

**CITY OF PORTLAND AND UNIFIED SEWERAGE AGENCY
WHOLESALE SEWER SERVICE AGREEMENT**

This Agreement is entered into pursuant to ORS 190.010 and ORS 454.165 between the City of Portland, hereinafter called the City, and the Unified Sewerage Agency, hereinafter called the Agency, under the authority of the charters and laws applicable to the City and the Agency for the purposes set forth below.

I. PURPOSE AND INTENT OF AGREEMENT

- A. To provide for transportation and treatment of sewage discharged from property within the portion of the Agency that lies within the drainage area of the City's new Fanno Basin Sewer Pump Station located on the Agency's Fanno Creek Interceptor, hereinafter called pump station, as shown in Exhibit A, defined as Area B.
- B. To provide for transportation and treatment of sewage discharged from property within the portion of the City that lies within the drainage area of the Agency, but outside the drainage area of the City's new Fanno Basin Sewer Pump Station as shown in Exhibit A, defined as Area C. This agreement will not provide for transportation and treatment of sewage from the area in the City served by the pump station, as shown in Exhibit A, defined as Area A, except as specified in Section VI.
- C. To provide a mechanism for payment between the City and the Agency for the difference in sewer flows, and provide a mechanism for payment of new connections.
- D. To provide a definition of procedures in the event of overflows from the new pump station.
- E. To provide standards for performance and provisions for monitoring the flows from each area.
- F. To provide standards for pretreatment programs administered by the City and the Agency.
- G. To provide for compliance with existing and future federal, state, and local requirements which are applicable to and binding on the City and the Agency.

II. DEFINITIONS

A. Director

For the City, the Director of the Bureau of Environmental Services or designee. For the Agency, its General Manager or designee.

B. Code

The Code of the City of Portland, as amended from time to time. The original is on file with the Auditor's Office of the City of Portland.

C. Agency Resolution or Ordinance

Agency Resolutions and Orders, or Ordinances, as approved or adopted by the Agency's Board of Directors, as amended from time to time. Originals are on file with the Agency.

D. Agency Discharge Code

The Agency Discharge Code as set forth in Resolution and Order 92-60 as amended.

E. Equivalent Dwelling Unit (EDU) or Dwelling Unit Equivalent (DUE)

For determination of EDU's (also known as DUE's), both residential and nonresidential properties shall be determined by each jurisdiction, either the Agency or the City, where property is located. This determination shall be based on Agency ordinance, Agency Resolution or City Code. For purposes of determining EDU's for the bypass flow, 12,000 gallons per month shall be one EDU.

F. City Rate

The City rate is the sanitary volume charge times the City-wide average monthly winter water usage plus the monthly service charge, as shown in Chapter 17 of the Code of the City of Portland.

G. Agency Rate

The Agency rate is the use charge times the system-wide average winter water consumption plus the monthly base charge, in accordance with the "sanitary sewer service charge" described in Agency Ordinances 28 and 29 and the annual Rates and Charges Resolution and Order.

H. City Connection Charge

The City connection charge is the "sewage system connection charge" per equivalent dwelling unit as described in City Code Section 17.36.020 B, and shown in City Code Chapter 17, Figure 5.

I. Agency Connection Charge

The Agency connection charge is the "System Development Charge" per equivalent dwelling unit described in Agency Ordinances 28 and 29 and the annual Rates and Charges Resolution and Order.

J. Certified Agency Portion

The portion of monthly service charges and connection charges collected which shall be remitted to the Agency for retirement of revenue bonds and other Agency responsibilities. The Agency Board annually certifies the portion of rates and charges to be paid or retained by the Agency (or City, as appropriate) in the Rates and Charges Resolution and Order. For example, in FY 97-98 the Certified Agency Portion is 78.6% of monthly service charges and 80.0% of connection charges.

K. Applicable Fees

Applicable fees in the city shall include all fees as described in City Code Section 17.36.020 and shown in Figure 5. Applicable fees in the Agency shall include all fees as described in Agency Ordinance and the annual Rates and Charges Resolution and Order.

