BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF: } MUTUAL AGREEMENT
 } AND ORDER
 } NO. WQ/M-NWR-06-073
 } CLACKAMAS COUNTY

WHEREAS:

1. Oregon law prohibits the discharge of raw sewage into waters of the state. Pursuant
to Oregon Revised Statute (ORS) 468B.080 (1) No sewage shall be discharged into or in any
other manner be allowed to enter the waters of the state from any building or structure unless the
sewage has been treated in a manner approved by the Oregon Department of Environmental
Quality (the Department). ORS 468B.050(1)(a) prohibits any discharge of wastes that enters
waters of the state, either without a waste discharge permit or from a discharge point not
authorized by a waste discharge permit. Oregon Administrative Rule (OAR) 340-041-0009(2)
prohibits the discharge of raw sewage to waters of the state.

2. The City of Lake Oswego (the City) has reported sewage overflows from manholes as
a result of intermittent surcharging within the Lake Interceptor dating back to 1983. The most
recently reported discharges of raw sewage to waters of the state occurred during December of
untreated wastewater released joined storm water flow and eventually entered Oswego Lake, or
the Willamette River, waters of the state.

3. Because of the Lake Interceptor’s capacity limitations, the Department and the City
recognize that during periods of heavy rainfall, manholes will overflow again, and the City will
be in violation of ORS 468B.080(1), ORS 468B.050(1)(a) and OAR 340-041-0009(2). The
City’s remedial course of action will include a construction project for addressing the Lake
Interceptor capacity issue. This construction project will involve replacing the current Lake
Interceptor with either a new, gravity-drained interceptor across Oswego Lake (“In-Lake
Option”) or a new series of force mains and pumping stations around the north end of Oswego Lake (“Around-the-Lake Option”). The Lake Oswego City Council will select one of these as the replacement for the current Lake Interceptor.

4. The Department and the City recognize that the Environmental Quality Commission has the power to impose a civil penalty and to issue an abatement order for violations of Oregon law. Therefore, pursuant to ORS 183.415(5), the Department and the City wish to settle those past violations referred to in Paragraph 2 and to limit and resolve the future violations referred to in Paragraph 3 in advance by this Mutual Agreement and Order (MAO).

5. This MAO is not intended to limit, in any way, the Department’s right to proceed against the City in any forum for any past or future violations not expressly settled herein.

NOW THEREFORE, it is stipulated and agreed that:

6. The Environmental Quality Commission shall issue a final order:

A. Requiring the City to comply with the following schedule and conditions:

(1) By no later than February 8, 2007, initiate formal negotiations with the Lake Oswego Corporation regarding the timing and duration of the drawdown of Oswego Lake necessary for the construction of either Lake Interceptor replacement option. The City will notify the Department that it has commenced formal negotiations within three business days thereafter.

(2) By no later than February 28, 2007, provide to the Department the Final Phase I Pre-design Report for the Lake Interceptor replacement project. Phase I of the Pre-design Report will further describe the In-Lake Option.

(3) By no later than July 16, 2007, provide to the Department the Final Phase II Pre-design Report for the Lake Interceptor replacement project. Phase II of the Pre-design report will describe the Around-the-Lake Option, provide a comparison of the In-Lake Option to the Around-the-Lake Option and will include engineering recommendations on the options.
(4) By no later than August 7, 2007, the Lake Oswego City Council will select either the In-Lake Option or the Around-the-Lake Option for the Lake Interceptor replacement project. The City will notify the Department of the City Council’s decision within three business days thereafter.

(5) By no later than August 10, 2007, the City will commence formal negotiations with landowners to obtain property interests necessary for the construction of the Lake Interceptor replacement project selected by the City Council. The City will notify the Department that it has commenced formal negotiations within three business days thereafter.

(6) The City will endeavor to obtain all property interests necessary for the construction of the Lake Interceptor replacement project selected by the City Council by no later than June 1, 2009. In the event the City believes it will be unable to obtain all necessary property interests by June 1, 2009, it will provide notice, no later than April 1, 2009, to the Department of the reasons it will be unable to obtain by that time and the reasons for the delay.

(7) The City will endeavor to obtain all permits and authorizations necessary for the construction of the Lake Interceptor replacement project selected by the City Council by no later than October 1, 2008. In the event the City believes it will be unable to obtain all necessary permits and authorizations by October 1, 2008, it will provide notice, no later than August 1, 2008, to the Department of the reasons it will be unable to obtain by that time and the reasons for the delay.

(8) By no later than September 1, 2008, the City will submit to the Department fifty-percent complete design plans and specifications for the Lake Interceptor replacement project selected by the City Council.

(9) By no later than June 30, 2009, the City will submit to the Department final design plans and specifications for the Lake Interceptor replacement project selected by the City Council. The Department will make its best efforts, given the limitations on the availability...
of its staff, to promptly to review the final design plans and specifications.

(10) By no later than October 1, 2009, the City will commence construction of
the Lake Interceptor replacement project selected by the City Council. The City will notify the
department that construction has commenced within three business days thereafter.

(11) Within two weeks of the date of Department approval of the final design
plans and specifications for the Lake Interceptor replacement project, the City and Department
will meet to review and agree on a construction completion schedule for the Lake Interceptor
replacement project. If the Department and the City agree to a completion schedule, this MAO
will be amended pursuant to Paragraph 10 to incorporate the agreed-upon construction
completion schedule. If the Department and the City are unable to agree to a construction
completion schedule, this MAO will terminate on October 1, 2009.

B. Requiring the City to provide quarterly reports via electronic mail to the
Department on the status of its compliance with schedule set forth in Paragraph 6.A above.

