2018-1373725
Page 1 of 49 Agreement
Sequim City Of
Clallam County Washington 12/17/2018 03:24:32 PM

**Return Address:**
City of Sequim
152 West Cedar Street
Sequim WA 98382

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

**Document Title(s)** (or transactions contained therein): (all areas applicable to your document **must** be filled in)
1. Interlocal Agreement for Wastewater Disposal 2. for the Jamestown S'Klallam Tribe
3. _____ 4. _____

**Reference Number(s) of Documents assigned or released:**
Additional reference #'s on page N/A of document

**Grantor(s)** Exactly as name(s) appear on document
1. City of Sequim, _____
2. _____, _____
Additional names on page _____ of document.

**Grantee(s)** Exactly as name(s) appear on document
1. Jamestown S'Klallam Indian Tribe, _____
2. _____, _____
Additional names on page _____ of document.

**Legal description** (abbreviated: i.e. lot, block, plat or section, township, range)
N/A

Additional legal is on page _____ of document.

**Assessor's Property Tax Parcel/Account Number** ☐ Assessor Tax # not yet assigned
N/A

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

**"I am signing below and paying an additional $50 recording fee (as provided in RCW 36.18.010 and referred to as an emergency nonstandard document), because this document does not meet margin and formatting requirements. Furthermore, I hereby understand that the recording process may cover up or otherwise obscure some part of the text of the original document as a result of this request."**

_____ Signature of Requesting Party

**Note to submitter: Do not sign above nor pay additional $50 fee if the document meets margin/formatting requirements**

# INTERLOCAL AGREEMENT
# FOR WASTEWATER DISPOSAL
# FOR THE JAMESTOWN S'KLALLAM TRIBE

**Table of Contents**

1. Recitals.....
2. Definitions.....
3. Delivery and Acceptance of Wastewater.....
4. Excess Discharge.....
5. Operating and Maintenance Charges.....
6. Capacity Charge and Capital Cost Share.....
7. Billing and Payment.....
8. Sewage Meter/Monitoring Vault.....
9. Books, Records and Communications.....
10. Indemnification and Insurance.....
11. Term of Contract.....
12. Dispute Resolution.....
13. General Provisions.....

**EXHIBITS:**

A. Map and Table Identifying Jamestown Transmission Route and Jamestown Transmission Percentages
B. Examples Showing Calculation of O&M Charges
C. Calculation of Capacity Charges and Explanation of Accrued Interest Factor
D. Limited Waiver of Sovereign Immunity

This agreement ("Agreement") pursuant to RCW 39.34, the Interlocal Cooperation Act, is made by and between the City of Sequim, a Washington municipal corporation ("City"), and the Jamestown S'Klallam Tribe, a federally recognized Indian tribe ("Tribe") (individually a "Party" and collectively the "Parties"). In consideration of the terms and conditions set forth in this Agreement, the Parties agree as follows:

**Section 1. Recitals**

1.1 The City owns and operates a wastewater collection and treatment system ("City System"), including a Wastewater Reclamation Facility ("WRF"), and is authorized pursuant to RCW 35.67.020(1) to provide sewer service to customers and properties located both within and outside of the city limits.

1.2 The Tribe intends to construct a wastewater collection and transport system ("Jamestown System") which will be located between the Tribe's trust and reservation lands at the head of Sequim Bay in Blyn, Washington, and the City System.

1.3 The Tribe intends to enter into a separate, long-term agreement with the City to perform the operations and maintenance of the Jamestown System.

1.4 The City System currently has available capacity, and the City desires to accept wastewater flows from the Jamestown System if there is no financial subsidy by the City's ratepayers.

1.5 The Tribe has evaluated its options for treating and disposing of wastewater from the Jamestown System and finds that the most cost-effective method is to discharge the wastewater into the City System.

1.6 City and Tribe representatives have met and discussed the discharge of wastewater from the Jamestown System into the City System, including the charges that should be paid by the Tribe to the City for the right to discharge. Both parties agree that the charges, terms and conditions set forth in this Agreement are reasonable and equitable.

1.7 It is the purpose of this Agreement to provide for long-term wastewater disposal, planning and certainty for both the City and the Tribe.

1.8 The City is subject to certain laws and regulations, such as the Growth Management Act ("GMA") (RCW 36.70A), relating to providing urban services to areas outside of its municipal limits. Sewer services are considered urban services under the GMA, and generally should not extend outside city limits or outside the boundaries of an urban growth area.

1.9 The City also bases its sewer charges on a cost recovery system, required under law, to protect City ratepayers.

1.10 The City and the Tribe agree that due to these limitations, the City must make appropriate provisions for ensuring that the City retains adequate sewer capacity to meet its obligations under the GMA.

1.11

1.11.1 The Tribe and the City agree that connection to the City System shall apply only to Tribal lands in Trust and Reservation status except as provided in Section 1.11.2. No additional connections to the City System through the Jamestown System for non-Tribal lands shall be initiated except as provided for in RCW 36.70A.110(4).

1.11.2 The City currently provides sewer collection and transmission service to certain properties already connected to City service upstream of the Point of Delivery (as defined in Section 2.35, below). The Tribe and the City agree that it is mutually beneficial to allow the City to connect these properties to the Jamestown System.

1.11.2A The Tribe and the City agree that the City will be responsible for any and all non-Tribal sewer connections beginning at the pump station to be constructed at Sequim Bay State Park and ending at the Point of Delivery.

1.11.2B The City will be the sewer service provider to these connected properties and any new properties connected within the section of the Jamestown System described in Section 1.11.2A; the Tribe will not be the sewer service provider to these properties or any additional properties connected within this section of the Jamestown System or anywhere outside of the Jamestown Service Area (as defined in Section 2.29, below).

1.12 The Parties agree that the Tribe is not required to pay State or local taxes or fees; however, as additional inducement for the City to enter into this Agreement, the Tribe will pay consideration equal to the amount of any fees or taxes levied by or against the City because of its status as a utility. The Tribe also consents and agrees that because of the limitations described below, it will pay local taxes and fees identified in this Agreement, even though it is not required to under law.

1.13 The Tribe is a sovereign entity that is not subject to the personal or subject matter jurisdiction in Washington State courts. Federal court jurisdiction is limited to matters involving a federal question or diversity of citizenship, and federal court jurisdiction cannot be conferred by agreement. Without a limited waiver of tribal immunity, the City has no remedy if the Tribe violates the terms of this Agreement. In order to induce the City to enter in this Agreement, the Tribe is willing to agree to a limited waiver of sovereign immunity as to subject matter and personal jurisdiction over the Tribe, strictly limited to those actions arising from or relating to this Agreement and includes any judgment rendered by Washington State courts. The Tribe must pass a resolution in accordance with Tribal Code Section 22.01.02 – Waiver of Sovereign Immunity that reflects the spirit and intent of this Agreement and specifically includes allowing monetary relief. Such resolution will be attached to this Agreement and incorporated as "Exhibit D. Limited Waiver of Sovereign Immunity".

1.14 The recitals made above are material representations to this Agreement. Based upon that understanding, the Parties now desire to enter into this Agreement, as an interlocal agreement pursuant to RCW 39.34, the Interlocal Cooperation Act, for the disposal of wastewater from the Jamestown System to the City System.

**Section 2. Definitions**

2.1 "Agreement" means this document.

2.2 "Average Jamestown Transmission Percentage" means the weighted average of the Jamestown Transmission Percentages, based on the length of each segment of pipe along the Jamestown Transmission Route (as defined in Section 2.34, below). The Average Jamestown Transmission Percentage set forth in Exhibit A is assumed, for the purposes of this Agreement, unless and until that percentage is updated pursuant to Section 5.1.2(c).

2.3 "Biochemical Oxygen Demand" or "BOD" means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures during five (5) days at twenty (20) degrees Celsius/sixty-eight (68) degrees Fahrenheit, expressed as a loading in lbs./day.

2.4 "Blyn Pump Station" means a pump station, including a wet well containing submersible pumps, a valve vault, a meter vault, and an electrical seal-off vault through which Jamestown Flows shall exit the Jamestown service area.

2.5 "Capacity" means the maximum amount of wastewater the WRF is designed to treat in a given unit of time. It is typically measured in millions of gallons per day (MGD) (see definition of "Flow" in Section 2.20, below). Capacity will normally be greater than Flow.

2.6 "Capacity Charge" means an up-front payment by the Tribe to the City for the right to discharge a given amount of Wastewater, or a subsequent payment for a given incremental increase in the amount of Wastewater, into the City System.

2.7 "Capacity Percentage" means the Capacity Reservation divided by the total rated flow capacity of the WRF, measured as a percentage of maximum monthly flow. When determining the Capital Cost Share for capital projects that expand WRF flow capacity, Capacity Percentage means the Capacity Reservation after WRF expansion divided by the total rated flow capacity after WRF expansion.

2.8 "Capacity Reservation" means the maximum Jamestown Flows that may be discharged to the City System in a given Fiscal Year, as measured by Maximum Monthly Flow in gallons per day (gpd), as updated pursuant to Section 3.4.2, below. This will include an initial amount of reserved capacity and, if negotiated by the parties as an amendment to this Agreement, future amounts.

2.9 "Capital Cost Share" means a required payment from the Tribe to the City toward the cost of capital improvements to the WRF, the Jamestown Transmission Route, or the City Collection System as a whole, where the capital cost is incurred after December 31, 2017.

2.10 "City" means the City of Sequim, a Washington municipal corporation existing and operating pursuant to Title 35 Revised Code of Washington.

2.11 "City Collection System" means the entire City-owned sanitary sewer trunk lines, laterals in City right-of-way, lift stations, and force mains through which sewage flows to the WRF, including manholes and other appurtenances, but not including the WRF.

2.12 "City Service Area" means the current sewer service area boundary of the City, and as such boundary may be modified and amended in the future.

2.13 "City System" means the City Collection System plus the WRF.

2.14 "City Wastewater Source Control Program" means the regulations, policies and procedures adopted by the City for the pretreatment of wastewater discharged into the City System, currently set forth in Sequim Municipal Code in Title 13, Chapter 13.48, and as such regulations, policies and procedures may be modified, amended, repealed and superseded by the City.

2.15 "Collection System Operating Cost Basis" means the actual cost of operating and maintaining the City System minus the Treatment Operating Cost Basis, subject to the inclusions and exclusions set forth in Section 5.2.

2.16 "DOE" means the Washington State Department of Ecology.

2.17 "Domestic Wastewater" means water carrying human wastes, similar in character and volume to wastewater generated from single and multifamily residences and permanent mobile home courts.

2.18 "Eligible City Capital Costs" means, and shall include, the cost of construction, engineering fees, staff time spent directly on engineering or project management, major equipment acquisitions, legal fees, land acquisition costs, and other types of costs customarily paid for by the City from capital funding sources for a capital asset, provided that eligible City Capital Costs shall not include interest or other financing charges, except for accrued interest as set forth in Section 6.3.3, below. Eligible City Capital Costs shall be offset by grants specific to the capital project. Eligible City Capital Costs shall not be reduced by capital cost shares paid by other wholesale customers that the City may potentially have in the future, nor shall it be reduced by the City's use of its own connection charge income.

2.19 "Fiscal Year" means the calendar year for the City of Sequim.

2.20. "Flow(s)" means the actual amount of water being treated, moved or reused. It is normally expressed in millions of gallons per day (MGD) (see definition of "Capacity" in Section 2.5, above).

2.21 "FOG" means wastewater whose components of fats, oils and grease are subject to measurement by the methods described in Standard Methods of Examination of Water and Wastewater, 20th Edition, 1998, Section 5520, or the latest edition; the term "fats, oils and grease" shall include polar and non-polar fats, oils and grease.

2.22 "High Strength Waste" means any water or wastewater having a concentration of BOD or TSS in excess of 300 mg/L.

2.23 "Industrial Wastewater" means water or liquid-carried waste from any industry, manufacturing operation, trade, business, or commercial establishment and public use facilities which includes process wastewater, cooling water, contaminated stormwater, contaminated leachates, or other waters in some combination such that the combined effluent differs in some way from Domestic Wastewater, or is subject to regulation under Federal Categorical Pretreatment Standards ("Standards"), the State Waste Discharge Permit Program ("WDP Program"), as such Standards and WDP Program may be updated, modified or amended.

2.24 "Inflow and Infiltration" or "I&I" means water that enters the sewer system from the outside environment, not from domestic or industrial structures. "Inflow" means surface water that enters the wastewater system from yard, roof and footing drains, from cross-connections with storm drains, downspouts, and through holes in manhole covers; "infiltration" means infiltration of groundwater that is influenced by surface or sea water, that enters sewer pipes, interceptors, collectors, manholes, or side sewers through breaks, holes, joint failures, connection failures and other openings.

2.25 "Initial Capacity Charge" means the Capacity Charge to be paid when the Jamestown System is first connected to the City System. See also "Subsequent Capacity Charge" in Section 2.37, below.

2.26 "Initial Capacity Reservation" means the Capacity Reservation in effect upon initial connection of the Jamestown System to the City System and thereafter, until updated pursuant to the procedure set forth in Section 3.4.2, below. See also "Subsequent Capacity Reservation" in Section 2.38, below.

2.27 "Jamestown Flow" or "Jamestown Flows" mean the total actual continuous flow volume of Wastewater through the Sewer Meter, in gallons per minute (gpm), peak hourly minus the total actual flow from any City customers connected along the Jamestown System also flowing through the Sewer Meter.

2.28 "Jamestown System" means the sewerage system consisting of a sanitary sewer collection system, sewage trunk lines, sewer pumping stations, and appurtenances owned, operated, and maintained by the Tribe in the Jamestown Service Area, including a force main extending to the Point of Delivery.

2.29 "Jamestown Service Area" means the Jamestown trust and reservation lands as presently designated or as modified in the future.

2.30 "Jamestown Transmission Percentage" means the projected Jamestown Flow in gallons per minute (gpm), peak hourly, as a percentage of projected total Wastewater flow in Maximum Monthly Flow in gallons per day (gpd) through any given segment of pipe along the Jamestown Transmission Route. The Jamestown Transmission Percentages set forth in Exhibit A are assumed, for the purposes of this Agreement, unless and until those percentages are updated pursuant to Section 5.1.2(c).

2.31 "Jamestown Transmission Route" means the linear path of City Sewer pipes, including manholes and related facilities, through which Jamestown Flows are primarily conveyed from the Point of Delivery to the City WRF, as shown in Exhibit A.

2.32 "Maximum Monthly Flow" ("MMF") means the total flow of sewage in gallons divided by the total number of days in that month during which the greatest volume of flow occurs, in any given Fiscal Year, expressed in gallons per day (gpd). Design capacities and discharge permits for wastewater treatment facilities are commonly based on MMF.

2.33 "Net Book Value" means the original cost of a capital asset, less the portion of the cost funded by contributed capital such as grants, less accumulated depreciation on the non-contributed portion.

2.34 "O&M Markup" means an amount that is added to the cost basis for the two types of O&M charges set forth in Section 5.1, below, to account for the City Business & Occupation Tax and an out-of-City multiplier. The O&M Markup is equal to twenty-five (25%) of the cost basis. There is no similar markup for the Capacity Charge or Capital Cost Share.

2.35 "Point of Delivery" means the boundary at which wastewater originating in the Jamestown System is conveyed into the City System, located in proximity to the intersection of US 101 and Whitefeather Way within the City, as shown in Exhibit A. All sewer lines upstream of the Point of Delivery are the responsibility of the Tribe, except as otherwise provided in Section 11.11.2B, above.

2.36 "Sewage" or "Wastewater" means water-carried human wastes or a combination of water-carried wastes from residences, business buildings, institutions, industrial establishments and public use facilities, together with such I&I as may be present.

2.37 "Sewer" means any pipe, conduit ditch, or other device used to collect and transport sewage from the generating source to the Wastewater Reclamation Facility.

2.38 "Sewer Meter" means a sewer flow meter, including a vault, sample port, and electronic equipment to allow remote meter reading, through which Jamestown Flows shall enter the City System.

2.39 "Subsequent Capacity Charge" means the capacity charge to be paid when the Jamestown System requests and is granted an increase in its Capacity Reservation pursuant to the provisions of Section 3.4.2, below. See "Initial Capacity Charge" in Section 2.25, above.

2.40 "Subsequent Capacity Reservation" means the revised Capacity Reservation in effect after an update to it pursuant to Section 3.4.2, below.

2.41 "Total Suspended Solids" or "TSS" means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering, expressed as a loading in lbs./day.

2.42 "Treatment Operating Cost Basis" means the actual cost of operating and maintaining the WRF in a given year, subject to the inclusions and exclusions set forth in Section 5.2, below.

2.43 "Tribe" or "Tribal" means or refers to the Jamestown S'Klallam Tribe, a federally recognized Indian Tribe.

2.44 "Wastewater Reclamation Facility" or "WRF" means the City's wastewater treatment and reclamation plant located at 247 Schmuck Road, Sequim, Washington, along with its appurtenant headworks, marine outfall, and water recycling facilities.

## Section 3. Delivery and Acceptance of Wastewater

3.1 Wastewater Delivery. The Tribe shall deliver to the City, not to exceed the Capacity Reservation for the Jamestown System, the Wastewater collected by the Jamestown System, and the City shall accept and treat the Jamestown Flows in accordance with the terms of this Agreement. The Tribe shall be responsible for all costs of design and construction of the Jamestown System. The Tribe shall also be responsible for design and construction costs necessary for connection of the Sequim Bay State Park and Sequim Bay Lodge sewage systems to the Jamestown System. The Tribe and the City agree that connection to the City's wastewater facility shall apply only to Tribal lands in Trust and Reservation status. No additional connections to the facility from non-Tribal lands shall be initiated except as provided for in RCW 36.70A.110(4).

3.2 Wastewater Metering. The Tribe shall deliver the Wastewater to the City at the Sewer Meter, which the Tribe shall construct at the Tribe's sole expense at the Point of Delivery. Upon completion of construction, the Tribe shall transfer to the City ownership of

the Sewer Meter, including any warranties or sureties, after which the City shall operate and maintain it at the City's sole expense.

3.3 Initial Capacity Reservation. The Initial Capacity Reservation is ninety four thousand seven hundred eighty six gpd (94,786 gallons per day) (Maximum Monthly Flow).

3.4 Future Updates to Capacity Reservation.

3.4.1 Planning Basis for Capacity Reservation. The intent of the Parties is that the Capacity Reservation be based on a long-term demand forecast for the Jamestown System, so that the Jamestown System has reserved capacity sufficient to accommodate between ten and twenty years of planned growth at any given time. The choice about how much treatment capacity to request is at the sole discretion of the Tribe, and the choice about whether to grant the requested level of capacity is at the sole discretion of the City. Both parties agree to be reasonable in exercising their discretion.

3.4.2 Process for Updating Capacity Reservation. At five-year intervals beginning in 2024, the Tribe shall assess the projected level of demand from the Jamestown System, and the City shall assess the total projected demand for the WRF. Based on the Jamestown System demand forecast, the Tribe shall determine whether the Jamestown System has sufficient reserved treatment capacity to accommodate its projected future growth. If the Tribe requests a change in the Capacity Reservation and the request is granted by the City, with approval from their respective legislative bodies, the incremental change and the revised Capacity Reservation shall be documented in a joint memorandum signed by the managers responsible for the Jamestown System and the City System, with such memorandum to be appended to the Agreement as an amendment. The Capacity Percentage shall thereby be updated to reflect the new percentage of WRF capacity committed to the Jamestown System, and the Tribe shall pay the appropriate Capacity Charge on the incremental Capacity reservation.

