

ORIGINAL

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF FIFE AND THE CITY OF EDGEWOOD
REGARDING SANITARY SEWER SERVICE**

1. Date and Parties.

This agreement, for reference purposes only, is dated the 5th day of November 2013, and is entered into between the City of Fife (hereinafter "Fife") and the City of Edgewood (hereinafter "Edgewood") under authority of the Interlocal Cooperation Act (Chapter 39.34 RCW) and the laws governing non-charter code cities.

2. Recitals.

2.1 Pursuant to RCW 35A.11.040, and RCW 39.34, Fife and Edgewood have the legal authority to cooperate with each other on a basis of mutual advantage and thereby to provide services and facilities in a manner that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.

2.2 Pursuant to RCW 35A.21.150, Fife and Edgewood each have the legal authority to maintain a sanitary sewerage system.

2.3 Edgewood has evaluated and determined it is in Edgewood's best interest to negotiate an interlocal agreement ("ILA") with Fife allowing certain property located within Edgewood to be served by Fife's sanitary sewerage system and included within Fife's sewer utility.

2.4 Fife has sufficient wastewater conveyance capacity within its sanitary sewer facilities to support this adjustment to the existing sewer services areas, provided the flows do not exceed the flows set forth in Edgewood's General Sewer Plan in effect on January 1, 2013, or as otherwise agreed within this document.

2.5 Fife does not have its own treatment facilities and contracts with the City of Tacoma for all treatment of all of its sewage. The contract with Tacoma determines Fife's sewage treatment capacity. Fife has sufficient treatment capacity within its contract with Tacoma to provide for Edgewood's sewage treatment flow requirements set forth in Edgewood's General Sewer Plan in effect on January 1, 2013, or as otherwise agreed within this document. Fife's capacity commitment hereunder shall be based on equivalent residential units, ERU's, where one ERU is equal to 230 gallons per day of sewerage flow.

2.6 Fife's provision of sewer service to this area will provide the maximum efficiency in the use of existing and future facilities, together with orderly and efficient sanitary sewer planning.

Now, therefore it is hereby agreed by and between the parties hereto as follows:

3. Sewer Service Area.

3.1 Fife agrees to provide, pursuant to all applicable regulatory requirements, sanitary sewer service to the Edgewood Non-Core West Phase I Sewer Area, as described in Edgewood's approved General Sewer Plan and Exhibit A attached hereto ("Edgewood Service Area"), provided that total sewer flows within the Edgewood Service Area do not exceed the flows set forth in Edgewood's General Sewer Plan in effect on January 1, 2013. Edgewood shall provide Fife with a copy of its approved General Sewer Plan in effect on January 1, 2013. Fife will accept sewer flows within the Edgewood Sewer Area up to 600 ERUs, at such time as Fife's General Sewer Plan is amended and approved by all government agencies from which approval is required to include the Edgewood Service Area at a capacity of 600 ERUs. Edgewood shall pay the cost of so amending Fife's General Sewer Plan, including consultant fees and attorney fees, and Fife shall diligently pursue completion and approval of such amendment. At its discretion Edgewood may either reimburse Fife for said costs at the time of their occurrence, or credit Fife for payments as provided for in Section 7 below. Any future sewer service provided by Fife to property within Edgewood which is outside of the Edgewood Sewer Service Area shall be subject to the execution of a separate agreement or agreements between the parties providing such service. Provided, that nothing herein shall be construed as requiring the parties to execute any such agreement, or as entitling any property owner to receive sanitary sewer service.

3.2 The parties acknowledge that connection facilities shall be constructed between Fife and Edgewood. Following construction and connection of these improvements to the Fife system, property owners may, subject to approval of Fife and Edgewood, connect to the collection system owned by Fife, and to the extent of the sewer service provided by Fife, shall be subject to all regulations and be afforded all privileges of Fife Customers. Fife shall determine capacity requirements for service to Edgewood customers and shall be under no obligation to permit connections which may cause Fife to exceed its capacity commitment as stated in 3.1. As a condition of service to any property within Edgewood, Edgewood shall issue a letter to Fife indicating that the parcel, or parcels, of property meets the City planning criteria for connecting to the Fife sewer system, and by so doing, Edgewood shall be deemed to be exercising approval authority for sewer connections issued within Edgewood.

