

AGREEMENT BETWEEN
PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY
AND THE CITY OF EVERETT
FOR MULTIPURPOSE DEVELOPMENT OF THE SULTAN RIVER

THIS AGREEMENT, made and entered into this 21st day of July,
1960, by and between PUBLIC UTILITY DISTRICT NO. 1 of SNOHOMISH COUNTY, WASH-
INGTON (hereinafter called the "District"), and the CITY OF EVERETT, WASHINGTON,
a municipal corporation (hereinafter called the "City

WITNESSETH

WHEREAS the City presently owns and operates a municipal water system
and is possessed of certain water rights and facilities in the area of the Sultan River, Lake
Chaplain and surrounding areas in Snohomish County, Washington, and the City is desirous
of improving and increasing the supply of water available for use of Everett and Snohomish
County; and

WHEREAS the District is engaged in the operation of a power and light
distribution system on a county-wide basis; and

WHEREAS the District is authorized by law to do all reasonable things to
conserve the water and power resources for the benefit of the people of the District; and

WHEREAS the District presently is engaged in the water business in
several areas in Snohomish County; and

WHEREAS the water supply facilities of the Sultan River and Lake Chaplain,
which are now utilized by the City, will be inadequate to supply the growing needs of the
City of Everett and Snohomish County; and

WHEREAS the District anticipates that it will need additional sources of
power supply in the foreseeable future; and

WHEREAS each party recognizes that it is to their mutual advantage that
facilities in the Sultan River Basin be developed by means of the construction of a multi-
purpose project for hydroelectric purposes for the residents of Snohomish County and
water supply purposes for the benefit of the residents of the City of Everett and as many
of the residents of Snohomish County who can be economically and efficiently served by

the water supply which can be made available as a result of the construction of such project; and

WHEREAS the parties have resolved that this development can be best achieved by means of the construction of such project by the District under the plan herein provided for, and the sale, storage and delivery of water to the municipal water system of the City;

NOW, THEREFORE, it is hereby covenanted and agreed as follows:

ARTICLE I

DEFINITIONS

As used in this Agreement, the following words and phrases shall have the meanings hereinafter set forth unless the context shall clearly indicate that another meaning is intended:

(1) The term "Project" shall mean the complete Sultan River Hydroelectric Development and shall consist of such plans, investigations and construction as may be reasonably necessary for the multipurpose development of the Sultan River and its tributaries and the Lake Chaplain storage area for water supply and hydroelectric purposes. The plan of the Project is generally as set forth in the application to the Federal Power Commission under F.P.C. No. 2157 dated November 21, 1957, for a license to construct said Project, a copy of which application is made a part hereof by this reference as though the same was set forth at length herein as modified by this or subsequent agreements.

(2) The term "Stage I" shall mean Dam No. 1 at the Sultan River Gorge to elevation approximately 1,360 feet above sea level including reservoir clearing, access roads and associated construction work. Stage I of the Project shall be constructed, for water supply purposes and no hydroelectric facilities will be constructed, except where such facilities may be an integral part of the Stage I construction of Dam No. 1 and facilities adjacent thereto in the reservoir which must be constructed initially in order to allow operation of the reservoir for water supply purposes pending the completion of the Project.

(3) The term "Stage II" shall mean all facilities of the Project not included under Stage I, including all of the hydroelectric and associated facilities.

(4) The term "Stage II, Water Purposes" shall be deemed to designate that portion of the Project, the construction of which may become necessary to supply additional water to the City at a time when the District shall not be ready to proceed with the construction of Stage II for hydroelectric purposes and shall not be willing to sell or convey its title to the Project to the City, but reserving the right at a future date to construct the balance of the Project for hydroelectric purposes.

(5) The term "Time of Minimum Water Usage" shall mean the first day of the month following any three consecutive calendar months during which the City shall use an amount of water equal to or in excess of 140,000,000 gallons per day as determined from the average total use of the City measured at the City's intake works to the City's transmission system at Lake Chaplain.

(6) The term "Stage II, Hydroelectric" shall mean the condition which exists when Stage I has been completed and the District desires to proceed with completion of Stage II for the development of hydroelectric power, but the City has not at that time arrived at the "time of minimum water usage."

(7) The term "Dam No. 1" shall mean the main storage dam located at the Sultan River Gorge in the Northwest quarter of Section 29, Township 29 North, Range 9 East.

(8) The term "Dam No. 2" shall refer to the re-regulating dam located on the Sultan River in the Northwest quarter of Section 26, Township 29 North, Range 8 East.

(9) The term "Diversion Dam" shall mean the presently existing diversion dam on the Sultan River in the Northeast quarter of Section 32, Township 29 North, Range 8 East, which is owned by the City and operated in connection with its existing water supply facilities.

(10) The term "Lake Chaplain" shall mean the existing storage reservoir owned and operated by the City for water supply purposes.

(11) The term "Reservoir No. 1" shall mean the storage reservoir along the Sultan River created by the construction of Dam No. 1

(12) The term "Reservoir No. 2" shall mean the storage reservoir along the Sultan River created by the construction of Dam No. 2.

