

97-8449

**INTERLOCAL AGREEMENT BETWEEN
PIERCE COUNTY AND THE CITY OF EDGEWOOD
REGARDING SURFACE WATER MANAGEMENT SERVICE CHARGES
COLLECTED BY PIERCE COUNTY AND FOR SURFACE
WATER MANAGEMENT BILLING SERVICES**

THIS 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 EDGEWOOD**, a municipal corporation of the State of Washington (herein referred to as "CITY") and is applicable to all properties located within the geographic area that constitutes the incorporated limits of the CITY (herein referred to as "INCORPORATED AREA").

WHEREAS, pursuant to RCW Chapter 35.02, the City of Edgewood incorporated on February 28, 1996 and upon that date, all governmental authority and jurisdiction with respect to the newly INCORPORATED AREA transferred to the CITY from the COUNTY; and

WHEREAS, the COUNTY operates a storm drainage and surface water management utility pursuant to Pierce County Code Chapter 11.02 and has instituted a surface water management service charge upon all properties within unincorporated Pierce County and those service charges are included in the COUNTY's real property tax billings which are due in April and October annually; and

WHEREAS, the COUNTY has developed a computer processing system to manage the billing, payment receipt, and tracking by parcel of surface water management service charges from property owners within unincorporated Pierce County; and

WHEREAS, on February 20, 1996, the CITY adopted Ordinance No.96-0015 which established a storm drainage and surface water management utility and authorized the transfer of funds and assets pertaining to surface water management to the CITY; and

WHEREAS, the COUNTY has billed and is in the process of collecting surface water management service charges for 1996 from property owners within the INCORPORATED AREA; and

WHEREAS, the CITY desires that the COUNTY provide billing, payment receipt, and parcel tracking services for surface water management service charges on properties within the INCORPORATED AREA; and

WHEREAS, the COUNTY has agreed to provide certain surface water billing, payment receipt, and parcel tracking services to the CITY to assist the CITY in the collection of its surface

water management service charges from properties within the INCORPORATED AREA; and

WHEREAS, the parties are authorized to enter into such agreements by virtue of RCW Chapter 39.34 and Sections 36.89.080 and 36.94.180;

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. Purpose of this agreement is to provide for the transfer of surface water management service charges collected by the COUNTY from properties within the INCORPORATED AREA and to memorialize the agreement between the parties relating to the provision by the COUNTY of future billing, payment receipt, and parcel tracking services for purposes of collecting the CITY's annual surface water management service charges.

SECTION 2. COUNTY WILL REMIT A PORTION OF THE CHARGES COLLECTED FROM PROPERTIES WITHIN THE CITY. Within fifteen (15) days of the approval by the Executive of this Agreement, the COUNTY will transfer to the CITY a portion of the surface water management service charges collected by the COUNTY from the INCORPORATED AREA from January 1, 1996 until December 31, 1996. The amount remitted shall be \$130,320.00 plus accrued interest and is based on the calculation described in Exhibit "1" attached hereto and incorporated herein. Collection of any delinquent County surface water management service charges attributed to and owed by properties within the INCORPORATED AREA prior to February 28, 1996 shall be conducted by the COUNTY and the COUNTY shall retain any such charges collected. Interest on the net transfer amount shall accrue on a monthly basis from January 1, 1996 until date of distribution, based on pro-rata portion of actual monthly investment earnings received by the COUNTY from the surface water management fund.

The CITY agrees that the funds transferred pursuant to this section shall be utilized for performing CITY designated surface water management related activities. The distribution of these transferred funds among CITY surface water management activities and the prioritization of activities shall be determined by the CITY.

SECTION 3. COUNTY SHALL PROVIDE BILLING, PAYMENT RECEIPT, AND PARCEL TRACKING SERVICES. The COUNTY shall utilize its computer billing system to manage the billing, mailing, payment receipt, and parcel tracking of CITY surface water management service charges imposed on parcels within the INCORPORATED AREA during the term of this agreement. The payments received by the COUNTY on behalf of the CITY will be distributed to the CITY on the same day as the CITY's property taxes are distributed.