III. LIMITATIONS ON DISCHARGE

The Agency and the City shall adopt and enforce through vigorous inspection, sewer construction and maintenance standards that minimize the amount of infiltration and inflow entering the other's sewer system.

The Agency and the City shall enact, maintain and enforce ordinances and regulations prohibiting direct or indirect connections of roof drains, footing drains and all other stormwater and groundwater connections to any portion of the other's sewer system served under terms of this Agreement.

The Agency and the City shall not allow sanitary sewage or infiltration and inflow to the sewer system that will cause the Tryon Creek Wastewater Treatment Plant (TCWTP), the Columbia Boulevard Wastewater Treatment

Plant (CBWTP) or the Durham Treatment Plant to exceed the limitations of the National Pollution Discharge Elimination System (NPDES) permit, or otherwise be detrimental to efficient operation or the economical disposal of sewage sludge, or adversely affect operations or the product of the sewage sludge composter, or cause any treatment plant to be inoperable.

The Agency and the City shall not allow sewage to be discharged to the other's sewer system from properties located outside the area of the sewer system served under terms of this Agreement as shown in Exhibit A without specific written permission of the Director of the City's Bureau of Environmental Services or the Agency's General Manager.

IV. PRETREATMENT

- A. The Agency owns and operates a wastewater collection and treatment system. The City owns and operates a wastewater collection and treatment system.
 1. The City is mandated to implement and enforce a pretreatment program to control discharges from Industrial Users to its wastewater treatment system pursuant to requirements set forth in its NPDES Permit, 40 CFR Part 403, and other federal and state regulations.
 2. The Agency is mandated to implement and enforce a pretreatment program to control discharges from Industrial Users to its wastewater treatment system pursuant to requirements set forth in its NPDES Permit, 40 CFR Part 403, and other federal and state regulations.
 3. Certain facilities located in the Agency and the City contribute wastewater which may include non-domestic sources of wastewater to the other's wastewater treatment system. These facilities are referred to as Industrial Users.
- B. The Agency agrees to administer its pretreatment program and to perform Industrial User surveying in those areas of the Agency discharging to the City sewer system. Therefore, the Agency shall:
 1. Notify the City of potential Industrial Users as defined by Agency's Ordinance prior to connections. The Agency shall not allow connection of any Industrial User which is required to have an Industrial Wastewater Discharge Permit, without specific authorization by the City's Director.
 2. Provide the City with a copy of the Agency Industrial User Survey and annual update for that portion of the Agency discharging to the City's sewer system on or before February of each year.
 3. Pay for all costs incurred in implementing the requirements of this section.
- C. The City agrees to administer its pretreatment program and to perform Industrial User surveying in those areas of the City discharging to the Agency sewer system. Therefore, the City shall:
 1. Notify the Agency of potential Industrial Users as defined by City's Code prior to connections. The City shall not allow connection of any Industrial User that is required to have an Industrial Wastewater Discharge Permit, without specific authorization by the Agency's General Manager.
 2. Provide the Agency with a copy of the City Industrial User Survey and annual update for that portion of the City discharging to the Agency's sewer system on or before February of each year.
 3. Pay for all costs incurred in implementing the requirements of this section.
- D. If the City determines that an Industrial User is required to have an Industrial Wastewater Discharge Permit, the Agency authorizes the City to implement and enforce the City's Industrial Discharge Code, Chapter 17.34 of the Code, and amendments for the Industrial Users located in the Agency that discharge to the City's wastewater collection and treatment system.

