

TACOMA-FIRCREST SEWER AGREEMENT

This Agreement is made and entered into as of the day of 24 day of June, 2014 by and between the CITY OF TACOMA, WASHINGTON (hereinafter referred to as "Tacoma") and the City of FIRCREST, WASHINGTON (hereinafter referred to as "Fircrest").

WHEREAS, Tacoma presently owns and operates a sewage system consisting in part of lateral sewers, trunk sewers, and sewage treatment and disposal facilities for the benefit of the citizens of Tacoma; and

WHEREAS, Fircrest presently owns and operates a system of lateral and trunk sewers for the benefit of its citizens, but does not own or operate any sewage treatment or disposal facilities; and

WHEREAS, Tacoma and Fircrest have previously executed a Sewer Service Agreement dated July 11, 1947, renewed January 1, 1967, and amended on March 28, 1979 for the joint use of their respective sewer systems; and

WHEREAS, it has been determined desirous by both parties to this Agreement and in the best interest of the public health, safety and welfare of the territory served by both parties, that this Agreement be entered into;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and for other good and valuable consideration, it is hereby agreed as follows:

1. AUTHORITY FOR CONTRACT- COMPLETENESS -TERM.

This Agreement is made and entered into pursuant to the authority vested in Tacoma and Fircrest by the provisions of RCW 35.67.300 and Chapter 39.34 RCW. This Agreement, except where otherwise provided, shall be complete within itself and shall remain in effect for a period of thirty-five (35) years from the effective date hereof, or as may be amended as contained herein.

This Agreement may be renewed at the end of the present term and each subsequent term for additional thirty-five (35) year periods by mutual agreement of both parties.

2. PERMISSION TO DISCHARGE.

Tacoma hereby grants Fircrest permission to discharge sanitary sewage from the Fircrest Sewer System into the Tacoma Sewer System at the intersection of South 30th Street and Huson Street, the intersection of Orchard Street and Princeton Street, the intersection of Bennett Street and W. 19th Street, and at other locations as may be determined by mutual agreement in the future. Any additional consent to discharge granted by either party shall be memorialized in a mutually executed amendment hereto.

3. QUALITY OF SEWAGE.

All sewage discharged into the system shall conform to the requirements set forth by the then prevailing regulations applicable to Tacoma sewage.

There shall be reserved to Tacoma the right to inspect all sewer facilities of Fircrest included within this Agreement in order to enable Tacoma to comply with any and all conditions of its current or any future National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permits, including, but not limited to, the monitoring of wastes and necessary construction of monitoring station facilities.

If, in order for Tacoma to meet Federal and/or State Laws, Rules, and Regulations, it is necessary to monitor any Fircrest sewer customer, Fircrest shall be responsible for assuring that its customer complies with all reasonable conditions to meet those monitoring requirements.

4. DESIGN AND CONSTRUCTION STANDARDS.

Design and construction standards and methods for all sewage facilities covered by this Agreement shall conform to the prevailing written specifications, codes, methods, and standards equal to or better than those used by Tacoma, or as mutually agreed upon at the time of construction. Each party reserves the right to make any check of construction plans or inspection of construction in this Agreement area (upstream from the terminus of the 14- inch diameter pressure line deemed necessary to uphold this requirement and reject any such plans or work not conforming to Tacoma's then prevailing specifications, codes, methods, and standards, or as mutually agreed upon.

5. CONTRA COSTA PUMP STATION PRESSURE LINE.

Title to the portion of the existing 14-inch diameter pressure line from the Contra Costa pump Station to the east City Limits of Fircrest at approximately South 32nd Street and Orchard Street shall vest in Fircrest and the portion of said pressure line from the above point on the west City Limits of Tacoma to its terminus in the intersection of South 30th Street and Huson Street shall vest in Tacoma. Fircrest shall maintain and repair and pay the total cost of all maintenance and repairs of that portion of said pressure lines of which ownership is vested in Fircrest, and Tacoma shall maintain and repair and pay the total cost of all maintenance and repairs of that portion of said pressure lines of which ownership is vested in Tacoma

6. SEWER SYSTEM MAINTENANCE.

Should either of the parties hereto fail to properly maintain or repair any of its sewers through which sewage of the other party flows, or shall permit said sewers to become stopped, and fails to correct said condition after notice and reasonable time to correct the same, the other party is hereby permitted and authorized to do the necessary work to correct such condition and to collect the reasonable cost of such work from the party owning said sewers. Each of the parties hereto shall save the other harmless from any damages to property of the other or claims from third parties caused by the negligence of said party, its agents, or employees.

