

Well System Agreement Operation, Maintenance & Easement

WATER SYSTEM PURVEYOR

Responsibilities/Roles

1. The purveyor shall be responsible for submission of all necessary water samples as required in the Washington Administrative Code (WAC) 246-291 and Pierce County Rules and Regulations No. 21.5.a.2 and for managing emergency situations including but not limited to water system shutdown and repair.
2. The purveyor shall serve as contact to the State of Washington and/or County of Pierce health officer(s), shall organize and maintain the water system records and notify the health officer(s) and all parties of the water quality tests that are required by WAC 246-291 and Pierce County Rules and Regulations No. 21.5.a.2.
3. The purveyor shall make water system records available for review and inspection by parties, at reasonable times and upon reasonable notice, and by the Washington and Pierce County health officer(s) in compliance with all state and local laws and regulations.
4. Parties agree to act in good faith and to cooperate with the purveyor regarding any and all decisions made by the purveyor regarding the water system including but not limited to assessment and collection of costs, establishment of the water system as a Group B water system, construction and maintenance of the water system, design of the water system for approval by the health officer, and initial and on-going well/water quality tests necessary to obtain and maintain approval of the water system as a Group B water system.
5. The purveyor shall establish and maintain an account at an FDIC approved bank for payment of expenses related to the water system. The purveyor shall, from time to time, pursuant to the terms of this agreement, assess the parties equally to maintain a reserve of funds in the account sufficient to properly manage the water system. The purveyor shall issue assessments by mailing a copy of the assessment, by regular first class mail, postage prepaid to each party at the mailing address designated by the party.
6. The purveyor shall construct and maintain all aspects of the water system so that there will be no leakage or seepage, or other defects which may cause contamination of the water, or injury, or damage to persons or property. However, each party shall be solely responsible for construction and maintenance of any aspect of the water system located on the party's property and serving the party's property exclusively.
7. In the event the purveyor is required to make a decision pursuant to the terms of this agreement and the impact of the decision would have a unique, positive or negative effect on an individual member of the purveyor committee member that a common interpretation of the situation would be to say that the purveyor committee member had a conflict of interest, that conflicted member of the purveyor committee shall recuse himself

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for the purposes of considering and making that decision only. With respect to all other tasks assigned to the purveyor, the conflicted member of the committee shall fulfill his or her role as a purveyor committee member. The remaining member(s) of the purveyor committee, following recusal of one or more members, shall appoint new purveyor committee member(s) for the purposes of considering and rendering the decision on the single issue that resulted in the conflict of interest. The purveyor committee shall consist of three members for the consideration and rendering of all decisions.

COSTS OF MAINTENANCE

8. Each party whose property with a connection to the water system is improved with a temporary or permanent dwelling shall share equally in all costs associated with the water system, including but not limited to maintenance, replacement, repair and operational costs of the water system.
9. Within 30 days following execution of this agreement by two or more parties, the purveyor shall issue an equal assessment to all parties in an amount necessary to create a balance sufficient to pay anticipated water system expenses for two years. Thereafter, on an annual basis, in keeping with the Road Maintenance agreement's schedule for collecting assessments, the purveyor shall issue an equal assessment to all parties in an amount necessary to pay the anticipated water system expenses for the following year. In this manner, the parties agree that the purveyor shall maintain reserve funds sufficient to pay the anticipated normal operating and routine maintenance expenses of the water system for one year, plus a reserve for future capital improvements. Parties shall pay any assessment within 30 days following issuance of the assessment by the purveyor.
10. If at any time the balance of the bank account is deemed by the purveyor to be insufficient to pay the actual costs of the water system and to maintain the required reserve funds, the purveyor shall issue an emergency assessment equally to all parties. Parties shall pay any emergency assessment within 30 days following issuance of the emergency assessment by the purveyor.
11. If any assessment or emergency assessment is not paid by a party within 30 days of issuance, the assessment and/or emergency assessment, together with interest, costs, and reasonable attorney fees, shall constitute a lien on the party's property, which may be foreclosed in the same manner as a mortgage or deed of trust on real property. Interest shall accrue on the lien at the rate of 12% per year, or the highest rate allowed by law, whichever is less.
12. If any payment is not received within 120 days, purveyor shall terminate delivery of water through the water system to the delinquent party pursuant to Section 20, of this agreement.

EASEMENTS

13. Parties hereby grant to one another a perpetual, non-exclusive over, under and across the party's property within a 30 foot radius of the well site, for purpose of installing, maintaining and/or repairing the water system. In addition, parties hereby grant to one another a perpetual, non-exclusive easement as necessary for installation, replacement and maintenance of the water system including delivery of water to each party's property.