(13) The term "Joint-Facility" shall mean those facilities, improvements or portions thereof constructed as a part of this Project which shall have value to both the District and the City, and shall include, but shall not be limited to, the following:

1. Dam No. 1 to water surface elevation of 1,440 and a crest elevation including full allowance for surcharge and freeboard to 1,450.
2. Reservoir No. 1 to elevation as required to serve Dam No. 1.
3. Raising the crest on the existing Diversion Dam a distance of five (5) feet above the existing elevation.
4. A lined tunnel from the Sultan River to Lake Chaplain including intake and outlet works and directly related appurtenances; provided, however, that there shall be charged as a joint cost only 35% of the total cost and the balance shall be charged as a hydroelectric cost.

(14) The term "Joint Cost" shall mean those costs of constructing as part of this Project those improvements, a portion thereof, or their equivalents that have value to both the District and the City as above described under the term "Joint Facility".

(15) The term "Water Cost" shall mean that cost or costs of construction or otherwise acquiring as a part of this project, those improvements or any portion thereof which have value only for purposes of aiding and increasing the water supply as herein contemplated and have no substantial value or usage for hydroelectric purposes.

(16) The term "Hydroelectric Cost" shall mean those costs of construction or otherwise acquiring as a part of this project, those improvements, or any

portion thereof, which have value only for the purposes of aiding and increasing the hydroelectric features of the Project as herein contemplated and have no substantial value or usage for purposes of water supply as herein contemplated.

ARTICLE II
BASIC PROVISIONS

Section 1. Water Quality to Have Precedence.

The City and the District agree to cooperate fully to maintain the water quality in accordance with the intent of this agreement, and with the existing contractual commitments of the City with Scott Paper Company and Weyerhaeuser Timber Company, both dated June 1, 1957.

Section 2. Water Supply to Have Precedence.

The parties hereto expressly agree that the requirements for water supply shall have precedence over any requirement or use of said water for power generation purposes.

Section 3. Use of Facilities and Holdings of the City.

The City now owns or holds certain real property and improvements, easements, licenses, permits, rights-of-way and other rights ~~which are to be used in the Project development.~~ It is hereby agreed that the City shall retain title to all of its real property and improvements thereon, all of its easements, licenses, permits and rights-of-way and other rights which shall be used as a part of the Project unless otherwise revoked or withdrawn by the State of Washington, or the United States of America. The District shall have the right to use any and all such real property and improvements, easements, licenses, permits, rights-of-way and other rights for any purpose consistent with the provisions and intent of this Agreement, and the City will execute any such easements, licenses or permits or rights-of-way which may be required for such purposes, provided that by so doing, the City will, lose none of its rights in the use of such property for City purposes in connection with the water supply system herein contemplated. If any such easements, licenses, permits and rights-of-way and other rights are not by law, or by condition, contained

contained herein, transferrable or assignable, then the District shall be designated the agent of the City for the purposes of this Agreement to exercise the City's rights under those easements, licenses, permits and rights-of-way and other rights. In exercising such right and privilege, the District hereby agrees to use and maintain such real property and the improvements thereon, easements, licenses, permits, rights-of-way and other rights which shall be used as a part of the Project in such a manner as will be consistent with the best interests of the City.

In the event the District elects to use the City's rights-of-way between the Sultan River and the corporate limits of the City of Everett for the purpose of electrical transmission lines, the City agrees to grant to the District the right to use said rights-of-way, if assignable, and if in the opinion of the City such use will not interfere with the use of said easements by the City for municipal purposes. Provided, however, that once the District shall have constructed its facilities upon such rights-of-way, no future or contemplated use by the City shall require the District to remove or modify its facilities without the consent of the District. The District shall be responsible for all damage to the City's installations on said rights-of-way which are attributable to the construction, operation and maintenance of District's facilities thereon.

Section 4. Maximum Beneficial Use.

The parties hereto recognize that the development of the Project will provide substantial and far-reaching benefits to all of the people of Snohomish County and the City of Everett, and hereby agree that all steps reasonable and necessary will be taken to accomplish the maximum and most economical development of the Project.

Section 5. Restrictions.

Unless otherwise provided for in this Agreement, the City shall be restricted in its use of the Project to the storage and supply of water for domestic, commercial and industrial needs, and the District shall be restricted in its use of the Project to operation for hydroelectric purposes.

Section 6. Plan of Construction.

The parties agree to cooperate fully to obtain the necessary licenses, permits, easements, agreements, and rights-of-way deemed essential to the completion of the Project without cost to the City except as to the development of water and joint facilities as herein provided.

It is hereby contemplated that the Project will be constructed in two (2) principal parts as follows:

The construction of Stage I of the Project shall be undertaken to provide additional water supply for the City, and to insure that the Project can be developed to the maximum and most economical use of the resource which can be realized. The parties agree to cooperate fully to achieve the earliest possible completion of Stage I of the Project and each party shall keep the other party fully advised at all times of its efforts and activities with respect thereto.

The construction of Stage II of the Project shall be undertaken to provide power and energy for the District and additional water supply for the City.

