitary Sewer Planning</u>. The County will perform a comprehensive sanitary sewer plan, with the assistance of the City, for the City and its Urban Service Area within 24 months after the execution of this Agreement. The County shall reimburse the City twenty-two thousand dollars (\$22,000) for providing preliminary sewer engineering data for presently unsewered properties located in the City within sixty (60) days of execution of this agreement.

- 3.8 <u>Sanitary Sewer Extension Permits and Inspections</u>. The County reserves the right to inspect, at any time, all wastewater facilities located in the City which are connected to the County's sanitary sewer system. The purpose of which shall be to enable the County to comply with any and all conditions of current or future Federal, State and County regulations, for the County's convenience in operating such a system, and to ensure the County's ability to issue permits in accordance with current regulations.
- 3.9 <u>Sanitary Sewer Projects Within the City</u>. For sanitary sewer projects constructed by the County or by private parties to connect to the sanitary sewer system within the City, the County shall ensure that all streets and private properties damaged by the sanitary sewer project are restored to at least their preconstruction condition. In restoring streets the County shall comply with the County's sewer construction standards or the City's public works standards, whichever is more restrictive as determined by the City's Public Works Director.

In the event the City requests that additional facilities or mitigation measures be constructed as a condition of development, beyond those required by City codes or State or Federal law, the City agrees to pay for the added capital costs in accordance with an interlocal agreement for the project. All conditions imposed on the County by the City shall be consistent with Federal and State constitutional law that requires the City to meet both the nexus/reasonable and rough proportionality tests articulated in case law when the City imposes conditions on the issuance of a permit to the County.

The County agrees to pay any permit fee and to compensate the City on a time and material basis for the review of the capital project plans and specifications.

3.10 <u>Utility Local Improvement Districts and Local Improvement Districts</u> (<u>ULIDs/LIDs</u>). The County agrees to work cooperatively with the City to analyze the feasibility for the formation of utility local improvement districts and local improvement districts (ULIDs/LIDs) to provide sanitary sewer service to areas within the City that are not currently receiving sanitary sewer service which is about one-third of the City. The County recognizes the City's right and authority to propose the formation of ULIDs/LIDs within its boundaries and shall assist the City in the study, design, and creation of such ULIDs/LIDs.

The County and the City recognize that the cost of providing sanitary sewer services to presently unserved areas of the City is significant. In some cases the cost may exceed the benefit a homeowner would accrue by being provided permanent sanitary sewers. The City and County agree to work cooperatively on future financing methods to lower the cost of serving these high cost presently unsewered areas of the City.

<u>SECTION 4.</u> CITY RESPONSIBILITY. In consideration for the services provided by the County as described herein the City shall perform as follows:

- 4.1 <u>City to Grant Franchise to the County</u>. In conjunction with this Interlocal Agreement, the City shall grant the County a non-exclusive franchise reasonably necessary to operate, maintain, improve or expand the sewer system within the City for the term of this agreement.
- 4.2 Industrial Pretreatment Regulation and Enforcement Authority
  Facilities located in the City do or may contribute wastewater, which includes
  industrial waste. These facilities are referred to herein as industrial users. The
  City recognizes that the County as a sanitary sewer provider governed by both
  state and federal regulations must implement and enforce a pretreatment program
  to control discharges from all industrial users of its wastewater treatment system
  pursuant to requirements set out in 40 CFR Part 403. To allow the County
  plenary authority to enforce all regulations necessary to meet the County's legal
  requirements, the City agrees to adopt a sewer use ordinance that subjects the
  industrial users within the City to the necessary pretreatment controls. The City
  shall also authorize the County to implement and enforce the City's sewer use
  ordinance.

#### A. Sewer use ordinance

The City agrees to adopt by reference within ninety (90) calendar days of the effective date of this Agreement Pierce County Code Chapter 13.06, Sewer Utility Prohibited Discharges and Industrial Pretreatment Regulations, as presently constituted or hereinafter amended. The ordinance shall specifically authorize Pierce County to enforce Chapter 13.06 within the City

### B. Identifying Industrial Users

- (1) The City agrees to work cooperatively with the County to adopt simple procedures to identify new users of the sewer system within the City. All new users shall be required by the City to submit a Pretreatment Review application to the County and receive a sewer use permit from the County prior to being issued a building permit by the City.
- (2) The County shall expeditiously process such Pretreatment Review applications. The County agrees to provide the City's Permit Center written notification whenever it is unable to complete its review within twenty-one (21) calendar days of receipt of a complete application. The County agrees at no expense to the City to conduct Pretreatment Review activities for new users in the City and to assist the City in identifying new users.
- (3) New users shall include new businesses, change of business, new building construction, remodels of current business sites, expansion or addition of commercial processes, and new tenants leasing commercial property. Any new business tenant in a building designed for multiple occupancy shall complete a

separate Pretreatment Review. Construction of single family housing is specifically excluded from the definition of new users. Construction of multifamily housing shall also be specifically excluded from the definition of new users unless the multi-family housing application includes the construction of non-housing structures such as swimming pools, recreation buildings, group kitchen facilities or laundry buildings.