4. Authority to Fix Rates and Charges. The rates, connection fees, capital facilities charges, or other fees or charges for sanitary sewer service within the Edgewood Service Area shall be fixed, altered, regulated and controlled solely by Fife, subject to the limitations set forth in RCW 35.67.020. Edgewood shall work with Fife to secure available potable water usage information for properties within the Edgewood Service Area, from Mountain View Edgewood Water Corporation. Fife shall develop a flat rate charge for all residential customers in the Edgewood Service Area. The initial flat rate sanitary sewer service of a single family residential unit in the Edgewood Service Area shall be \$61.61 per month effective upon approval of this document. Fife may thereafter modify the fixed rate in accordance with RCW 35.67.020. Fife

shall be exclusively responsible for collecting rates and charges from connections within the Edgewood Service Area, and collecting any delinquent customer accounts for service to property within the Edgewood Service Area using liens and other legally authorized methods.

5. Conformance with Fife Code and Edgewood Code. Edgewood agrees to adopt by reference those portions of Fife's Municipal Code, Title 13, chapters 13.08, 13.09, 13.12 and 13.14 necessary to require each residential and business use within the Edgewood Service Area to obtain and maintain sanitary sewer service from Fife, and to comply with the terms of this Agreement relative to sanitary sewer service to such residential and/or business use.

6. Sewage Works Design Standards. Edgewood shall adopt by reference City of Fife's standards and operating procedures for collecting, pumping, treating and disposing of sanitary sewage for all sewage facilities within the Edgewood Sewer Service Area. All facilities receiving sanitary sewer service within the Edgewood Sewer Service Area shall comply with Fife's design and construction standards for sewage works as amended at the time that an application for construction of such improvements is submitted.

7. Use and Administrative Fee. To compensate Edgewood for the use of the public right of way within the Edgewood Service Area and for the administrative expense of implementing this ILA, Fife shall pay Edgewood a quarterly administrative fee during the term of this Agreement equal to six (6) percent of the gross rate revenues received by Fife from sanitary sewer customers within the Edgewood Service Area.

8. Land Use Approval. Fife shall, upon application by a landowner or development applicant, timely issue a certificate of sanitary sewer availability for any land development project (i.e. subdivision, short subdivision, binding site plan and building permits) within the Edgewood Sewer Service Area that will use or result in using the Fife sanitary sewer system. Fife shall in writing issue or deny with stated reasons a requested certificate of sewer availability within 30 days upon receiving a copy of the underlying project application from the development applicant or landowner, unless delay is caused by circumstances beyond Fife's reasonable control. Fife shall timely upon request provide staff, as necessary, for Edgewood pre-application meetings and others that require representation by the sewer provider. The certificate shall include all conditions deemed reasonably necessary by Fife to provide for the sanitary sewer flow and sanitary sewer treatment that will be required by the project. Such conditions shall be included by Edgewood as conditions of permit approval for the project, subject to applicable legal standards as determined Edgewood. Edgewood shall not provide final approval of a subdivision, short subdivision, binding site plan or any other division of property, that requires sewer service from Fife, until the landowner or development applicant has provided Edgewood with a certificate of "Completion of Sewer System Improvements" from Fife which indicates that all connection charges, capital facilities charges and permit fees for the project owed to Fife have been paid or otherwise provided for, all required sewer facilities and/or extensions have been constructed or otherwise provided for, all necessary sewer permits have been obtained, and all other applicable Fife Municipal Code requirements have been satisfied. Any parcel or facility, in the Edgewood Service Area, requiring sewer service from Fife shall be required to

provide Edgewood with a certificate of sanitary sewer availability before a building permit will be issued. Edgewood's building permit will include a section requiring Fife's sanitary sewer requirements to be met before gaining occupancy of the building.

9. Use of Public Right of Way. Pursuant to all applicable regulatory requirements, Fife shall have the right and privilege to lay down, construct, relay, connect, replace and/or maintain pipes, conduits and mains, trunk lines, and appurtenances and facilities thereto, in, along, through, and under the avenues, streets, highways and road rights-of-way controlled by Edgewood within the Edgewood Service Area, as may be necessary, convenient and/or proper in order to provide sanitary sewer service to business and residential properties and uses within the Edgewood Service Area, and for that purpose to make any and all connections which may be necessary, convenient and/or proper in accordance with the terms and conditions set forth herein. The right of way use rights described in this section shall not be deemed or held to be exclusive, and shall not prevent Edgewood from entering other agreements or franchises for use of any avenues, streets, highways or road rights-of-way controlled by Edgewood within the Edgewood Service Area.