The easement area shall include the existing location of the water system except that the existing location may be modified as necessary to achieve the setbacks described below. The width of the easement created by this section shall be (10) ten feet centering on water system pipelines.

14. When an existing water system improvement is replaced, the improvement shall be constructed in the same location as the existing water system improvement except that the improvement shall be setback 10 feet from septic tanks, sewer lines and sewage disposal drain field lines to the extent that setback is possible, unless those sewage disposal systems are constructed to eliminate public health risk. Nothing in the grant of the easement set forth above shall require a party to cease or change the use of any improvement on the party's property. Rather, any water system improvements shall be repaired, replaced or newly constructed in such away as not to interfere with another party's use of the party's property existing at that time. To the extent possible, parties shall grant an easement across their Property to avoid interruption of an existing use of another party's property. Notwithstanding any other provision of this agreement, the parties shall cooperate to allow the minimal amount of total construction consistent with the provisions of this agreement
15. Once water system improvements are constructed in the easements created by this agreement no permanent improvement, trees or landscaping that would be difficult to remove shall be located upon the easements except with the express permission of the purveyor or as deemed necessary by the purveyor for the operation of the well and water system. If improvements or landscaping in any easements created by this agreement are damaged during any repair or installation of the water system Improvements, all parties shall share equally in the cost of restoring the damaged improvements and/or landscaping except that nothing in this section shall require the parties to restore a party's property if the party was the exclusive beneficiary of the installation or repair.

PROHIBITED PRACTICES

16. No party shall construct, maintain, or suffer to be constructed or maintained upon any party's property and within 100 feet of the well site, so long as the same is operated to furnish water for human consumption, any potential source of contamination, such as septic tanks and drain fields, sewer lines, underground storage tanks, roads, railroad tracks, vehicles, structure, barns, feed stations, grazing animals, enclosures for maintaining fowl or animal manure, uncontained liquid or dry chemical storage, herbicides, insecticides, hazardous waste, uncontained garbage of any kind or description excluded from the potential sources of contamination are the maintenance, repair, replacement or remodel of existing residences and outbuildings, and construction of new structures as long as the building locations will not encroach into the 100-foot well radius any more than existing buildings encroach on the well radius at time of water system approval. New drainfields, septic tanks and sewer lines will be no closer than any previous sewage disposal systems the well site. All vehicle operation and storage, road maintenance, auto maintenance, household chemical storage and automotive fluid storage shall be conducted in a way that creates the least potential contaminant impact on the well site and its 100-foot protective well radius. The road shall be maintained or improved in such a way that will minimize contamination to the well site and its 100-foot radius.

Herbicides and pesticides shall be used in such a manner that will prevent seepage into the water system.

If replacement or remodel of existing residences, outbuildings, or construction of new structures is closer than 30-feet from the Well Site or closer than 5 feet from the remaining water system, or if new or extended septic systems are closer to the well than any other previous systems at the signing of this agreement, the parties wishing to make the improvements must get permission from the purveyor. Purveyor will determine if said improvements pose a public health risk. The affected party and the purveyor shall agree on appropriate outside experts for that determination, and the party seeking approval will pay for such experts. The purveyor will approve or deny the improvement in writing with documentation, and their decision shall be binding on all parties.

17. No party shall cross connect any portion of the water system with any other water source without prior written approval of Tacoma-Pierce County Health Department, other appropriate governmental agencies and the purveyor.
18. No party shall add connections or furnish water from the water system to any other persons, properties or dwellings without prior written consent of the purveyor and written approval from the Tacoma-Pierce County Health Department.

LATECOMERS

19. Any party or real property owner in the vicinity of the water system who does not initially sign this agreement or who later terminates use of the water system (a "latecomer") may become a party by executing and recording an addendum to this agreement with the Pierce County Auditor. The amendment shall not be valid nor binding until the latecomer obtains prior written approval to join the water system from the Tacoma-Pierce County Health Department and the purveyor and pays an amount determined by the purveyor established as a latecomer fee at the time approval is granted. A latecomer shall be solely responsible for extending the water pipeline to the latecomer's real property. If any real property owner records this agreement against their property without obtaining necessary approval and paying the latecomer's fee, then the latecomer's fee owing at the time of recording, together with 12% interest, the amount of any additional Assessments, regular or emergency, and the cost of reasonable attorney fees and costs, shall constitute a lien on the property owner's real property which may be foreclosed in the same manner as a mortgage or deed of trust on real property.