It is also understood that under certain circumstances, construction may be made as defined in ARTICLE I (d) "Stage II Water Purposes, and (e) "Stage II Hydroelectric."

Section 7. Use of Water.

It is hereby agreed that all water diverted by the District above the Diversion Dam for hydroelectric purposes will be returned to the Sultan River at or above the Diversion Dam. All water which is diverted by the District into Lake Chaplain as a result of the construction of the Project and which is not needed for consumption for water supply purposes may be withdrawn from Lake Chaplain by way of canals, pipes or other suitable conduits and utilized by the District for hydroelectric purposes. It is further agreed that the City may not withdraw water from the Sultan River for water supply or other purposes at any point on the Sultan River which is more than 1,000 feet in distance above the existing Diversion Dam.

CONSTRUCTION OF PROJECT

Section 1. Commencement of Construction - Option of City to Construct.

The District shall forthwith undertake such procedures as shall be necessary to acquire title or the right to use the site upon which Stage I of the Project will be constructed (other than that portion thereof owned by the City). At the same time, the District shall forthwith proceed with the necessary steps to procure and obtain all necessary permits and licenses from the Federal Power Commission for such construction. Upon the issuance of such permits or licenses as will make the Project feasible in terms of financial and engineering considerations, the District shall forthwith take all reasonable steps to complete its engineering plans, surveys and specifications, and upon such completion, shall forthwith take all reasonable steps to complete all necessary arrangements for the commencement of construction and shall proceed with construction promptly thereafter. If, for any reason, the District does not obtain such licenses and permits necessary to construct from the Federal Power Commission within 27 months from the date of this contract or the District shall fail to commence construction within 24 months after the granting of such licenses and permits necessary to construct from the Federal Power Commission, then the following conditions shall prevail:

- (a) Within one and one-half (1 1/2) years thereafter the City shall reimburse the District for all engineering costs relating to water purposes only and one-half of all "joint costs" with respect to engineering as defined herein. If thereafter the City shall elect to proceed with construction as hereinafter provided, the City shall, within one and one-half (1 - 1/2) years after its election to proceed, reimburse the District for the remaining one-half of the joint costs with respect to engineering. All engineering surveys, plans and specifications and all data pertaining thereto shall be available

for full use by the City.

(b) In the event the City shall elect to proceed with construction as hereinafter provided the District agrees to join with the City in any request to the Federal Power Commission or other appropriate Boards or government agencies to permit the City to build a dam for water supply purposes at the site described under Stage I.

(c) In the event that the City, in the exercise of its sole discretion, shall elect to proceed with the construction of a dam at said site, the District shall convey to the City all of its right, title and interest in and to the site which may have been acquired by it as aforesaid, and the City shall reimburse the District for all costs and expenses incurred by the District in such acquisition. Upon the occurrence of such event, the District shall have the right to request the construction of the type of dam which can be subsequently utilized for or converted to hydroelectric purposes, and the City shall comply with such request, provided that such hydroelectric project shall be substantially the same as that described herein. Upon the occurrence of the events provided for in this sub-paragraph (c), the following conditions shall prevail:

(1) The District shall pay the City for all additional costs of construction which may be required to be expended for such "hydroelectric only" purposes in cash, as and when such costs are incurred, except that no such costs shall be incurred without the express approval in writing by the District.

(2) In the event that the City shall have completed and/or commenced construction of Stage I, or Stage II - water

purposes, and shall have issued its water revenue bonds to finance the same, and the District shall thereafter obtain a permit or license from the Federal Power Commission, or its successor, to construct a hydroelectric dam and shall elect to proceed with such construction, then, one or both of the following options may be exercised by the District:

- A. The District may elect to acquire all of the facilities theretofore constructed by the City, subject to the liens upon the revenues therefrom represented by any outstanding water revenue or general obligation bonds theretofore issued with respect to said facilities. If the District should exercise such option, it shall pay to the City, periodically, such sums as will equal the current principal and interest requirements of any such water revenue bonds or general obligation bonds issued to finance such facility; all such payments shall be made at least ten (10) days prior to the dates upon which principal and interest payments are required to be deposited under the provisions of any such bond indenture. If the District should exercise such option, it shall by appropriate resolution, warrant to the City and to the City's bondholders that the earnings of the District's electric utility shall be sufficient to provide for all obligations of the District and that there shall be remaining thereafter an amount which shall be at least equal to the coverage on the City's bonds issued with respect to said facilities. Upon the exercise of the option

specified herein, the City shall convey such facilities to the District, subject to the conditions herein set forth; PROVIDED, HOWEVER, that if, under the covenants or conditions of any of the City's bonds, except as to the bonds issued subsequent to issuance of bonds referred to in this paragraph, the consent of bondholders is required for the conveyance of any such facilities, the City and the District agree to cooperate fully to obtain such consent; or

B. Any time after the earliest available date upon which all of the bonds of the City issued with respect to said facilities may be called for redemption the District may acquire full title to such facilities by paying in cash an amount equal to the amounts expended by the City for the acquisition and construction of such facilities, including all costs of engineering, financing and all legal costs pertaining to the issuance of bonds, plus interest paid or accrued as of the date of such purchase, upon any bonds issued by the City to finance the same, less sums paid to the City pursuant to paragraph (1) of this subsection 1 (c) and sums paid pursuant to subparagraph (2) A of this subsection 1 (c).

