

**SANITARY SEWER LIFT STATIONS NO. 4 AND NO. 8
RECONSTRUCTION PROJECTS**

PARTICIPATION AGREEMENT

Between

CYPRESS LYNNWOOD, LLC

And

CITY OF LYNNWOOD

THIS PARTICIPATION AGREEMENT (“AGREEMENT”) is entered into between Cypress Lynnwood, LLC (“DEVELOPER”), and the City of Lynnwood (“CITY”), a municipal corporation organized under the laws of the State of Washington, (collectively “the Parties”), to provide for the reconstruction of the City of Lynnwood Sewer Utility’s Sewer Lift Stations Nos. 4 and 8 (“the Lift Station Projects”), including necessary capacity increases resulting from increased sewer flows due to private development projects one of which is planned by DEVELOPER, (“the Lynnwood Place Development, Phase 2 Mixed Use”), and to define the Parties’ respective rights, obligations, costs and liabilities regarding this undertaking.

RECITALS

WHEREAS, the City of Lynnwood operates a Sewer Utility that has as its responsibility the handling of sewer wastes from properties within its boundaries; and

WHEREAS, the City of Lynnwood Sewer Utility owns and operates two Sanitary Sewer Lift Stations, Nos. 4 and 8, that because of increased capacity demand from upstream private development require upsizing to handle such increased demand; and

WHEREAS, the City is currently under design on both multi-million dollar Lift Station Projects with construction anticipated for both in 2015; and

WHEREAS, the Developer is redeveloping an existing property upstream of Lift Stations Nos. 4 and 8 with the Lynnwood Place Development Phase 2 Mixed Use Project and the redevelopment will add sewer flows beyond what the development site historically generated; and

WHEREAS, the City of Lynnwood intends to create in the future a connection charge for all development in the same sanitary sewer basin tributary to Lift Stations Nos. 4 and 8 based on sewer flow generated by that development as a percentage of total additional sewer flows expected from new development to help pay costs incurred due to upsizing of the stations to meet increased development sewer flow demands

45 WHEREAS, future connection charges may utilize the same calculation for future
46 development as was used to identify the costs for this Agreement; and
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48 WHEREAS, the Draft Environmental Impact Statement for the Developer’s
49 Lynnwood Place Development Mixed-Use Project dated October, 2011 states that
50 impacts from the development “would need to be quantified and considered in
51 developing a cost-sharing plan for the upgrades to Lift Stations 4,8...”; and
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53 WHEREAS, the CITY and the DEVELOPER, are negotiating a Development
54 Agreement for the purpose of implementing the Lynnwood Place Development; and
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56 WHEREAS, the Parties desire to enter into this Agreement for the purpose of
57 defining their respective rights, obligations, costs and liabilities regarding the Lift Station
58 Projects, consistent with the Lynnwood Place Phase 2 Development Agreement; and
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60 WHEREAS, the DEVELOPER and the City of Lynnwood have taken appropriate
61 action to approve their respective Parties entry into this Agreement;
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63 NOW, THEREFORE, in consideration of the terms, conditions and covenants
64 contained herein, the Parties agree as follows:
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66 **TERMS**

67 Section 1. Purpose. The purpose of this Agreement is to establish a formal
68 arrangement under which the DEVELOPER will pay the CITY for a calculated portion of
69 the costs of construction of the Lift Station Projects, as defined in Exhibit No. 1. The
70 terms, conditions, and covenants of this Agreement shall accordingly be interpreted to
71 advance the Lift Station Project’s purpose. This Agreement further seeks to allocate and
72 define the Parties’ respective rights, obligations, costs and liabilities concerning the
73 establishment, operation and maintenance of this undertaking.

74 Section 2. Term. This Agreement shall be effective upon execution by the
75 Parties hereto. This Agreement shall remain effective until the issuance of the first
76 building permit and the payment of the sanitary sewer connection charge pursuant to
77 Section 4 of this Agreement for improvements pursuant to the Lynnwood Place Project
78 Phase 2 Development Agreement. The Parties may at their option renew and/or amend
79 this Agreement for a mutually agreed upon term by a writing signed by both Parties.
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81 Section 4. Obligations of DEVELOPER. DEVELOPER agrees to:
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- 83 A. Provide the CITY with a cashier check in the amount of \$113,400.00 for
84 Lift Station No. 4 and \$318,813.00 for Lift Station No. 8 at the time
85 Developer applies for the first building permit. Unless any part of the
86 Lynnwood Place Development exceeds flow capacity estimates used as
87 the basis for the amounts shown as the “Upsize Capacity Needed for
88 Development” in the attached Exhibit No. 1, Developer will not be

89 responsible for any additional, connection charges or ongoing
90 maintenance expense of the Lift Stations.

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92 B. If future development on the Lynnwood Place Development site exceeds
93 the flow capacity estimates used as the basis for the amounts shown as the
94 “Upsize Capacity Needed for Development” in the attached Exhibit No. 1,
95 then DEVELOPER shall pay additional connection charges to the City at
96 the time Developer applies for its building permits for such future
97 development. In this instance the City and the Developer shall enter into a
98 Participation Agreement for the payment of the revised connection
99 charges.

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101 Section 5. Obligations of CITY. CITY agrees to:

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103 A. Assume full responsibility for the construction of the Lift Station Projects
104 including but not limited to, securing all necessary consultants,
105 contractors, subcontractors, processing all change orders, and procuring
106 permits. All construction contracts shall be procured through a formal
107 competitive bidding process consistent with applicable State law. CITY
108 shall be solely and exclusively responsible for ensuring the compliance of
109 said bidding process with all applicable procedures required under state
110 and local regulations.