- E. If the Agency determines that an Industrial User is required to have an Industrial Wastewater Discharge Permit, the City authorizes the Agency to implement and enforce the Agency's Industrial Discharge Code for the Industrial Users located in the City that discharge to the Agency's wastewater collection and treatment system.
- F. The City agrees to perform technical and administrative duties for the Agency which are necessary to implement and enforce the City's Industrial Wastewater Discharge Code. Therefore, the City shall:
1. Provide technical services such as sampling and analysis, issue permits, conduct inspection and compliance monitoring, and perform enforcement activities. In addition, the City is authorized to take emergency action to stop or prevent any discharge which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to interfere with operation of its wastewater treatment plant.
 2. Be responsible for all costs it incurs in implementing and enforcing this section.
- G. The Agency agrees to perform technical and administrative duties for the City which are necessary to implement and enforce the Agency's Discharge Code. The Agency's Discharge Code as set forth in Resolution and Order 92-60, as amended from time to time. Therefore, the Agency shall:
1. Provide technical services such as sampling and analysis, issue permits, conduct inspection and compliance monitoring, and perform enforcement activities. In addition, the Agency is authorized to take emergency action to stop or prevent any discharge which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to interfere with operation of its wastewater treatment plant.
 2. Be responsible for all costs it incurs in implementing and enforcing this section.
- H. The parties agree to review and revise this section to ensure compliance with the Federal Clean Water Act (42 U.S.C.1251 et seq.) and the rules and regulations issued thereunder, as necessary.
- I. If the authority of the City to act as agent for the Agency under this Agreement is questioned by an Industrial User, court of law, or otherwise, the Agency will take whatever action is necessary to ensure the implementation and enforcement of its Industrial Wastewater Discharge Code on its own behalf and/or by amending this Agreement to clarify the City's authority.
- J. If the authority of the Agency to act as agent for the City under this Agreement is questioned by an Industrial User, court of law, or otherwise, the City will take whatever action is necessary to ensure the implementation and enforcement of its Industrial Wastewater Discharge Code on its own behalf and/or by amending this Agreement to clarify the Agency's authority.

V. CHARGES FOR TRANSPORTATION AND TREATMENT OF SEWAGE

Payments between the Agency and the City for each month will be based on the net difference in the estimated volume of sanitary sewage generated by each area for each month.

The volume of sanitary sewage flow from each area will be estimated based on the number of EDU's. The number of EDU's in each area for a given month will be determined based on the rules in place that month of the jurisdiction from which the flow originates. The Agency will determine EDU's for Area B, and the City will determine EDU's for Area C. Payments for each month shall be based on the difference in EDU's except as modified by Section VI.

The payment for the difference in EDU's for each month shall be calculated as follows:

If EDU's in Area C exceed EDU's in Area B, then the City shall pay the Agency:

$$((\text{EDU's in Area C}) - (\text{EDU's in Area B})) \times (\text{Certified Agency Portion}) \times (\text{current Agency rate})$$

If EDU's in Area B exceed EDU's in Area C, then the Agency shall pay the City:

$$((\text{EDU's in Area B}) - (\text{EDU's in Area C})) \times (\text{Certified Agency Portion}) \times (\text{current City-rate})$$

Reports of EDU's shall be made within 15 days of the end of the month; payment shall be calculated by the City and reported to the Agency; and payment shall be made within 45 days of the end of the month.

VI. OVERFLOW CONNECTION

The Agency shall allow a bypass connection from the pump station to the Agency's Fanno Creek Interceptor. The bypass connection shall be kept in a closed position, except as provided below.

Under normal operation conditions, the pump station will pump to the City 100% of the flows from the area upstream of the pump station with no overflows or bypasses to the Agency system. The City shall design the pump station to have adequate capacity for anticipated flows, including infiltration and inflow during peak storm events. In addition, the City shall design the pump station to have backup power and other redundancies in accordance with DEQ standards and subject to Agency review and approval to reduce the probability of a pumping failure.

Even with the design criteria stated above, it is possible that extraordinary circumstances will occur where the pump station will fail or will not have adequate capacity. In such circumstance, the bypass connection may be opened by either party to allow excess flows to enter the Agency's system. Whichever jurisdiction opens the bypass shall notify the other immediately.

Whenever the bypass connection is used (except for repair work of limited duration, for which the Current Agency Rate will apply), the City will reimburse the Agency for any direct expenses incurred by the Agency that are necessitated by the emergency bypass, and will pay the Agency for the flow volume at three times the current Agency Rate, as follows:

$$(\text{EDU's for the bypass flow}) \times (\text{Certified Agency Portion}) \times 3 \times (\text{current Agency rate})$$

VII. CONNECTION TO AND USE OF FACILITIES AND CONNECTION CHARGES

Properties which lie within the City's or the Agency's boundaries may require collection facilities, and because of topography or economy of scale or other reasons, construction of collection facilities may be most feasible in whole or in part within the boundaries of the other party. Therefore, the Agency and the City shall cooperate in all matters relating to the provision of such collection facilities. Connection to and use of either party's collection system shall be in accordance with the provisions of this Agreement.