The City agrees that in the issuance and sale of any of its bonds referred to in this subparagraph (2), it will provide for the earliest call date which may be feasible (considering all factors of effective interest rates and marketability), and in any event all of such bonds shall be made subject to call for redemption no longer than ten (10) years after the respective dates of

issue; the City agrees to redeem said bonds in the manner provided for in the respective bond indentures upon the exercise of the District's option under subparagraph (2) B above and upon payment of the sums provided to be paid by the District. At the time the District shall first exercise an option under this paragraph (2), the District shall proceed with construction of the Project in the manner herein contemplated and the provisions of this agreement relative to the mutual rights and obligations of each party hereto shall be in full force and effect, and all prior expenditures by the City for Water Costs and Joint Costs shall be allocated and paid in the manner elsewhere provided in this agreement. If, at that time, any portion of the principal of such bond indebtedness shall have been retired by the City, the amount so retired shall be credited against any amounts which will thereafter become first payable by the City to the District under the terms of this agreement, except that such amount as is so credited shall be deducted from the purchase price provided in subparagraph (2) B of this subsection 1 (c).

- (3) The exercise of the rights and options of the District as provided in this subsection 1 (c) shall in no event delay the construction of the facilities of the Project as aforesaid.
- (4) In the event that prior to the District's exercising its rights or options of this sub-section 1 (c), the City has entered into a contract with any third party that makes the continued joint use by the District impossible, impracticable, or unfeasible, then the

District shall be deemed to have forfeited any and all rights, except for reimbursement of costs already incurred as provided under this section 1, above.

- (d) Construction shall be deemed commenced whenever the District has let the contract to a responsible contractor for the construction of a substantial portion of Stage I and issued its order to the contractor to proceed with the construction.

Section 2. Review of Plans and Specifications.

The District shall furnish or cause to be furnished all engineering services necessary or desirable for the construction of the Project, including, without limitation, preparation of all field surveys and investigations, preparation of plans and specifications, supervision of construction, and preparation of inventories and related final documents. The engineer designated by the District shall consult with the City, or its duly appointed representative, throughout the period of preparation of engineering surveys, plans and specifications. Insofar as the same pertains to Stage I and/or Stage II-water purposes, all such engineering surveys, plans and specifications must be approved by the City. If the parties agree to purchase insurance on the construction or for engineering costs, such insurance cost shall be prorated in the same manner as other costs. The District agrees the engineering firm employed for the design of the Project shall carry errors and omissions insurance during the period of construction in an amount of not less than \$250,000.00.

Section 3. Review of Construction Contracts.

The Project, or Stage I or Stage II thereof, shall be constructed by the District pursuant to a construction contract or contracts unless it is determined otherwise by mutual consent. The District shall require each contractor bidding on the Project to submit with his bid a detailed statement outlining the plan and program of construction work which he proposes to follow during said construction. Such construction contract or contracts and contracts of the District for the purchase of materials and equipment for the Project insofar as the same

pertains to the construction of Stage I and/or Stage II - Water Purposes, shall be submitted to and must be approved by the City prior to the execution of said contract or contracts. Provided further, however, that except where an emergency exists, all change orders on contracts relating to such construction in excess of \$5,000.00 each must be approved by the City.

Section 4. Cost of Construction.

The District shall prepare and submit to the City a monthly statement of expenditures and costs of construction of the Project incurred during the preceding month. Within fifteen days after receipt of same the City shall notify the District of its objection to any costs and expenditures which in the opinion of the City are not reasonable and proper. In the event any of such items have not had the previous approval of the City the burden shall be upon the District to prove that such expenditures are reasonable and proper and chargeable as Joint Costs under the terms and conditions of this contract. No "water costs" as herein defined shall be chargeable to the City unless written consent of the City has been had prior to the incurring of such expenditure, except as provided in Section 3 above.

~~Except as provided for elsewhere in this agreement, the District shall pay all costs of construction of any nature whatsoever which may be undertaken by the District in connection with Stage I or Stage II of the Project for hydroelectric purposes or for the joint utilization of such facilities as are provided for hydroelectric and water supply purposes. The cost of construction shall include but not be limited to the following: (i) the direct cost incurred by the District in connection with the construction of the Project or a part thereof, including transportation, labor, supervision, clerical, warehousing, materials and equipment costs, construction equipment rentals, automobile and truck mileage expense, travel expenses and taxes; (ii) the cost of engineering services incurred by the District in connection with the design and construction of the Project or a part thereof; (iii) insurance premiums in respect to policies maintained or taken out~~

in connection with the construction of the Project; (iv) interest paid on the cost of construction during the period of construction; and (v) the legal, financing, accounting, and other general and administrative overhead expenses incurred by the District in connection with the construction of the Project or a part thereof.