Fircrest shall notify Tacoma in the event of any sanitary sewer overflows occurring at the Contra Costa Pump Station.

City7. ENLARGEMENTS - TACOMA SEWER SYSTEM.

In the event that any Tacoma treatment and/or trunkage facilities need enlarging, and which Fircrest did not participate in the construction of, but that Fircrest discharges sewage to, Fircrest and Tacoma agree to negotiate a fair and equitable cost for Fircrest's share of such enlargement.

8. UPGRADING - TACOMA SEWAGE TREATMENT FACILITIES.

In the event that treatment processes need to be upgraded, the costs shall be shared between Fircrest and Tacoma on a ratio of average dry weather capacity or peak flow capacity (whichever is the controlling factor in causing the upgrade to be made) required by or granted to each party. Total capacity shall be the amount contributed by each party at the time of the upgrading plus the amount required by either party for future anticipated flows.

9. ENLARGEMENT AND UPGRADING COST OBLIGATIONS.

Wherever in this Agreement Fircrest is obligated to pay to Tacoma all or any portion of the cost of any improvements, enlargements, or additions to any part of the sewer system involved in this Agreement, or to the treatment plant, the term "cost" shall mean the actual sum paid or to be paid by Tacoma out of its normal revenues, or funds borrowed by it by the sale of bonds or otherwise, which it is obligated to repay, but shall not include any sums received and paid from any Federal, State, or other outside aid or source of revenue.

10. FIRCREST SEWER SYSTEM AREA - DEFINED.

It is mutually agreed that the sewer service area for Fircrest, under this Agreement, shall not, without the prior written agreement of Tacoma, extend beyond the following limits:

On the North: 19th Street
On the South: 48th Street
On the East: Orchard Street
On the West: Mildred Street north of Regents Boulevard and Anderson-Pierce Road (67th Avenue West) south of Regents Boulevard

No assignment of capacity rights within the above described areas shall be made to any sewer district without the written mutual consent of both parties hereto.

11. FIRCREST CAPACITY RIGHTS IN TACOMA SEWER SYSTEM.

In consideration of mutual promises and covenants Tacoma has previously granted Fircrest certain capacity rights in the Tacoma Sewer System. These capacity rights are herein

defined at 0.75 million gallons per day (MGD) average dry weather flow and 2.25 MGD peak hydraulic flow.

Nothing in this Section 11 shall prevent Fircrest from acquiring and Tacoma from relinquishing to Fircrest additional capacity rights in any existing facilities of the Tacoma Sewer System.

12. SEWERAGE SERVICE RATES AND CHARGES.

A. DETERMINATION OF RATE.

For sewerage service provided to Fircrest by Tacoma, Fircrest shall pay Tacoma an annual sewerage service charge. This charge shall be based on the metered flows from Fircrest into the Tacoma sewerage system. Flows will be measured at the Contra Costa, China Lake and Princeton pump stations. Composite rates will be developed using the constituent concentration rates put forth in TMC 12.08.390 on the measured constituent strengths and characteristics which will include Biological Oxygen Demand, Total Suspended Solids, and Flow of the waste waters discharged from the three pump stations. A composite rate will be calculated for discharges from each pump station. The composite rate will be multiplied by the flow from each pump station resulting in a charge for the discharge from each pump station. The charges from each pump station will be summed and this number shall be the Fircrest sewerage service Rate. The Fircrest sewer charge shall be calculated as follows:

China Lake Flow from Fircrest Discharge Point X China Lake Constituent Rate
Plus
Contra Costa Flow X Contra Costa Constituent Rate
Plus
Princeton Flow X Princeton Constituent Rate

= Fircrest Sewerage Rate

Fircrest Sewerage Rate X Ratio of Applicability = Fircrest Sewerage Charge

The ratio of applicability is the Fircrest sewerage expense divided by the total sewerage service expense.

B. DEFINITIONS.

I. "ccf"

"ccf" shall mean one hundred (100) cubic feet.

II. "Fircrest Capacity"

The "Fircrest Capacity" shall be determined by the flow of sewage originating from within the boundaries of the Fircrest Sewer System described in Section 11, or as may hereafter be amended.

III. "Residential Equivalent"

A "Residential Equivalent" is a unit of service being a single-family residence or living unit.

IV. "Sewage"

Sewage" shall mean sanitary sewage only, consisting of domestic, commercial, and industrial waste material.