To avoid duplication of sewer construction, and upon approval by its administrator, both parties to this Agreement shall allow the other to connect to and use its sewer system to convey sewage to the other's sewage transportation and treatment system.

The party in whose jurisdiction the connecting property is located shall require a sewer connection permit and shall collect all applicable fees as if the sewer were under its full jurisdiction. The party owning the sewer treatment facilities receiving the flow from the new connection shall not require payment of connection charges from the property owner, but shall collect all its applicable fees from the party in whose jurisdiction the property is located.

If a direct connection is to be made to any trunk or interceptor, the party owning the trunk or interceptor shall review and approve the tap in the sewer. Before the sewer is tapped, the property owner shall be required to obtain a sewer connection permit from the party in whose jurisdiction the property is located and to pay the tap fee applicable in that jurisdiction. (The party in whose jurisdiction the property is located shall pay the party owning the trunk or interceptor the tap fee applicable within that party's jurisdiction, as described in the preceding paragraph.) All connections will be made according to the "Rules for Sewer Connection" of the party owning the trunk or interceptor to be tapped. Also, the property owner (or the jurisdiction requesting the tap) shall be required to provide a trench or hole with adequate shoring to allow safe access to the sewer.

To facilitate calculation of the quantity of sewage from the Agency and the City, both shall keep records of the number, address, and equivalent dwelling units that have made connection to any system served by the other. Each jurisdiction will forward such information monthly to the other, and mail such information within 15 days after completion of each month. In addition, for purposes of billing, connections served by a system completed anytime during a given month will be considered to have been connected for the full month.

When the contract is let to construct the new pump station, the connection charges due to the Agency from the City in Area A shall be waived from that date forward since the area will thereafter be served by the City.

Within Area B, whenever a vacant property connects to the sanitary sewer or whenever an existing property expands its sanitary sewer usage, a connection fee shall be paid to the City for the new connection or expanded usage. Payment shall be calculated by combining all new (or expanded) connections for the month from Area B, and netting the EDU's represented by those new or expanded connections against new EDU's from Area C.

Within Area C, whenever a vacant property connects to the sanitary sewer or whenever an existing property expands its sanitary sewer usage, a connection fee shall be paid to the Agency for the new connection or expanded usage. Payment shall be calculated by combining all new (or expanded) connections for the month from Area C, and netting the EDU's represented by those new or expanded connections against new EDU's from Area B.

If new EDU's in Area C exceed new EDU's in Area B, then the City shall pay the Agency

$$((\text{new EDU's in Area C}) - (\text{new EDU's in Area B})) \times (\text{Certified Agency Portion}) \times (\text{current Agency rate})$$

If new EDU's in Area B exceed new EDU's in Area C, then the Agency shall pay the City

$$((\text{new EDU's in Area B}) - (\text{new EDU's in Area C})) \times (\text{Certified Agency Portion}) \times (\text{current City rate})$$

VIII. TERM OF AGREEMENT

This Agreement shall be in effect on July 1, 1999, and be in effect in perpetuity or until terminated by either party. Either party may terminate this Agreement by giving the other party 18 months written notice. After such notice is given, the Agreement shall automatically terminate at the end of the 18-month period. Either party may reopen negotiation of any or all terms of the Agreement by giving the other party six months written notice of its desire to renegotiate the Agreement.

IX. SEVERABILITY

In the event any of the provisions of this Agreement shall be held to be impossible, invalid, or unenforceable, the remaining provisions shall be valid and binding upon the parties hereto.

X. WAIVER

One or more waivers by either party of any provision, condition, or covenant shall not be construed by the other party as a waiver or subsequent breach of the same by the other party.

XI. INTERPRETATION

This Agreement was drafted as a joint effort of the City and the Agency. It therefore shall not be construed against any party preparing it, but shall be construed as if both parties had prepared it.