In addition to the costs set forth hereinbefore in this Section 4, the cost which has been incurred by the District in connection with engineering studies and investigations of Dam No. 1, as set forth in Exhibit A attached hereto and by this reference made a part thereof, shall be included in the cost of construction to the District for Stage I of the Project.

Section 5. Quality Control During Construction.

During the construction of the Project, or a part thereof by the District, the District will take all steps reasonable and necessary to prevent deterioration of the quality of the water so that the water shall be maintained at the standards consistent with the intent of this Agreement. In order to protect the interests of the City with respect to water quality control during the construction of the Project, the City may retain a qualified representative who shall act on behalf of the City as advisor to the District with respect to water quality, and he shall have the sole right to determine procedures to be taken to maintain the required standards of quality and any additional costs so required to be borne by the City.

If during the course of construction of the Project, or a part thereof, the quality of the water deteriorates to a standard which in the opinion of the City will cause a hardship to the City's water users, the District will make such reasonable changes in the construction practices and/or program as may be determined as necessary by the City. All costs and expenses which are incurred by reason of such changes so ordered by the City shall be borne by the City as to water and joint facilities. All costs incurred for changes required for hydroelectric purposes only shall be paid by the District; provided, however, that the construction practices for hydroelectric facilities applicable hereunder shall

not be different or in excess of the requirements for water and joint facilities.

During the construction and subsequent operation of the Project by the District, the District will construct and maintain suitable toilets. The adequacy of said facilities shall be at least equal to those approved by the State of Washington Department of Health or applicable agency. In the event that the City requests facilities other than those facilities approved by the above agency or agencies, the District shall install or cause to be installed facilities to the specifications of the City. The cost of such facilities so specified by the City over and above the cost of facilities approved by the State of Washington Department of Health shall be borne by the City.

Section 6. Special Facilities.

(a) The District shall install as a part of Stage II of the Project, automatic flow controllers on all outlets of Lake Chaplain. This cost shall be a Joint Cost.

(b) The District shall install as a part of Stage II of the Project suitable control devices on the Diversion Dam to allow bypassing of the waters of the Sultan River in accordance with the provisions of this Agreement. The cost of constructing, operating and maintaining such devices shall be a Joint Cost.

(c) The District shall install as a part of Stage II of the Project a complete telemetering system which shall indicate and record at a receiving point at the Project control center, among other things, the water surface elevation at Reservoir No. 1, Reservoir No. 2 and Lake Chaplain. Complete copies of all records shall be made available to the City. This cost shall be a Hydroelectric Cost.

(d) The District shall include in its plans for Stage II of the Project suitable access to Reservoir No. 2 to allow the City to treat the waters stored in Reservoir No. 2 if the City so desires. This cost shall be a Hydroelectric Cost.

Section 7. Accounting for Construction Expenditures.

The District shall maintain complete records and books of account,

n accordance with the Federal Power Commission Uniform System of Accounts, of all expenditures in connection with the cost of construction of the Project and shall make such books and records as are applicable to facilities in which the City has an interest available to the City at such times as may be agreed upon by the parties hereto.

ARTICLE IV

PROJECT OPERATION

Section 1. Stage I Operation and Maintenance.

Commencing on the date of substantial completion of construction of the Stage I facilities and continuing thereafter until the beginning of construction of the Stage II facilities, the City shall have full authority and responsibility for the operation and maintenance of the Stage I project works which are constructed for water supply purposes. The City shall have the right to regulate the water releases from Reservoir No. 1 in whatever manner it deems most advantageous to the operation of the City's water supply facilities. The operation and maintenance of the Stage I project works by the City shall be in a manner consistent with sound utility operating practice. The District shall have the right at any time to examine the manner of operation and maintenance of said facilities by the City, and if, in the judgment of the District, said operation and maintenance is not adequate or is such that the interests of the District are not being properly protected, the District shall so notify the City in writing, and the City will make such changes in its operation and maintenance of the project works as are determined by the parties to be in the best interests of both parties.

All costs of operation and maintenance of the Stage I facilities applicable to water supply, including Joint Facilities shall be borne by the City.

The District shall operate and maintain those facilities constructed as a part of Stage I which are solely for the future purposes of the District and shall pay all costs and expenses associated therewith.

Where used in this Article IV, Section 1, Article V, Section 1 (b)

and Section 2 (b), and Section 4 (b), the term "substantial completion" shall refer to the time when the major construction work on that particular stage of the project has been completed and water is made available to the City, or such earlier date as the parties may mutually agree.

Section 2. Stage II Operation and Maintenance.

Commencing at the time of beginning of construction of Stage II and continuing thereafter as long as this Agreement shall remain in force and effect, the District shall operate and maintain the project works and facilities in whatever manner deemed by the District to be in the best interests of the parties, subject to the provisions of this Agreement.

The City shall have the right, at any time, to examine the manner of operation and maintenance by the District of those facilities of the Project which are used jointly for hydroelectric and water supply purposes, and if in the judgment of the City, said operation and maintenance is not adequate or is such that the interests of the City are not being properly protected, the City shall so notify the District in writing and the District will make such changes in its operation and maintenance of said facilities as are determined by the parties to be in the best interest of both parties.