C. Requiring the City to provide the Department with a copy of their ongoing
contingency plan for addressing overflow events (overflow response plan) by February 22, 2007.
The overflow response plan should detail steps that will be taken by the City to mitigate these
events and to notify the public regarding them.

D. Requiring the City, upon receipt of a written notice from the Department for any
violations of this MAO, to pay a civil penalty in the amount of $250 for each day of each

7. If any event occurs that is beyond the City's reasonable control and that causes or
may cause a delay or deviation in performance of the requirements of this MAO, the City shall
immediately notify the Department verbally of the cause of delay or deviation and its anticipated
duration, the measures that have been or will be taken to prevent or minimize the delay or
deviation, and the timetable by which the City proposes to carry out such measures. The City
shall confirm in writing this information within five (5) working days of the onset of the event.
It is the City's responsibility in the written notification to demonstrate to the Department's satisfaction that the delay or deviation has been or will be caused by circumstances beyond the control and despite due diligence of the City. If the City so demonstrates, the Department shall extend times of performance of related activities under this MAO as appropriate. Circumstances or events beyond the City's control include, but are not limited to, acts of nature, unforeseen strikes, actions or inactions of federal, state or local governmental agencies other than the City, lawsuits filed against the City or that the City is required to file relating to the Lake Interceptor replacement project, work stoppages, fires, explosion, riot, sabotage, or war. Increased cost of performance or consultant's failure to provide timely reports may not be considered circumstances beyond the City's control.

8. Regarding all past reported violations, including those set forth in Paragraph 2 above, all of which are expressly settled herein with a civil penalty pursuant to ORS 468.140 of $54,000, the City and the Department hereby waive any and all of their rights to any and all notices, hearing, judicial review, and to service of a copy of the final order herein. The penalty of $54,000 referred to herein may be reduced by an amount up to $43,200 through performance of a Supplemental Environmental Project ("SEP") accepted by the Department. Penalty reduction is subject to the Department's approval of a SEP proposal within 120 days of the execution of this MAO. If the Department does not approve of a SEP proposal within 120 days of the execution of this MAO, the balance of the civil penalty previously subject to mitigation, $43,200, will immediately become due and owing. The Department reserves the right to enforce this order through appropriate administrative and judicial proceedings.

9. Regarding the potential for future violations set forth in Paragraph 3 above, the City and the Department hereby waive any and all of their rights to any and all notices, hearing, judicial review, and to service of a copy of the final order herein, provided the City has followed their overflow response contingency plan. In addition the City must provide the Department with oral notification either directly or through the Oregon Emergency Response System (OERS @1-
800-452-0311) of each occurrence within 24 hours and a written description of actions taken
within 5 days of the conclusion of the overflow. The Department reserves the right to enforce
this order through appropriate administrative and judicial proceedings.

10. The terms of this MAO may be amended by the mutual agreement of the Department
and the City.

11. The Department may amend the compliance schedule and conditions in this MAO
upon finding that such modification is necessary because of changed circumstances or to protect
public health and the environment. The Department shall provide the City a minimum of thirty
(30) days written notice prior to issuing an Amended Order modifying any compliance schedules
or conditions. If the City contests the Amended Order, the applicable procedures for conduct of
contested cases in such matters shall apply.

12. This MAO shall be binding on the parties and their respective successors, agents, and
assigns. The undersigned representative of each party certifies that he or she is fully authorized
to execute and bind such party to this MAO. No change in ownership or corporate or partnership
status relating to the facility shall in any way alter the City's obligations under this MAO, unless
otherwise approved in writing by the Department.

13. All reports, notices and other communications required under or relating to this MAO
should be directed to Lyle Christensen, DEQ Water Quality Northwest Regional Office, 2020
SW 4th Avenue, Portland, Oregon 97201, phone number (503) 229-5295. The contact person for
the City shall be Joel Komarek, City Engineer, PO Box 369, Lake Oswego, Oregon 97034,
phone number (503) 635-0270.

14. The City acknowledges that it has actual notice of the contents and requirements of
the MAO and that failure to fulfill any of the requirements hereof would constitute a violation of
this MAO and subject the City to payment of civil penalties pursuant to Paragraph 6.D above.

15. Any stipulated civil penalty imposed pursuant to Paragraph 6.D shall be due upon
written demand. Stipulated civil penalties shall be paid by check or money order made payable
to the "Oregon State Treasurer" and sent to: Business Office, Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204. Within 21 days of receipt of a "Demand for Payment of Stipulated Civil Penalty" Notice from the Department, the City may request a hearing to contest the Demand Notice. At any such hearing, the issue shall be limited to the City's compliance or non-compliance with this MAO. The amount of each stipulated civil penalty for each violation and/or day of violation is established in advance by this MAO and shall not be a contestable issue.

16. Providing the City has paid in full all stipulated civil penalties pursuant to Paragraph 15 above, this MAO shall terminate 60 days after the City demonstrates full compliance, through and including completion of construction, with the requirements of the schedule set forth in Paragraph 6.A above, unless terminated earlier pursuant to provisions of 6. A. (11) above.

The City of Lake Oswego

2-7-07

Date

Judie Hammerstad, Mayor

DEPARTMENT OF ENVIRONMENTAL QUALITY

2-7-07

Date

Jane K. Hickman, Administrator
Office of Compliance and Enforcement

FINAL ORDER

IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

2-7-07

Date

Jane K. Hickman, Administrator
Office of Compliance and Enforcement
Department of Environmental Quality
Pursuant to OAR 340-11-136(1)