

# Attachment A



## **AGREEMENT FOR ASSUMPTION OF OPERATION OF WASTEWATER TREATMENT AND COLLECTION FACILITIES**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the PUBLIC UTILITY DISTRICT NO. 1 OF JEFFERSON COUNTY (“PUD”), a municipal corporation of the State of Washington, and THE HAMLET OF PLEASANT HARBOR INC. (HPH), a privately owned company.

### **RECITALS**

WHEREAS, The Hamlet of Pleasant Harbor INC. (HPH) is the developer of a master planned resort called The Hamlet of Pleasant Harbor, which includes a private Water Reclamation Facility (“WRF”) which will manage the domestic wastewater generated within the proposed development and includes an associated wastewater collection system. The treatment plant and collection system are owned and operated by The Hamlet of Pleasant Harbor INC. and is managed by The Pleasant Harbor Utility District. (PHUD), the utility district is designed to comply with Class A reclaimed water requirements mandated by Washington State Department of Ecology (ECY) and Washington State Department of Health (DOH).

WHEREAS, The Hamlet of Pleasant Harbor INC. has been approved through a development agreement with regulations as a Master Planned Resort on the Black Point Peninsula in the Brinnon Subarea of Jefferson County, Washington. The +/- 256 gross acres of the Black Point Peninsula and the existing marina will provide numerous services to the area including a Maritime Village with a hydroponic greenhouse facilitating a Farmer’s Marketplace located on Tax Parcel #502152005 plus 200,000 sq. ft. of commercial and recreational facilities, and 890 residential units. Jefferson County has regulated that 35% are for long-term accommodation and 65 % for short-term accommodation that does include affordable staff housing for 52 dual-suites. The amenities include a 9-hole golf course irrigated with reclaimed water, and specified xeriscaping with natural vegetation for the +/- 20 % of impervious area.

There are no public wastewater treatment systems in the Brinnon subarea, which relies on septic treatment systems for sewage and disposal. The community has been designed for a Membrane Bioreactor (MBR) water reclamation facility (“WRF”) built to address the sewage treatment and reclamation needs of the development. The Class A reclaimed water will meet landscape irrigation needs of the Development. An Environmental Impact Statement has been prepared for the project.

WHEREAS, regulations promulgated by ECY at WAC 173-240-104 allow for private ownership of domestic sewage facilities, provided that there is an agreement with a public agency for assumption of operations of the system under certain conditions.

WHEREAS, the PUD is authorized under RCW 54.16.230 to operate, acquire, construct, maintain, and add to sewage systems, subject to the Jefferson County Comprehensive Plan.

WHEREAS, this Agreement is in the best interests of the citizens of Jefferson County, in that it makes provisions for backup public operation of the Pleasant Harbor Membrane Bioreactor (MBR) Water Reclamation Facility (“WRF”) and Collection System in the unlikely event that assumption becomes necessary under the conditions set forth herein.

THEREFORE, the PUD and HPH agree as follows:

1. Definitions.

- a. “System” shall mean the Pleasant Harbor WRF, wastewater collection system and reclaimed distribution system owned and operated by HPH with an independent Utility District Board to manage the operations.
- b. “Pleasant Harbor” shall mean all development associated with The Hamlet of Pleasant Harbor located south of Brinnon, Washington.
- c. “Engineering Report” shall mean the Engineering Report for The Hamlet of Pleasant Harbor and its independent utility district for facilitating the Engineering Report, as approved by ECY.

2. Purpose. The purpose of this Agreement is to comply with WAC 173-240-104 which allows a nonpublic entity to own a domestic sewage facility for providing a public entity with state-of-art sewage treatment. The PUD would only assume operations of the System in the event that the conditions set forth in Article 4 of this Agreement are not met.

3. Responsibilities of HPH. In its present capacity as owner and operator of the System, HPH shall be responsible for the following actions:

- a. HPH shall take such actions as are necessary for proper operation and maintenance of the System and compliance with applicable laws, regulations, approvals, and permits, issued by ECY for the System.
- b. HPH shall employ suitably licensed treatment plant operators and other employees familiar with the operation and maintenance of secondary treatment plants. As part of

facility design and construction, HPH and the PHUD shall develop an Operation and Maintenance Manual for the System and shall provide a copy of the Manual to the PUD.