Except as provided for elsewhere in this Agreement, all costs of operation and maintenance of the Project shall be paid by the District, and the District shall monthly or periodically as agreed, bill the City a maintenance charge which is proportionate to the City's share of the Joint Costs of the Project, plus the entire cost of operation and maintenance of any "water facilities" operated or maintained by the District.

Section 3. City to Operate Its Own Facilities.

Except as specifically provided for elsewhere in this Agreement, the City shall operate and maintain any and all of the facilities which the City owns or may construct in the Sultan River Basin, along the Sultan River or in Lake Chaplain, including the bottom and shorelines of Lake Chaplain and lands adjacent thereto and

all facilities constructed thereon by the City, and the City shall pay all costs associated therewith, provided, however, that if the withdrawals of water or other uses by the District for hydroelectric purposes shall increase the cost of the operations and maintenance to the City then the District shall pay to the City all such increase in costs.

Section 4. City to Treat Stored Water.

The City may treat the stored water in Reservoir No. 1, Reservoir No. 2 and Lake Chaplain in any manner deemed necessary by the City to effect quality control. All costs incurred by the City in connection with such treatment shall be borne by the City, except that any and all costs which are necessary to effect control by reason of conditions which are caused by and are directly attributable to Reservoir No. 2 shall be paid to the City by the District. This section does not give the City an right to control the quantity of water flow except as otherwise herein provided.

Section 5. Watershed Control.

~~The City may patrol the watershed in any manner determined necessary by the City and shall take any and all other steps necessary and desirable to effect quality control and protection of the watershed area. All costs associated with such watershed control shall be borne by the City.~~

Section 6. District to Regulate Water Releases.

The District shall have the right to control the discharge of water from or into Reservoir No. 1, Reservoir No. 2 and Lake Chaplain, and to regulate the water level within the reservoirs in any manner determined by the District to realize the most advantageous operation of the Project, except as otherwise provided for in this Agreement and consistent with the following:

(a) In accordance with the express agreement of the parties that the City's requirements for water supply shall have precedence over any and all other uses, the District agrees that there shall at all times be stored in Lake Chaplain at least seven (7) days' average demand of the City for water supply as measured by the last preceding seven-day (7-day) delivery, and that at all times this total seven-day

(7-day) storage shall be above elevation 623 feet (USGS datum) except that with the written permission from the City the District may draw the level of Lake Chaplain below the above specified elevation, and except further that this provision shall not apply at such times when the provisions of subparagraph (b) of this Section 6 shall apply.

(b) Consistent with the express agreement that the quality of the water shall be maintained at the highest standards consistent with sound operation of the Project, the parties agree as follows:

(i) The District shall at all times exercise care and diligence in the operation of the Project to avoid excessive turbidity or any other condition in the water which might materially increase the difficulty or cost to the City or its customers in the use of such water, except that liability for a breach of this provision shall not be deemed to be incurred until after the District shall be notified by the City of such excessive turbidity or other condition in the water, and thereafter the District shall have failed to take those steps provided for in paragraph (ii) of this subsection 6 (b).

(ii) At any time the quality of the water in Lake Chaplain or being diverted into Lake Chaplain by the District pursuant to the operation of the Project for hydroelectric purposes is below certain agreed upon standards, as hereinafter defined, the City may request the District to modify its operation of the Project and cease diverting water into Lake Chaplain and the District shall immediately so do and shall so continue until the quality of the water meets the standards set forth herein or until the City, by written permission, authorizes the District to divert the water into Lake Chaplain for hydroelectric or water supply purposes.

(iii) Tests pursuant to (ii) above shall be conducted by the City at such time or times as herein described. All water samples shall be taken at two points; namely, Sampling Point No. 1 at or near the outlet of the tunnel between the Sultan River and Lake Chaplain or in the event no water is being diverted into Lake Chaplain the samples shall be taken adjacent to the intake of said tunnel, and Sampling Point No. 2 at or near the City's water supply intake structure on Lake Chaplain for transmission

via the City's Panther Creek Station. Not less than three (3) separate samples and tests thereon shall constitute a determination of water quality for each sampling point. At any time the District is not diverting water into Lake Chaplain under the terms of this Section 6-b, and desires to so do, it may request the City to make tests of the water at each sampling point to determine if the provisions of this Section 6 shall continue to apply, and the City shall immediately make such tests and advise the District of the results thereof. In the event that the City, for any reason, does not make the tests so requested, the District may make such tests and the results thereof shall be considered the same as if conducted by the City.