V. Sewerage Service Expense.

a. "Total Sewerage Service Expense"

The "Total Sewerage Service Expense" shall be the total of the following items as listed in the annual Summary of Expenditures in the current Statistical and Cost Data Report for the Sewer Utility Division:

- (1) Direct Operation and Maintenance.
- (2) General Expense.
- (3) Taxes.
- (4) Engineering.
- (5) Capital Improvements.
- (6) Debt Service except on bonds issued by the City of Tacoma to finance further enlargements and treatment plant upgrading in those situations where Fircrest's share is contributed directly.

It is understood that the above items are account titles currently being used by the City in its Statistical and Cost Data Report. The City agrees that composition and maintenance of these accounts shall be the same in substance throughout the duration of this Agreement.

b. "Fircrest Sewerage Service Expense"

The "Fircrest Sewerage Service Expense shall include only the total cost for treatment in the Tacoma Sewer System as listed in Tacoma's current Statistical and Cost Data Report with Customer Billing and Customer Service as listed in Tacoma's current Statistical and Cost Data Report deleted from the total cost thereof.

C. PAYMENT OF SEWERAGE SERVICE CHARGE.

Tacoma shall bill Fircrest for sewerage service charges on a quarterly basis. Sewerage service charges shall be based on the actual metered flows discharged from the Fircrest system to the Tacoma system.

Fircrest shall submit to the City all information necessary to compile sewer service charges quarterly for the billing periods on or before the fifteenth (15th) day of January, April, July, and October of each year. The City shall compute the charges and submit the bill to Fircrest on or about the fifteenth (15th) day of February, May, August, and November.

All Fircrest sewerage service charges shall be due and payable to Tacoma within thirty (30) days of receipt by Fircrest of the Tacoma Sewer Utility invoice.

The amount shown on the invoice shall be considered correct unless the City is notified to the contrary within twenty (20) days. If corrections are necessary, the thirty (30) days shall begin upon receipt by Fircrest of the corrected invoice.

Any charges, credit, or portion thereof not paid within the thirty (30) days shall begin accruing interest at the rate of eight percent (8%) per annum beginning with the thirty-first (31st) day.

D. FEDERAL AND STATE REGULATIONS.

Tacoma and Fircrest agree to abide with all Federal and State Laws, Rules and Regulations regarding user charges and industrial cost recovery charges.

E. EFFECTIVE DATE FOR SERVICE RATES AND CHARGES.

The effective date for implementation of this Section 14 shall be June 1, 2014.

13. INSURANCE- LIABILITY.

Fircrest shall secure and maintain with responsible insurers all such insurance as is customarily maintained with respect to sewage systems of like character against loss of or damage to the sewage facilities operated and maintained by Fircrest and against public and other liability to the extent that such insurance can be secured and maintained at reasonable cost. Any liability incurred by Tacoma solely as a result of the operation of its treatment facility and not caused or occasioned by any act of Fircrest or any of its customers, or resulting from the connection to Fircrest facilities, shall be the sole liability of Tacoma.

14. DISPUTES.

In the event of any dispute or disagreement arising under this Agreement, the City's Director of Environmental Services and the Fircrest Director of Public Works shall agree on and appoint a third person. These three individuals shall comprise an arbitration committee which shall be charged with the function of resolving any disputes or disagreement arising under this Agreement to the extent permitted by law. The expenses of the third person shall be shared equally by the City and Fircrest.

15. AGREEMENT RELEASE.

In the event Fircrest determines it to be necessary or practical to construct its own sewage disposal system, or to join with the County or others in another and different system of sewage disposal, Fircrest shall be released from further obligations under this Agreement upon the following terms and conditions:

A. Fircrest shall give Tacoma not less than one year advance notice of its desire to connect to another sewage disposal system, with the estimated or actual date of such connection.

B. Fircrest shall remain liable to Tacoma for its share of the cost of any improvements, additions, or enlargements undertaken by mutual agreement by Tacoma and/or Fircrest under the terms of this Agreement prior to receipt of such notice by Tacoma.

16. REVIEW.

The terms of this Agreement shall be reviewed at five (5) year intervals or at such time as may be mutually agreed upon by both parties.

Notwithstanding any such termination as provided under Section 15, each party shall remain liable to the other for its proportionate share of the cost of any improvements, enlargements, or additions authorized herein; provided, however, no such improvements, enlargements, or additions shall be undertaken by either party during the period, where notice of termination has been given, without the written approval and agreement concerning the sharing of costs, if any, of both parties hereto.