10. Relocation of Facilities for Edgewood Street Projects. Fife agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any public right of way within the Edgewood Sewer Service Area, any component of Fife's sanitary sewerage system when so required by Edgewood by reason of traffic conditions or any public works project, including without limitation public safety, widening, relocating or improvement of existing rights-of-way, streets or avenues, or change or establishment of street grade, provided that Fife shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same street upon approval of Edgewood, any sanitary sewer line or portion thereof required to be temporarily disconnected or removed. The provisions of this section shall not be applicable if the relocation is due to a private development, use or activity. Provided further that when street widening or improvement is desired by Edgewood within the Edgewood Service Area, that Edgewood will acquire sufficient right-of-way to accommodate all utilities including Fife's sanitary sewerage system.

If Edgewood determines that a project (other than a project due to a private development, use or activity) necessitates the relocation of Fife's then existing facilities, Edgewood shall:

a. At least one hundred and eighty (180) days prior to commencement of construction of such project, provide Fife with plans and written notice requiring such relocation, unless another time period for the notice is agreed to by the parties for a particular project; and

b. Provide Fife with copies of pertinent portions of the plans and specifications for such project and a proposed location for Fife's facilities so that Fife may relocate its facilities in other Edgewood right-of-way in order to accommodate such project.

After receipt of such notice and such plans and specifications, Fife shall timely complete relocation of its facilities at no charge or expense to Edgewood (except as hereinafter provided)

so as to accommodate the project construction schedule and prevent any delay to the project.

Fife shall indemnify, defend and hold harmless Edgewood, its officers, officials, boards, commissions, authorized agents and employees for any damages or claims, specifically including without limitation any additional costs or expenses assessed against, or payable by, Edgewood related to, arising out of, or resulting, directly or indirectly, from Fife's failure to remove, adjust or relocate any of its facilities in the Right-of-Way in a timely manner in accordance with any relocation required by Edgewood.

11. Excavations.

11.1 During any period of installation, relocation, construction, maintenance or repair of Fife's facilities, all surface structures, if any, shall be erected and used in such places and positions within said public right-of-ways and other public properties so as to interfere as little as practicable with the free passage of traffic and the free use of adjoining property, and Fife shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of Edgewood or the laws of the State of Washington.

11.2 Whenever Fife shall excavate in any public right-of-way or other public property for the purpose of installation, construction, repair, maintenance or relocation of its facilities, it shall apply to Edgewood for a permit to do so and upon obtaining a permit shall give Edgewood at least twenty-four (24) hours written notice during the normal work week of Fife's intent to commence such work. In no case shall any work commence within any public right-of-way or other public property without a permit, except as otherwise provided in this Agreement. At least 90 days before commencing on new construction of sewer improvements within the Edgewood sewer service area, Fife shall provide Edgewood with an approved set of plans for those improvements as well as a construction schedule for work in the Rights-of-Ways.

During the progress of the work, Fife shall not unnecessarily obstruct the passage or proper use of the right-of-way or other public property, and shall file as-built plans or maps with Edgewood showing the proposed and final location of its facilities.

11.3 If either Fife or Edgewood at any time plans to make excavations in any area covered by this Agreement and as described in this Section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, the first opportunity to use such excavation at no additional cost, provided that:

(1) Such joint use shall not unreasonably delay the work of the party causing the excavation to be made;

(2) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties;

(3) Either party may deny such request for safety reasons; and

(4) If either party increases the size of the original excavation, said party shall be responsible for the extra cost associated with the additional excavation.

12. Restoration after Construction. Fife shall, after installation, construction, relocation, maintenance, or repair of its sewerage facilities within the Edgewood Service Area, restore the surface of the street, right-of-way or public property to at least the same condition the property was in immediately prior to any such installation, construction, relocation, maintenance or repair, unless other arrangements are mutually agreed to by both parties for a particular project. The Edgewood Public Works Director shall have final approval of the condition of such streets, rights-of-way and public places after restoration. All concrete encased monuments that have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. Fife agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the Edgewood Service Area at its sole cost and expense.

13. Permits and Fees. Fife shall be required to obtain all applicable permits from Edgewood necessary for sewer related work by Fife in Edgewood and/or in Edgewood's rights-of-way. However, in consideration of the administrative fee established in Section 7 and Fife's willingness to provide sanitary sewer service to the Edgewood Service Area, Fife shall not be subject to any permit fees associated with Fife's sanitary sewer service maintenance or construction activities.