(iv) The standards of quality applicable under this Section 6 shall be established as follows:

Commencing with the effective date of this Agreement, the City shall take samples and make tests of the water in Lake Chaplain and being diverted into Lake Chaplain. The water samples shall be taken daily at approximately the same time each day. Samples for Sampling Point No. 1 shall be taken at or near the outlet of the City's existing tunnel between the Sultan River and Lake Chaplain or in the event no water is being diverted into Lake Chaplain the samples shall be taken adjacent to the intake of said tunnel, and samples for Sampling Point No. 2 shall be taken at the previously designated point at the City's water supply intake structure. Tests of each water sample shall be made by the City to determine turbidity and color. In addition, tests shall be made by the City at regular routine intervals but not less often than one each week to determine, among other things, iron, copper and manganese. All tests shall be made in accordance with current standards of the water works industry or as modified with the approval of the District. Records of all tests shall be maintained by the City and shall be made available to the District upon request.

Prior to commencing construction of Stage II of the Project by the

subparagraph (iv) and shall determine the following standards of water quality:

(x) From all said tests made on water samples taken during during the periods May 15 to November 15 inclusive:

turbidity as measured in turbidity units (silica scale) which was exceeded in ten per cent (10%) of said tests; and color expressed in color units (platinum-cobalt scale) which was exceeded in ten per cent (10%) of said tests.

(xx) From all said tests made on the water samples taken during the periods November 16 to May 15 inclusive:

turbidity as measured in turbidity units (silica scale) which was exceeded in ten per cent (10%) of said tests; and color expressed in color units (platinum-cobalt scale) which was exceeded in ten per cent (10%) of said tests.

The standards of water quality applicable under this Section 6 shall be the standards determined under the provisions set forth hereinbefore in this sub-paragraph; provided, however, that during the period May 15 to November 15, inclusive, the standard of water quality applicable to turbidity shall not be less than ten (10) turbidity units or the standard of water quality applicable to color shall not be less than fifteen (15) color units; and provided further, that during the period November 16 to May 14, inclusive, the standard of water quality applicable to turbidity shall not be less than twelve (12) turbidity units or the standard of water quality applicable to color shall be less than twenty (20) color units.

(v) If at the time of commencing construction of Stage II of the Project, it is established by the City that the iron, manganese or copper content of the water during certain periods or under certain conditions of stream flow which cannot reasonably be determined at the time of the execution of this Agreement, but which are exhibited by the tests specified hereinbefore in subparagraph (iv) of this Section 6-b,

has deteriorated to a point where the water is unsuitable for water supply purposes by the City, the standards of water quality set forth hereinbefore in subparagraph (iv) shall then be amended to include standards applicable to iron, manganese and copper. Said quality standards for iron, manganese and copper shall, in general, be limited to the standards of the water which the City has diverted into Lake Chaplain during the period prior to construction of Stage II and in no event shall the District be limited in diverting water into Lake Chaplain by quality standards established pursuant to this subparagraph (v) which are below standards of water actually diverted into Lake Chaplain by the City during the period prior to the commencing of construction of Stage II of the Project; provided, however, that at any time the City shall treat the stored waters in Reservoirs No. 1 or 2, using chemicals or other methods of treatment which may affect the quality of the water, the District shall not be obligated under the terms of this subparagraph (v), except that the District agrees to cooperate with the City in regulating the releases of water through the Project to eliminate to the maximum extent commensurate with the sound operation of the Project any such water being diverted into Lake Chaplain during the period immediately following said treatment by the City.

(c) The City shall not request the District to divert water from Lake Chaplain if such diversion of water will in no event aid the quality of water in Lake Chaplain or otherwise improve the condition or quality of such water.

(d) The District shall at all times have the right to release water from Dams No. 1 and 2 in such amounts and such quantities as may be necessary for hydroelectric purposes of the District except as otherwise provided in this contract.

Section 7. Initial Reservoir Filling.

During the initial period of biological imbalance following filling of Reservoir No. 1, great care shall be taken in operation of the reservoir levels in order to hold to a minimum the protozoal and algae growth until enrichment of the water has ceased and the lake bed and stored water have reached a balanced

condition. If at any time after the completion of Stage II it is determined necessary by the City that complete drawdown of the reservoir behind Dam No. 2 is required to control the enrichment and biological balance, the City shall so advise the District in writing. The District shall have the right to establish the date when such drawdown of Reservoir No. 2 will be accomplished except that said date shall be not more than eight (8) months after receipt of written notice from the City unless the City shall give its written consent otherwise. All costs incident to the drawdown of Reservoir No. 1, except loss of stored water, shall be borne by the City. All costs incident to the drawdown of Reservoir No. 2 shall be borne by the District.

Section 8. Plan of Operation.

The District shall prepare and furnish to the City a plan of the manner in which the District proposes to operate the reservoir releases from all reservoirs. Said plan shall show the anticipated amount of water which will be stored in each reservoir at the end of each week. The plan shall be prepared in advance for each ninety-day (90-day) period and a copy thereof shall be furnished to the City in advance of the starting date of each period. The plan shall be an estimate only and the District shall not be obligated to adhere thereto if conditions or circumstances make it more advantageous to the District to operate the project works otherwise. In the event that the District determines that it is desirable to modify the plan materially from that furnished to the City, the District shall immediately prepare a revised plan for that period and furnish a copy of said revised plan to the City.

A R T I C L E V

PAYMENT

Section 1. Stage I.