3.4.3 Plan for Maintaining Adequate Capacity Reservation. Even if it has been less than five years since the most recent demand forecast, if the Maximum Monthly Flow of the Jamestown System exceeds eighty-five percent (85%) of the Capacity Reservation, the Tribe shall update the Jamestown System demand forecast and submit a plan to the City for continuing to maintain adequate treatment capacity, potentially including a request for additional Capacity Reservation. For purposes of this section "adequate" means a minimum fifteen percent (15%) Capacity Reservation buffer at all times.

3.4.4 Reductions in Capacity Reservation. If the City requests a reduction in Capacity Reservation and the Tribe agrees, then the City shall pay the Tribe a Capacity Refund Payment. As illustrated in Exhibit C, attached and incorporated by this reference, the Capacity Refund Payment shall be based on the then-current Net Book Value of the capital assets previously funded by Capital Cost Shares and the then-current Net Book Value of the pre-2018 assets included in previously paid Capacity Charges, the sum divided by the then-

current WRF total capacity (in gpd) and then multiplied by the change in Capacity Reservation (in gpd).

3.5 High Strength Waste and Industrial Wastewater. The City agrees to accept and treat High Strength Waste and Industrial Wastewater from the Jamestown System; however, the City shall have the right to regulate and control the conditions through the City's Wastewater Source Control Program under which High Strength Waste and Industrial Wastewater is accepted into the City System.

3.5.1 Pretreatment Requirements for Jamestown System Customers. The Tribe shall adopt and implement a pretreatment program for the Jamestown System customers discharging High Strength Waste or Industrial Wastewater, with requirements at least as stringent as what the City Wastewater Source Control Program requires of City System customers. The Tribe's pretreatment program may include requirements to install on-site pretreatment facilities, adopt specified wastewater management practices, monitor wastewater flows from particular customers, be subject to inspections by Tribal or City pretreatment staff, and/or pay fees for retreatment program administration and lab testing. The Tribe shall not accept into the Jamestown System septage and other liquid hauled wastes as referenced in "Criteria for Sewage Works Design (T1-2 Septage and Other Liquid Hauled Wastes)" Washington State Department of Ecology.

3.5.2 Tribe Responsible for Jamestown System High Strength Waste and Industrial Wastewater. The City shall be responsible for testing at its own expense the BOD, TSS, FOG, and other regulated characteristics of the Jamestown Flows at the Blyn Pump Station. The Tribe shall be responsible for any violations of the City Wastewater Source Control Program or DOE permit requirements resulting from Jamestown Flows but only to the extent such violations result in Wastewater originating from the Jamestown Service Area and not originating from City customers connected to the Jamestown System. A pattern or practice of violations by the Tribe, but not by non-Tribal connections to the Jamestown System, of the City Wastewater Source Control Program or DOE permit requirements for high strength waste or industrial wastewater, may be considered grounds for the City to terminate the Agreement, with ten (10) years advance written notice. The City also retains the right to suspend the Tribe's service in accordance with Section 7.8, Suspension of Service for Non-Payment, below, for violations arising under this Section.

3.5.3 Surcharge for High Strength Wastewater Flows. The City Agrees to accept and treat High Strength Industrial Wastewater from the Jamestown System at a surcharge calculated on the cost of treating concentrations of $BOD_5$ or TSS in excess of 300 mg/L. High strength O&M surcharge rates are based on estimates of the O&M costs associated with treating each pound of $BOD_5$ and TSS. Annual O&M expenses at the Water Reclamation Facility have been analyzed and segregated into costs associated with treating flow, $BOD_5$ and TSS. The total annual costs to treat $BOD_5$ and TSS are then divided by the total pounds treated at the City's WRF to determine unit costs ($/pound) to treat each pound of $BOD_5$ and TSS. The high strength O&M surcharge rate for $BOD_5$ based on 2017 WRF costs is estimated to be $0.19 per pound of $BOD_5$ and $0.20 per pound of TSS. The High Strength

Surcharge Rate shall be calculated each year in conjunction with the Treatment O&M Rate. High strength surcharges will be billed for $BOD_5$ or TSS concentration that represents an average strength concentration over the billing period in excess of 300mg/L as set forth in 5.1.2 below. The equations below will be used by the City to calculate high strength O&M surcharges.

- $BOD_5$ or TSS O&M Surcharge Rate ($BOD_5$ of $0.19 and TSS of $0.20) per pound
- "C" = $BOD_5$ or TSS concentration that represents the average strength concentration over the billing period
- The high strength customer's flow over the billing period in million gallons
- Conversion factor = 8.34 (lb/mgal)/(mg/L)

$BOD_5$ O&M Surcharge per Billing Period Bill Calculation
$BOD_5$ O&M Surcharge Rate: ($/lb) x Flow (mgal) x (C(mg/L) – 300 mg/L) x 8.34

TSS O&M Surcharge per Billing Period Bill Calculation
TSS O&M Surcharge Rate: ($/lb) x Flow (mgal) x (C(mg/L) – 300 mg/L) x 8.34

Examples of $BOD_5$ and TSS O&M Surcharge Billing Period Calculation charges are shown in Exhibit B, attached and incorporated by this reference.

3.6 Tribal Access to Reclaimed Water from Sequim Water Reclamation Facility.

3.6.1 Statement of Intent. Both parties recognize that the Tribe is contributing to the effluent flows at the WRF. The reclaimed water generated by the WRF offers a resource that is valuable to the region and may be of interest to the Tribe in the future. Nothing in this Agreement requires the City of Sequim to have reclaimed water that meets the standards or volumes needed for upland or aquifer recharge. The City shall have the choice of which wastewater treatment standard to apply and may base this decision on many factors, including but not limited to State regulations, discharge permit conditions, cost to produce reclaimed water, market demand for reclaimed water, WRF operating constraints, upset plant conditions, and/or distribution system constraints.

3.6.2 Tribal Right to Acquire Reclaimed Water. Prior to the City selling or committing reclaimed water to other customers or for mitigation projects, the Tribe will have a right of first refusal to purchase a quantity of reclaimed water equal to the amount of Jamestown Flows, as measured at the Sewer Meter. The Tribe will have ninety (90) calendar days to formally commit to such a purchase after being notified in writing by the City of its availability. The price charged to the Tribe for reclaimed water shall equal the price charged to in-City customers plus fifteen percent (15%), provided that if any part of the cost of creating reclaimed water is already included in the Tribe's wastewater treatment bill, that amount will be deducted from the cost of the reclaimed water purchase. If Tribe use of the reclaimed water requires special pumping or conveyance not otherwise provided to City

customers, the cost shall be borne by the Tribe. If the Tribe uses its purchased reclaimed water for water rights mitigation or other long-term commitments, it will do so solely at its own discretion, and the City will not be responsible for any guaranteed delivery of the reclaimed water beyond what is normal policy for all customers of the City.

3.7 Pipe Capacity. The Tribe shall design and operate the Jamestown System so as not to cause surcharging, as defined in the DOE *Criteria for Sewage Works Design* (Orange Book) latest edition, due to Jamestown Flows exceeding its share of pipe capacity. The City shall have the right to review and comment on the design and operating procedures for Jamestown System lift stations.

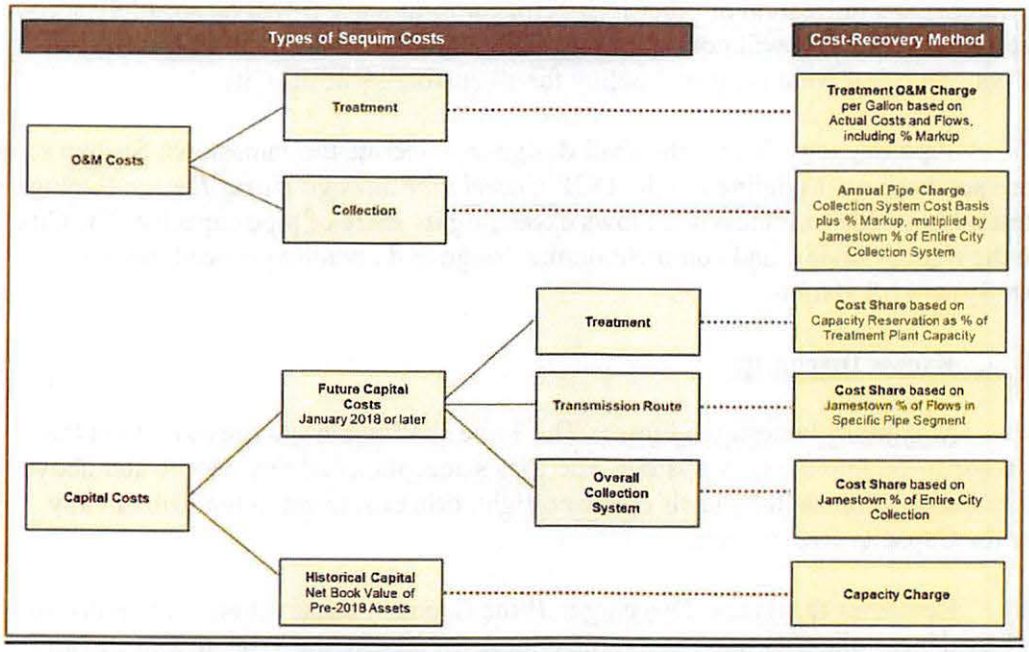
**Section 4. Excess Discharge**

4.1 Maximum Jamestown Flows. The Tribe shall not discharge more than the Capacity Reservation into the City System. The City's acceptance of any wastewater above the Capacity Reservation shall by itself create no right, title or interest in the Tribe in any increase in the Capacity Reservation.

4.2 Remedies for Excess Discharge. If the Capacity Reservation is exceeded in any given Fiscal Year, the City may, at its sole option, (a) require the Tribe to agree to an increased Capacity Reservation, (b) if the City determines it does not have sufficient WRF capacity to allow an increased capacity reservation, require the Tribe to impose a moratorium on new connections within the Jamestown System trust and reservation lands, and/or (c) terminate this Agreement and discontinue receiving Tribal Wastewater after at least ten (10) years prior written notice to the Tribe. Before imposing a remedy, the City shall consult with the Tribe to determine which remedy the Tribe considers to be the least burdensome and most realistic, provided, however, the City shall retain the right in its sole, reasonable discretion to impose the appropriate remedy.

**Introductory Note to Sections 5 and 6.** Figure 1 is a graphic depiction of the methods by which capital and operating costs related to the City WRF and Jamestown System Transmission Route are to be recovered from the Tribe by the City. Section 5 addresses the recovery of operating and maintenance ("O&M") costs; Section 6 addresses the recovery of capital costs.

**Figure 1: Types of Costs and Cost Recovery Methods**




## Section 5. Operating & Maintenance Charges

5.1 Types of Operating and Maintenance Charges. The Tribe shall pay the City monthly two types of O&M Charges for the disposal of the Jamestown Flows: a Treatment O&M Charge based on a Treatment O&M Rate (see Section 5.1.1, below) per gallon multiplied by the number of gallons of Jamestown Flows in a given month, and an Annual Pipe Charge divided by twelve (12) months.

5.1.1 Calculation of Treatment O&M Rate. A Treatment O&M Rate per gallon shall be calculated each Fiscal Year based on the Treatment Operating Cost Basis plus the O&M Markup, the sum divided by the actual total gallons of influent to the WRF during that year.

5.1.2 High Strength Wastewater Flow Surcharge. The monthly surcharge for high strength wastewater shall be calculated as a lump sum according to the formulas referenced in paragraph 3.5.3 and added as a flat charge to the monthly utility bill for Treatment and Pipe Charge for each of the TSS and BOD loads.

5.1.3 Annual Pipe Charge. The Annual Pipe Charge shall be calculated each Fiscal Year based on the Collection System Operating Cost Basis plus the O&M Markup, the sum multiplied by the Jamestown Percentage of the entire City Collection System. The Annual Pipe Charge divided by twelve (12) shall be billed each month, beginning with the

date the Jamestown System is connected to the City System, with the first month pro-rated to the number of days of service during that month.

(a) The Jamestown percentage of the entire City Collection System results from the Average Jamestown Transmission Percentage being multiplied by the Jamestown Transmission Route lineal feet as a percentage of the total lineal feet in the entire City Collection System, as shown in Exhibit A. Until updated in the future, the Jamestown Percentage of the entire City Collection System will be one point nine per cent (1.90%)

Every five years beginning in 2024, the City shall update the Jamestown percentage of the entire City Collection System based on updated information about total lineal feet in the City Collection System. The updated number of total lineal feet in the City Collection System and resulting updated Jamestown percentage of the entire City Collection System shall be documented in a memorandum from the manager responsible for the City System, appended to the Agreement as an amendment, executed by both Parties, and used in subsequent calculations of the Annual Pipe Charge and Capital Cost Share.

(b) If both Parties agree in writing, with approval from their respective legislative bodies, to update the Jamestown Transmission Percentages, then an engineering analysis shall be performed to forecast the peak hourly flows (in gallons per minute, or gpd) of the Jamestown System and City System, respectively, through the shared pipes of the Jamestown Transmission Route. The time frame for the engineering analysis shall be fifteen (15) years, and the cost of the analysis shall be shared equally by both Parties. The updated Jamestown Transmission Percentages and Jamestown Percentage of the entire City System resulting from the analysis shall be documented in a joint memorandum signed by the respective managers responsible for the Jamestown System and the City System, to be appended to the Agreement, as an amendment, and shall supersede the percentages shown in Exhibit A and be used for subsequent calculations of the Annual Pipe Charge and Capital Cost Share.

5.2. Included and Excluded Costs.

5.2.1. Included Costs. The Treatment Operating Cost Basis and Collection System Operating Cost Basis shall include both direct and indirect costs of operating and maintaining the City System, subject to the exclusions set forth in Section 5.2.2, below. Indirect costs such as administrative, general, and insurance costs shall be allocated in proportion to the amount of direct costs with which they are associated.

5.2.2. Excluded Costs. The Treatment Operating Cost Basis and Collection System Operating Cost Basis shall exclude the following:

(a) Any capital-related costs, such as capital expenditures, debt service costs, or transfers for the purpose of funding capital reserves.

(b) The City Business & Occupation Tax.

(c) State public utility and B&O taxes not applicable on sales to governmental customers.

(d) The cost of services not received by the Jamestown System, such as stormwater service, sewage pumping, retail meter reading, or retail customer billing.

Exhibit B illustrates the calculation of the Treatment O&M Charge and Annual Pipe Charge.

5.3. Estimated O&M Charges and True-up Adjustment. In advance of a given Fiscal Year, the City shall create an estimated Treatment O&M Rate based on estimated costs and flows, and the estimated rate shall be applied to actual Jamestown Flows during that year. The City shall also create an estimated Annual Pipe Charge based on the estimated Collection System Operating Cost Basis. After Fiscal Year-end, the Treatment O&M Rate for the given year shall be re-calculated based on actual costs and flows and a corrected Treatment O&M Charge calculated. Also, after Fiscal Year-end a corrected Annual Pipe Charge shall be calculated based on the actual Collection System Operating Cost Basis. The difference between estimated and corrected amounts for both types of O&M charges shall be divided into twelve equal parts and added to or subtracted from the following twelve monthly bills to the Tribe. Exhibit B provides an example of a true-up adjustment after the end of a Fiscal Year.

## Section 6. Capacity Charge and Capital Cost Share

6.1 Introduction to Section 6. In general, under the terms of this Agreement, Capacity Charges are used to recover a proportionate share of the Net Book Value of WRF and Jamestown Transmission Route assets built or acquired prior to December 31, 2017, including Construction Work in Progress as of December 31, 2017. For City capital costs incurred for WRF and Jamestown Transmission Route projects after December 31, 2017, a proportionate share of the City capital cost is recovered through a Capital Cost Share.

6.2 Capacity Charges.

6.2.1 Initial Capacity Charge. Ninety (90) calendar days after funding from USDA becomes available for distribution, the Tribe shall pay to the City an Initial Capacity Charge of One million, five hundred ninety one thousand, five hundred eighty Dollars ($1,591,580.00), pursuant to calculations shown in Exhibit C. The Initial Capacity Charge is based on the Jamestown System share of the Net Book Value of pre-2018 WRF and Jamestown Transmission Route assets, assuming accumulated depreciation as of December 31, 2017, which is the projected date for the Jamestown System to be connected to the City System.

6.2.2 Subsequent Capacity Charges. If the Capacity Reservation is increased pursuant to Section 3.4.2, above, a subsequent Capacity Charge shall be paid by the Tribe to

the City. Subsequent Capacity Charges shall be calculated following the method illustrated in Exhibit C, based on the Net Book Value per gpd of pre-2018 treatment assets, multiplied by the increase in Capacity Reservation. The Net Book Value for subsequent Capacity Charges shall be net of year-end accumulated depreciation for the year immediately preceding the date the charge is payable. If the increase in Capacity Reservation occurs in conjunction with a WRF expansion project, post-expansion WRF capacity shall be used in calculating the subsequent Capacity Charge. Subsequent Capacity Charges shall be payable prior to the increase in Capacity Reservation taking effect.

6.3 Capital Cost Share. For capital expenditures to the City System incurred subsequent to December 31, 2017, the Tribe shall pay to the City a Capital Cost Share based on Eligible City Capital Costs and the applicable Capital Cost Share percentages.

6.3.1. Capital Cost Share Percentages. The Capital Cost Share shall be based on the percentages set forth below:

(a) Treatment Capital. For capital improvements to the WRF, the applicable Capital Cost Share percentage shall be the Capacity Percentage, except that if the capital improvements are triggered by the need to expand the capacity for BOD or TSS loadings, the cost of those treatment improvements shall be shared on the basis of each party's relative BOD or TSS loadings at the time the need for the expansion is triggered.

(b) Jamestown Transmission Route Capital. For capital improvements to the Jamestown Transmission Route, the applicable Capital Cost Share percentage shall be the Jamestown Transmission Percentage for the applicable segment of the Jamestown Transmission Route. If more than one segment is involved in a single capital improvement project, the project cost shall be allocated by segment so that the relevant Jamestown Transmission Percentage can be applied to each improved segment. If a City Collection System project improves sewer lines both on and off the Jamestown Transmission Route, the Capital Cost Share shall only apply to the portion on the Jamestown Transmission Route.

(c) Collection System-wide Capital. For capital improvements or acquisitions that benefit the City Collection System as a whole, without being geographically specific, the applicable Capital Cost Share percentage shall be the Jamestown Percentage of the entire City Collection System, as set forth in Section 5.1.2 (b), above. Examples of this type of project might include improved GIS mapping or the replacement of a Vactor truck.

(d) City Collection System Projects Not on the Jamestown Transmission Route. For capital improvements to a geographically specific part of the City Collection System that is not on the Jamestown Transmission Route, there is no Capital Cost Share.

6.3.2. Eligible City Capital Costs. The Capital Cost Share shall be based on Eligible City Capital Costs actually incurred.

6.3.3 Annual Billing for Capital Cost Share. Beginning in 2019, the City shall bill the Tribe, prior to March 31 each year, for the Jamestown System Capital Cost Share relevant to the previous year's capital expenditures, and the Tribe shall make the required payment within thirty (30) calendar days, subject to the dispute resolution process outlined in Section 7.5 and Section 12, below. The City may add three-quarters of one percent (0.75%) to the Capital Cost Share as an approximation of accrued interest during the year in which capital expenditures are incurred. The accrued interest factor is further explained in Exhibit C.

6.3.4. No Markup or Out-of-City Multiplier. The Capital Cost Share shall not include a markup or an out-of-City multiplier.

**Section 7. Billing and Payment**

7.1 Billing and Payments for O&M Charges and Capital Cost Share. In consideration for the transmission, treatment and disposal of Wastewater received from the Jamestown System, the City shall bill the O&M Charges to the Tribe on a monthly basis for the Treatment O&M Charge and one-twelfth (1/12) of the Annual Pipe Charge. The City shall also bill the Tribe annually, as set forth in Section 6.3.3, above, for the Capital Cost Share. The Tribe shall make payments to the City based on the bill. Billing and payment are further described herein.