- c. HPH may contract with a third party for management, operations, and maintenance of the System; provided, that the PUD shall receive notice of such action, which shall not change the rights, duties, and obligations of the parties under this Agreement.
  - d. HPH shall maintain and keep records of all work performed on the System, including inspection, maintenance, repair, and operations, and shall keep similar records of any problems with the System, including reports. Upon request by the PUD, copies of records shall be made available by HPH and the PHUD for inspection at a reasonable time and place. Upon request by the PUD, HPH and the PHUD shall also make the System available for inspection at a mutually convenient time.
  - e. HPH shall determine back-up switch gear or mechanisms required for maintenance, operation, & repairs so the System remains in operating condition. The Pleasant Harbor Utility District will invoice monthly to the Pleasant Harbor property owners a monthly sewer service charge. Such service charge shall be adjusted from time to time as necessary to reflect current costs and conditions and shall be sustained at a high enough level to cover all operation and maintenance costs including a recovery calculation for costs. HPH shall keep accurate records of the monies invoiced and received with the purpose of recovering all costs including capital costs with bank denoted interest, plus a 7% net operating income. Upon request of the PUD, copies of such records shall be made available by HPH and the PHUD for inspection by the PUD or its agents at a reasonable time and place. Copies requested by the PUD shall be made available and provided by either HPH or the PHUD.
  - f. HPH and the Board of the Pleasant Harbor Utility District (PHUD) shall cooperate with the PUD in establishing a continuing orientation program through which PUD officials and employees can become familiar with the physical and operational characteristics of the System, including procedures set forth in the Operation and Maintenance Manual to be developed by HPH and the PHUD.
4. Assumption of Operations by PUD. Pursuant to WAC 173-240-050 the PUD shall assume full operational responsibility for the System upon any one of the following occurrences:
- a. Treatment efficiency is unsatisfactory either as a result of plant capacity or physical operations and maintenance.

- b. The implementation of the System must be approved through the General Sewer Plan, as defined by WAC 173-240-050 and maintained to this level.
  - c. Should either/or HPH and the Pleasant Harbor Utility District (PHUD) cease to operate and maintain the System, and there is no successor appointed by HPH and the PHUD to assume these responsibilities. or
  - d. If HPH and/or the PHUD fail to comply with any permit requirements, such as monitoring and reporting, over an extended period of time recorded as not less than six (6) months from the date of the notice of default.
5. Determination by ECY. ECY shall determine the occurrence of such condition set forth in Article 4 of this Agreement and shall give the parties written notice thereof. Such written notice shall constitute an appealable order within the meaning of RCW 90.48.120. The order shall specify an implementation schedule and shall if conditions allow, grant HPH and the HPUD 6-months to correct unsatisfactory conditions.
6. Responsibilities of Parties Upon Assumption. In the event that assumption of the System by the PUD becomes necessary under Articles 4 and 5 of this Agreement, and as directed by ECY, the responsibilities of the parties shall be as follows:
- a. The PUD will become responsible for all operational aspects of the System, including operations, routine maintenance, and repair. Financing of such matters shall be as provided for in Article 8 of this Agreement. The PUD shall also be responsible for paying all taxes and assessments, if any, associated with operation and maintenance of the System, but are not responsible to reimburse ownership for any costs it incurred based on its development, ownership or operation of the System.
  - b. HPH and the PHUD shall be entitled to continue collecting and retaining sewer connection fees from Pleasant Harbor property owners solely for the purpose of servicing and retiring the capital debt incurred by HPH in constructing the System, as described in the Engineering Report, which is incorporated herein by this reference. PHUD and HPH agree that under no circumstances if the PUD undertakes its responsibilities described in this Section 6, is it entitled to reimbursement from the PUD for any costs resulting from operations, maintenance and repair. Ownership of the System shall not be changed by the PUD's assumption of operations, maintenance, and repair. If the PUD assumes operations and maintenance of the System, the new development connection fees will

be paid to HPH as the owner of the System. The PUD will collect and retain monthly billing as outlined in the Agreement.