XII. INDEMNIFICATION**A. Indemnification by the City of Portland**

To the maximum extent permitted by law, the City shall hold harmless the Agency, its officers and employees and shall indemnify the Agency, its officers and employees for any claims or damages to property or injury to persons or for any penalties or fines which may be occasioned in whole or in part by the City's failure to fully perform the obligations undertaken by the City in this Agreement.

B. Indemnification by the Unified Sewerage Agency

To the maximum extent permitted by law, the Agency shall hold harmless the City, its officers and employees and shall indemnify the City, its officers and employees, for any claims or damages to property or injury to persons or for any penalties or fines which may be occasioned, in whole or in part, by the Agency's failure to fully perform the obligations undertaken by the Agency in this Agreement.

Approved as to form:

CITY OF PORTLAND



City Attorney

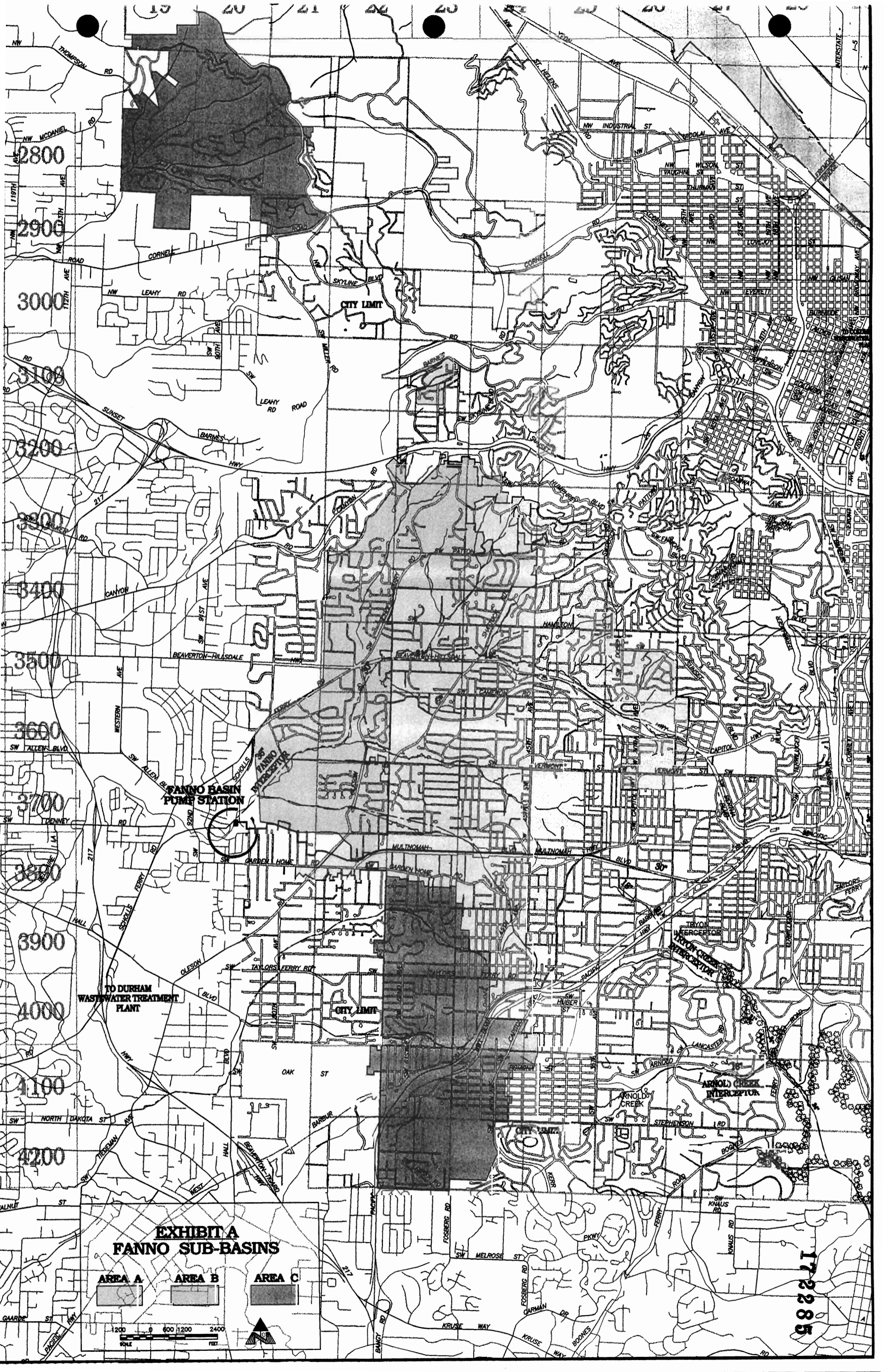
Commissioner-in-Charge

By: Auditor

UNIFIED SEWERAGE AGENCY

Chief Legal Counsel

General Manager or designee



**EXHIBIT A
FANNO SUB-BASINS**



172285

ORDINANCE No.

17 2285

- * Authorize updated Wholesale Sewer Service Agreement between City of Portland and the Unified Sewerage Agency. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The original Intergovernmental Agreement between Unified Sewerage Agency (USA) and the City of Portland (City) was adopted on April 1, 1975. The five pump stations within the Fanno Basin covered in the original agreement have been operating nearly 30 years, and needed either major reconstruction, or be dismantled and send all sewage flows to USA. A study determined that the optimum alternative was to install one pump station at the lowest point in the line and eliminate the five upstream pump stations. Construction of the Fanno Basin Pump Station also allows modification of the service areas within the existing agreement.
2. Portions of the City's sewer system tributary drainage area extend beyond the City's urban service area and into the Unified Sewerage Agency's sewer service area. As such, the preferred method of transportation and treatment is to allow the sanitary flow from the Agency areas to flow into the City's pump station system, offsetting a portion of the sanitary flow from the City area into the Agency's system.