7.2 Billings. A bill that has been properly addressed and deposited in the United States mail, either to the address shown in Section 13.1, below, or to another address designated by the Tribe in writing, shall be deemed to be presented to the Tribe for payment. If both parties agree in writing, electronic billing may be used, in which case the billing date is the date the bill is sent electronically to the e-mail address designated in writing by the Tribe. The Tribe's payment in full of the monthly bill shall be due and payable at the City's Business Office twenty-five (25) days after the deposit of the City bill in the United States mail or the bill is sent electronically to the Tribe ("Due Date"). Any bill not paid by the Due Date shall be past due. The City may charge interest on any past due bill at the rate applied to other City customers, subject to RCW 35.67.210 or as such statute may be modified, amended or superseded, for every month or portion of a month that the past due amount remains unpaid.

7.3 Temporary Lapses in Sewer Meter Data. If metered sewage volume is incomplete or inaccurate for any period of time, the City may bill the Tribe for such period based on an estimated volume using any of the following methods: historical Jamestown Flows, historical relationship of Jamestown Flows to related metered water use, or surrogate Jamestown Flows agreed upon in writing by the Parties. The City shall provide the Tribe documentation of the basis for the estimated Jamestown Flows in any such instance.

7.4 Tribal Customers. The Tribe shall be solely responsible for billing and collecting for sewer service from customers connected to the Jamestown System, except for Sequim Bay State Park and the business currently operating as Sequim Bay Lodge. Sewage

volume from Sequim Bay State Park and Sequim Bay Lodge will be metered independently of and deducted from the Jamestown System metered volume for the purposes of billing.

7.5 Disputed Bills. If the Tribe believes that a bill from the City is in error, the Tribe shall notify the City and provide supporting documents within the thirty (30) calendar days after the City's transmittal of the bill to the Tribe. Notice of disputed bills shall include payment of undisputed amounts and fifty percent (50%) of disputed amounts. Within ten (10) business days thereafter, the City and Tribe shall meet to attempt to resolve the dispute. If the dispute cannot be resolved, then the Parties shall proceed with dispute resolution under Section 12, below.

7.6 Notice and Opportunity to Cure Payment Default. If a past due bill remains unpaid and no notice of dispute has been timely filed under Section 7.5, above, the City shall give written notice and opportunity to cure to the Tribe ("Notice to Cure"). Defaults other than payment defaults, are addressed in Section 13.6, below.

7.7 Default on Payment Obligations. If the Tribe does not pay the past due bill within fifteen (15) business days after the Notice to Cure is mailed by the City to the Tribe, the City shall have the right to collect the past due amount and impose a one-time penalty of ten percent (10%) of the amount of each past due bill. If the Tribe has provided notice to the City of a dispute concerning a bill pursuant to Section 7.5, above, no penalty will be added to the bill, but interest will still accrue on the unpaid due amount until the dispute has been resolved and the appropriate payment made, in which case interest shall only apply to the unpaid portion of the appropriate payment. If the dispute resolution process results in an appropriate payment that is less than what the Tribe has already remitted, the City shall refund the difference plus interest. Such interest, if any, accrues at the same rate the City charges other ratepayers. The City shall have the right to pursue all lawful means of pursuing debt collection from the Tribe. Subject to the dispute resolution process set forth in Section 12, below, failure of the Tribe to make payments required under this Agreement shall be considered grounds for the City to terminate this Agreement, on at least ten (10) years prior written notice to the Tribe.

7.8 Suspension of Service for Non-Payment. After the City's written notice required under Section 7.6, above, if any past due items remain unpaid, the City may suspend service to the Tribe until such payment has been received. The City will give the Tribe at least 48-hours prior written notice regarding the date and time the service will be suspended. The City is not responsible for any consequential damages the Tribe or its customers may incur because of suspension of service pursuant to this Section.

## Section 8. Sewage Meter/Monitoring Vault

8.1 Access and Maintenance. The City and the Tribe shall have equal access to the Sewer Meter for the purpose of periodic reading of Tribe flows and to perform maintenance and operation functions.

8.2 Meter Recalibration. The Sewer Meter shall be re-calibrated upon the request of either Party. The cost of this recalibration shall be the responsibility of the requesting Party, except that the cost shall be the City's responsibility if a re-calibration has not been performed within the time frame recommended by the manufacturer of the meter. Representatives of each Party shall have the right to observe the recalibration. Should a meter recalibration reflect meter variation greater than five per cent (5%) of the measured meter reading, either Party may request a billing adjustment for the six (6) months previous to the recalibration using the meter variation percentage.

**Section 9. Books, Records and Communications**

9.1 Books. The City shall keep full and complete books of accounts showing all costs and expenses incurred in connection with the City System, including the maintenance and operations costs, capital costs, and any other costs or offsetting revenues used in calculating amounts payable by the Tribe under this Agreement.

9.2 Inspection. Each Party shall have the right to inspect and copy, during regular business hours, all reports and records maintained by the other Party that relate to this Agreement, including, but not limited to, maintenance and operations costs or any other matter affecting the Tribe's rates, flow records, wastewater quality reports, pretreatment monitoring records, connection records and reports, and reports to the DOE or other regulatory authorities, excepting public records maintained by either Party that (a) are exempt from disclosure pursuant to Chapter 42.56 RCW, the Public Records Act, (b) are privileged and confidential pursuant to Chapter 5.60 RCW, or (c) are otherwise not subject to public disclosure or production in civil litigation. Tribe specifically consents to abide by the Public Records Act (RCW 42.56) and Witnesses – Competency (RCW 5.60) for purposes of this section.

9.3. Policy Notifications. At least fifteen (15) business days in advance of adoption, the City and Tribe shall provide each other with copies of any policies, codes or ordinances related to City treatment capacity, Jamestown or City pretreatment requirements, or Jamestown System connection requirements. Each party shall endeavor to maintain communications with the other at the management level in order to be aware of the other party's interests while the proposed policies, codes or ordinances are being developed.

9.4 Annual Report on Industrial or High Strength Customers. The Tribe shall report to the City annually on individual customers who are permitted to discharge industrial or high strength wastewater into the Jamestown System. This report shall identify the relevant pretreatment requirements and monitoring results for each industrial or high strength customer.

**Section 10. Indemnification and Insurance**

10.1 City. The City shall indemnify, defend, and hold harmless the Tribe, its elected officials, officers, agents, and employees from and against all suits, claims, or

liabilities of any nature, including attorney fees, costs, and expenses, for or on account of injuries or damages sustained by any person or property, resulting from acts or omissions of and to the extent harm is caused by the City, its agents or employees in connection with maintenance and operation of the City System or for breach of its duties under this Agreement. If suit in respect to the above is filed, the City shall defend the suit at the City's own cost and expense, and if judgment is rendered or settlement made requiring payment by the Tribe, its officers, agents or employees, the City shall pay the same. Should a court of competent jurisdiction determine that this indemnity agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused or resulting from the concurrent negligence of the City and the Tribe, and their elected officials, officers, employees or agents, the City's liability hereunder shall only be to the extent of the City's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the City's waiver of immunity under industrial insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties.

10.2 Tribe. The Tribe shall indemnify, defend, and hold harmless the City, its elected officials, officers, agents, and employees from and against all suits, claims, or liabilities of any nature, including attorney fees, costs, and expenses, for or on account of injuries or damages sustained by any person or property, resulting from acts or omissions of and to the extent harm is caused by the Tribe, its agents or employees in connection with maintenance and operation of the Jamestown System or for breach of its duties under this Agreement. If suit in respect to the above is filed, the Tribe shall defend the suit at the Tribe's own cost and expense, and if judgment is rendered or settlement made requiring payment by the City, its officers, agents or employees, the Tribe shall pay the same. Should a court of competent jurisdiction determine that this indemnity agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused or resulting from the concurrent negligence of the City and the Tribe, and their elected officials, officers, employees, or agents, the Tribe's liability hereunder shall only be to the extent of the Tribe's negligence.

10.3 Recovery of Cost of Regulatory Violations. If the City incurs fines, penalties, or remedial capital or cleanup costs for which the Tribe has been deemed by an independent investigation as partially or fully responsible, the City shall have the right to charge the Tribe for a proportionate share of any such fines, penalties and remedial capital or cleanup costs, and the Tribe agrees to pay such charges to the City. The City retains sole, reasonable discretion to select the independent investigator.

10.4 Insurance Requirements.

(a) The Tribe shall maintain insurance sufficient to pay any suits, claims, or liabilities of the City described in Section 10.2, above, and, in addition, the cost of remediation of environmental damage caused by any Tribe discharge, such as the discharge into or transfer of toxic wastes from the Jamestown System into the City System. The Tribe's current insurance limits are $6,000,000 per occurrence. The City presumptively agrees that the Tribe's

coverage as of the date of this Agreement is sufficient to cover known risks as of that date. The Tribe agrees, at its own expense, to maintain this insurance coverage for all of its liability exposures for this Agreement. The Tribe agrees to provide the City with at least thirty (30) days prior written notice of any material change in the Tribe's insurance program. The Tribe agrees to add the City as an additional insured on such insurance and to provide the City with an endorsement confirming the City as an additional insured on such policy or policies. The maintenance of, or lack thereof, of insurance coverage shall not limit the liability of the Tribe to the City.

(b) The City shall maintain insurance sufficient to pay any suits, claims, or liabilities of the Tribe described in Section 10.2, above, and, in addition, the cost of remediation of environmental damage caused by any City discharge, such as the discharge into or transfer of toxic wastes from the City System into the Jamestown System. The City, a Washington State municipal corporation, maintains an insurance program through the Washington Cities Insurance Authority risk pool for the protection and handling of the City's liabilities including injuries to persons and damage to property. The City's current insurance limits are $5,000,000 per occurrence. The Tribe presumptively agrees that the City's coverage as of the date of this Agreement is sufficient to cover known risks as of that date. The City agrees, at its own expense, to maintain this insurance coverage for all of its liability exposures for this Agreement. The City agrees to provide the Tribe with at least thirty (30) days prior written notice of any material change in the City's insurance program. The Tribe acknowledges and understands the City does not purchase Commercial General Liability ("CGL") insurance and therefore does not have the ability to add the Tribe as an additional insured under such insurance. Should the City elect to cease insurance through the risk pool and purchase CGL insurance, City agrees to add the Tribe as an additional insured on such insurance and to provide the Tribe with an endorsement confirming the Tribe as an additional insured on such policy or policies. The maintenance of, or lack thereof, of insurance coverage shall not limit the liability of the City to the Tribe.

10.5 Survival. The obligations of Section 10.4, above, shall survive the termination of this Agreement, except that insurance need not be maintained that covers events occurring after the termination of the Agreement. Without limiting the generality of this provision, the obligations to provide insurance and to indemnify survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters or actions begun within that period.

## Section 11. Term of Contract

11.1 Term. The Contract shall commence on the Effective Date and continue until terminated in accordance with Section 11.2, below.

11.2 Expiration and Termination. In the absence of an agreement to the contrary, or termination as otherwise provided in this Agreement, this Agreement shall expire on December 31, 2058 ("Expiration Date"); provided, at least ten (10) years prior to the Expiration Date, either Party must notify the other Party in writing if the Party intends to (a) let the Agreement expire and terminate on the Expiration Date, or (b) negotiate changes in the terms and conditions of the Agreement and renew and extend the Agreement. If neither Party provides notice as provided in Section 11.2(a) or (b), above, the Agreement shall automatically be extended for an additional ten (10) year term on its existing terms and conditions commencing from the Expiration Date set forth above, subject to the ten (10) year notice provision prior to any new Expiration Date, and thereafter until the Agreement is terminated. Notwithstanding the foregoing, the Tribe may terminate this Agreement at any time on at least ten (10) years prior written notice to the City. In addition, the City may terminate this Agreement at any time for cause, only as provided in Section 3.5, Section 4.2, Section 7.7, above, or Section 13.6, below, of this Agreement, on at least ten (10) years prior written notice to the Tribe.

**Section 12. Dispute Resolution**

12.1 Applicable Law. This Agreement, including all matters of interpretation, validity, performance, and enforcement shall be governed and enforced in accordance with the laws of the State of Washington.

12.2 Informal Resolution of Disputes. Any dispute arising out of this Agreement, including without limitation issues relating to the validity or enforcement of the Agreement and billing disputes under Section 7.5, above, shall be referred to representatives of the Parties, who shall meet and make a good faith effort to resolve the dispute among themselves.

12.3 Notice of Formal Dispute. If the Parties have met to resolve the dispute informally and the dispute remains unresolved, then, within thirty (30) days of the informal dispute resolution meeting, the Party raising the issue in dispute may invoke formal dispute resolution by providing the other Party with written notice of the dispute, including a brief description of the nature of the dispute and the Party's proposed resolution of the dispute. Notice given by the Tribe of a billing dispute under Section 7.5, above, shall satisfy the notice requirement for billing disputes.

12.4 Alternative Dispute Resolution. Within fifteen (15) business days after notice is given under Section 12.3, above, the Parties shall meet to explore whether the dispute should be resolved by mediation or arbitration. By mutual agreement, the Parties may submit the dispute to non-binding mediation or to binding arbitration. If the Parties agree on arbitration, the arbitration shall be conducted in accordance with this subsection.

12.4.1 Any agreement to arbitrate shall be in writing signed by the Parties, shall conform to the requirements of this subsection, and shall specify the procedures governing the arbitration.

12.4.2 The arbitrator or arbitration panel selected shall have the power and authority to grant legal and equitable relief in accordance with Washington law and the provisions of this Agreement.

12.4.3 The decision of the arbitrator or of a majority of the arbitration panel members shall be final and binding. The costs of arbitration shall be borne equally by the Parties, unless the arbitrator or arbitration panel rules otherwise.

12.5 Litigation of Disputes. In the event that the dispute is not resolved informally or by mediation and the Parties do not agree to arbitration, either Party may commence a suit in Clallam County Superior Court on all claims related to the dispute.

12.6 Emergency Relief. Notwithstanding the other provisions of this Section 12, either Party may seek emergency or temporary equitable relief in Clallam County Superior Court concerning disputes governed by this Section 12 if imminent and irreparable harm to the Party will likely result if action is delayed until completion of the dispute resolution procedures. The Court may grant such temporary relief as may be required to preserve the status quo or otherwise prevent irreparable harm while the Parties pursue resolution of the dispute. The Court may require the Party requesting relief to give such security as the Court deems necessary for the payment of costs and damages that may be incurred by the other Party resulting from temporary relief wrongfully granted.

**Section 13. General Provisions**

13.1 Notice. Whenever written notice is required by this Agreement, except for notice to cure or notice to terminate, the notice may be given to the following representatives by actual delivery, by United States mail, or by electronic mail addressed to the respective Party at the following addresses or a different address hereafter designated in writing by the Party:

| | |
|---|---|
| CITY | TRIBE |
| City Manager | Chief Executive Officer |
| 152 W. Cedar Street | 1033 Old Blyn Hwy., |
| Sequim, WA 98382 | Sequim, WA 98362 |

The date of notice shall be deemed to be the date of actual delivery in person or by electronic mail, or the postmarked date if notice is by United States mail. Notice to Cure or notice of termination must be accomplished by actual delivery or by both first-class mail and certified mail (with return receipt requested) deposited with the United States Postal Service. In these cases, the date of the notice shall be the date received. This section is not intended to apply to mailings for normal communications, which are commonly communicated by email or other less formal means. Such communications may be directed to the appropriate City or Tribal personnel.

13.2 Severability. The purpose of this Agreement is to provide for long-term wastewater disposal, planning and certainty for both Parties. It is the intent of the Parties that if any provision of this Agreement or its application is held by a court of competent jurisdiction to be illegal, invalid or void, the validity of the remaining provisions of the Agreement or its application shall not be affected. The remaining provisions shall continue in full force and effect, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular invalid provision; however, if the invalid provision or its application is found by a court of competent jurisdiction to be substantive and to render the performance of the remaining provisions unworkable and non-feasible, or is found to seriously affect the consideration and is inseparably connected to the remainder of the Agreement, the entire Agreement shall be null and void.

13.3 No Joint Venture - Individual Liability. This is not an agreement of joint venture or partnership, and no provisions of this Agreement shall be construed so as to make the City individually or collectively a partner or joint venturer with the Tribe. Neither Party is an agent of the other. Neither the City nor the Tribe shall be liable for the acts of the other in any representative capacity whatsoever.

13.4 Complete Agreement. This Agreement represents the entire agreement between the Parties concerning this subject matter. The Agreement may be amended as provided herein, or as otherwise agreed to by the legislative bodies of both Parties.

13.5 Venue, Jurisdiction and Specific Performance. In the event of litigation between the Parties, venue and jurisdiction shall lie with the Clallam County Superior Court of the State of Washington. The Parties shall be entitled to specific performance of the terms and conditions of this Agreement.

13.5.1 Waiver of Sovereign Immunity. The Tribe is a Sovereign Nation with all of immunities attendant thereto WITH THE FOLLOWING EXCEPTION AS SPECIFICALLY NEGOTIATED BY THE PARTIES:

A. Tribe agrees to a limited waiver of sovereign immunity. Tribe expressly waives its right to sovereign immunity and its right to assert sovereign immunity defense in Washington State courts for the limited purpose of 1) any legal claim or complaint in the interpretation, validity, performance, and/or enforcement of this Agreement, 2) any complaints or counterclaims for monetary damages or equitable relief for any breach of this Agreement, and 3) for the enforcement of any final judgment by any Washington State court regarding such matters. This limited waiver of immunity is solely for the benefit of the City of Sequim for the purposes stated herein, and the Tribe does not waive its sovereign immunity as to any party other than the City. The Tribe agrees not to invoke sovereign immunity as a defense up to the limits of the insurance policy in connection with the enforcement of the City's rights. The Tribe further waives and agrees not to assert any doctrine requiring exhaustion of Tribal Court or administrative proceedings before proceeding with any dispute resolution or legal remedies described in this Agreement.

B. Tribe expressly consents to the jurisdiction of the Washington State Superior Court if either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement. The Parties further agree that any such action or proceedings shall be brought in Clallam County Superior Court situated in Clallam County, Washington. This waiver and consent is effective only during the term of this Agreement, except it remains in force for such time after termination that is necessary to resolve the rights and obligations of either Party arising out of this Agreement.

13.6 Default Other Than Payment Default. In the event of a potential default other than on payment obligations addressed in Section 7, above, the non-defaulting Party shall issue written notice to the other Party setting forth the nature of the potential default. If the alleged defaulting Party does not dispute the potential default, it shall use its best efforts to cure the default within ninety (90) calendar days. If such default cannot be reasonably cured within such ninety (90) day period, the alleged defaulting party shall, upon written request prior to the expiration of the ninety (90) day period, be granted an additional sixty (60) calendar days to cure the default. If the alleged defaulting Party disputes the alleged non-payment default, it shall proceed with its dispute according to the provisions of Section 12, above.

13.7 Force Majeure. The time periods for the Parties' performances under any provisions of this Agreement shall be extended for a reasonable period of time during which the respective Party's performances are prevented, in good faith, due to fire, flood, earthquake, lockouts, strikes, embargoes, acts of God, war or civil disobedience. If this provision is invoked, the Parties agree to immediately take all reasonable steps to alleviate, cure, minimize or avoid the cause preventing such performances, at their respective sole cost and expense.

13.8 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns, provided the Tribe shall not have the right to assign its rights and obligations in this Agreement without the City's prior written approval of any such proposed assignment, such approval not to be unreasonably withheld.

13.9 Recitals Incorporated by Reference. The Recitals set forth in Section 1, above, are hereby incorporated in this Agreement in full by this reference.