TERMINATION

20. Any party may voluntarily cease to use the water system and terminate future obligations to contribute to the costs of maintaining the water system upon written notice to the purveyor. Additionally, a party's use of the water system may be terminated by the purveyor pursuant to the provisions set forth in Section 12 regarding non-payment of assessments or other charges owing. However, under no circumstances may the terminated party recover any refund or relief from assessments already paid or owing. In addition, cessation of use of the water system shall not affect any party's obligation to the remaining terms of this agreement including but not limited to the grant of any easements over, under or across the party's property and any limitations on use of the party's property. If a party's use of the water system is terminated, the purveyor of shall affect a

"cut-off" of the party's connection, at the party's sole expense. A "cutoff" of a party's connection shall include a modification to the water system that prevents delivery of water to the party's property until the modification is reversed at the exclusive direction of the purveyor. If a terminated party, wishes to reconnect to the water system, the party shall be considered a "latecomer", and shall be required to obtain approval in accordance with Section 19 of this agreement, and shall be solely responsible for all related fees for approval re-modification of the water system and latecomer fees.

PROVISIONS FOR CONTINUATION OF WATER SERVICE

21. The parties agree to maintain a continuous flow of water from the water system in accordance with public water supply requirements of the State of Washington and Pierce County.
22. Each party is entitled to an equal share of water from the water system. Nevertheless, the parties shall share the water from the water system according to their respective needs. In every circumstance, however the use of the water by the parties shall be restricted to the party's property and shall be for domestic purposes only.
23. In the event the quality of quantity or water from the water system becomes unsatisfactory as determined by the health officer, the parties shall cooperate to develop a new source of water. Prior to the development of, or connection to a new source of water, the parties shall obtain written approval from the health officer. Each party shall share equally in the cost of developing the new source of water and installing the necessary equipment associated with delivery of the new source of water. In the event that a new source of water becomes necessary, and is approved by the health officer, the new source of water shall become the water system which shall be subject to the provisions of this agreement, as amended or replaced pursuant to Section 25 below.

LIABILITY FOR DAMAGE

24. If any party or party's tenants, guests, agents or employees damage the water system, that party shall be solely and exclusively liable for the cost of repair of the damage. The purveyor shall make or oversee the necessary repairs, but the cost of the repair shall be the sole responsibility of the party and shall be paid by the party immediately upon receipt of notification of the amount owing. If the amounts owed are not paid as required, the amounts owed, together with interest, costs, and reasonable attorney fees, shall constitute a lien on the party's property, which may be foreclosed in the same manner as a mortgage or deed of trust on real property. Interest shall accrue on the lien at the rate of 12% per year, or the highest rate allowed by law, whichever is less.

HEIRS. SUCCESSORS AND ASSIGNS AND AMENDMENT OF THIS AGREEMENT

25. This agreement shall run with the land and shall be binding on and inure to the benefit of the parties, their heirs, successors and assigns. This agreement shall be recorded with the Pierce County Auditor. This agreement may be modified or replaced only with the express consent of not less than 75% of the parties. Regardless of the number of lots owned by one party, each party shall have only one vote per water system connection for which assessments are being paid. To the extent a lot is owned by multiple persons, the persons owning each Lot shall determine among themselves how a single vote is to be cast.

WATER CONSERVATION

26. All parties are encouraged to practice water conservation consistent with current Department of Ecology rules. At the effective date of the agreement, water usage may not exceed 5,000 gallons per day for the entire water system. No more than 1/2 an acre of real property may be irrigated by the water system unless a water right permit is obtained from the Department of Ecology. Each party may use no more than their equal share of the 5,000 gallons per day and may irrigate no more land than their equal share of the 1/2 acre. Purveyor may provide public education and materials for water conservation.
27. The purveyor will use its best efforts to effectively manage and maintain the water system. The parties hereby indemnify and promise to defend and hold harmless each other, including but not limited to the purveyor, from and against all liability, loss, damage, expense, actions, and claims arising out of their respective use and management of the water system, or use by their tenants, invitees, guests, employees, and agents.

ATTORNEY FEE PROVISION

28. Should any dispute arise as to the terms or enforcement of this agreement or use of the water system, the prevailing party shall be entitled to recover all costs and reasonable attorney's fees, including those for appeals. Venue shall be Pierce County, Washington.

COUNTERPARTS

29. This agreement may be signed in counterparts.

To have and to hold the said right and easement, subject to the said conditions herein set forth and agreed.

Dated this _____ day of _____, year _____.

GRANTOR: _____

GRANTEES: _____

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

On this day personally appeared before me _____,
to me known to be the individual(s) described in and who executed the within and foregoing
instrument, and acknowledged that she/he/they signed the same as _____ (her/
his/their) free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this _____ day of _____, year _____.

NOTARY PUBLIC in and for the State of Washington

(Type/Print Name)
Notary Public in and for the State of
Washington, residing at _____
Appointment expires: _____

Well System Agreement
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Exhibit A

The undersigned individuals are owners of the real property affected by this agreement and upon signing this agreement shall be considered "parties".