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112 B. Respond reasonably to information requests submitted by DEVELOPER
113 or its agents regarding the Lift Station Projects.

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115 C. Accept sanitary sewer flows from the Lynnwood Place Development at
116 rates adopted and regularly amended by the City Council and provide
117 capacity to service all development on the site consistent with the flow
118 capacity estimates shown on Exhibit No. 1

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120 Section 6. Administration; No Separate Entity Created. Pursuant to RCW
121 39.34.030, the City will appoint a Contract Administrator who will be responsible for
122 administering this Agreement, and at the direction of the parties, this Contract
123 Administrator shall take such action as is necessary to ensure that this Agreement is
124 implemented in accordance with its terms. The parties hereby designate the CITY’S
125 Public Works Director, or his designee, as the Contract Administrator for this Agreement.
126 No separate legal entity is formed by this Agreement.

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128 Section 7. Release, Indemnification and Hold Harmless Agreement. Each Party
129 to this Agreement shall be responsible for its own negligent and/or wrongful acts or
130 omissions, and those of its own agents, employees, representatives or subcontractors, to
131 the fullest extent required by laws of the State of Washington. Each Party agrees to
132 protect, indemnify and save the other Party harmless from and against any and all such
133 liability for injury or damage to the other Party or the other Party’s property, and also
134 from and against all claims, demands, and causes of action of every kind and character

135 arising directly or indirectly, or in any way incident to, in connection with, or arising out
136 of work performed under the terms hereof, caused by its own fault or that of its agents,
137 employees, representatives or subcontractors.
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139 Each Party specifically promises to indemnify the other Party against claims or
140 suits brought under Title 51 RCW by its own employees, contractors, or subcontractors,
141 and waives any immunity that the Party may have under that title with respect to, but
142 only to, the limited extent necessary to indemnify the other Party. This waiver has been
143 mutually negotiated by the Parties. Each Party shall also indemnify and hold the other
144 Party harmless from any wage, overtime or benefit claim of any of the first Party's
145 employees, agents, representatives, contractors or subcontractors performing services
146 under this Agreement. Each Party further agrees to fully indemnify the other Party from
147 and against any and all costs of defending any such claim or demand to the end that the
148 other Party is held harmless therefrom.
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150 Section 8. Governing Law and Venue. This Agreement shall be governed by the
151 laws of the State of Washington. Any action arising out of this Agreement shall be
152 brought in Snohomish County Superior Court.
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154 Section 9. No Employment Relationship Created. The Parties agree that nothing
155 in this Agreement shall be construed to create an employment relationship between
156 DEVELOPER and any employee, agent, representative or contractor of CITY, or
157 between CITY and any employee, agent, representative or contractor of DEVELOPER.
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159 Section 10. Notices. Notices to DEVELOPER shall be sent to the following
160 address:
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162 **Mr. Stephen R. Schmidt**
163 **Cypress Equities**
164 **8343 Douglas Ave. Ste. 200**
165 **Dallas, TX 75225**
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167 Notices to CITY shall be sent to the following address:
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169 **City of Lynnwood**
170 **Deputy Public Works Director / City Engineer**
171 **19100 44th Avenue W., P.O. Box 5008**
172 **Lynnwood, WA 98046-5008**
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175 Section 11. Integration. This document constitutes the entire embodiment of the
176 Agreement between the Parties, and, unless modified in writing by an amendment to this
177 Agreement signed by the Parties hereto, shall be implemented as described above.
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179 Section 15. Non-Waiver. Waiver by any Party of any of the provisions contained
180 within this Agreement, including but not limited to any performance deadline, shall not
181 be construed as a waiver of any other provisions.
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CYPRESS LYNNWOOD, LLC

CITY OF LYNNWOOD

By: _____
Name

By: _____
Nicola Smith, Mayor

Date: _____

Date: _____

ATTEST:

ATTEST:

Lorenzo Hines, Finance Director

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Rosemary Larson, City Attorney

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Exhibit No. 1

Developer Participation Amounts for Increased Capacity at City of Lynnwood Sanitary Sewer Lift Stations Nos. 4 and 8.

Lift Station No. 4:

Existing Station Capacity	300 gpm	Value	\$1,303,303
<u>Future Station Capacity</u>	<u>500 gpm</u>	<u>Value</u>	<u>\$1,443,000</u>
Difference	200 gpm		\$140,000
Cost per gpm for upgrade			\$700/gpm
Amount of Upsized Capacity Needed for Development	162 gpm		
Developer's Cost of Capacity Upgrade		(162 gpm)* \$700/gpm =	\$133,400

Lift Station No. 8:

Existing Station Capacity	600 gpm		
Current Planned Capacity	886 gpm	Value	\$1,379,000
<u>Future Station Capacity</u>	<u>1540 gpm</u>	<u>Value</u>	<u>\$1,915,000</u>
Difference	654 gpm		\$536,000
Cost per gpm for upgrade			\$819.57/gpm
Amount of Upsized Capacity Needed for Development	389 gpm		
Developer's Cost of Capacity Upgrade		(389 gpm)* \$819.57/gpm =	\$318,813

The aforementioned capacity calculations are derived from the approximate square footages included in the Developer's Lynnwood Place Development Mixed-Use Project as summarized in the FEIS and the table below:

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	9/11/12 Submittal & EIS Alternative 2 (3/30/12)
Site size (acres)	~ 40.22
Developed area (including roads)	~35 acres
Gross building area	990,000 sq. ft.
Uses: Multifamily Residential	Up to 500 units (500,000 sq. ft.)
Retail anchor (Costco)	~160,000 sq. ft.
Retail shops	192,000 sq. ft.
Amusement/Recreation	105,000 sq. ft.
Restaurant	33,000 sq. ft.
Parking spaces	3,548

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