C. Issuing Wastewater Discharge Permits and Other Control Mechanisms
The City agrees that the County will perform technical and administrative duties
necessary to implement and enforce the Industrial Pretreatment Regulations
adopted by the County and by the City. The County will (1) conduct Pretreatment
Reviews and update the Industrial User Survey, (2) issue wastewater discharge
permits to all industrial users required to obtain permits, (3) conduct inspections,
sampling, analysis and record review to verify compliance with the Industrial
Pretreatment Regulations, (4) take all appropriate enforcement actions outlined in
the Pierce County enforcement response plan and provided for in the Industrial
Pretreatment Regulations adopted by the County and the City; and (5) perform
any other technical or administrative duties deemed necessary to meet the
objectives of the Pierce County Industrial Pretreatment Program. In addition, the
County may take emergency action to stop or prevent any discharge which
presents or threatens and imminent danger to public health, the environment or
operation of the County's Publicly Owned Treatment Plant (POTW).

D. Enforcement of Industrial Pretreatment Regulations
The City agrees that the County shall implement and enforce Chapter 13.06 of the Pierce County Code, as presently constituted or hereinafter amended, on industrial users located within the City.

#### E. Periodic Review

The Parties will review and revise this Agreement to ensure compliance with the Federal Clean Water Act (42 U.S.C. ∋1251 et seq.) and rules and regulations (see 40 CFR Part 403) issued thereunder, as necessary, but at least once every five (5) years on a date to be determined by the Parties.

4.3 <u>City shall not allow installation of septic systems</u>. In keeping with the City's desire to promote use of sanitary sewers within its municipal boundaries, the City will not permit new building construction to utilize septic systems, except in instances where, after a showing by the property owner and consultation by the City with the County it is determined by the City, that permanent sanitary sewer facilities are not physically available to the property and to install such facilities would be cost prohibitive. Similarly, should sewers become available in areas that are served by septic systems, the City shall encourage property owners to connect to the sanitary sewer system.

## 4.4 <u>City/County Coordination of Land Use Applications and Building Permits</u>

- (A) The City shall not issue a building permit for any building that will connect to the County sanitary sewer system nor grant final approval for any land use application that proposes to connect any facilities to the County sanitary sewer system until the County's Public Works and Utilities Department has reviewed and approved the sanitary sewer plans for such building or facilities. The County agrees to expeditiously review and notify the City Permit Center in writing whenever the County will be unable to complete its review, comment or approval processes within twenty-one (21) calendar days of receiving a complete sewer permit application from any applicant who has a related building permit or land use application pending before the City.
- (B) Both the City and the County recognize that there exist in City code land use applications which do not involve sewer issues and which the County does not need to review. As such, the City and the County will work cooperatively to identify those land use applications which the County shall review and implement a procedure to exclude all non-sewer related land use applications from County review.
- (C) If work is required in the City right-of-way, the County 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 City right of way use permit.

## 4.5 <u>Changes in City Zoning Regulations.</u>

- (A) The City shall advise the County of any proposed rezoning in the City. The City shall also notify the County of proposed changes in zoning codes if they relate to sanitary sewer usage. The City shall provide the County with current zoning maps and provide notice of any proposed rezoning applications within the City. The County shall use the information provided to review the adequacy and capacity of the sewer facilities within the area affected by the proposed changes in zoning. The County shall provide written comments back to the City within twenty-one (21) calendar days of being notified of potential zone classification changes within the City.
- (B) The County shall not connect properties within the City in a manner inconsistent with the City's zoning and Comprehensive Plan.
- 4.6 <u>City Added Taxes, Fees or Surcharges.</u> The City shall provide written notice to the County no less than sixty (60) calendar days prior to the implementation of any additional taxes, fees, or surcharges the City proposes to add to the service charge billings for properties within its city limits. The methodology for calculation said tax or surcharge must be compatible with the

County's service charge structure and computer billing system. Within twenty-one (21) calendar days of receipt of notice of the change, the County shall comment on the City's proposed tax or surcharge and shall either affirm its ability to implement the tax, fee or surcharge or show cause as to why its computer billing system is not capable of implementing the tax, fee or surcharge. Any city tax, fee or surcharge shall be shown as a separate line item on the customers sewer statement.