SECTION 4. CITY SHALL PAY TO THE COUNTY A SYSTEM CONVERSION FEE. In consideration of the COUNTY's provision of billing, payment receipt, and parcel tracking services to the CITY, the CITY shall pay to the COUNTY a sum of \$36,844.00 to cover

the costs involved in making changes to the COUNTY's computer system. Said payment shall be deducted from the Surface Water Management service charge prior fund balance collected prior to incorporation and held by the COUNTY as shown in Exhibit "2" attached hereto and incorporated by this reference.

SECTION 5. CITY SHALL REMIT TO THE COUNTY AN ANNUAL FEE FOR PROVIDING BILLING SERVICES. In further consideration of the COUNTY providing the billing, payment receipt, and parcel tracking services described herein, the CITY shall remit to the COUNTY the sum of \$9,334.00 for 1996 and \$11,200.00 for 1997 to compensate the COUNTY for providing said services.

For each year after 1997, the annual costs for billing and payment receipt services will be adjusted based on the CITY's pro-rata share of any system upgrade that is beneficial to the CITY and based on a 5% cost escalator. Payment of the annual fee for billing services for each year after 1997 shall occur on or before June 1 of that year. Delinquent payments shall accrue interest on the unpaid balance, from the date of delinquency until paid, at an interest rate of one-half of one percent (.5%) per month.

SECTION 6. SYSTEM MODIFICATIONS. When system modifications beyond the scope of normal and existing account and data base maintenance and beyond system conversion as contemplated by Section 4 is requested by the CITY, the COUNTY will review the request, and if appropriate, approve the request and perform the modification. For purposes of this Section, "normal and existing account and data base maintenance" shall mean those operations necessary for the COUNTY to accomplish the billing, payment receipt, and parcel tracking services to properties in the INCORPORATED AREA in an accurate and timely manner. Modifications will be requested by the CITY in writing. The COUNTY will make every effort to perform the requested modifications within 30 days of receipt of a request for modification. The COUNTY will bill the CITY for modifications on a time and material basis.

SECTION 7. COMPATIBILITY OF SERVICE CHARGES. The CITY shall adopt a surface water management service charge structure that is compatible with the COUNTY's service charge structure. For purposes of this agreement, the CITY's surface water management service charge structure is "compatible" with that of the COUNTY so long as the COUNTY can bill properties, receive payments, and track parcels in the INCORPORATED AREA without performing system modifications as defined in Section 6 herein. Should the CITY amend its service charge structure such that the structure is no longer compatible with the COUNTY's service charge structure, the CITY shall provide written notice to the COUNTY no less than sixty (60) days prior to the implementation of a new service charge structure. Within twenty (20) days of receipt of notice of the change, the COUNTY shall agree to modifications, if necessary, in the matter and within the limitations established in Section 6 herein. Upon receipt of notice of change to the CITY's service charge structure, the COUNTY may elect to terminate this agreement pursuant to Section 11 herein.

Similarly, should the COUNTY amend its service charge structure so that it is not compatible with that of the CITY, the COUNTY shall notify the CITY no less than sixty (60) days prior to the implementation of a new service charge structure. Within twenty (20) days of receipt of notice of the change, the CITY shall agree to modifications, if necessary, in the manner and within the limitations established in Section 6 herein. Upon receipt of notice of change to the COUNTY's service charge structure, the CITY may elect to terminate this agreement pursuant to Section 11 herein.

SECTION 8. CITY SHALL BE RESPONSIBLE FOR FORECLOSURE ACTIONS.

The COUNTY shall not be responsible for liening and foreclosing against those properties within the INCORPORATED AREA that fail or refuse to pay CITY surface water management service charges. The liening and filing of any foreclosure action for CITY imposed surface water management service charges shall be the responsibility of the CITY and the CITY shall bear the cost thereof, including any legal service charges. PROVIDED, however, that the COUNTY shall agree to perform those collection efforts ordinarily undertaken by the COUNTY prior to liening and foreclosure. The County will provide a quarterly report on the number and identity of accounts that have not made payment within the required time period. Said report will be submitted to the CITY within fifteen (15) days after the close of the quarter.