13.10 No Third Party Beneficiaries. Except as expressly set forth in this Agreement, nothing in this Agreement is intended to confer upon any person or entity, other than the Parties hereto, any rights, benefits, privileges or obligations. No such third-party shall have any right to enforce any of the terms of this Agreement unless expressly stated otherwise.

13.11 Waiver. A waiver by either Party of any terms or conditions of this Agreement shall not be deemed or construed to be a waiver of any other term or condition, nor shall the waiver of any breach or default by either Party under the Agreement be deemed or construed

to constitute a waiver of any subsequent breach or default, whether of the same or any other term or condition of this Agreement. Any waiver of a breach or default under this Agreement must be done in writing and signed by the representatives of the Parties.

13.12 Exhibits. Exhibits A, B, C, and D are attached and incorporated into this Agreement in full by this reference.

13.13 Effective Date. This Agreement and its terms and conditions shall be effective on the date by which the Agreement is signed by both Parties and the Limited Waiver of Sovereign Immunity resolution required under this Agreement is passed and signed by the Tribe and attached to this Agreement. ("Effective Date"). If for any reason, the Tribe fails to pass or sign the resolution or the resolution is not attached to this Agreement, the Agreement immediately becomes void regardless of whether signatures have been affixed.

13.14 Recording. This Agreement and all amendments shall be recorded with the Clallam County Auditor following its approval and execution by the Parties and the cost of such recordings shared equally by the Parties.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement.

**CITY OF SEQUIM**

By: Candace Pratt

Printed Name: Candace Pratt

Title: Mayor Deputy

Date: 12-10-2018

APPROVED AS TO FORM:

City Attorney

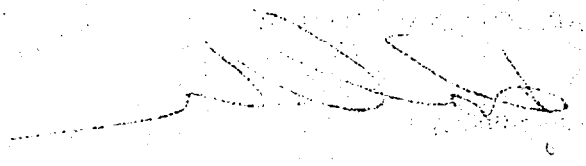
**JAMESTOWN S'KLALLAM TRIBE**

By: W. Ron Allen

Printed Name: W. Ron Allen

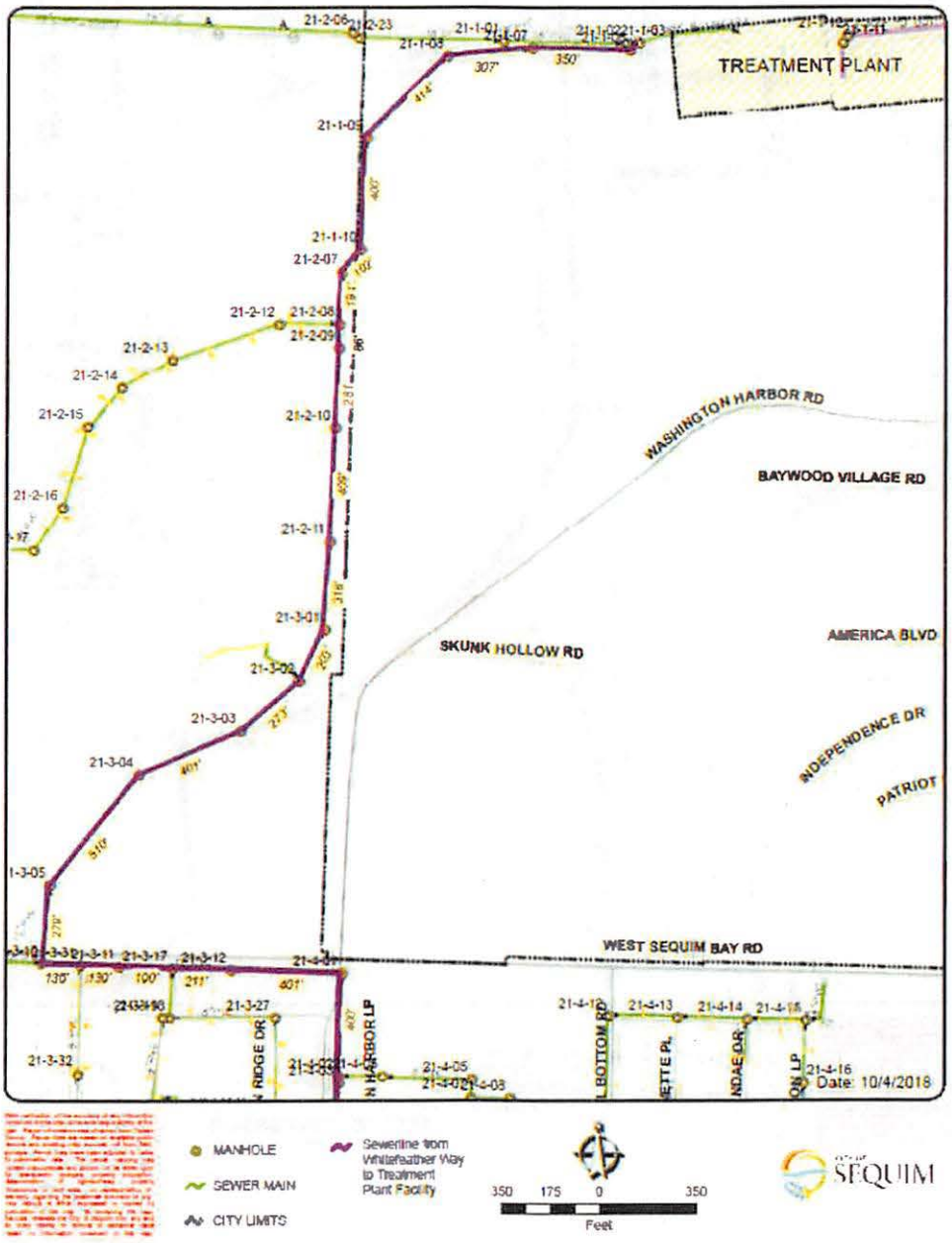
Title: Tribal Chairman/CEO

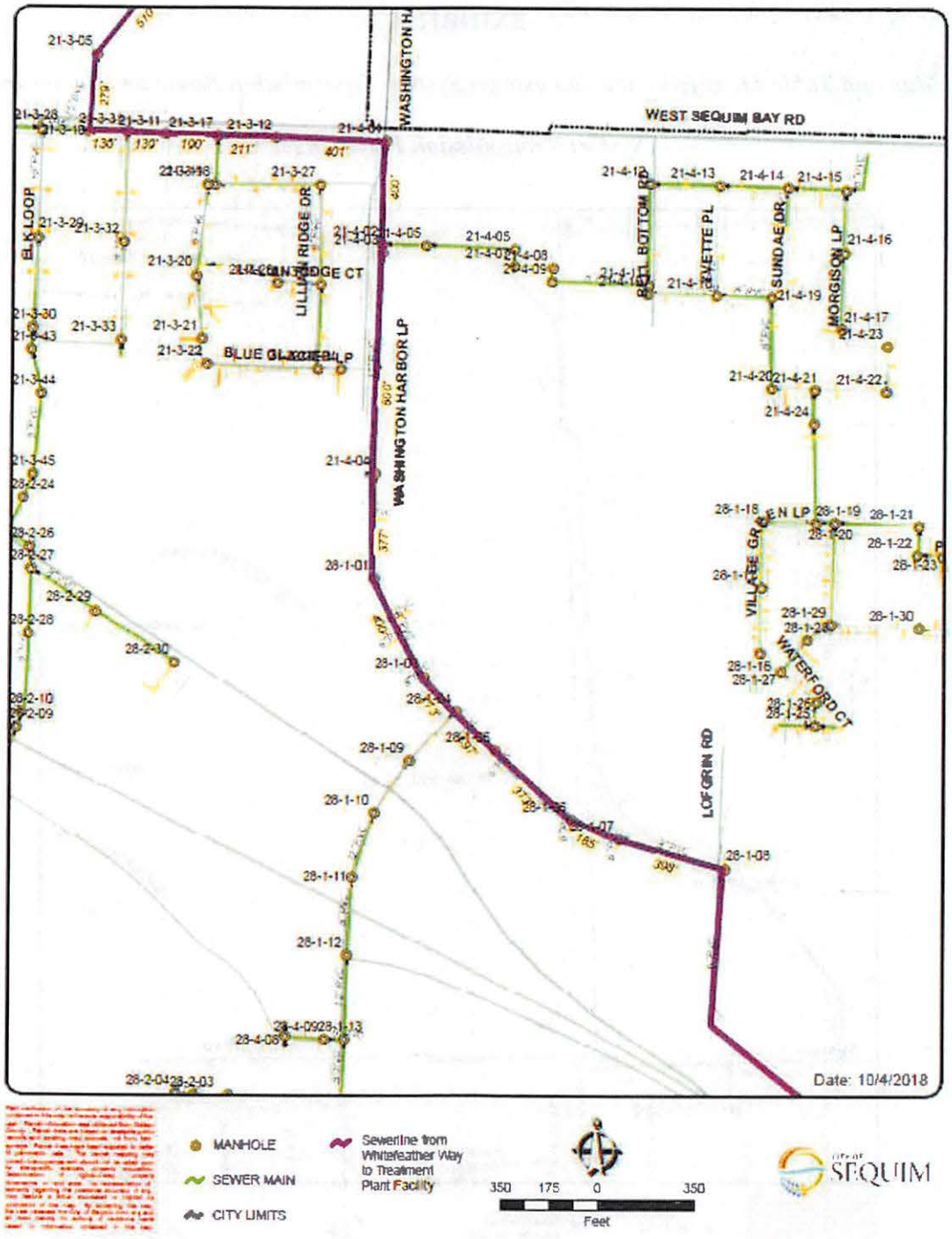
Date: 11/30/2018



## EXHIBIT A

***Map and Table Identifying the Jamestown System Transmission Route and Jamestown System Transmission Percentages***




WEST SEQUIM BAY RD
WASHINGTON HARBOR LP
ELK LOOP
LILLIWAUP RIDGE DR
LILLIWAUP RIDGE CT
BLUE GLACIER LP
BELL BOTTOM RD
SUNDAE DR
MORGISON LP
VILLAGE GREEN LP
WATERFORD CT
LOFGRIN RD
21-3-05
21-3-28
21-3-18
21-3-11
21-3-17
21-3-12
21-4-06
21-3-27
21-3-29
21-3-32
21-3-20
21-3-30
21-3-43
21-3-33
21-3-21
21-3-22
21-3-44
21-3-45
28-2-24
28-2-26
28-2-27
28-2-29
28-2-28
28-2-30
28-2-10
28-2-09
21-4-05
21-4-08
21-4-09
21-4-10
21-4-13
21-4-14
21-4-15
21-4-16
21-4-19
21-4-17
21-4-23
21-4-20
21-4-21
21-4-22
21-4-24
28-1-01
28-1-18
28-1-19
28-1-21
28-1-20
28-1-22
28-1-23
28-1-29
28-1-30
28-1-28
28-1-16
28-1-27
28-1-25
28-1-24
28-1-09
28-1-10
28-1-11
28-1-12
28-1-13
28-1-08
28-2-04
28-2-03
Date: 10/4/2018
MANHOLE
SEWER MAIN
CITY LIMITS
Sewerline from Whitefeather Way to Treatment Plant Facility
350 175 0 350
Feet
CITY OF SEQUIM

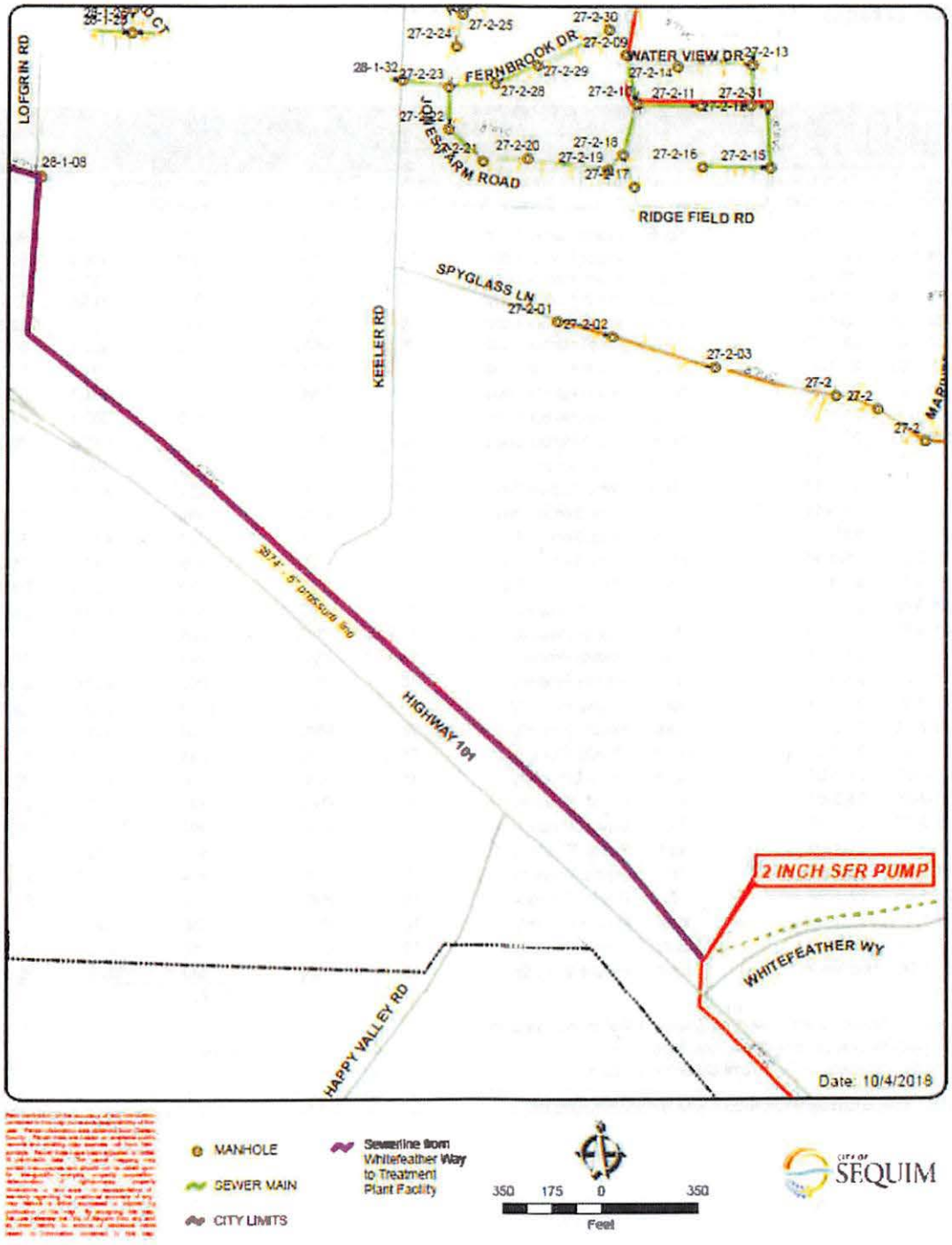

LOFGREN RD
28-1-08
FERNBROOK DR
WATER VIEW DR
JESSE'S FARM ROAD
RIDGE FIELD RD
SPYGLASS LN
KEELER RD
HIGHWAY 101
2 INCH SFR PUMP
WHITEFEATHER WY
HAPPY VALLEY RD
Date: 10/4/2018
MANHOLE
SEWER MAIN
CITY LIMITS
Sewerline from Whitefeather Way to Treatment Plant Facility
350 175 0 350
Feet
SEQUIM

EXHIBIT A: Map and Table of Jamestown Transmission Route

## Table Identifying the Jamestown Transmission Route and Jamestown Transmission Percentages

| Exhibit A: Jamestown Percentage of Transmission Route Projected Flows | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| From Manhole | To Manhole | Segment ID # | Direction of Flow | Direction & Nearest Street Alignment | Diameter (Inches) | Pipe Material | Length (lineal ft.) | Total Flow (gpm) | Jamestown Transmission Percentages |
| *Source: Gray & Osbone, Pipe Cost Estimates April 2018, with pipe lengths from City GIS. Assumes 177 gpm Peak Hour Jamestown Flowin 2030. City flows from City of Sequim General Sewer Plan, Table E-15 2032 Model Pipe Output* | | | | | | | | | |
| WF Way | 28-1-08 | | North | Wash Harbor Loop | 6 | PVC | 3,874 | 196.3 | 90.2% |
| 28-1-08 | 28-1-07 | | West | Wash Harbor Loop | 8 | PVC | 398 | 196.3 | 90.2% |
| 28-1-07 | 28-1-06 | | West | Wash Harbor Loop | 8 | PVC | 185 | 213.9 | 82.8% |
| 28-1-06 | 28-1-05 | | West | Wash Harbor Loop | 8 | PVC | 373 | 213.9 | 82.8% |
| 28-1-05 | 28-1-04 | | West | Wash Harbor Loop | 8 | PVC | 197 | 213.9 | 82.8% |
| 28-1-04 | 28-1-03 | | NW | Wash Harbor Loop | 8 | PVC | 173 | 301.3 | 58.8% |
| 28-1-03 | 28-1-01 | | NW | Wash Harbor Loop | 8 | PVC | 400 | 301.3 | 58.8% |
| 28-1-01 | 21-4-04 | | North | Wash Harbor Loop | 8 | PVC | 377 | 301.3 | 58.8% |
| 21-4-04 | 21-4-03 | | North | Wash Harbor Loop | 12 | PVC | 800 | 306.4 | 57.8% |
| 21-4-03 | 21-4-01 | | North | Wash Harbor Loop | 12 | PVC | 400 | 487.1 | 36.3% |
| 21-4-01 | 21-3-12 | | West | West Sequim Bay | 12 | PVC | 401 | 487.1 | 36.3% |
| 21-3-12 | 21-3-17 | | West | West Sequim Bay | 12 | PVC | 211 | 491.8 | 36.0% |
| 21-3-17 | 21-3-11 | | West | West Sequim Bay | 12 | PVC | 190 | 491.8 | 36.0% |
| 21-3-11 | 21-3-31 | | West | West Sequim Bay | 12 | PVC | 139 | 497.1 | 35.6% |
| 21-3-31 | 21-3-10 | | West | West Sequim Bay | 12 | PVC | 136 | 497.1 | 35.6% |
| 21-3-10 | 21-3-05 | | North | West Sequim Bay | 15 | PVC | 279 | 605.1 | 29.3% |
| 21-3-05 | 21-3-04 | | NE | Private Property | 15 | PVC | 510 | 613.0 | 28.9% |
| 21-3-04 | 21-3-03 | | NE | Private Property | 15 | PVC | 401 | 613.0 | 28.9% |
| 21-3-03 | 21-3-02 | | NE | Private Property | 15 | PVC | 273 | 613.0 | 28.9% |
| 21-3-02 | 21-3-01 | | NE | Private Property | 15 | PVC | 203 | 613.0 | 28.9% |
| 21-3-01 | 21-2-11 | | North | Private Property | 18 | PVC | 318 | 613.0 | 28.9% |
| 21-2-11 | 21-2-10 | | North | Private Property | 18 | PVC | 409 | 613.0 | 28.9% |
| 21-2-10 | 21-2-09 | | North | Private Property | 18 | PVC | 281 | 613.0 | 28.9% |
| 21-2-09 | 21-2-08 | | North | Private Property | 18 | PVC | 86 | 613.0 | 28.9% |
| 21-2-08 | 21-2-07 | | North | Private Property | 18 | PVC | 191 | 635.3 | 27.9% |
| 21-2-07 | 21-1-10 | | NE | Private Property | 18 | PVC | 102 | 635.3 | 27.9% |
| 21-1-10 | 21-1-09 | | North | Private Property | 18 | PVC | 400 | 691.0 | 25.6% |
| 21-1-09 | 21-1-08 | | NE | Private Property | 18 | PVC | 414 | 691.0 | 25.6% |
| 21-1-08 | 21-1-07 | | NE | Private Property | 18 | PVC | 307 | 691.0 | 25.6% |
| 21-1-07 | 21-1-06 | | East | Private Property | 18 | PVC | 350 | 691.0 | 25.6% |
| 21-1-06 | 21-01-03 | | East | Private Property | 18 | PVC | 50 | 691.0 | 25.6% |
| 21-1-06 | Headworks | | East | Private and City | 18 | DI | 389 | 3229.8 | 5.5% |
| Total | | | | | | | 13,217 | | |
| Weighted Average Jamestown Percentage of Transmission Route | | | | | | | | | 55.39% |
| Total Sequim Collection System (lineal feet) | | | | | | | 385,440 | | |
| Transmission Route as % of Total Collection System | | | | | | | | | 3.43% |
| **Jamestown Percentage of Entire City Collection System** | | | | | | | | | **1.90%** |