- 4.7 <u>City as Future Provider of Water Services Water Use Data and Water Meter Calibration</u>. If the City now or in the future has control over the water utility within the City, the City shall submit to the County, on or prior to January 31 of each year, all residential, commercial and industrial metered water use data for the preceding calendar year within the City area.
- 4.8 <u>City Will Coordinate with the County on Annual Street and Utility Improvement Projects within the City</u>. The City agrees to contact the County at the outset of any proposed capital improvement project (CIP) where sewers are not present to discuss the feasibility of installing sewers as part of the project. The City will provide the County a copy of any draft capital improvement project plan document for street or utility related capital expenditures for the next calendar year no later than August 1st of the year prior to implementation of the CIP plan. The City will provide the County a final copy of its final CIP plan after final passage by the City Council. City and County will coordinate movement and relocation of any impacted County facilities prior to finalization of the construction plans related to individual CIP projects.

In accordance with County capital improvement plans and to the extent it has the financial ability to do so, the County will install dry lines during major construction or renovation of City streets to enhance the ability of abutting or nearby properties to connect to sanitary sewer. For minor capital improvement projects where the cost of installing the sanitary sewer as part of the City capital improvement project is less than \$100,000, the County agrees to install the sanitary sewers as part of the project, provided the County Council authorizes the expenditure of funds for such project through its annual budget process. Specific terms governing work on joint capital improvement projects shall be through a separate interlocal agreement between the County and City.

## SECTION 5. SANITARY SEWER SERVICE TO PROPERTIES WITHIN THE CITY'S URBAN GROWTH AREA AND FUTURE ANNEXATION AREAS.

This agreement shall not preclude future annexations to the City. Any future annexations to the City will automatically come under this agreement the date the annexation is approved of by the City Council. The County will provide sanitary sewer service to the newly annexed areas provided it has facilities in the immediate vicinity and has line and treatment capacity available to provide service. The County will not, however, provide service to newly annexed areas already receiving service from another sewer service provider, unless formally authorized to do so by the current service provider.

SECTION 6. TERM. This agreement shall have a term of two (2) years commencing upon the date of the last signature by the parties and terminating on December 31, 2000. Thereafter, the agreement will be automatically renewed every January 1 for an additional one year period unless prior written notification of termination is given by either party no later than the preceding June 30<sup>th</sup>. If this agreement is terminated by either party for any reason, the County shall continue to provide all necessary sewer service to customers connected to the sanitary sewer system as of the termination date of the agreement.

SECTION 7. INDEMNIFICATION AND DEFENSE. The County shall defend, indemnify and save harmless the City, its officers, employees and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the County, its officers, employees, or agents associated with this agreement including but not limited to, County delay in processing an application required by this agreement. In executing this agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules, regulations, resolutions, customs, policies, or practices. Provided, however, that the County shall indemnify and hold the City harmless from any claim of any kind associated with City adoption of those portions of Title 13 of the Pierce County Code and the County's Sewerage and Pretreatment regulations which the City shall adopt by reference as required by Section 4.2 of this Agreement. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule, regulation, resolution, custom, policy or practice is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and attorney's service charges.

The City shall defend, indemnify and save harmless the County, its officers, employees and agents from any and all costs, claims, judgments or awards of damages, resulting from the acts or omissions of the City, its officers, employees or agents associated with this agreement. In executing this agreement, the City does not assume liability or responsibility for or in any way release the County from any liability or responsibility which arises in whole or in part from the existence or effect of County 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 County ordinance, rule, regulation, resolution, custom, policy or practice is at issue, and except as provided in the preceding paragraph the County shall defend the same at its sole expense and if judgment is entered or damages are awarded against the County, the City, or both, the County shall satisfy the same, including all chargeable costs and attorney's service charges.

SECTION 8. NO THIRD-PARTY BENEFICIARY. The County does not intend by this agreement to assume any contractual obligations to anyone other than the City, and the City does not intend by this agreement to assume any contractual obligations to anyone other than the County. The County and the City do not intend that there be any third-party beneficiary to this agreement.

<u>SECTION 9.</u> **NON-DISCRIMINATION**. The County and the City certify that they are Equal Opportunity Employers.