- c. In no event shall the PUD be responsible for costs associated with physically connecting individual residences and other users to the System. Such costs shall continue to be borne by the users.
  - d. HPH and the PHUD shall make its best efforts to cooperate with the PUD in accomplishing an orderly System turnover to PUD personnel, including making available all pertinent records, procedures, and employees necessary for turnover.
  - e. Upon formal assumption of the System, as determined by ECY order issued under Article 5 of this Agreement, the PUD shall be authorized to enter upon the property served and occupied by the System to perform the duties set forth in this Agreement. Entry shall be made in a manner creating the least disruption to Pleasant Harbor residents and real property, but in a manner consistent with the efficient operation, maintenance, and repair of the System. Such right of entry shall exist until termination of this Agreement.
7. Indemnification. The PUD agrees to indemnify and hold HPH and the PHUD harmless from any and all claims, causes of action, judgments, liability, tort claims and claims for negligence, loss, damage, and expenses (including reasonable attorneys' fees), including claims for death or injury to persons or loss or damage to property, arising out of the PUD's use, operation or possession of the System after assumption has taken place pursuant to Articles 4 and 5 of this Agreement. HPH and the PHUD agree separately and jointly to indemnify and hold the PUD harmless from any and all claims, causes of action, judgments, liability, tort claims and claims for negligence, loss, damage, and expenses (including reasonable attorneys' fees), including claims for death or injury to persons or loss or damage to property, arising out of occurrences prior to the PUD's assumption of the System, and relating to HPH and PHUD's use, operation, possession or ownership of the System, and in the event HPH and PHUD's assumption of operations, the indemnity obligation to the PUD shall continue..
8. Funds for Operations. The parties shall provide for funding of System operation as follows.
- a. If the PUD assumes the operation of the System under Articles 4 and 5 of this Agreement, HPH and/or PHUD shall pay the PUD the expenses incurred for the initial month for the Operation and Maintenance including repair of the System.
  - b. Upon the PUD's assumption of System operations, HPH and/or PHUD shall assign over to the PUD its accounts receivable for monthly sewer service fees from owner-customers.

The PUD shall, thereafter, be responsible for administration and collection of such fees directly from the owner-customers.

- c. If the owner-customer payments do not cover the PUD's Operation and Maintenance expenses including repairs, then the PUD shall recover additional costs and expenses from HPH and the PHUD per Subsection 8.a. If HPH and or PHUD does not pay any expenses incurred by the PUD due to HPH and PHUD's failure to meet ECY regulations, then the PUD has the right to directly bill customers of the System. HPH and PHUD hereby waive any objections.
9. Transfer of Permits, Franchises and Leases. Upon assumption of the System, HPH or the PHUD shall assign and transfer to the PUD all permits, approvals, franchises, easements, rights-of-way, and leases which are necessary to enable the proper operation and maintenance of the System. Where required by law, the parties will seek and obtain the prior consent of government agencies within the jurisdiction. Such assignments and transfers shall pass to the PUD all the rights, duties and obligations formerly held by HPH and the PHUD therein.
10. Transfer Back of Operations to HPH. After assumption of the System by the PUD, HPH and the PHUD may at any time request that the PUD to transfer back to HPH and the PHUD all operational responsibilities previously assumed, including the permits, franchises, and leases, if any, assigned or transferred under Article 8 of this Agreement. The PUD shall grant such request if the effluent is within the concentration limits set forth in Pleasant Harbor waste discharge permit for at least six (6) consecutive months at the time of the request. Upon request by the PUD, HPH and the PHUD shall reimburse the PUD for any verifiable cash flow deficit experienced by the PUD from operation, maintenance and repair of the System during the period of assumption. Such reimbursement shall be a condition to transfer back system operations to HPH and the PHUD. Upon request by HPH and the PHUD the PUD shall make its books and records available at reasonable times and places during the period of assumption, so that HPH and the PHUD will be able to monitor and verify the existence of a cash flow deficit. This reimbursement shall include, but not be limited to the then current overhead calculated by the PUD.

HPH and the PHUD shall not be responsible for reimbursement of losses caused by the negligence of the PUD.

11. General Sewer Plan. The PUD shall adopt the Pleasant Harbor Utility District Sewer Plan (as defined by WA173-240-050) covering the Pleasant Harbor system, once the plan is approved by ECY.
12. Term. This Agreement shall terminate ten (10) years from the date of execution here for but shall be subject to extension by written agreement of the parties.
13. Successors-in-Interest. The rights, duties and obligations contained in this Agreement shall inure to the benefit of and be transferred to any assigns, purchasers, and any third party under this Agreement and subject to the PUD's reasonable written consent
14. Further Documents. Upon request, the parties shall execute such further documents as may be necessary to carry out the intent of this Agreement.
15. Entire Agreement. This Agreement constitutes the entire agreement between the parties with regard to the subject matter herein and may be modified only by written amendment executed by both the parties.
16. In the event of any litigation between the parties, venue for any such action shall be in Jefferson County, Washington.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

THE HAMLET OF PLEASANT HARBOR INC.  
OF JEFFERSON COUNTY

PUBLIC UTILITY DISTRICT NO. 1

By \_\_\_\_\_

Dr. M. Garth Mann: Director

The Hamlet of Pleasant Harbor INC.

By \_\_\_\_\_

Mr. Kevin Streett, General Manager