14. Excavation and Restoration by Developer. The parties acknowledge that construction of sewer facilities within right of way in the Edgewood Service Area will be primarily accomplished by developers in conjunction with the land use development process. The provisions of Section 11 to 13 apply to work done by Fife only. Nothing herein shall be construed as limiting or otherwise waiving the compliance of any such developers or other third parties with respect to all applicable Edgewood requirements for utility work in Edgewood right of way, including without limitation the requirement to obtain all necessary permits from Edgewood and pay all applicable permit fees.

15. Emergency Work -- Permit Waiver. In the event of an emergency in which any of Fife's facilities located in or under any street or right of way controlled by Edgewood are broken, damaged, or if Fife's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, Fife shall immediately take the proper emergency measures to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this Agreement. However, this shall not relieve Fife from the requirement of obtaining any permits necessary for this purpose, and Fife shall apply for all such permits not later than the next succeeding day during which Edgewood's offices are open for business.


Fife


Edgewood

16. 26th Street Sewer Main. In order to serve the Edgewood Service Area a developer constructed sewer main on 26th Street East will need to be conveyed to Fife. Fife's obligation to serve the Edgewood Service Area shall not commence unless and until either the sewer main on 26th Street East is conveyed to Fife or an alternate conveyance route is developed and agreed upon by the parties.

17. Agreement Term. This Agreement shall be effective upon execution by both parties ("Effective Date"). Fife's obligation to provide sanitary sewer service within the Edgewood Sewer Service Area under this Agreement shall commence at such time as all governmental approvals necessary for Fife to serve the Edgewood Service Area have been obtained, Edgewood has adopted all ordinances, standards, and regulations required under Sections 5 and 6 of this Agreement, and Fife has obtained ownership of the 26th Street sewer main or an alternate conveyance route is developed and agreed upon by the parties. There shall be no fixed term associated with this Agreement, however, this Agreement may be terminated, and all property acquired and used by the parties disposed, by mutual agreement of the parties per RCW 39.34.030(3). Unless otherwise expressly provided herein, ownership of any real and personal property acquired or owned by a party before and during the term of this Agreement shall remain vested in said party upon termination.

18. Street Vacations. Edgewood may have occasion to vacate certain streets, public ways or areas that have Fife's facilities located thereon. Edgewood agrees to notify Fife of such an occurrence and to reserve an easement for Fife's lines and facilities when a street, public way or area is vacated. If it is not feasible for Edgewood to reserve an easement for Fife's lines and facilities, the proponents of the vacation shall be required by Edgewood as a condition of finalizing the vacation, and as part of land use or other permitting approvals, to reimburse Fife all costs to relocate said lines and facilities.

19. Contract Administration. The parties do not by this Agreement create any separate legal or administrative entity. The City Manager of Fife, or his designee shall be responsible for working with the City Manager of Edgewood, or his/her designee to administer the terms of this Agreement. The parties do not intend to jointly own any real or personal property as part of this undertaking. The parties will cooperatively work together to further the intent and purpose of this Agreement.

20. Consent to Formation of LID. By approving this Agreement, the City Council of the City of Edgewood hereby authorizes and approves the formation by Fife of local improvement districts or utility local improvement districts for sewer infrastructure purposes exclusively, that are composed entirely or in part of territory within the Edgewood Service Area.

21. Indemnification.

21.1 Fife agrees to indemnify and hold Edgewood, its elected officials, officers, employees, agents and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities,

including, without limitation their respective agents, licensees, or representatives arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of Fife, its elected officials, officers, employees, agents, and volunteers or by Fife's breach of this Agreement.

21.2 Edgewood agrees to indemnify and hold Fife, its elected officials, officers, employees, agents and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation their respective agents, licensees, or representatives arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of Edgewood, its elected officials, officers, employees, agents, and volunteers or by Edgewood's breach of this Agreement.

21.3 In the event of a claim, loss, or liability based upon the alleged concurrent or joint negligence of the parties, the parties shall bear their respective liability, including cost, in accordance with their respective liability established in accordance with the laws of the State of Washington.

21.4 FOR PURPOSES OF INDEMNIFICATION ONLY, THE PARTIES, BY MUTUAL NEGOTIATION, HEREBY WAIVE, AS RESPECTS THE OTHER PARTY ONLY, ANY IMMUNITY THAT WOULD OTHERWISE BE AVAILABLE AGAINST SUCH CLAIMS UNDER THE INDUSTRIAL INSURANCE PROVISIONS OF TITLE 51 RCW.