SECTION 10. ACCEPTANCE. The County shall provide the City with a written unconditional acceptance of a Sewer Franchise within one hundred and twenty (120) calendar days after the execution of this Interlocal Agreement. A resolution of the Pierce County Council approving this agreement will constitute such acceptance. The City shall enact a Franchise Ordinance which solely incorporates by reference the terms of this Interlocal Agreement.

<u>SECTION 11.</u> **ASSIGNMENT**. Neither the County nor the City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

SECTION 12. NOTICE. Any formal notice or communication to be given by the County to the City under this agreement shall be deemed properly given if delivered, or if mailed postage prepaid and addressed to:

City of University Place 3715 Bridgeport Way West University Place, WA 98466 Attention: City Manager

Any formal notice or communication to be given by the City to the County under this agreement shall be deemed properly given if delivered, or if mailed postage prepaid and addressed to:

Pierce County
Pierce County Executive's Office
930 Tacoma Avenue South, Room 737
Tacoma, Washington 98402-2100
Attention: Executive Director of Operations

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 the City or the County giving notice thereof to the other as herein provided.

SECTION 13. COUNTY AS INDEPENDENT CONTRACTOR. County is, and shall at all times deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between City and County or any of the County's agents or employees. The County shall retain all authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services by County pursuant to this Agreement.

Nothing in this agreement shall make any employee of the City a County employee or any employee of the County a City employee for any purpose, including, but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded County or City employees by virtue of their employment.

SECTION 14. 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 of any subsequent breach, whether of the same or a different provision of this agreement.

### SECTION 15. AGREEMENT ADMINISTRATION AND DISPUTE

RESOLUTION. The County shall designate one or more employee representatives from the Department providing the services within the City as authorized by this Interlocal Agreement. The employee representatives shall act as liaisons with the City to handle daily administration of this Agreement. The City shall designate one or more liaisons for the various services described herein. Each party shall notify the other in writing of its designated representatives. County liaisons shall meet with the City liaisons on a regular or on an as-needed basis, whichever the liaisons deem appropriate, to discuss questions and resolve problems regarding the implementation of this Interlocal Agreement. Any operational conflict that is not resolved by the liaison committee shall be referred to the City Manager and the County Executive.

SECTION 16. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

<u>SECTION 17</u>. **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 18. NO REAL PROPERTY ACQUISITION OR JOINT**

**FINANCING**. This Interlocal Agreement does not provide for the acquisition, holding or disposal of real property. Nor does this Agreement contemplate the financing of any joint or cooperative undertaking. There shall be no budget maintained for any joint or cooperative undertaking pursuant to this Interlocal Agreement.

SECTION 19. FILING. Copies of this Interlocal Agreement, together with the resolution of the Pierce County Council and the University Place City Council approving and ratifying this agreement, shall be filed with the University Place City Clerk, the Pierce County Auditor, and the Secretary of State of Washington after execution of the agreement by both parties.

SECTION 20. 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.

DOUG SUTHERLAND PIERCE COUNTY EXECUTIVE

Leaves X Mcc. 27: Doug Sutherland

3/9/99 Date

APPROVED AS TO FORM:

JOHN LADENBURG PIERCE COUNTY PROSECUTOR

By: Deputy Prosecuting Afformey

3/4/99 Date

## CITY OF UNIVERSITY PLACE

By: Robert W Jean City Manager 1/26/99 Date

ATTEST:

By: Susan Matthew City Clerk 1/24/99 Date

APPROVED AS TO FORM:

By: Timothy X. Sullivan City Attorney

Date

## SEWER FRANCHISE AGREEMENT BETWEEN PIERCE COUNTY AND THE CITY OF UNIVERSITY PLACE

WHEREAS, the City of University Place (the "City") has authority to grant franchises for the use of its public streets and other public properties pursuant to Chapter 35A.47.040 RCW; and

WHEREAS, Pierce County, a political subdivision of the State of Washington (the "County"), through its Department of Public Works and Utilities owns, operates and maintains a sanitary sewer system, which includes a wastewater treatment plant, throughout portions of Pierce County, as well as within the City, pursuant to Chapter 36.94 RCW; and

WHEREAS, the County provides sewer service in the City; and

WHEREAS, the County and the City have negotiated the contractual requirements contained within the franchise and desire to enter into a franchise agreement substantially as set forth in the attached Sewer Franchise Agreement to install, operate and maintain the County's system of sewerage in the public rights-of-way of the City; now therefore, the County and the City agree as follows:

This franchise grants to the County the right, privilege and authority to construct, operate, maintain, remove, replace and repair all necessary facilities for a sanitary sewer system in, under, on, across, over, through, along or below the public rights-of-way located in the City, as approved under City permits issued pursuant to applicable City codes and regulations. Public "rights-of-way" means all public streets, roads, alleys, highways, and easements of the City as now or hereafter laid out, platted, dedicated or improved. Whenever the City vacates a public right-of-way in which County facilities are located, the City shall reserve to the County an easement for access to its facility for operation, maintenance, repair, and replacement, which said width thereof shall be in accordance with County standards as subject to and limited by the boundaries of the right-of-way being vacated.