EXHIBIT B: Examples Showing Calculation of O&M Charges

**EXHIBIT B**

***Examples Showing Calculation of O&M Charges:***

1. Treatment O&M Charge
2. High Strength Wastewater Flow Surcharge
3. Annual Pipe Charge
4. Estimated vs. Adjusted O&M Charges

EXHIBIT B: Examples Showing Calculation of O&M Charges

## 1. Treatment O&M Charge

| Calculation of Treatment O&M Charge Example | City Expenditures | Exclude | Applicable City Expenditures |
|---|---|---|---|
| **Sequim Treatment O&M Cost Basis** | | | |
| Direct: | | | |
| City B&O Tax - Treatment | | - | - |
| Salaries | 306,483 | | 306,483 |
| OT | 17,370 | | 17,370 |
| Call Wages | 15,761 | | 15,761 |
| L&I Ins | 10,791 | | 10,791 |
| FICA/Medicare | 25,025 | | 25,025 |
| PERS | 39,074 | | 39,074 |
| Health Ins | 70,461 | | 70,461 |
| Other Benefits | | | - |
| Supplies/Chemicals | 103,566 | | 103,566 |
| Fuel | 30,168 | | 30,168 |
| Small Tools/Minor Equip | 34,422 | | 34,422 |
| Prof Svcs | 9,932 | | 9,932 |
| Travel & Meals | 270 | | 270 |
| Utilities | 101,774 | | 101,774 |
| Repair & Maint | 18,879 | | 18,879 |
| Misc Svcs & Fees | 11,398 | | 11,398 |
| State Utility Taxes | 99,312 | (99,312) | - |
| Reuse Prof Svcs | 173,250 | | 173,250 |
| Subtotal | 1,067,936 | (99,312) | 968,624 |
| Share of Utility Mgr Salary | 29,456 | | 29,456 |
| Total Treatment O&M Direct | 1,097,392 | (99,312) | 998,080 |
| Indirect: | | | |
| Transfer - Allocated Central Services | 614,651 | | 614,651 |
| Capital Replacement Reserve *(2017 equip is applicable)* | 31,420 | | 31,420 |
| Debt Svc | 656,331 | (656,331) | - |
| Total Indirect | 1,302,402 | (656,331) | 646,071 |
| **Total Treatment O&M Cost Basis (annual $)** | 2,399,794 | (755,643) | **1,644,151** |
| | | | |
| O&M Markup Percentage | | | 25.00% |
| O&M Markup - Treatment | | | 411,038 |
| Treatment O&M Cost Basis plus O&M Markup | | | 2,055,189 |
| | | | |
| Total Flow to WRF (gallons/year) | | | 232,071,000 |
| **Treatment O&M Rate ($/gallon, rounded off to four decimal places)** | | | **$ 0.0089** |
| Jamestown Actual Flows in example month (gal) | | | 1,098,469 |
| Treatment O&M Charge in example month (assumes 5.68%) | | | **$ 9,776** |
| | | | |
| Jamestown Actual Flows in example year (gal) | | | 13,181,633 |
| Treatment O&M Charge in example year (assumes 5.68%) | | | **$ 117,317** |

## 2. High Strength Wastewater Flow Surcharge Calculation

| Calculation of Monthly High Strength Surcharge Example | | | |
|---|---|---|---|
| **EXAMPLE - 450 mg/l BOD and TSS** | | | |
| **Surcharge for BOD ($0.19/lb)** | | | |
| Jamestown Actual Flows in example month (gal) | 1,098,469 | | |
| Excess Strength (450 mg/L - 300 mg/L) | 150 | | |
| $/LB | 0.19 | | |
| Conversion Factor (per mgal) | 8.34 | | |
| | | $ | 261.10 |
| Indirect Cost Percentage (Allocated Central Services/Total O&M Cost Basis) | 37.4% | $ | 97.61 |
| | Subtotal | $ | 358.70 |
| O&M Markup Percentage | 25% | $ | 89.68 |
| | **Total Monthly BOD Surcharge** | **$** | **448.38** |
| **Surcharge for TSS ($0.20/lb)** | | | |
| Jamestown Actual Flows in example month (gal) | 1,098,469 | | |
| Excess Strength (450 mg/L - 300 mg/L) | 150 | | |
| $/LB | 0.20 | | |
| Conversion Factor (per mgal) | 8.34 | | |
| | | $ | 274.84 |
| Indirect Cost Percentage (Allocated Central Services/Total O&M Cost Basis) | 37.4% | $ | 102.79 |
| | Subtotal | $ | 377.63 |
| O&M Markup Percentage | 25% | $ | 94.41 |
| | **Total Monthly TSS Surcharge** | **$** | **472.03** |

## 3. Annual Pipe Charge

| Calculation of Pipe Charge Example | City Expenditures | Exclude | Applicable City Expenditures |
|---|---|---|---|
| **Sequim Collection System O&M Cost Basis** | | | |
| Direct: | | | |
| Billing Supplies | $ 1,350 | $ (1,350) | $ - |
| Admin Communications | 12,188 | (12,188) | - |
| Admin Repair & Maint | 3,167 | | 3,167 |
| Admin Intergov Prof Svcs | 13,423 | | 13,423 |
| City B&O tax - Admin | 327,181 | (327,181) | - |
| Trans Salaries | 198,787 | | 198,787 |
| Trans OT | 13,531 | | 13,531 |
| Trans Call Wages | 9,838 | | 9,838 |
| Trans L&I Ins | 8,081 | | 8,081 |
| Trans FIC/Medicare | 16,106 | | 16,106 |
| Trans PERS | 26,287 | | 26,287 |
| Trans Health Ins | 55,273 | | 55,273 |
| Trans Supplies | 43,463 | | 43,463 |
| Trans Inv for Sale (BFP) | 2,767 | (2,767) | - |
| Trans Tools & Minor Equip | 36,537 | | 36,537 |
| Trans Prof Svcs | - | | - |
| Trans Travel & Meals | 1,327 | | 1,327 |
| Pump Station Utilities | 13,184 | (13,184) | - |
| Trans Repair & Maint | 12,900 | | 12,900 |
| Trans Misc Svcs & Fees | 6,841 | | 6,841 |
| State Utility Taxes | (77,122) | 77,122 | - |
| Subtotal | 725,109 | (279,548) | 445,561 |
| Share of Util Manager Salary | 29,456 | | 29,456 |
| Total Sewer O&M Direct | 754,565 | (279,548) | 475,017 |
| Indirect: | | | |
| Transfer - Allocated Central Services | 426,864 | | 426,864 |
| Capital - Utility Repair | 21,820 | | 21,820 |
| Capital Transfer to Stormwater | - | - | - |
| Operating Transfer to Stormwater | - | - | - |
| Capital Replacement Reserve | - | - | - |
| Total Indirect | 448,684 | - | 448,684 |
| Total Collection/Transmission Costs | 1,203,249 | (279,548) | 923,701 |
| Exclude: | | | |
| Pump Station Maintenance Labor | (21,224) | | (21,224) |
| Sewer Share of Customer Service Labor | (45,972) | | (45,972) |
| **Total Collection System O&M Cost Basis (annual $)** | $ 1,136,053 | $ (279,548) | **$ 856,505** |
| O&M Markup Percentage | | | 25.00% |
| O&M Markup - Collection System | | | 214,126 |
| Collection System O&M Cost Basis plus O&M Markup | | | $ 1,070,631 |
| **Jamestown Percentage of Entire City Collection System:** *As of May 2018* | | | |
| Total Sequim Collection System (lf) | | | 385,440 |
| Shared pipes along Jamestown transmission route (lf) | | | 13,217 |
| Shared pipes as % of total City collection system (rounded off) | | | 3.43% |
| Average projected Jamestown % of flow in shared pipes (rounded off) | | | 55.39% |
| Jamestown Percentage of Entire City Collection System (rounded off) | | | **1.90%** |
| **Annual Pipe Charge for Example Year** | | | $ 20,342 |
| Monthly Pipe Charge during Example Year | | | $ 1,695 |

EXHIBIT B: Examples Showing Calculation of O&M Charges

## 4. Estimated vs. Adjusted O&M Charges

| Estimated vs. Adjusted O&M Charge Example | Estimate | Actual/ Corrected | Adjustment |
|---|---|---|---|
| **Treatment O&M Charge** | | | |
| Treatment O&M Cost Basis | 1,600,000 | 1,644,151 | |
| O&M Markup % | 25.00% | 25.00% | |
| O&M Markup | 400,000 | 411,038 | |
| Treatment O&M Basis plus O&M Markup | 2,000,000 | 2,055,189 | |
| Total Flow to WRF (gallons/year) | 210,000,000 | 232,071,000 | |
| Treatment O&M Rate ($/gallon) | $ 0.009524 | $ 0.008856 | |
| Jamestown Flows (gallons/year) | 13,181,633 | 13,181,633 | |
| Treatment O&M Charge | $ 125,539 | $ 116,735 | $ (8,805) |
| **Annual Pipe Charge** | | | |
| Collection System O&M Cost Basis | 730,000 | 856,505 | |
| O&M Markup % | 25.00% | 25.00% | |
| O&M Markup | 182,500 | 214,126 | |
| Collection System O&M Cost Basis plus O&M Markup | 912,500 | 1,070,631 | |
| Jamestown Pct of Entire City Collection System | 1.90% | 1.90% | |
| Annual Pipe Charge | $ 17,338 | $ 20,342 | $ 3,004 |
| **Combined O&M Charges** | | | |
| Total O&M Charges | $ 142,877 | $ 137,077 | $ (5,800) |
| Monthly Adjustment for Next 12 Months | | | $ (483) |

## EXHIBIT C

***Calculation of Capacity Charges and Explanation of Accrued Interest Factor:***

1. Calculation of Initial Capacity Charge for Jamestown System Transmission Route
2. Calculation of Initial Capacity Charge for Treatment Assets and Total Initial Capacity Charge
3. Hypothetical Calculation of Future Capacity Charges if Capacity Reservation is Increased
4. Hypothetical Calculation of Future Capacity Refund Payment if Capacity Reservation is Decreased
5. Explanation of Accrued Interest Factor

EXHIBIT C: Calculation of Capacity Charges and Explanation of Accrued Interest Factor

**1. Calculation of Initial Capacity Charge for the Jamestown Transmission Route**
*Assumed Unit Replacement Costs by Pipe Size*

| Sanitary Sewer Pipe Cost Summary June 2018 | | |
|---|---|---|
| Pipe Size | | Project Cost/Ft |
| 4 or 6 Inch | $ | 306 |
| 8 Inch | $ | 329 |
| 12 Inch | $ | 349 |
| 15 Inch | $ | 379 |
| 18 Inch | $ | 403 |

Source: Sequim Project Costs
Construction Cost includes 20% contingency
Project Cost includes 25% Engineering/Admin

EXHIBIT C: Calculation of Capacity Charges and Explanation of Accrued Interest Factor

*Estimated Original Cost by Pipe Segment*

| Exhibit C - Transmission Route From Manhole | To Manhole | Direction of Flow | Direction & Nearest Street Alignment | Length (lineal ft.) | Assumed Year Installed | Assumed Replacemt Cost/LF | 2018 Replacemt Cost ($) | ENR Inflation Factor | Estimated Original Cost ($) |
|---|---|---|---|---|---|---|---|---|---|
| *Source: City of Sequim GIS. 1998 installation costs calculated using ENR Construction Cost Index (CCI) 20 City average* | | | | | | | | | |
| WF Way | 28-1-08 | North | Wash Harbor Loop | 3,874 | 1998 | $ 306 | $1,185,444 | 0.551 | $ 653,676 |
| 28-1-08 | 28-01-07 | West | Wash Harbor Loop | 398 | 1998 | 329 | 130,942 | 0.551 | 72,204 |
| 28-1-07 | 28-1-06 | West | Wash Harbor Loop | 185 | 1998 | 329 | 60,865 | 0.551 | 33,562 |
| 28-1-06 | 28-1-05 | West | Wash Harbor Loop | 373 | 1998 | 329 | 122,717 | 0.551 | 67,668 |
| 28-1-05 | 28-1-04 | West | Wash Harbor Loop | 197 | 1998 | 329 | 64,813 | 0.551 | 35,739 |
| 28-1-04 | 28-1-03 | NW | Wash Harbor Loop | 173 | 1998 | 329 | 56,917 | 0.551 | 31,385 |
| 28-1-03 | 28-1-01 | NW | Wash Harbor Loop | 400 | 1998 | 329 | 131,600 | 0.551 | 72,567 |
| 28-1-01 | 21-4-04 | North | Wash Harbor Loop | 377 | 1998 | 329 | 124,033 | 0.551 | 68,394 |
| 21-4-04 | 21-4-03 | North | Wash Harbor Loop | 800 | 1998 | 346 | 276,800 | 0.551 | 152,633 |
| 21-4-03 | 21-4-01 | North | Wash Harbor Loop | 400 | 1998 | 346 | 138,400 | 0.551 | 76,316 |
| 21-4-01 | 21-3-12 | West | West Sequim Bay | 401 | 1998 | 346 | 138,746 | 0.551 | 76,507 |
| 21-3-12 | 21-3-17 | West | West Sequim Bay | 211 | 1998 | 346 | 73,006 | 0.551 | 40,257 |
| 21-3-17 | 21-3-11 | West | West Sequim Bay | 190 | 1998 | 346 | 65,740 | 0.551 | 36,250 |
| 21-3-11 | 21-3-31 | West | West Sequim Bay | 139 | 1998 | 346 | 48,094 | 0.551 | 26,520 |
| 21-3-31 | 21-3-10 | West | West Sequim Bay | 136 | 1998 | 346 | 47,056 | 0.551 | 25,948 |
| 21-3-10 | 21-3-05 | North | West Sequim Bay | 279 | 1998 | 379 | 105,741 | 0.551 | 58,308 |
| 21-3-05 | 21-3-04 | NE | Private Property | 510 | 1998 | 379 | 193,290 | 0.551 | 106,584 |
| 21-3-04 | 21-3-03 | NE | Private Property | 401 | 1998 | 379 | 151,979 | 0.551 | 83,804 |
| 21-3-03 | 21-3-02 | NE | Private Property | 273 | 1998 | 379 | 103,467 | 0.551 | 57,054 |
| 21-3-02 | 21-3-01 | NE | Private Property | 203 | 1998 | 379 | 76,937 | 0.551 | 42,424 |
| 21-3-01 | 21-2-11 | North | Private Property | 318 | 1998 | 403 | 128,154 | 0.551 | 70,666 |
| 21-2-11 | 21-2-10 | North | Private Property | 409 | 1998 | 403 | 164,827 | 0.551 | 90,889 |
| 21-2-10 | 21-2-09 | North | Private Property | 281 | 1998 | 403 | 113,243 | 0.551 | 62,444 |
| 21-2-09 | 21-2-08 | North | Private Property | 86 | 1998 | 403 | 34,658 | 0.551 | 19,111 |
| 21-2-08 | 21-2-07 | North | Private Property | 191 | 1998 | 403 | 76,973 | 0.551 | 42,444 |
| 21-2-07 | 21-1-10 | NE | Private Property | 102 | 1998 | 403 | 41,106 | 0.551 | 22,667 |
| 21-1-10 | 21-1-09 | North | Private Property | 400 | 1998 | 403 | 161,200 | 0.551 | 88,889 |
| 21-1-09 | 21-1-08 | NE | Private Property | 414 | 1998 | 403 | 166,842 | 0.551 | 92,000 |
| 21-1-08 | 21-1-07 | NE | Private Property | 307 | 1998 | 403 | 123,721 | 0.551 | 68,222 |
| 21-1-07 | 21-1-06 | East | Private Property | 350 | 1998 | 403 | 141,050 | 0.551 | 77,778 |
| 21-1-06 | 21-1-03 | East | Private Property | 50 | 1998 | 403 | 20,150 | 0.551 | 11,111 |
| 21-1-06 | Headworks | East | Private and City | 389 | 1984 | 403 | 156,767 | 0.386 | 60,536 |
| Total | | | | 13,217 | | | $4,625,278 | | $2,524,556 |

**1. Calculation of Initial Capacity Charge for Jamestown Transmission Route,** continued
*Jamestown Share of Net Book Value by Pipe Segment*

| Exhibit C - Transmission Route From Manhole | To Manhole | Direction of Flow | Direction & Nearest Street Alignment | Estimated Original Cost ($) | Assumed Useful Life | Age in 2018 | Net Book Value as of 2018 | Jamestown Transmission Percentages | Jamestown Share of Net Book Value |
|---|---|---|---|---|---|---|---|---|---|
| *Source: City of Sequim GIS. 1998 installation costs calculated using ENR Construction Cost Index (CCI) 20 City average* | | | | | | | | | |
| WF Way | 28-1-08 | North | Wash Harbor Loop | $ 653,676 | 60 | 20 | $ 435,784 | 90.2% | $ 392,930 |
| 28-1-08 | 28-01-07 | West | Wash Harbor Loop | 72,204 | 60 | 20 | 48,136 | 90.2% | 43,402 |
| 28-1-07 | 28-1-06 | West | Wash Harbor Loop | 33,562 | 60 | 20 | 22,375 | 82.8% | 18,517 |
| 28-1-06 | 28-1-05 | West | Wash Harbor Loop | 67,668 | 60 | 20 | 45,112 | 82.8% | 37,334 |
| 28-1-05 | 28-1-04 | West | Wash Harbor Loop | 35,739 | 60 | 20 | 23,826 | 82.8% | 19,718 |
| 28-1-04 | 28-1-03 | NW | Wash Harbor Loop | 31,385 | 60 | 20 | 20,923 | 58.8% | 12,293 |
| 28-1-03 | 28-1-01 | NW | Wash Harbor Loop | 72,567 | 60 | 20 | 48,378 | 58.8% | 28,422 |
| 28-1-01 | 21-4-04 | North | Wash Harbor Loop | 68,394 | 60 | 20 | 45,596 | 58.8% | 26,788 |
| 21-4-04 | 21-4-03 | North | Wash Harbor Loop | 152,633 | 60 | 20 | 101,755 | 57.8% | 58,782 |
| 21-4-03 | 21-4-01 | North | Wash Harbor Loop | 76,316 | 60 | 20 | 50,878 | 36.3% | 18,487 |
| 21-4-01 | 21-3-12 | West | West Sequim Bay | 76,507 | 60 | 20 | 51,005 | 36.3% | 18,533 |
| 21-3-12 | 21-3-17 | West | West Sequim Bay | 40,257 | 60 | 20 | 26,838 | 36.0% | 9,659 |
| 21-3-17 | 21-3-11 | West | West Sequim Bay | 36,250 | 60 | 20 | 24,167 | 36.0% | 8,697 |
| 21-3-11 | 21-3-31 | West | West Sequim Bay | 26,520 | 60 | 20 | 17,680 | 35.6% | 6,295 |
| 21-3-31 | 21-3-10 | West | West Sequim Bay | 25,948 | 60 | 20 | 17,298 | 35.6% | 6,159 |
| 21-3-10 | 21-3-05 | North | West Sequim Bay | 58,308 | 60 | 20 | 38,872 | 29.3% | 11,371 |
| 21-3-05 | 21-3-04 | NE | Private Property | 106,584 | 60 | 20 | 71,056 | 28.9% | 20,516 |
| 21-3-04 | 21-3-03 | NE | Private Property | 83,804 | 60 | 20 | 55,869 | 28.9% | 16,131 |
| 21-3-03 | 21-3-02 | NE | Private Property | 57,054 | 60 | 20 | 38,036 | 28.9% | 10,982 |
| 21-3-02 | 21-3-01 | NE | Private Property | 42,424 | 60 | 20 | 28,283 | 28.9% | 8,166 |
| 21-3-01 | 21-2-11 | North | Private Property | 70,666 | 60 | 20 | 47,111 | 28.9% | 13,603 |
| 21-2-11 | 21-2-10 | North | Private Property | 90,889 | 60 | 20 | 60,592 | 28.9% | 17,495 |
| 21-2-10 | 21-2-09 | North | Private Property | 62,444 | 60 | 20 | 41,630 | 28.9% | 12,020 |
| 21-2-09 | 21-2-08 | North | Private Property | 19,111 | 60 | 20 | 12,741 | 28.9% | 3,679 |
| 21-2-08 | 21-2-07 | North | Private Property | 42,444 | 60 | 20 | 28,296 | 27.9% | 7,884 |
| 21-2-07 | 21-1-10 | NE | Private Property | 22,667 | 60 | 20 | 15,111 | 27.9% | 4,210 |
| 21-1-10 | 21-1-09 | North | Private Property | 88,889 | 60 | 20 | 59,259 | 25.6% | 15,179 |
| 21-1-09 | 21-1-08 | NE | Private Property | 92,000 | 60 | 20 | 61,333 | 25.6% | 15,710 |
| 21-1-08 | 21-1-07 | NE | Private Property | 68,222 | 60 | 20 | 45,481 | 25.6% | 11,650 |
| 21-1-07 | 21-1-06 | East | Private Property | 77,778 | 60 | 20 | 51,852 | 25.6% | 13,282 |
| 21-1-06 | 21-1-03 | East | Private Property | 11,111 | 60 | 20 | 7,407 | 25.6% | 1,897 |
| 21-1-06 | Headworks | East | Private and City | 60,536 | 60 | 34 | 26,232 | 5.5% | 1,438 |
| Total | | | | $ 2,524,556 | | | $ 1,668,912 | | |
| **Initial Capacity Charge for Transmission Route** | | | | | | | | | **$ 891,229** |