SECTION 9. CITY SHALL MANAGE ITS SERVICE CHARGE CREDIT PROGRAM (ON-SITE MITIGATION). The CITY shall be responsible for establishing and managing its own program for granting credit to properties within the INCORPORATED AREA that install on-site mitigation measures to handle surface water from individual properties. The establishment of such a program shall be at the discretion of the CITY, and the COUNTY's own program shall not apply to properties within the INCORPORATED AREA. The CITY's program shall outline the parties within the CITY responsible for managing the program and will detail the procedure for the granting of such credit. The CITY will coordinate with the COUNTY to ensure that the CITY's program is compatible with the COUNTY's billing system.

As of the date of passage of CITY Ordinance No. 96-0015, properties in the INCORPORATED AREA are now subject to the CITY's surface water management charges. Those property owners within the INCORPORATED AREA who applied for and were granted a service charge credit from the COUNTY for 1996, will retain such a credit for 1996 and 1997. Should the term of this agreement be extended for 1998 and subsequent calendar years, property owners seeking credit shall apply with the CITY for credit if such a program exists. In the event of extension to 1998 and succeeding calendar years, the CITY will notify the COUNTY no later than November 30, 1997, and by November 30th of each succeeding year, of those properties within the INCORPORATED AREA which have been granted a credit. In the event these credits shall require the COUNTY to make system modifications, such modifications shall be accomplished in the manner and under the limits provided for in Section 6 herein.

SECTION 10. DISTRIBUTION OF PRIOR FUND BALANCE. The COUNTY has been collecting surface water management service charges from properties within the INCORPORATED AREA prior to February 28, 1996. These funds were combined with service charges paid by property owners within the Hylebos and Lower White River Basin which are the basins within which the CITY is located. The COUNTY has utilized a portion of these funds for surface water planning and for construction of capital improvements within the Hylebos and Lower White River Basin.

The remaining funds attributable to the INCORPORATED AREA, herein known as the PRIOR FUND BALANCE, has been segregated and placed in an interest bearing account and said interest shall be calculated based on a pro-rata portion of actual monthly investment earnings received by the COUNTY from the Surface Water Management Fund. The CITY and the COUNTY agree to negotiate the distribution of those funds through a separate agreement.

SECTION 11 TERM OF THE AGREEMENT. This Agreement shall have a term commencing on the date of execution of this Agreement and terminating at midnight, December 31, 1997. This Agreement shall automatically renew for one (1) year increments beginning January 1 and ending midnight, December 31, unless terminated by giving ninety (90) days notice to the other party.

SECTION 12. 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. 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. 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, 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 13. 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.

SECTION 14. INSURANCE COVERAGE. The CITY shall maintain at all times during the course of this Agreement a general liability insurance policy or other comparable coverage with a self-insured retention of no more than \$500,000.00 and a policy limit of no less than \$5,000,000.00 dollars.

SECTION 15. NON-DISCRIMINATION. The COUNTY and the CITY certify that they are Equal Opportunity Employers.

SECTION 16. 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 17. 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 EDGEWOOD
10319 8th Street East
Edgewood, WA 98372

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, WA 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 18. COUNTY AS INDEPENDENT CONTRACTOR. COUNTY is, and shall at all times be 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 19. 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 20. 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.

SECTION 21. 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 22. 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 23. FILING. Copies of this Interlocal Agreement, together with the resolution of the Pierce County Council and the Edgewood City Council approving and ratifying this Agreement, shall be filed with the Edgewood City Clerk, the Pierce County Auditor, and the Secretary of State of Washington after execution of the Agreement by both parties.

SECTION 24. 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.


IN WITNESS WHERE OF, the parties have caused this Agreement to be executed on the day and year the last signature hereto is affixed.

EDGEWOOD


PIERCE COUNTY


T. D. FAHERTY
Mayor

3/27/97
Date

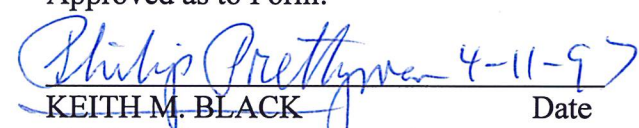

DOUG SUTHERLAND
Pierce County Executive

4/18
Date


STEPHEN L. ANDERSON
City Manager

3/29/97
Date

Approved as to Form:


KEITH M. BLACK
Chief Civil Deputy Prosecuting Attorney

4-11-97
Date

Approved as to Form:


LISA MARSHALL
City Attorney

3-27-97
Date