#### 1. Non-Exclusive Franchise.

• ; ,

This franchise is non-exclusive, and the City reserves the right to grant other or further franchises in, along, over, through, under, below or across any of its public rights-of-way. This franchise shall in no way prevent or prohibit the City from using any of its public rights-of-way or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement and dedication of same, including the dedication, establishment, maintenance and improvement of all new rights-of-way, thoroughfares, and other public properties of every type and description.

#### 2. Cooperative Administration.

The County and the City each recognize its respective obligation to plan in accordance with the laws of the State. In furtherance of that obligation, the County will prepare its Unified Sewer Plan pursuant to RCW Chapter 36.94, both substantively and procedurally, so that it is compatible with City planning documents and the planning documents of other jurisdictions that are served by the County's sewerage system. To assure such compatibility, the County will solicit input from the City with regard to County's sewerage planning activities early in the planning process, so that City comments may be considered by the County and, if appropriate, incorporated into the Unified Sewer Plan. To facilitate the County's efforts to comply with Growth Management Act requirements to provide urban government services in urban growth areas, the City will supply the County with requested information in a timely manner.

#### 3. Relocation of Sanitary Sewer System Facilities.

3.1 As consideration for the County's agreement to pay to the City the monthly compensation stated in Section 12, the City shall fully reimburse the County for all costs and expenses to protect, support, temporarily disconnect, relocate, adjust or remove from any public right-of-way within the City's corporate limits as it exists now or in the future, any of its installations when so required by the City by reason of traffic conditions or public safety, dedications of new rights-of-way and the establishment and improvement

thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, or the construction within the right-of-way by the City of any public works project provided that, with City approval, the County may temporarily bypass, in the authorized portion of the same street, any section or portion of its sanitary sewer system required to be temporarily disconnected or removed. The County shall invoice the City for such costs and expenses each calendar month and the City shall pay such costs and expenses within thirty (30) days from the billing date, after which time the payment of such respective costs and expenses shall be delinquent. Delinquent charges shall accrue interest on the unpaid balance from the date of delinquency until paid, at an interest rate of one percent (1%) per month.

- 3.2 Any condition or requirement imposed by the City upon any person or entity which reasonably necessitates the relocation of the County's facilities within the franchise area shall be subject to full reimbursement to the County for all costs and expenses for such utility relocation and the County's right to establish terms for such utility relocation with such person or entity; provided, such arrangements do not unduly delay a City construction project. The County shall invoice the person or entity for such costs and expenses each calendar month and the person or entity shall pay such costs and expenses within thirty (30) days from the billing date, after which time the payment of such respective costs and expenses shall be delinquent. Delinquent charges shall accrue interest on the unpaid balance from the date of delinquency until paid, at an interest rate of one percent (1%) per month.
- 3.3 Except as stated in section 3.5 herein, if the City determines that a project necessitates the relocation of County facilities, the City shall:
  - A. At least ninety (90) days before commencement of the improvement project, provide the County with written notice requiring a utility relocation; provided that the City shall notify the County of a relocation required by a City capital improvement project as soon as the City, acting with reasonable diligence, learns that relocation of utilities are required; and
  - B. Provide the County with copies of pertinent portions of thirty percent (30%) plans for such improvement project and a proposed location for County facilities so that the County may relocate its facilities in other City rights-of-way in order to accommodate such improvement project; and
  - C. The City and County shall work cooperatively during the design process to resolve conflict issues between existing City/County facilities; and
  - D. After receipt of such notice and such plans, and unless the City agrees that the relocation should occur in conjunction with the City's project, the County shall complete relocation of its facilities at least ten (10) days prior to commencement of the City's project. Relocation shall be accomplished in such a manner as to accommodate the City's project. The County shall not be considered in breach of this Section if the City fails to give the required notice or if it is delayed by the time required:
    - (i) to comply with state bid law requirements for contracting out any of the relocation work and the County has diligently pursued the award of the necessary contract; or
    - (ii) to obtain or comply with any permits necessitated by environmental or endangered species requirements; or
    - (iii) to obtain sole source materials necessary for the relocation work.
- 3.4 The County may submit to the City written alternatives to any requested relocation, to which the City shall give full and fair consideration. The County shall submit additional information requested by the City in a timely manner as necessary to aid the City's evaluation. The City shall advise the County in writing if one or more of the alternatives is acceptable. If the City determines that no other reasonable or feasible alternative exists, the County shall relocate its facilities as otherwise provided in this Agreement.