21.5 The provisions of this section shall survive the expiration or termination of this Agreement with respect to acts and omissions occurring during the term hereof.

22. Comprehensive Sewer Planning. The terms of this Agreement shall be included in Fife and Edgewood's respective Comprehensive Sanitary Sewerage Plans. Edgewood shall pay all direct costs associated with the updating of updating Fife's Comprehensive Sewerage Plan necessary to implement this agreement. At its discretion Edgewood may either reimburse Fife as such costs are incurred, or provide a credit against fees charged to Fife by Edgewood under Section 7 of this Agreement.

23. Government Approvals. The parties shall give notice of the adoption of this Agreement to the Pierce County Department of Health, State of Washington Department of Ecology, and to any other agency with jurisdiction relevant to the terms hereof, and shall cooperate and assist in all reasonable manner in procuring any necessary approvals hereof by those agencies, including necessary approvals of sewer service boundary revisions consistent with this Agreement.

24. Assignment. Neither party may assign this Agreement or any interest, obligation or duty therein without the express written consent of the other party.

25. Venue and Attorneys Fees. This Agreement shall be governed in all respects by the laws of the State of Washington. The Venue for any dispute related to this Agreement shall be with the United States District Court for the Western District of Washington or the Pierce County Superior Court, Tacoma, Washington. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys' fees from the other party.

26. Insurance. Both Fife and Edgewood shall maintain membership in WCIA's liability and risk pool or have equivalent limits of liability from another insurance program or liability pool.

27. Notice. Any notice or information required or permitted to be given to the parties under this Agreement may be sent to the following addresses unless otherwise specified:

City of Fife
Attn: Public Works Director
5411 23rd Street East
Fife, WA 98424

City of Edgewood
Attn: Public Works Director
2224 104th Avenue E.
Edgewood, WA 98372


28. Modification. This Agreement constitutes the complete and final agreement of the parties, and replaces and supersedes all oral and/or written proposals and agreements heretofore made by the parties on the subject matter. No provision of this Agreement may be amended or added to except by agreement, in writing, signed by both parties.


29. Signature Authority

29.1 The Fife City Manager was authorized to execute this Agreement by Resolution No. 1557 adopted by a majority of the entire City Council on the 13th day of August, 2013, at a regularly scheduled Council meeting. Fife shall record its Agreement with Pierce County and/or post it on the Fife City website prior to its entry into force.

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29.2 The Edgewood City Manager was authorized to execute this Agreement by Resolution No. 13-0040 adopted by a majority of the entire City Council on the 10 day of Sept. 2013 at a regularly scheduled Council meeting, which date was at least five days after its introduction. The resolution had been submitted to the Edgewood City Attorney prior to adoption, and has been published at least once in a newspaper of general circulation in the City of Edgewood. Edgewood shall then recorded its Agreement with Pierce County and/or post it on the Edgewood City website prior to its entry into force.


30. No Third-Party Beneficiaries. This Agreement is executed for the sole and exclusive benefit of the signatory parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any right, remedy or other entitlement upon any person other than the parties hereto, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party, nor shall any provision herein give any third party any right of action against any party hereto.


Fife



Edgewood

31. Severability. Should any clause, phrase, sentence or paragraph of this Agreement or its application be declared invalid or void by a court of competent jurisdiction, the remaining provisions of this Agreement or its applications of those provisions not so declared shall remain in full force and effect.

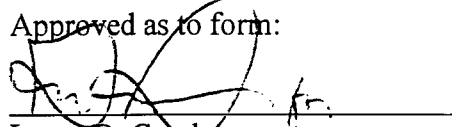
CITY OF FIFE

By: 
Dave Zabell
City Manager


ATTEST:


Carol Etegen
City Clerk

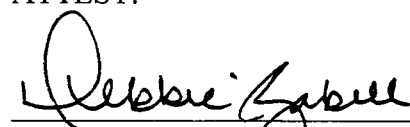
Approved as to form:


Loren D. Combs
City Attorney

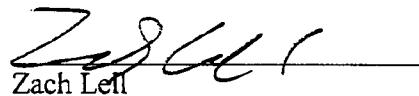
CITY OF EDGEWOOD

By: 
Mark D Bauer
City Manager

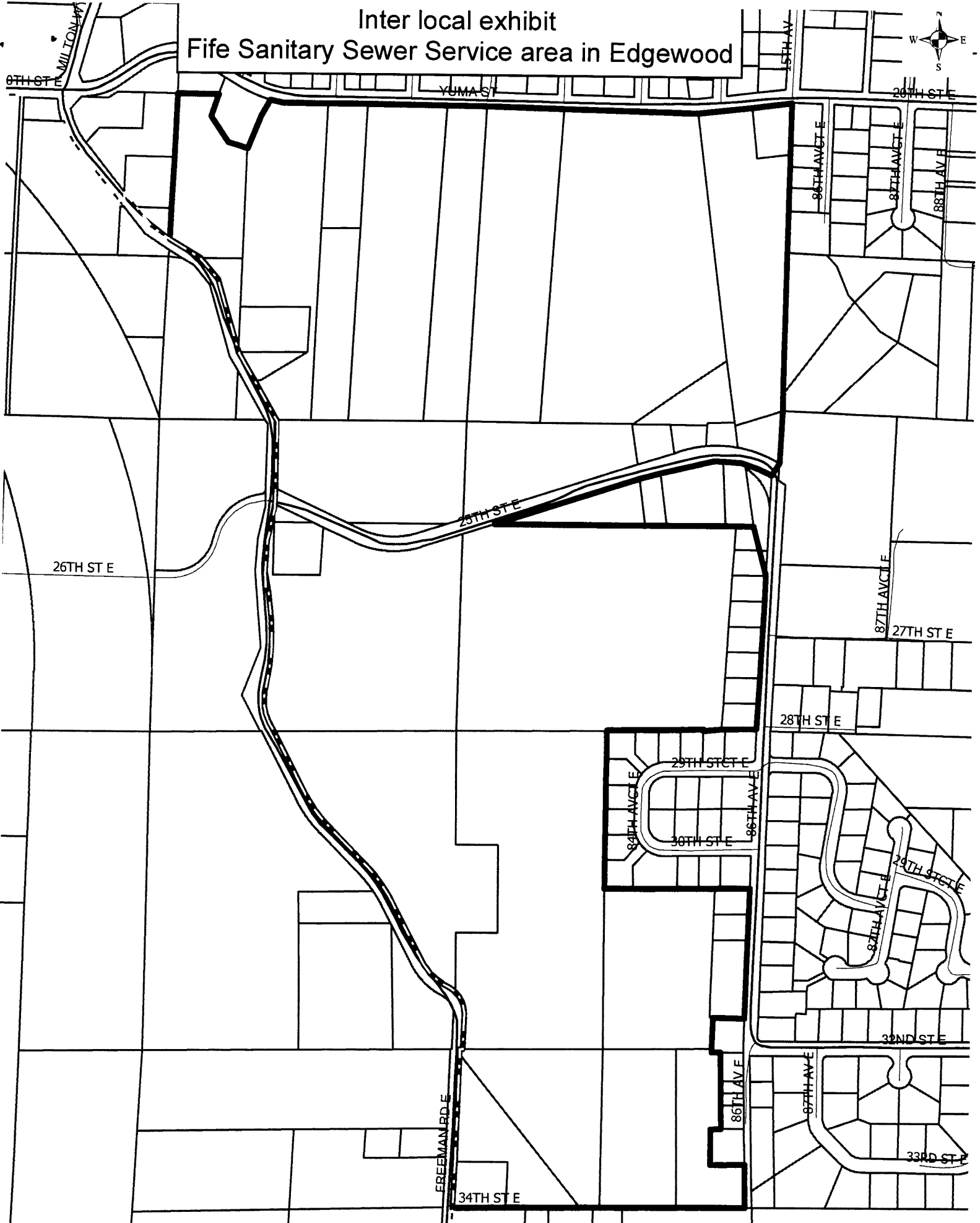
ATTEST:


Debbie Zabell
City Clerk

Approved as to form:


Zach Leff
City Attorney

Inter local exhibit Fife Sanitary Sewer Service area in Edgewood



The map features are approximate and are intended only to provide an indication of said feature. Additional areas that have not been mapped may be present. This is not a survey. Orthophotos and other data may not align. The County assumes no liability for variations ascertained by actual survey. ALL DATA IS EXPRESSLY PROVIDED 'AS IS' AND 'WITH ALL FAULTS'. The County makes no warranty of fitness for a particular purpose.

1 inch = 500 feet
DS 10/30/2013