## 2. Calculation of Initial Capacity Charge for Treatment Assets and Total Initial Capacity Charge

**Janestown Initial Capacity Charge**
**Pre-2018 Sequim Wastewater Treatment Assets**
**Estimated Original Cost less Depreciation as of December 2017**

| Treatment Assets<br>Pre-2018 Asset | Year Installed | Original Cost | Est. Useful Life | Annual Deprec % | Age in 2018 | Net Book Value as of 2018 |
|---|---|---|---|---|---|---|
| *Sources: Gray & Osborne November 2011 Technical Memo Appendix B, subsequent City accounting records.* | | | | | | |
| **Treatment Assets:** | | | | | | |
| 1984 Plant Improvements: | 1984 | 1,224,364 | 50 | 2.0% | 34 | 391,796 |
| New Headworks | | | | | | |
| Secondary Splitter Box | | | | | | |
| New Lab Building 2 | | | | | | |
| New Oxidation Ditch | | | | | | |
| New Clarifier 1 | | | | | | |
| Waste Sludge Pump Building | | | | | | |
| Tank Conversions | | | | | | |
| Chlorine Tank | | | | | | |
| Aerobic Digesters | 1993 | 600,000 | 40 | 2.5% | 25 | 225,000 |
| Building Conversion | 1993 | 150,000 | 50 | 2.0% | 25 | 75,000 |
| Clarifier #2 | 1993 | 620,000 | 50 | 2.0% | 25 | 310,000 |
| RAS Pumping Station | 1993 | 60,000 | 40 | 2.5% | 25 | 22,500 |
| Other 1993 Projects | 1993 | 897,000 | 40 | 2.5% | 25 | 336,375 |
| Flow Equalization Basin | 1997 | 442,000 | 50 | 2.0% | 21 | 256,360 |
| Flow Diversion | 1997 | 70,000 | 40 | 2.5% | 21 | 33,250 |
| Coagulation Facility | 1997 | 676,000 | 40 | 2.5% | 21 | 321,100 |
| Holding Pond | 1997 | 321,000 | 40 | 2.5% | 21 | 152,475 |
| Control Building | 1997 | 233,000 | 50 | 2.0% | 21 | 135,140 |
| Backwash Basin | 1997 | 42,000 | 50 | 2.0% | 21 | 24,360 |
| UV Basin | 1997 | 207,000 | 40 | 2.5% | 21 | 98,325 |
| Other 1997 Projects | 1997 | 319,000 | 40 | 2.5% | 21 | 151,525 |
| Biosolids Improvements | 2003 | 1,107,165 | 30 | 3.3% | 15 | 553,583 |
| Phase 1A & 1B WRF Improvements | 2010 | 9,755,000 | 30 | 3.3% | 8 | 7,153,667 |
| Filtration Basin Design 2011 | 2011 | 24,028 | 40 | 2.5% | 7 | 19,823 |
| Carlsborg Engineering | 2011 | 17,985 | 30 | 3.3% | 7 | 13,789 |
| Miscellaneous Treatment Projects | 2011 | 11,908 | 40 | 2.5% | 7 | 9,824 |
| General Sewer Plan | 2012 | 88,150 | 6 | 16.7% | 6 | - |
| Filtration Basin Design 2012 | 2012 | 31,920 | 40 | 2.5% | 6 | 27,132 |
| Filtration Basin Construction 2012 | 2012 | 205,545 | 40 | 2.5% | 6 | 174,713 |
| WRF Server Room | 2012 | 38,117 | 40 | 2.5% | 6 | 32,399 |
| Digester Engineering | 2013 | 70,067 | 40 | 2.5% | 5 | 61,309 |
| Filtration Basin Construction 2013 | 2013 | 401,315 | 40 | 2.5% | 5 | 351,151 |
| Headworks Engineering | 2014 | 59,929 | 40 | 2.5% | 4 | 53,936 |
| Headworks Mod #1/Digester Upgrade | 2016 | 1,342,937 | 40 | 2.5% | 2 | 1,275,790 |
| Equalization Basin Aeration System | 2017 | 48,541 | 40 | 2.5% | 1 | 47,328 |
| Industrial Pretreatment | 2017 | 7,292 | 10 | 10.0% | 1 | 6,562 |
| Odor Control | 2017 | 3,736 | 20 | 5.0% | 1 | 3,549 |
| Electric Vehicle | 2017 | 22,605 | 20 | 5.0% | 1 | 21,475 |
| Total Pre-2018 Treatment Assets | | $ 19,097,604 | | | | $ 12,339,235 |
| Total Treatment Capacity (gpd) | | | | | | 1,670,000 |
| Net Book Value of Pre-2018 Assets per gpd Capacity | | | | | | $ 7.39 |
| Assumed Initial Capacity Reservation for Blyn (gpd)<br>*Assumes Max. Monthly Average Daily Flow (MMADF)* | | | | | | 94,786 |
| **Initial Capacity Charge for Treatment Assets** | | | | | | **$ 700,351** |
| *Initial Capacity Percentage* | | | | | | *5.68%* |
| *Hypothetical Future Capacity Charges (applies to Treatment only):*<br>Assumed WRF Treatment Capacity (gpd)<br>Net Book Value of Pre-2018 Assets per gpd<br>Assumed Blyn Capacity Reservation (gpd)<br>Incremental Capacity Reservation<br>*Hypothetical, for illustration only. Assumes 5,000 gpd increase every 10 years.*<br>Hypothetical Future Capacity Charge<br>*Hypothetical Future Blyn Capacity Percentages* | | | | | | |
| **Initial Capacity Charge for Transmission Route Assets** | | | | | | **$ 891,229** |
| **Total Initial Capacity Charge** | | | | | | **$ 1,591,580** |

## 3. Hypothetical Calculation of Subsequent Capacity Charges if Capacity Reservation is Increased *(applies to Treatment Assets only)*

| Treatment Assets<br>Pre-2018 Asset | Year Installed | Original Cost | Est. Useful Life | Annual Deprec % | 2028 | 2033 | 2038 | 2043 | 2048 | 2053 | 2058 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| *Sources: Gray & Osborne November 2011 Technical Memo Appendix B, subsequent City accounting records.* | | | | | | | | | | | |
| **Treatment Assets:** | | | | | | | | | | | |
| 1984 Plant Improvements: | 1984 | 1,224,364 | 50 | 2.0% | 146,924 | 24,487 | - | - | - | - | - |
| New Headworks | | | | | | | | | | | |
| Secondary Splitter Box | | | | | | | | | | | |
| New Lab Building 2 | | | | | | | | | | | |
| New Oxidation Ditch | | | | | | | | | | | |
| New Clarifier 1 | | | | | | | | | | | |
| Waste Sludge Pump Building | | | | | | | | | | | |
| Tank Conversions | | | | | | | | | | | |
| Chlorine Tank | | | | | | | | | | | |
| Aerobic Digesters | 1993 | 600,000 | 40 | 2.5% | 75,000 | - | - | - | - | - | - |
| Building Conversion | 1993 | 150,000 | 50 | 2.0% | 45,000 | 30,000 | 15,000 | - | - | - | - |
| Clarifier #2 | 1993 | 620,000 | 50 | 2.0% | 186,000 | 124,000 | 62,000 | - | - | - | - |
| RAS Pumping Station | 1993 | 80,000 | 40 | 2.5% | 7,500 | - | - | - | - | - | - |
| Other 1993 Projects | 1993 | 897,000 | 40 | 2.5% | 112,125 | - | - | - | - | - | - |
| Flow Equalization Basin | 1997 | 442,000 | 50 | 2.0% | 167,960 | 123,760 | 79,560 | 35,360 | - | - | - |
| Flow Diversion | 1997 | 70,000 | 40 | 2.5% | 15,750 | 7,000 | - | - | - | - | - |
| Coagulation Facility | 1997 | 676,000 | 40 | 2.5% | 152,100 | 87,600 | - | - | - | - | - |
| Holding Pond | 1997 | 321,000 | 40 | 2.5% | 72,225 | 32,100 | - | - | - | - | - |
| Control Building | 1997 | 233,000 | 50 | 2.0% | 88,540 | 65,240 | 41,940 | 18,640 | - | - | - |
| Backwash Basin | 1997 | 42,000 | 50 | 2.0% | 15,960 | 11,760 | 7,560 | 3,360 | - | - | - |
| UV Basin | 1997 | 207,000 | 40 | 2.5% | 46,575 | 20,700 | - | - | - | - | - |
| Other 1997 Projects | 1997 | 319,000 | 40 | 2.5% | 71,775 | 31,900 | - | - | - | - | - |
| Biosolids Improvements | 2003 | 1,107,165 | 30 | 3.3% | 184,528 | - | - | - | - | - | - |
| Phase 1A & 1B WRF Improvements | 2010 | 9,755,000 | 30 | 3.3% | 3,902,000 | 2,276,167 | 650,333 | - | - | - | - |
| Filtration Basin Design 2011 | 2011 | 24,028 | 40 | 2.5% | 13,816 | 10,813 | 7,809 | 4,806 | 1,802 | - | - |
| Carlsborg Engineering | 2011 | 17,985 | 30 | 3.3% | 7,794 | 4,796 | 1,799 | - | - | - | - |
| Miscellaneous Treatment Projects | 2011 | 11,908 | 40 | 2.5% | 6,847 | 5,359 | 3,870 | 2,382 | 893 | - | - |
| General Sewer Plan | 2012 | 88,150 | 6 | 16.7% | - | - | - | - | - | - | - |
| Filtration Basin Design 2012 | 2012 | 31,920 | 40 | 2.5% | 19,152 | 15,162 | 11,172 | 7,182 | 3,192 | - | - |
| Filtration Basin Construction 2012 | 2012 | 205,545 | 40 | 2.5% | 123,327 | 97,634 | 71,941 | 46,248 | 20,555 | - | - |
| WRF Server Room | 2012 | 38,117 | 40 | 2.5% | 22,870 | 18,106 | 13,341 | 8,576 | 3,812 | - | - |
| Digester Engineering | 2013 | 70,067 | 40 | 2.5% | 43,792 | 35,034 | 26,275 | 17,517 | 8,758 | - | - |
| Filtration Basin Construction 2013 | 2013 | 401,315 | 40 | 2.5% | 250,822 | 200,658 | 150,493 | 100,329 | 50,164 | - | - |
| Headworks Engineering | 2014 | 59,929 | 40 | 2.5% | 38,954 | 31,463 | 23,972 | 16,480 | 8,989 | 1,498 | - |
| Headworks Mod #1/Digester Upgrade | 2016 | 1,342,937 | 40 | 2.5% | 940,058 | 772,188 | 604,321 | 436,454 | 268,587 | 100,720 | - |
| Equalization Basin Aeration System | 2017 | 48,541 | 40 | 2.5% | 35,192 | 29,125 | 23,057 | 16,989 | 10,922 | 4,854 | - |
| Industrial Pretreatment | 2017 | 7,292 | 10 | 10.0% | - | - | - | - | - | - | - |
| Odor Control | 2017 | 3,736 | 20 | 5.0% | 1,681 | 747 | - | - | - | - | - |
| Electric Vehicle | 2017 | 22,605 | 20 | 5.0% | 10,172 | 4,521 | - | - | - | - | - |
| Total Pre-2018 Treatment Assets | | $ 19,097,604 | | | $ 6,804,436 | $ 4,040,318 | $ 1,794,443 | $ 714,323 | $ 377,675 | $ 107,073 | $ - |
| Total Treatment Capacity (gpd) | | | | | | | | | | | |
| Net Book Value of Pre-2018 Assets per gpd Capacity | | | | | | | | | | | |
| Assumed Initial Capacity Reservation for Blyn (gpd)<br>*Assumes Max. Monthly Average Daily Flow (MMADF)* | | | | | | | | | | | |
| **Initial Capacity Charge for Treatment Assets**<br>*Initial Capacity Percentage* | | | | | | | | | | | |
| *Hypothetical Future Capacity Charges (applies to Treatment only):* | | | | | | | | | | | |
| Assumed WRF Treatment Capacity (gpd) | | | | | 1,670,000 | 1,670,000 | 2,240,000 | 2,240,000 | 2,240,000 | 2,240,000 | 2,240,000 |
| Net Book Value of Pre-2018 Assets per gpd | | | | | $ 4.07 | $ 2.42 | $ 0.80 | $ 0.32 | $ 0.17 | $ 0.05 | $ - |
| Assumed Blyn Capacity Reservation (gpd) | | | | | 99,786 | 99,786 | 104,786 | 104,786 | 109,786 | 109,786 | 114,786 |
| Incremental Capacity Reservation | | | | | 5,000 | - | 5,000 | - | 5,000 | - | 5,000 |
| *Hypothetical, for illustration only. Assumes 5,000 gpd increase every 10 years.* | | | | | | | | | | | |
| Hypothetical Future Capacity Charge | | | | | $ 20,373 | $ - | $ 4,005 | $ - | $ 843 | $ - | $ - |
| *Hypothetical Future Blyn Capacity Percentages* | | | | | 6.0% | 6.0% | 4.7% | 4.7% | 4.9% | 4.9% | 5.1% |

## 4. Hypothetical Calculation of Subsequent Capacity Refund Payment if Capacity Reservation is Decreased *(applies to Treatment Assets only)*

| Treatment Assets<br>Pre-2018 Asset | Year Installed | Original Cost | Est. Useful Life | Annual Deprec % | Age in 2018 | Net Book Value as of 2028 |
|---|---|---|---|---|---|---|
| **Net Book Value of Pre-2018 Treatment Assets included in Capacity Charges:** | | | | | | |
| 1984 Plant Improvements: | 1984 | 1,224,364 | 50 | 2.0% | 34 | 146,924 |
| Aerobic Digesters | 1993 | 600,000 | 40 | 2.5% | 25 | 75,000 |
| Building Conversion | 1993 | 150,000 | 50 | 2.0% | 25 | 45,000 |
| Clarifier #2 | 1993 | 620,000 | 50 | 2.0% | 25 | 186,000 |
| RAS Pumping Station | 1993 | 60,000 | 40 | 2.5% | 25 | 7,500 |
| Other 1993 Projects | 1993 | 897,000 | 40 | 2.5% | 25 | 112,125 |
| Flow Equalization Basin | 1997 | 442,000 | 50 | 2.0% | 21 | 167,960 |
| Flow Diversion | 1997 | 70,000 | 40 | 2.5% | 21 | 15,750 |
| Coagulation Facility | 1997 | 676,000 | 40 | 2.5% | 21 | 152,100 |
| Holding Pond | 1997 | 321,000 | 40 | 2.5% | 21 | 72,225 |
| Control Building | 1997 | 233,000 | 50 | 2.0% | 21 | 88,540 |
| Backwash Basin | 1997 | 42,000 | 50 | 2.0% | 21 | 15,960 |
| UV Basin | 1997 | 207,000 | 40 | 2.5% | 21 | 46,575 |
| Other 1997 Projects | 1997 | 319,000 | 40 | 2.5% | 21 | 71,775 |
| Biosolids Improvements | 2003 | 1,107,165 | 30 | 3.3% | 15 | 184,528 |
| Phase 1A & 1B WRF Improvements | 2010 | 9,755,000 | 30 | 3.3% | 8 | 3,902,000 |
| Filtration Basin Design 2011 | 2011 | 24,028 | 40 | 2.5% | 7 | 13,816 |
| Carlsborg Engineering | 2011 | 17,985 | 30 | 3.3% | 7 | 7,794 |
| Miscellaneous Treatment Projects | 2011 | 11,908 | 40 | 2.5% | 7 | 6,847 |
| General Sewer Plan | 2012 | 88,150 | 6 | 16.7% | 6 | - |
| Filtration Basin Design 2012 | 2012 | 31,920 | 40 | 2.5% | 6 | 19,152 |
| Filtration Basin Construction 2012 | 2012 | 205,545 | 40 | 2.5% | 6 | 123,327 |
| WRF Server Room | 2012 | 38,117 | 40 | 2.5% | 6 | 22,870 |
| Digester Engineering | 2013 | 70,067 | 40 | 2.5% | 5 | 43,792 |
| Filtration Basin Construction 2013 | 2013 | 401,315 | 40 | 2.5% | 5 | 250,822 |
| Headworks Engineering | 2014 | 59,929 | 40 | 2.5% | 4 | 38,954 |
| Headworks Mod #1/Digester Upgrade | 2016 | 1,342,937 | 40 | 2.5% | 2 | 940,056 |
| Equalization Basin Aeration System | 2017 | 48,541 | 40 | 2.5% | 1 | 35,192 |
| Industrial Pretreatment | 2017 | 7,292 | 10 | 10.0% | 1 | - |
| Odor Control | 2017 | 3,736 | 20 | 5.0% | 1 | 1,681 |
| Electric Vehicle | 2017 | 22,605 | 20 | 5.0% | 1 | 10,172 |
| Total Pre-2018 Treatment Assets | | $19,097,604 | | | | $ 6,804,436 |