- 3.5 Where the City has relied upon the as-built maps, plans, and/or the best available information submitted by the County to determine that the County's pipe and/or facilities (live/or abandoned) will not be affected by a proposed City improvement project, and subsequently during the construction of the City improvement project, the City finds that the County's pipe and/or facilities are in the construction area, the City shall notify the County, and the County shall expeditiously remove and relocate its facilities.
- 3.6 The County may establish terms for any utility relocation that is requested by a third party if the utility is not being relocated at the direction of the City; provided such arrangements do not unduly delay a City construction project or unduly impact sewer services.

#### 4. Maps and Records.

After construction of new facilities in the City rights-of-way, the County shall provide to the City, upon request and at no cost, a copy of all as-built plans, maps, and records detailing the location and condition of its facilities within the public rights-of-way and public places.

#### 5. Abandonment of Sanitary Sewer Pipe, Manholes and System Facilities.

The County shall not abandon in place any County property located in any right-of-way without the written consent of the City, which shall not be unreasonably withheld; provided that the County must provide the City with (1) as-built drawings showing the location of the facilities to be abandoned; and (2) if the County property is composed in whole or in part of hazardous material (i.e. asbestos), the County shall provide the City with written documentation showing its plans for compliance with all applicable regulations pertaining to abandonment of said hazardous materials.

Unless the County has conveyed the abandoned property to the City, and the City accepts such conveyance, the County, when so directed by the City, shall, at the County's expense, remove abandoned County property located in the right-of-way composed in whole or in part of materials containing hazardous materials. In removing such material, the County shall conform to all local, state, and federal regulations applicable to such abatement and shall be responsible for all costs of remediation.

Whenever the direction to remove County facilities is associated with a City project, the parties shall comply with section 3 of this Agreement. The County shall comply expeditiously, subject to permitting requirements, engineering necessity, and laws governing public contracts. The parties working together shall develop a schedule for removal that is reasonable under the circumstances. If the County fails to comply with the agreed schedule, the City may, at the County's expense, remove the County's facilities.

#### 6. Excavations.

All work performed by the County or its contractors shall be accomplished in a safe and workmanlike manner and in a manner that will minimize interference with traffic and the use of adjoining property. The County shall post and maintain proper barricades and comply with all applicable safety regulations during construction as required by the ordinances of the City or the laws of the State of Washington.

The County shall submit to the City's Director of Public Works or his/her designee ("Director") for review and approval the requested number of plan sets drawn to an accurate scale showing the location, character, position, dimension, depth, and height of the work to be done. The plans shall provide sufficient detail, as determined by the Director, with respect to the relative position and location of all pipes, conduits, mains, manholes, facilities, and appurtenances to be constructed, laid, relaid, installed, replaced, repaired, connected or disconnected, and the existing street, avenue, alley, highway, right-of-way or property line, including the local improvements therein.

Except as otherwise provided herein, the County shall apply for and secure all necessary City permit(s) to work in the public rights-of-way and, in addition, shall give the City at least five (5) working days' notice of its intent to commence work in the public rights-of-way.

If either party plans to excavate in the public rights-of-way, then upon a written request from the other, that party may share such excavation upon mutually agreed terms and conditions.

#### 7. Restoration.

After completion of work in a public right-of-way, the County shall restore the surface of the right-of-way to the same condition as existed immediately prior to the work and to the standards established on the approved plans or permit conditions, whichever is greater; however, if such work is to be followed by a City capital improvement project, then the City shall be responsible for any restoration work. The City's Public Works Director shall have final approval of the condition of such streets and public places after restoration, and such approval will not be unreasonably withheld. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state, and local standards and specifications. The County shall complete all restoration work promptly and shall promptly repair any damage caused by such work.

#### 8. Emergency Work (Permit Waiver).

Whenever a County facility located in a right-of-way endangers property, health or safety, the County shall immediately take proper emergency measures, without first obtaining a permit as required by this franchise. However, the County shall notify the City of the work no later than the next succeeding business day and apply for a right-of-way permit within forty-eight (48) hours.