3. The City's sewer system has adequate capacity to allow the Unified Sewerage Agency to connect to the City's sewage transportation and treatment system.
4. The wholesale sewer service Agreement between the City and the Agency has been successfully negotiated between both jurisdictions' staff, has been coordinated with the City's annexation office, and is consistent with the City's urban services policy.

NOW, THEREFORE, the council directs:

- a. The Commissioner of Public Works and Auditor are authorized to enter into an updated Wholesale Sewer Service Agreement between the City of Portland and the Unified Sewerage Agency, substantially similar in form to the Agreement attached as Exhibit A.

Section 2. The Council declares that an emergency exists because the Intergovernmental Agreement should be in place before entering into construction contracts for the phases of the Project. Fanno Creek must be crossed by a sanitary sewer line. The construction period for crossing Fanno Creek is from July through September. To meet this time frame time is of the essence. Therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, **MAY 20 1998**
Commissioner Erik Sten

Erling T. Soli, PE
May 8, 1998

Project #5761 - ord

BARBARA CLARK
Auditor of the City of Portland
By

Barbara Olson

Deputy

ORDINANCE NO.

17 2285

Title

* Authorize updated Wholesale Sewer Service Agreement between City of Portland and the Unified Sewerage Agency. Ordinance)

MAY 14 1998

INTRODUCED BY	DATE FILED:
Erik Sten, Commissioner of Public Works	Barbara Clark Auditor of the City of Portland
NOTED BY COMMISSIONER	By: <u>Cay Kershner</u> Deputy
Affairs	For Meeting of: _____
Safety	ACTION TAKEN:
Utilities	
Works <u>ES/KMR</u>	
BUREAU APPROVAL	
Bureau: Environmental Services	
Prepared by: Erling T. Soli, PE Date: May 8, 1998	
Budget Impact Review: <u>gml</u> X Completed Not Required	
Bureau Head: <u>Demand</u> Dean C. Marriott, Director	

AGENDA		FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
				YEAS	NAYS
Consent	Regular X	Francesconi	Francesconi		
NOTED BY		Hales	Hales	✓	
City Attorney		Kafoury	Kafoury	✓	
City Auditor		Sten	Sten	✓	
City Engineer		Katz	Katz	✓	

City of Portland, Oregon