## 4. Hypothetical Calculation of Subsequent Capacity Refund Payment if Capacity Reservation is Decreased, continued

**Net Book Value of Treatment Assets Funded by Capital Cost Shares:**
*Hypothetical capital expenditures from 2018 through 2028, for which Jamestown will have paid a 5.68% capital cost share based on a 94,786 gpd Capacity Reservation. Assume reduction of capacity reservation is effective at the end of 2028, so that Jamestown will still be responsible for 5.68% of the 2028 capital expenditures.*

| | | | | | | |
|---|---|---|---|---|---|---|
| Biosolids Handling & Distrib Ctr | 2018 | 1,320,000 | 40 | 2.5% | 10 | 990,000 |
| WRF Headworks Modifications #2 | 2019 | 350,000 | 40 | 2.5% | 9 | 271,250 |
| WRF Pumping System Reconfiguration | 2019 | 660,000 | 40 | 2.5% | 9 | 511,500 |
| Outfall Pipeline Repair/Replacement | 2023 | 1,450,000 | 40 | 2.5% | 5 | 1,268,750 |
| Rapid Infiltration Basin Improvements | 2023 | 1,700,000 | 40 | 2.5% | 5 | 1,487,500 |
| High Pressure Zone Expansion | 2028 | 1,550,000 | 40 | 2.5% | 0 | 1,550,000 |
| Total Treatment Assets Funded by Capital Cost Shares | | | | | | $ 6,079,000 |
| Total Treatment Assets - Net Book Value 2028 | | | | | | 12,883,436 |
| Assumed Total Treatment Capacity (gpd) | | | | | | 1,670,000 |
| Net Book Value of Treatment Assets per gpd Capacity | | | | | | $ 7.71 |
| Initial Capacity Reservation (gpd) | | | | | | 94,786 |
| Assumed Revised Capacity Reservation (gpd) | | | | | | 84,786 |
| Reduction in Capacity Reservation (gpd) | | | | | | 10,000 |
| **Capacity Refund Payment** | | | | | | **$ 77,146** |
| *Revised Capacity Percentage* | | | | | | *5.08%* |

*So in this scenario, for the Capital Cost Share for the year 2028, the City would bill Jamestown prior to March 31, 2029 as follows:*

| | Cost: | multiplied by: | |
|---|---|---|---|
| Capital Cost Share for 2028 capital expenditures | 1,550,000 | 5.68% | $ 88,040 |
| Plus accrued interest | 88,040 | 0.75% | 660 |
| Total payment for Jamestown share of 2028 capital | | | $ 88,700 |
| Less credit for Capacity Refund Payment (reducing Capacity Reservation to 84,786 gpd) | | | (77,146) |
| Net Jamestown capital payment to City in this scenario | | | $ 11,554 |

**5. Explanation of Accrued Interest Factor**

*Referred to in Section 6.3.3*

**Calculation of Accrued Interest Factor**

*Assumptions:*

| | |
|---|---|
| Annual expenditure by City | $ 1,000 |
| Annual interest rate | 1.2% |
| Quarterly interest rate | 0.30% |

| Quarter | Quarterly Expenditure | Quarterly Interest | Number of Periods | Accrued Interest |
|---|---|---|---|---|
| 1Q | $ 250 | $ 0.75 | 4 | $ 3.00 |
| 2Q | $ 250 | $ 0.75 | 3 | $ 2.25 |
| 3Q | $ 250 | $ 0.75 | 2 | $ 1.50 |
| 4Q | $ 250 | $ 0.75 | 1 | $ 0.75 |
| | $ 1,000 | | | $ 7.50 |
| Implied accrued interest rate | | | | **0.75%** |

In other words, if we assume a level stream of capital expenditures by the City throughout the year, and if we assume an annual interest rate of 1.2% (representing the City's foregone interest earnings), and if we assume that the City completes its year-end project accounting and bills Jamestown by March 31 of the following year, then then a 0.75% markup on the Capital Cost Share will approximately compensate the City for accrued interest.

# EXHIBIT D - Limited Waiver of Sovereign Immunity

JAMESTOWN S'KLALLAM TRIBE

1033 Old Blyn Highway, Sequim, WA 98382 360/683-1109 FAX 360/681-4643

**RESOLUTION #49-18**

WHEREAS, the Jamestown S'Klallam Indian Tribe (herein after referred to as "the Tribe") was Federally acknowledged by the Secretary of the Interior of the United States of America on February 10, 1981; and

WHEREAS, the Jamestown S'Klallam Tribal Council ("Council") is the governing body of the Tribe, in accordance with its Constitution adopted on November 19, 1983, pursuant to the provisions of Part 81 of Title 25 of the Code of Federal Regulations, as such Constitution is amended from time-to-time; and

WHEREAS, the Council and City of Sequim ("City") entered into a Joint Memorandum of Agreement, dated February 26, 2015, stating their mutual interest in having the City provide, at its regional wastewater treatment facility, wastewater treatment services, in whole or in part, to the Tribe; and

WHEREAS, the parties agreed to work together to pursue a mutually satisfactory arrangement for such wastewater treatment; and

WHEREAS, the Tribe and City staff have worked over the past two years to develop an Interlocal Agreement ("ILA") which sets forth such a plan to provide long-term wastewater services to Tribal trust and reservation lands; and

WHEREAS, the City has requested, and the Tribe has agreed, as a condition for entering into the ILA, to grant a limited waiver of sovereign immunity, pursuant to the provisions of Title 22 of the Tribal Code;

NOW, THEREFORE, the Tribe expressly waives its right to sovereign immunity and its right to assert a sovereign immunity defense in Washington State courts for the limited purpose of: 1) any legal claim or complaint in the interpretation, validity, performance, and/or enforcement of the ILA, 2) any complaints or counterclaims for monetary damages or equitable relief for any breach of the ILA, and 3) for the enforcement of any final judgment by any Washington State court regarding such matters. This limited waiver of immunity is solely for the benefit of the City for the purposes stated herein, and the Tribe does not waive its sovereign immunity as to any party other than the City. The Tribe agrees not to invoke sovereign immunity as a defense up to the limits of its insurance policy in connection with the enforcement of the City's rights. The Tribe further waives and agrees not to assert any doctrine requiring exhaustion of Tribal Court or administrative proceedings before proceeding with any dispute resolution or legal remedies described in the ILA; and

BE IT RESOLVED FURTHER, Tribe expressly consents to the jurisdiction of the Washington State Superior Court if either Party to the ILA deems it necessary to institute legal action or proceedings to enforce any right or obligation under the ILA. The Parties further agree that any such action or

proceedings shall be brought in Clallam County Superior Court situated in Clallam County, Washington. This waiver and consent is effective only during the term of the ILA, except it remains in force for such time after termination that is necessary to resolve the rights and obligations of either Party arising out of the ILA; and

FINALLY, BE IT RESOLVED, the Council approves the ILA with the City for disposal of wastewater from all Tribal trust and reservation lands held now and in the future and directs the CEO of the Tribe, or his designee, to execute the ILA, substantially as set forth in Exhibit A to this resolution, on behalf of the Tribe.

W. Ron Allen

W. Ron Allen, Chairman

**Certification**

I, Lisa M. Barrell, Secretary of the Jamestown S'Klallam Tribal Council of the Jamestown S'Klallam Tribe, do hereby certify that the resolution was adopted at a regularly scheduled meeting of the Jamestown S'Klallam Tribal Council at the Tribal Office in Blyn, Washington on November 28, 2018, with a quorum approving the resolution by a vote of 3 FOR and Ø AGAINST with Ø ABSTAINING.

Lisa M. Barrell

Lisa M. Barrell, Tribal Council Secretary

# SOVEREIGN NATION COMMERCIAL INSURANCE COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine your rights, duties, and what is and is not covered. Subject to its terms, conditions and exclusions, this policy is a commercial insurance policy and provides coverage only with respect to the conduct of your business.

Throughout this policy, the word "Hudson" refers to Hudson Insurance Company. Words and phrases that appear within quotation marks have, wherever they appear, the special meanings set forth in the Definitions.

Coverage is only provided under the Insuring Agreements contained in this policy for which a limit of insurance is shown in the Declarations.

## GENERAL PROVISIONS

The provisions listed in this section are applicable to your entire policy.

A. ASSURED

It is agreed that "Assured", wherever used in this policy, includes the entity listed in Item 1. of the Declarations (the "Named Assured") and:

1. Any official, trustee, "employee" or volunteer of the "Named Assured" while acting within the scope of his duties as such, and any person, organization, trustee or estate to whom the "Named Assured" is obligated by virtue of a legally binding contract or agreement to provide insurance such as is afforded by this policy, but only with respect to the business operations performed by or on behalf of the "Named Assured";

2. Any person while using an "automobile" owned or hired by the "Named Assured" and any person or organization legally responsible for the use thereof, provided the actual use of such owned or hired "automobile" is by the "Named Assured" or with his permission, any official, trustee or "employee" of the "Named Assured" provided the use of the owned or hired "automobile" is in connection with the business of the "Named Assured".

   However, with respect to any person or organization other than the "Named Assured", this policy does not apply:

   a. To any person or organization, or to any agent or employee thereof, operating an "automobile" sales agency, repair shop, service station, garage or public parking place, with respect to any accident arising out of the operation thereof; however, if Insuring Agreement G. of the policy Declarations indicates coverage is included for "garage keeper's and valet parking services", then this provision

does not apply to “employees” of the “Named Assured” while loading, unloading or parking an “automobile” for a guest of the “Named Assured”;

b. To any employee with respect to injury to or sickness, disease or death of another employee of the same employer injured in the course of such employment in an accident arising out of the maintenance or use of any “automobile” while being maintained or used in the business of such employer;

c. With respect to any hired “automobile”, to the owner or a lessee thereof, other than the “Named Assured”, nor to any agent or employee of such owner or lessee; and/or

d. With respect to any non-owned “automobile”, except as excess insurance over any other valid or collectible insurance, to any official or employee if such “automobile” is owned by him or a member of the same household.

B. TERRITORY

This policy applies worldwide.

C. SERVICE ORGANIZATION

Hudson” designates Alliant Specialty Insurance Services, Inc. as “Hudson’s” “Service Organization”. This policy is issued to the “Named Assured” on the express condition that the “Named Assured” undertakes to utilize, at all times, the services of the “Service Organization”. The “Service Organization” shall perform the following duties:

1. Supervise “claims” in accordance with accepted industry standards once notice of a “loss”, “claim” or “occurrence” has been made to the “Service Organization”;

2. Comply with the notice and reporting requirements of “Hudson” under the terms of this policy;

3. Maintain accurate records of all reported “claims” and incidents with details of “loss” and “expense” payments;

4. Furnish loss prevention and consulting services;

5. Recommend and implement controls and monitor loss prevention programs; and

6. Furnish monthly “claims” records on an approved form.

The acceptance of these services shall be a condition precedent to any liability which may attach to “Hudson” in accordance with the terms and conditions of this policy.

“Hudson” shall have the right and opportunity, but neither the duty nor obligation, to: (i) associate with the “Named Assured” or the “Service Organization” in the defense of any “claim”; or (ii) at “Hudson’s” option, assume the control of the defense of any “claim”. In such event:

a. The “Named Assured” agrees to take the necessary legal measures to allow “Hudson’s” counsel to associate with the “Named Assured” in, or assume the control of, the defense of any “claim” in which case the “Named Assured” and “Hudson” shall cooperate in all matters relating thereto;

during the “policy period” and up to the final resolution of all claims under this policy or three years after the end of the “policy period”, whichever is later.

F. CANCELLATION/NON-RENEWAL: In the event of non-payment of premium by the “Assured,” “Hudson” will give ten (10) days’ notice of cancellation, in writing, sent certified mail to the “Assured” and all coverage afforded by this policy will terminate ten (10) days after the mailing of such notice.

Notwithstanding the aforementioned, “Hudson” may elect to cancel this policy at any time upon ninety (90) days’ written notice to the "Named Assured", otherwise this policy automatically expires at the end of the “policy period”.

G. If this policy is by canceled by “Hudson,” for any reason other than non-payment of premium, Hudson will refund premium on a pro-rata basis. If the “Assured” cancels the policy, the refund will be on a short rate basis..CURRENCY: The premium, “losses” and/or “expenses” under this policy are payable in United States currency.

H. BANKRUPTCY AND INSOLVENCY: In the event of the bankruptcy or insolvency of the “Named Assured” or any entity comprising the “Named Assured”, “Hudson” shall not be relieved of the payment of any claims hereunder because of such bankruptcy or insolvency. The Bankruptcy or insolvency of the “Assured”, or any refusal or inability of the “Assured” to satisfy its obligation pursuant to this Policy will not reduce the “retained limit” as set forth on the Declarations nor will it require “Hudson” to pay any amounts within the “retained limit”.

I. OTHER INSURANCE: If the “Assured” has other insurance, from an insurer other than “Hudson” or any other company within the Hudson Insurance Group, which provides coverage against “loss” and “expense” that is also covered by this policy, “Hudson” shall be liable, under the terms of this policy, only in excess of that coverage provided by such other insurance and no monies payable or collectible from such other insurance shall accrue to the "retained limit".

If the “Assured” has other insurance from “Hudson” or any other company within the Hudson Insurance Group which provides coverage against “loss” and “expense” that is also covered by this policy, “Hudson” shall be liable only under the terms of this policy. This provision does not apply to coverage which is specifically written as excess over coverage provided by this policy.

J. ADDITIONAL ASSURED CLAUSE: The interest of any additional “Assured” with respect to liability covered hereunder is included as if a separate Insuring Agreement were attached hereto to the extent of their interest as of the date of loss subject to the limits of insurance set forth in this policy.

K. LOSS PAYMENTS: When it has been determined by the “Service Organization” that “Hudson” is liable under this policy, “Hudson” shall thereafter promptly make payment(s) up to the applicable limit of insurance, as stated in Item 4. of the Declarations. The “Assured” will be responsible for reimbursement of the “retained limit” upon request from the “Service Organization”. All adjusted claims shall be paid or made good to the “Assured” within thirty (30) days after the presentation to and acceptance by “Hudson” of satisfactory proof of interest and loss.

L. APPEALS: In the event the “Assured” and “Hudson” are unable to agree as to the advisability of appealing a judgment, they may, as an alternative to arbitration (Condition S. -- Arbitration), appoint a disinterested attorney, mutually agreeable to “Hudson” and the “Assured”, who shall be retained and directed to render a written opinion as to his recommendation concerning such appeal. Such written recommendation shall be binding on both the “Assured” and “Hudson”.

Fees of such retained attorney shall be borne equally by both parties for the services of rendering his recommendation only. The “Assured's” portion of such fee shall not apply towards the “retained limit”.

M. LITIGATION PROCEEDINGS: No suit to recover under this policy shall be brought until ninety (90) days after the proof of loss shall have been furnished, nor at all unless commenced within twelve (12) months from the date upon which the "claim" is denied by "Hudson".

N. SUBROGATION: "Hudson" shall be subrogated to all rights which the "Assured" may have against any person or other entity in respect to any "claim" or payment made under this policy and the "Assured" shall do everything necessary to secure these rights and do nothing to impair them. The "Assured" shall execute any papers required by "Hudson" and shall cooperate with "Hudson" to secure "Hudson's" rights. In the event of any reimbursement obtained or recovery made by the "Assured" or "Hudson" on account of any liability, "loss" and/or "expense" covered by this policy, the net amount of such reimbursement or recovery, after deducting the actual cost of obtaining or making the same, shall be applied in the following order:

1. To the amount of "loss" and "expense" which exceeds the applicable limit of insurance of this policy;

2. To reduce "Hudson's" liability, "loss" and "expense" until "Hudson" is fully reimbursed; and

3. To reduce the "Assured's" liability, "loss" and "expense".

O. WAIVER OF SUBROGATION: This policy shall not be invalidated if the "Assured", by written agreement, has waived or shall waive its right of recovery from any party for "loss" and/or "expense" covered hereunder; provided that any such waiver is made prior to the happening of the "occurrence" giving rise to such "loss" and/or "expense".

P. ASSIGNMENT: Assignment of interest under this policy by the "Assured" shall not bind "Hudson" unless and until "Hudson's" consent is endorsed hereon.

Q. CHANGES: By acceptance of this policy, the "Assured" agrees that it embodies all agreements existing between the "Assured" and "Hudson" or any of their agents relating to this policy. None of the provisions, conditions or other terms of this policy shall be waived or altered except by endorsement; nor shall notice to any agent or knowledge possessed by any agent or by any other person be held to effect a waiver or change in any part of this policy.

R. FRAUDULENT CLAIMS: If the "Assured" shall make any "claim" knowing the same to be false or fraudulent, as regards amount or otherwise, this policy shall become void and all "claims" hereunder shall be forfeited.

S. ARBITRATION: All disputes which may arise between "Hudson" and the "Assured" out of or in relation to this policy (including disputes as to its validity, construction or enforceability), or for its breach, shall be finally settled by arbitration based, insofar as possible, upon the rules and procedures of the American Arbitration Association, by which "Hudson" and the "Assured" agree to be bound. In addition to the rules governing such arbitration, the parties shall have at their disposal the broadest pre-trial discovery rights as are then available under the laws and judicial rules of the jurisdiction in which the arbitration is to be held, provided that any dispute between the parties relating to discovery shall be submitted to the arbitration panel for resolution.

Unless the parties consent in writing to a lesser number, the arbitration panel shall consist of three (3) arbitrators, the first to be appointed by "Hudson", the second to be appointed by the "Assured" and the third by the two (2) arbitrators so appointed.

The arbitration proceedings shall take place in New York, NY, provided that the arbitration panel may, for the convenience of the parties and without changing the status of the arbitration proceeding, take evidence outside New York, NY.

The award of the arbitration panel may be, alternatively or cumulatively, for monetary damages, an order requiring the performance of the obligations under this policy, or any other appropriate order or remedy. The award shall assign

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 6/29/2020

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

| | |
|---|---|
| **PRODUCER**<br>Brown & Brown of Washington, Inc.<br>800 5th Ave Suite 2400<br>Seattle WA 98104 | **CONTACT NAME:** Maureen Shiri-Wasto<br>**PHONE (A/C, No, Ext):** 206-676-8143 **FAX (A/C, No):** 206-956-9604<br>**E-MAIL ADDRESS:** mshiriwasto@bbseattle.com |
| | **INSURER(S) AFFORDING COVERAGE** / **NAIC #** |
| | **INSURER A :** HUDSON INSURANCE COMPANY — 25054 |
| **INSURED** JAMES-1<br>Jamestown S' Klallam Tribe<br>1033 Old Blyn Highway<br>Sequim WA 98382 | **INSURER B :**<br>**INSURER C :**<br>**INSURER D :**<br>**INSURER E :**<br>**INSURER F :** |

**COVERAGES** **CERTIFICATE NUMBER:** 838221810 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| A | X **COMMERCIAL GENERAL LIABILITY**<br>CLAIMS-MADE [X] OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>POLICY [ ] PRO-JECT [ ] LOC<br>OTHER: | Y | | NACL00196-14 | 7/1/2019 | 7/1/2022 | EACH OCCURRENCE<br>DAMAGE TO RENTED PREMISES (Ea occurrence)<br>MED EXP (Any one person)<br>PERSONAL & ADV INJURY<br>GENERAL AGGREGATE<br>PRODUCTS - COMP/OP AGG | $ 6,000,000<br>$ 250,000<br>$ Excluded<br>$ 6,000,000<br>$ 10,000,000<br>$ 6,000,000 |
| | **AUTOMOBILE LIABILITY**<br>ANY AUTO<br>OWNED AUTOS ONLY<br>HIRED AUTOS ONLY<br>SCHEDULED AUTOS<br>NON-OWNED AUTOS ONLY | | | | | | COMBINED SINGLE LIMIT (Ea accident)<br>BODILY INJURY (Per person)<br>BODILY INJURY (Per accident)<br>PROPERTY DAMAGE (Per accident) | $<br>$<br>$<br>$ |
| | **UMBRELLA LIAB** OCCUR<br>**EXCESS LIAB** CLAIMS-MADE<br>DED RETENTION $ | | | | | | EACH OCCURRENCE<br>AGGREGATE | $<br>$ |
| | **WORKERS COMPENSATION AND EMPLOYERS' LIABILITY**<br>ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? **(Mandatory in NH)**<br>If yes, describe under DESCRIPTION OF OPERATIONS below | Y / N<br>N / A | | | | | PER STATUTE / OTH-ER<br>E.L. EACH ACCIDENT<br>E.L. DISEASE - EA EMPLOYEE<br>E.L. DISEASE - POLICY LIMIT | <br>$<br>$<br>$ |

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

RE: Interlocal Agreement for Sanitary Services and Sanitary Sewer Collection System Maintenance Agreement.
The City of Sequim is Additional Insured as required per the referenced written agreements/contracts between the City and Named Insured.