#### 9. Dangerous Conditions, Authority for City to Abate.

If work related to facilities authorized by this franchise endangers property or the public's health and safety, the Public Works Director may direct the County, at the County's own expense, to take appropriate protective action, including compliance within a prescribed time. Unless otherwise notified in writing by the County, the City shall notify the County as follows:

Contact Person: Pierce County Wastewater Utility Manager

Phone number: 253-798-4050 Cell/pager number: 253-377-8271

If the County does not comply with such directions, or if immediate action is required to protect property or the public's health and safety, the City may take reasonable emergency measures, and the County shall be liable to the City for the costs thereof.

#### 10. Indemnification.

The County shall release, indemnify, and defend the City, its officers, employees, agents, and representatives from any and all claims, costs, judgments, awards, or liability to any person for injury or death of any person or damage to property caused by or arising out of the negligent acts or omissions of the County, its agents, servants, officers, or employees, performed under authority of this franchise; provided, that for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the County and the City, its officers, employees, and agents, the County's obligation shall be only to the extent of the County's negligence. This indemnification includes claims by the County's own employees for which the County might otherwise be immune under Title 51 RCW, and the County waives its immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The foregoing obligation and waiver shall also extend to any claims, costs, judgments, awards, fines or penalties or liability to any person for injury or death of any person or damage to property caused by or arising out of the County's abandonment or removal of hazardous material under section 5.

Inspection or acceptance by the City of any work performed by the County at the time of completion of construction shall not relieve the County of any of its obligations under this section.

If a court or other tribunal agreed upon by the parties determines that the County wrongfully refused the tender of defense in any suit or any claim made pursuant to this indemnification provision, the County shall pay all of the City's costs for defense of the action, including all expert witness fees, costs, and attorney's fees, including costs and fees incurred in recovering under this indemnification provision.

The City shall defend, indemnify, and hold the County harmless from and against any and all claims, suits, actions or liabilities (including litigation costs and attorney's fees) arising from the execution of this Agreement in any way related to the imposition of any fee, compensation or surcharge, the collection of any fee, compensation or surcharge from ratepayers, or the County's payment of any fee, compensation or surcharge to the City.

#### 11. Insurance.

. 5

The County shall procure and maintain for the duration of the franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted hereunder to the County, its agents, representatives, or employees. The County shall provide an insurance endorsement, naming the City as an additional insured, to the City for its inspection prior to the adoption of this Franchise Agreement, and such endorsement shall evidence a policy of insurance that includes:

- A. Automobile Liability insurance with limits no less than \$1,000,000 Combined Single Limit per occurrence for bodily injury and property damage; and
- B. Commercial General Liability insurance, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury, and property damage. Coverage shall include but not be limited to: blanket contractual; products and completed operations; broad form property damage; explosion, collapse, and underground (XCU); and employer's liability.

The County's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the County to coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity. The County may satisfy the requirements of this section by a self-insurance program or membership in an insurance pool providing coverage substantially the same as set forth above.

#### 12. Agreement not to Compete (Non-Assumption) and Mutual Consideration.

- During the term of this franchise, the County agrees to pay to the City compensation in an amount equal to six percent (6%) of the regular rates and charges for the furnishing of service, collected by the County on all sewer accounts located within the City. This compensation is consideration for the City's agreement not to establish a City-owned sewer utility in competition with the County system, and the City's promise not to exercise its statutory authority under Chapter 36.94.180, as currently written or as may be hereafter amended or modified, to assume jurisdiction over that portion of the County's sanitary sewer system lying within the City's corporate boundaries and provide services to properties within said boundaries or any part thereof during the term of this franchise. The County shall disburse funds collected pursuant to this section to the City on a monthly basis with the first payment being made the first full month after this amount of compensation is collected. This payment may be recovered from ratepayers and reflected on said customers' monthly bills as a separate line item. As consideration for the County's agreement to pay such compensation to the City, the City shall fully reimburse the County for all costs and expenses for any relocation of County sewer facilities as stated in Section 3. The percentage rate of compensation shall not be increased without the consent and agreement of the City and the County.
- 12.2 The City and County acknowledge and agree that all properties in the City are not served by sewer and that the long-term goal of both parties is to extend the sewer system to be readily available to all properties in the City. Therefore, as additional material consideration to the County, the City agrees that at least once each calendar year for the term of this franchise, the City will consult with the County on

sewer extension opportunities and options, and the City Council will study in a public meeting potential programs, policies, and then-available opportunities to extend the sewer system to be readily available to all properties in the City.