17. INSPECTIONS - VIOLATIONS.

Both parties hereto shall have the right when they deem it necessary and appropriate to cause inspections to be made of sewer installations within the boundaries of the other city or within any area connected to said sewer lines for the purpose of determining whether or not the plumbing installations in questions conform to the requirements of the governing sewer ordinances of Tacoma and Fircrest. In connection with the right to make said inspections, both the parties hereto shall have the right to conduct such tests as may be appropriate in order to further the purposes of said inspection. All tests and inspections made pursuant to the provisions of this Section shall be at the sole expense of the party making said inspection or test.

In the event that either party hereto shall find existing a violation of a sewer ordinance, it shall promptly advise the other party thereof and both parties hereto agree and warrant that upon receipt of such notice they will undertake to have the necessary corrections made so that all sewage collected in said system shall conform to the requirements set forth in Section 3 hereof. In the event that either party hereto shall be unable to compel the property owner to change his plumbing fixtures or apparatus so as to conform with the provisions of the governing ordinances, then and in that event said property owner shall not be entitled to further sewer service until such correction has been made, and both the City of Tacoma and the City of Fircrest hereby represent and warrant that they will undertake to remove said violator from the sewer system.

18. DESIGNATED REPRESENTATIVES.

For purposes of this Agreement, the parties designated representatives are as follows:

- 18.1 Tacoma Representative: T.C. Broadnax, City Manager
747 Market Street
Tacoma, WA 98402
- 18.2 Fircrest Representative: Rick Rosenblatt, City Manager
115 Ramsdell Street
Fircrest, WA 98466
- Phn. (253) 564-8901
e-mail: rrosenblatt@cityoffircrest.net

19. NO SEPARATE ENTITY CREATED.

This Agreement does not create any separate or administrative entity. This Agreement shall be administered by the parties' representatives defined in Section 18.1 and 18.2 above.

20. MODIFICATION OF AGREEMENT.

This Agreement may be amended at any time in writing, upon approval of each parties' respective legislative body, or as their internal processes may otherwise dictate.

21 . NOTIFICATION

Any notice required or permitted to be given pursuant to this Agreement shall be in writing, and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the following addresses or be electronic mail to the parties' representatives defined in subsections 18.1 and 18.2 herein, unless otherwise indicated by the parties to this Agreement.

22. VENUE

This Agreement shall be deemed to be made in the County of Pierce, State of Washington, and the legal rights and obligations of Tacoma and Fircrest shall be determined in accordance with the laws of the state of Washington. All legal actions in connection with this Agreement shall be brought in the County of Pierce, State of Washington.

23. NO THIRD PARTY BENEFICIARIES

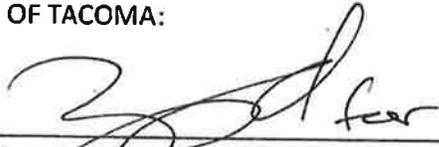
This Agreement is entered into solely for the mutual benefit of the parties. This Agreement is not entered into with the intent that it shall benefit any other person or entity and no other such person or entity shall be treated as a third-party beneficiary of this Agreement.

24. SEVERABILITY

The provisions of this Agreement are hereby declared to be separate and severable, and the invalidity of any clause, sentence, paragraph, section, subsection, or portion of this Agreement or the invalidity of its application to any person or circumstance shall not affect the validity of its application to other persons and circumstances.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers on this 24 day of June, 202014

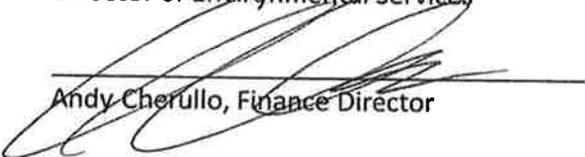
CITY OF TACOMA:



T.C. Broadnax, City Manager

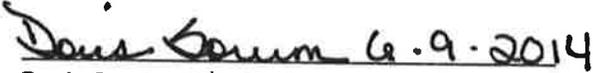


Michael P. Slevin III, P.E.
Director of Environmental Services



Andy Cherullo, Finance Director

ATTEST:



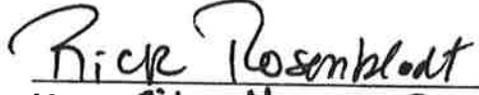
Doris Sorum, City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

CITY OF FIRCREST;



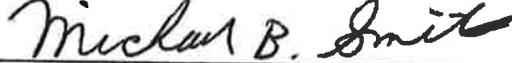
~~Mayor~~ City Manager

ATTEST:



City Clerk

APPROVED:



~~Deputy~~ City Attorney