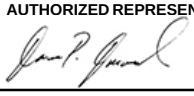
**CERTIFICATE HOLDER**

Clerk's Office
City of Sequim
152 W Cedar Street
P.O. Box 1087
Sequim WA 98382

**CANCELLATION**

**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.**

**AUTHORIZED REPRESENTATIVE**



**© 1988-2015 ACORD CORPORATION. All rights reserved.**

# SOVEREIGN NATION COMMERCIAL INSURANCE COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine your rights, duties, and what is and is not covered. Subject to its terms, conditions and exclusions, this policy is a commercial insurance policy and provides coverage only with respect to the conduct of your business.

Throughout this policy, the word "Hudson" refers to Hudson Insurance Company. Words and phrases that appear within quotation marks have, wherever they appear, the special meanings set forth in the Definitions.

Coverage is only provided under the Insuring Agreements contained in this policy for which a limit of insurance is shown in the Declarations.

## GENERAL PROVISIONS

The provisions listed in this section are applicable to your entire policy.

A. ASSURED

It is agreed that "Assured", wherever used in this policy, includes the entity listed in Item 1. of the Declarations (the "Named Assured") and:

1. Any official, trustee, "employee" or volunteer of the "Named Assured" while acting within the scope of his duties as such, and any person, organization, trustee or estate to whom the "Named Assured" is obligated by virtue of a legally binding contract or agreement to provide insurance such as is afforded by this policy, but only with respect to the business operations performed by or on behalf of the "Named Assured";

2. Any person while using an "automobile" owned or hired by the "Named Assured" and any person or organization legally responsible for the use thereof, provided the actual use of such owned or hired "automobile" is by the "Named Assured" or with his permission, any official, trustee or "employee" of the "Named Assured" provided the use of the owned or hired "automobile" is in connection with the business of the "Named Assured".

   However, with respect to any person or organization other than the "Named Assured", this policy does not apply:

   a. To any person or organization, or to any agent or employee thereof, operating an "automobile" sales agency, repair shop, service station, garage or public parking place, with respect to any accident arising out of the operation thereof; however, if Insuring Agreement G. of the policy Declarations indicates coverage is included for "garage keeper's and valet parking services", then this provision

does not apply to “employees” of the “Named Assured” while loading, unloading or parking an “automobile” for a guest of the “Named Assured”;

b. To any employee with respect to injury to or sickness, disease or death of another employee of the same employer injured in the course of such employment in an accident arising out of the maintenance or use of any “automobile” while being maintained or used in the business of such employer;

c. With respect to any hired “automobile”, to the owner or a lessee thereof, other than the “Named Assured”, nor to any agent or employee of such owner or lessee; and/or

d. With respect to any non-owned “automobile”, except as excess insurance over any other valid or collectible insurance, to any official or employee if such “automobile” is owned by him or a member of the same household.

B. TERRITORY

This policy applies worldwide.

C. SERVICE ORGANIZATION

Hudson” designates Alliant Specialty Insurance Services, Inc. as “Hudson’s” “Service Organization”. This policy is issued to the “Named Assured” on the express condition that the “Named Assured” undertakes to utilize, at all times, the services of the “Service Organization”. The “Service Organization” shall perform the following duties:

1. Supervise “claims” in accordance with accepted industry standards once notice of a “loss”, “claim” or “occurrence” has been made to the “Service Organization”;

2. Comply with the notice and reporting requirements of “Hudson” under the terms of this policy;

3. Maintain accurate records of all reported “claims” and incidents with details of “loss” and “expense” payments;

4. Furnish loss prevention and consulting services;

5. Recommend and implement controls and monitor loss prevention programs; and

6. Furnish monthly “claims” records on an approved form.

The acceptance of these services shall be a condition precedent to any liability which may attach to “Hudson” in accordance with the terms and conditions of this policy.

“Hudson” shall have the right and opportunity, but neither the duty nor obligation, to: (i) associate with the “Named Assured” or the “Service Organization” in the defense of any “claim”; or (ii) at “Hudson’s” option, assume the control of the defense of any “claim”. In such event:

a. The “Named Assured” agrees to take the necessary legal measures to allow “Hudson’s” counsel to associate with the “Named Assured” in, or assume the control of, the defense of any “claim” in which case the “Named Assured” and “Hudson” shall cooperate in all matters relating thereto;

during the “policy period” and up to the final resolution of all claims under this policy or three years after the end of the “policy period”, whichever is later.

F. CANCELLATION/NON-RENEWAL: In the event of non-payment of premium by the “Assured,” “Hudson” will give ten (10) days’ notice of cancellation, in writing, sent certified mail to the “Assured” and all coverage afforded by this policy will terminate ten (10) days after the mailing of such notice.

Notwithstanding the aforementioned, “Hudson” may elect to cancel this policy at any time upon ninety (90) days’ written notice to the "Named Assured", otherwise this policy automatically expires at the end of the “policy period”.

G. If this policy is by canceled by “Hudson,” for any reason other than non-payment of premium, Hudson will refund premium on a pro-rata basis. If the “Assured” cancels the policy, the refund will be on a short rate basis..CURRENCY: The premium, “losses” and/or “expenses” under this policy are payable in United States currency.

H. BANKRUPTCY AND INSOLVENCY: In the event of the bankruptcy or insolvency of the “Named Assured” or any entity comprising the “Named Assured”, “Hudson” shall not be relieved of the payment of any claims hereunder because of such bankruptcy or insolvency. The Bankruptcy or insolvency of the “Assured”, or any refusal or inability of the “Assured” to satisfy its obligation pursuant to this Policy will not reduce the “retained limit” as set forth on the Declarations nor will it require “Hudson” to pay any amounts within the “retained limit”.

I. OTHER INSURANCE: If the “Assured” has other insurance, from an insurer other than “Hudson” or any other company within the Hudson Insurance Group, which provides coverage against “loss” and “expense” that is also covered by this policy, “Hudson” shall be liable, under the terms of this policy, only in excess of that coverage provided by such other insurance and no monies payable or collectible from such other insurance shall accrue to the "retained limit".

If the “Assured” has other insurance from “Hudson” or any other company within the Hudson Insurance Group which provides coverage against “loss” and “expense” that is also covered by this policy, “Hudson” shall be liable only under the terms of this policy. This provision does not apply to coverage which is specifically written as excess over coverage provided by this policy.

J. ADDITIONAL ASSURED CLAUSE: The interest of any additional “Assured” with respect to liability covered hereunder is included as if a separate Insuring Agreement were attached hereto to the extent of their interest as of the date of loss subject to the limits of insurance set forth in this policy.

K. LOSS PAYMENTS: When it has been determined by the “Service Organization” that “Hudson” is liable under this policy, “Hudson” shall thereafter promptly make payment(s) up to the applicable limit of insurance, as stated in Item 4. of the Declarations. The “Assured” will be responsible for reimbursement of the “retained limit” upon request from the “Service Organization”. All adjusted claims shall be paid or made good to the “Assured” within thirty (30) days after the presentation to and acceptance by “Hudson” of satisfactory proof of interest and loss.

L. APPEALS: In the event the “Assured” and “Hudson” are unable to agree as to the advisability of appealing a judgment, they may, as an alternative to arbitration (Condition S. -- Arbitration), appoint a disinterested attorney, mutually agreeable to “Hudson” and the “Assured”, who shall be retained and directed to render a written opinion as to his recommendation concerning such appeal. Such written recommendation shall be binding on both the “Assured” and “Hudson”.

Fees of such retained attorney shall be borne equally by both parties for the services of rendering his recommendation only. The “Assured's” portion of such fee shall not apply towards the “retained limit”.

M. LITIGATION PROCEEDINGS: No suit to recover under this policy shall be brought until ninety (90) days after the proof of loss shall have been furnished, nor at all unless commenced within twelve (12) months from the date upon which the "claim" is denied by "Hudson".

N. SUBROGATION: "Hudson" shall be subrogated to all rights which the "Assured" may have against any person or other entity in respect to any "claim" or payment made under this policy and the "Assured" shall do everything necessary to secure these rights and do nothing to impair them. The "Assured" shall execute any papers required by "Hudson" and shall cooperate with "Hudson" to secure "Hudson's" rights. In the event of any reimbursement obtained or recovery made by the "Assured" or "Hudson" on account of any liability, "loss" and/or "expense" covered by this policy, the net amount of such reimbursement or recovery, after deducting the actual cost of obtaining or making the same, shall be applied in the following order:

1. To the amount of "loss" and "expense" which exceeds the applicable limit of insurance of this policy;

2. To reduce "Hudson's" liability, "loss" and "expense" until "Hudson" is fully reimbursed; and

3. To reduce the "Assured's" liability, "loss" and "expense".

O. WAIVER OF SUBROGATION: This policy shall not be invalidated if the "Assured", by written agreement, has waived or shall waive its right of recovery from any party for "loss" and/or "expense" covered hereunder; provided that any such waiver is made prior to the happening of the "occurrence" giving rise to such "loss" and/or "expense".

P. ASSIGNMENT: Assignment of interest under this policy by the "Assured" shall not bind "Hudson" unless and until "Hudson's" consent is endorsed hereon.

Q. CHANGES: By acceptance of this policy, the "Assured" agrees that it embodies all agreements existing between the "Assured" and "Hudson" or any of their agents relating to this policy. None of the provisions, conditions or other terms of this policy shall be waived or altered except by endorsement; nor shall notice to any agent or knowledge possessed by any agent or by any other person be held to effect a waiver or change in any part of this policy.

R. FRAUDULENT CLAIMS: If the "Assured" shall make any "claim" knowing the same to be false or fraudulent, as regards amount or otherwise, this policy shall become void and all "claims" hereunder shall be forfeited.

S. ARBITRATION: All disputes which may arise between "Hudson" and the "Assured" out of or in relation to this policy (including disputes as to its validity, construction or enforceability), or for its breach, shall be finally settled by arbitration based, insofar as possible, upon the rules and procedures of the American Arbitration Association, by which "Hudson" and the "Assured" agree to be bound. In addition to the rules governing such arbitration, the parties shall have at their disposal the broadest pre-trial discovery rights as are then available under the laws and judicial rules of the jurisdiction in which the arbitration is to be held, provided that any dispute between the parties relating to discovery shall be submitted to the arbitration panel for resolution.

Unless the parties consent in writing to a lesser number, the arbitration panel shall consist of three (3) arbitrators, the first to be appointed by "Hudson", the second to be appointed by the "Assured" and the third by the two (2) arbitrators so appointed.

The arbitration proceedings shall take place in New York, NY, provided that the arbitration panel may, for the convenience of the parties and without changing the status of the arbitration proceeding, take evidence outside New York, NY.

The award of the arbitration panel may be, alternatively or cumulatively, for monetary damages, an order requiring the performance of the obligations under this policy, or any other appropriate order or remedy. The award shall assign

TRIBAL FIRST
ALLIANT UNDERWRITING SOLUTIONS

# TRIBAL PROPERTY INSURANCE PROGRAM
## 2020-2021 NAMED INSURED
### AS OF 06/09/2020

Jamestown S'Klallam Tribe
1033 Old Blyn Highway
Sequim, WA 98382

**NAMED INSURED:**

Jamestown S'Klallam Tribe

Northwest Native Expressions

Jamestown Point Whitney Ventures, LLC

Jamestown Excavating, Inc.

Jamestown S'Klallam Association

Jamestown Properties, Inc.

JKT Development, Inc. dba Jamestown Information Technologies

Jamestown SKlallam Tribe Economic Development Authority

JKT Development, Inc.

Carlsborg Self Storage

River Center Board

The Dungeness River Audubon Center

Jamestown S'Klallam Tribe Economic Development Authority DBA: Jamestown Networks (JNET)

Jamestown Development, Inc. dba: Jamestown Excavation

## Erika Hamerquist

**From:** Erika Hamerquist
**Sent:** Thursday, July 2, 2020 11:09 AM
**To:** Maureen Shiri-Wasto
**Subject:** RE: Your Insured Jamestown S'Klallam Tribe - Contracts with City of Sequim, Washington

Thank you for the list of the Tribe's entities covered by the policy; that is very helpful.

From your responses below, it appears you are agreeing that the coverage includes coverage for any environmental damage caused by the Tribe related to the system, or transfer of toxic discharge into the City system, etc. If that is accurate, I think we are happy with the Certificate and other documentation and will add it to each agreement.

Thank you very much for your prompt response. Please let me know if our interpretation above is *not* correct.

Erika Hamerquist, Legal Secretary
Sequim City Attorney's Office
152 West Cedar Street Sequim WA 98382
(360) 681-6611 ehamerquist@sequimwa.gov

---

**From:** Maureen Shiri-Wasto <mshiriwasto@bbseattle.com>
**Sent:** Wednesday, July 1, 2020 10:04 AM
**To:** Erika Hamerquist <ehamerquist@sequimwa.gov>
**Subject:** RE: Your Insured Jamestown S'Klallam Tribe - Contracts with City of Sequim, Washington

Good morning Erika,

Please see below and let me know if would like to talk over the phone.

Maureen

---

**From:** Erika Hamerquist <ehamerquist@sequimwa.gov>
**Sent:** Tuesday, June 30, 2020 1:40 PM
**To:** Maureen Shiri-Wasto <mshiriwasto@bbseattle.com>
**Cc:** Kristina Nelson-Gross <knelson-gross@sequimwa.gov>
**Subject:** RE: Your Insured Jamestown S'Klallam Tribe - Contracts with City of Sequim, Washington

[External]

Hi Maureen:

Thank you for the updated certificate. It appears to be exactly the same as the one we received earlier, other than the new 2022 expiration. That is true also of the "blanket" document you sent.

The City still has all of the questions and concerns set out in our June 25th email, below. Are you able to respond to those or can we expect correspondence from someone else at your company?

Erika Hamerquist, Legal Secretary
Sequim City Attorney's Office
152 West Cedar Street Sequim WA 98382
(360) 681-6611 ehamerquist@sequimwa.gov

**From:** Erika Hamerquist <ehamerquist@sequimwa.gov>
**Sent:** Thursday, June 25, 2020 9:10 AM
**To:** Ethan Olesen <eolesen@bbseattle.com>; Aaron Amaral <aamaral@bbseattle.com>
**Cc:** Erika Hamerquist <ehamerquist@sequimwa.gov>
**Subject:** Your Insured Jamestown S'Klallam Tribe - Contracts with City of Sequim, Washington
**Importance:** High

[External]

Greetings:

The City of Sequim has two agreements with your insured, the Jamestown S'Klallam Tribe:

(1) an Interlocal Agreement for Wastewater Disposal executed in late 2018 ("ILA"), and
(2) a Sanitary Sewer Collection System [Operations and] Maintenance Agreement executed in June 2020 ("OMA"). [Note that the Tribe owns the pipes and pump stations.]

We have previously received proof of the Tribe's insurance coverage in the form of a Certificate of Liability Insurance and excerpts from Hudson's "Sovereign Nation Commercial Insurance Coverage Form" (attached). We believe you will be providing updated insurance information soon, since the current Certificate expires on July 1, 2020. We are writing to make sure the City receives evidence that the insurance coverage fully covers both agreements. Specifically, we need to confirm the following:

1) On the Coverage Form, does the reference to "Named Assured" in General Provision A.1. mean the Jamestown S'Klallam tribal government as well as the Tribe's business arm? Please provide us with the policy language that defines "business operations" as referenced in this subparagraph. In the alternative, please include language in the Certificate's Description of Operations that makes clear that the policy covers *all* of the Jamestown S'Klallam Tribe's operations. See attached named Assureds

2) Is the Tribe's coverage adequate for it to meet its obligations under paragraphs 10.2 and 10.4 of the ILA [see complete excerpts below], that is, "injuries or damages sustained by any person or property, resulting from acts or omissions of and to the extent harm is caused by the Tribe, its agents or employees in connection with maintenance and operation of the Jamestown System or for breach of its duties under this Agreement" *and* "the cost of remediation of environmental damage caused by any Tribe discharge, such as the discharge into or transfer of toxic wastes from the Jamestown System into the City System." Yes, see blanket endorsement attached

The City will accept a single Certificate and Endorsement/policy language if that is more convenient, so long as the Description of Operations describes both agreements and calls out the required coverages. For the Description box we would accept something similar to: "Re: (1) Interlocal Agreement for Sanitary Services and (2) Sanitary Sewer Collection System Maintenance Agreement. The City of Sequim is Additional Insured/Assured as required per the referenced written agreements/contracts between the City and Named Insured/Assured Jamestown S'Klallam Tribe." See attached Certificate

Pertinent excerpts from the ILA are below:

10.2 Tribe. The Tribe shall indemnify, defend, and hold harmless the City, its elected officials, officers, agents, and employees from and against all suits, claims, or liabilities of any nature, including attorney fees, costs, and expenses, for or on account of injuries or damages sustained by any person or property, resulting from acts or omissions of and to the extent harm is caused by the Tribe, its agents or employees in connection with maintenance and operation of the Jamestown System or for breach of its duties under this Agreement. If suit in respect to the above is filed, the Tribe shall defend the suit at the Tribe's own cost and expense, and if judgment is rendered or settlement made requiring payment by the City, its officers, agents or employees, the Tribe shall pay the same. Should a court of competent jurisdiction determine that this indemnity agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused or resulting from the concurrent negligence of the City and the Tribe, and their elected officials, officers, employees, or agents, the Tribe's liability hereunder shall only be to the extent of the Tribe's negligence.

10.4 Insurance Requirements.

(a) The Tribe shall maintain insurance sufficient to pay any suits, claims, or liabilities of the City described in Section 10.2, above, and, in addition, the cost of remediation of environmental damage caused by any Tribe discharge, such as the discharge into or transfer of toxic wastes from the Jamestown System into the City System. The Tribe's current insurance limits are $6,000,000 per occurrence. The City presumptively agrees that the Tribe's



coverage as of the date of this Agreement is sufficient to cover known risks as of that date. The Tribe agrees, at its own expense, to maintain this insurance coverage for all of its liability exposures for this Agreement. The Tribe agrees to provide the City with at least thirty (30) days prior written notice of any material change in the Tribe's insurance program. The Tribe agrees to add the City as an additional insured on such insurance and to provide the City with an endorsement confirming the City as an additional insured on such policy or policies. The maintenance of, or lack thereof, of insurance coverage shall not limit the liability of the Tribe to the City.

Erika Hamerquist, Legal Secretary
Sequim City Attorney's Office
152 West Cedar Street  Sequim WA  98382
(360) 681-6611  ehamerquist@sequimwa.gov

Please remember that insurance coverage cannot be bound, amended or cancelled by leaving an electronic message or voice mail without confirmation from a licensed representative.

CONFIDENTIALITY NOTICE: Information contained in this communication, including attachments is privileged and confidential and is intended for the exclusive use of the addressee. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone at 206-956-1600 immediately. Thank you.
Please remember that insurance coverage cannot be bound, amended or cancelled by leaving an electronic message or voice mail without confirmation from a licensed representative.

CONFIDENTIALITY NOTICE: Information contained in this communication, including attachments is privileged and confidential and is intended for the exclusive use of the addressee. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone at 206-956-1600 immediately. Thank you.