12.3 Upon the City's request, the County shall within thirty (30) days make available to the City for examination, audit and review, the County's books and records pertaining to all revenue and charges derived by the County by virtue of this franchise, to verify the accuracy of payments. The City shall maintain the confidentiality of the information the County provides to the extent permitted by law when the County has notified the City of the confidential nature of said information. Should such a review result in the discovery of an error in payment (over or under payment), the City shall notify the County in writing of its findings and the error shall be mitigated by the County in the next monthly payment cycle.

#### 13. Modification.

14

The terms and conditions of this franchise may be modified only upon written agreement of the parties.

#### 14. Forfeiture and Revocation.

If the County willfully fails to comply with any provision of this franchise, or through willful misconduct or gross negligence fails to comply with any notice given the County by the City under the provisions of this franchise, then the City may revoke this franchise after a hearing is held upon notice to the County.

#### 15. Remedies to Enforce Compliance.

In addition to any other remedy, the City may obtain a superior court order compelling the County to comply with the provisions of this Franchise Agreement and seek to recover damages and costs incurred by the City by reason of the County's failure to comply. The pursuit of any right or remedy by the City shall not prevent the City from acting under section 14.

#### 16. City Ordinances and Regulations.

This franchise shall not prevent the City from adopting and enforcing all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers. While the design and construction of the County's sewer facilities shall be in accordance with County standards, the City retains its authority to control by reasonable regulations the location of County's system of sewerage in the public rights-of-way, and the County shall conform with all such regulations, unless compliance would cause the County to violate other requirements of law.

#### 17. Cost of Publication.

The cost of the publication of the Ordinance approving this Franchise Agreement shall be borne by the City.

#### 18. Survival.

Section 3 (Relocation of Sanitary Sewer System Facilities), Section 5 (Abandonment of Sanitary Sewer Pipe, Manholes and System Facilities), Section 6 (Excavation), Section 7 (Restoration), Section 9 (Dangerous Conditions, Authority for City of Abate) and Section 10 (Indemnification) shall be in addition to any and all other obligations and liabilities the County may have to the City at common law, by statute, or by contract, and shall survive the City's franchise with the County for the use of the City rights-of-way. The Ordinance approving this Franchise Agreement is binding upon the successors and assigns of the County and all privileges, as well as all obligations and liabilities of the County, shall inure to its successors and assigns.

#### 19. Assignment.

This franchise may not be assigned or transferred without the written approval of the City, which approval shall not be unreasonably withheld.

#### 20. Notice.

Any notice required or permitted by this franchise may be sent to the following addresses unless otherwise specified in writing:

CITY OF UNIVERSITY PLACE Public Works Director 3715 Bridgeport Way West University Place, WA 98466 Pierce County Public Works and Utilities Public Works Director 9850 64th Street West University Place, WA 98466

#### 21. Severability.

If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court, the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance shall not be affected, unless the rights, privileges, duties, or obligations hereunder are materially altered, whereupon either party may request renegotiation of those remaining terms.

#### 22. Franchise Term.

This Franchise Agreement is and shall remain in full force and effect for a period of twenty (20) years from and after the effective date of the Ordinance approving same; provided, however, the County shall have no rights under this Franchise Agreement, nor shall the County be bound by the terms and conditions of this Franchise Agreement, unless the County shall, within sixty (60) days after the effective date of the Agreement, file with the City its written acceptance of the Franchise Agreement.

#### 23. Effective Date.

This Agreement will take effect when both parties have executed below.

IN WITNESS WHEREOF, the parties hereby execute this Agreement as follows.

CITY OF UNIVERSITY PLACE

Stephen P. Sugg, City Manager

Date: Jan 30, 2017

Approved as to form,

Steve Victor, City Attorney

#### **ACCEPTANCE OF FRANCHISE**

Pierce County accepts the nonexclusive franchise with the City of University Place approved by the University Place City Council, by the adoption of University Place City Ordinance No.668

DATED this 16 day of February, 2017

PIERCE COUNTY

County Executive

## PIERCE COUNTY CONTRACT SIGNATURE PAGE

SUPPLIER:	CITY OF UNIVERSITY PLACE
CONTRACT NAME:	Sewer Franchise Agreement between Pierce County and The City of University Place
CONTRACT NUMBER:	SC-104818
	PIERCE COUNTY
	Approved as to legal form only: without review as Comeil's Executive had previously approved:  By 2017 Deputy Prosecuting Attorney Date
	Recommended:
	Budget and Finance Date
	Approved:
	By 2/3/16/17 Department Director (Less than \$250,000)
	By See page 8 for signature County Executive Date (\$250,000 or more)