It is understood that the District will undertake the construction of Stage I of the Project and will pay all costs properly connected therewith, all in the manner as herein described. For and in consideration of such acts and in consideration of furnishing of storage and making available additional water unto the City and other benefits as herein contemplated, the City shall pay unto the District

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a sum equivalent to one-half of all Joint Costs as herein defined, plus the entire amount of all Water Costs - Stage I. Such total sum shall hereinafter be referred to as "City's Cost - Stage I." It is further understood that the District will not be reimbursed by the City for the remaining one-half of all Joint Costs and shall not be reimbursed for any costs so incurred for such items herein defined as Hydroelectric Costs. For such City's Cost - Stage I, the City agrees that it will reimburse the District as follows:

(a) The District will monthly submit statements to the City for expenses incurred in connection with Water Costs - Stage I, and the City shall within thirty (30) days of receipt of such statement, reimburse the District in the amount of such expenditures as set forth in said statement. Any balance not regularly paid by the City at the time and manner above set forth shall bear interest at the rate of five per cent (5%) per annum from the date of said statement.

(b) Commencing thirty (30) days after receipt from the District of the notification of the substantial completion of the construction of Stage I, the City shall pay unto the District monthly, an amount which shall be sufficient to amortize over a period of twenty-five (25) years, a sum equivalent to one-half of all Joint Costs - Stage I, including interest thereon, computed from the date of such notification of substantial completion. The interest to be charged unto the City shall be an amount computed at a rate of interest equal to that paid by the District on the bonds or other evidence of indebtedness sold or issued by the District for the purpose of financing the construction of said Stage I, or any part thereof. If at the time of substantial completion of the Stage I Project, and notification of the City by the District thereof, the Stage I Project shall not then be totally completed, the parties shall estimate the balance of the costs to completion, and such actual and estimated costs shall be used for the purpose of determination of the total amount of payments to be made. When the total costs are ultimately determined, credits shall then be given to the proper party and, at the option of the City, the payments may be either increased or decreased in amount or duration of payments accordingly.

Section 2 - Stage II - Joint Construction.

At any time hereafter when the City and the District shall jointly agree to proceed with the construction of Stage II of the dam for water and hydro-electric purposes, as herein defined, then and in that event, the District shall proceed to undertake the construction of Stage II and will pay all costs properly connected therewith, all in the manner herein described. For and in consideration of the furnishing and making available greater quantities of water unto the City and other benefits to the City as herein contemplated, the City shall continue to pay unto the District for all sums for City's cost - Stage I as above set forth. Further, and in addition, the City shall pay unto the District a sum equivalent to one-half of the cost of construction of all Joint Costs - Stage II as herein defined, plus the entire amount of all Water Costs for Stage II as herein defined. Such total sum shall hereafter be referred to as "City's Cost - Stage II."

For the City's Cost - Stage II, the City agrees that it will reimburse the District as follows:

(a) The District will monthly submit statements to the City for expenses incurred in connection with Water Costs - Stage II, and the City shall, within thirty (30) days after receipt of such statement, reimburse the District in the amount of such expenditures as set forth in said statement. Any balance not regularly paid by the City at the time and in the manner above set forth shall bear interest at the rate of five per cent (5%) per annum from the date of said statement.

(b) Commencing thirty (30) days after receipt from the District of the notification of the substantial completion of the construction of Stage II - Joint Facilities, the City shall pay unto the District monthly an amount which, together with the payments provided under Joint Cost - Stage I, shall be sufficient to amortize over a period of forty (40) years, a sum equivalent to the City's remaining balance of Joint Costs - Stage I, plus one-half of all Joint Costs - Stage II, including interest thereon, computed from the date of such notification of substantial completion. The interest to be charged unto the City shall be an amount

other evidence of indebtedness, sold or issued by the District for the purpose of financing the construction of said Stage II, or any part thereof. If at the time of substantial completion of Stage II of the project, and notification of the City by the District thereof, Stage II of the Project shall not then be totally completed, the parties shall estimate the balance of the cost of completion, and such actual and estimated costs shall be used for the purpose of determination of the total amount of payments to be made. When the total costs of Stage II are ultimately determined, credit shall then be given to the proper party and at the option of the City, the payments may be either increased or decreased in amount or duration of payments accordingly.

Section 3. Stage II - Hydroelectric Purposes.

If at any time hereafter, the District shall elect independently of the City to proceed with the completion of Stage II - Hydroelectric Purposes, the District shall proceed to construct Stage II as Stage II - Hydroelectric and include in the basic construction all necessary items which will be an integral part of said Project, even though for "water purposes" only. The City shall inform the District of all items for water purposes only which are not immediately necessary to the use of the City, and which are not necessary to be included at such time. Upon completion of Stage II - Hydroelectric, the District shall furnish to the City a statement of all Joint Costs - Stage II and Water Cost - Stage II. For and in consideration of such construction and of making such additional water available and other benefits herein contemplated, the City shall pay unto the District a sum equivalent to all Water Cost - Stage II, including interest and one-half of all Joint Costs - Stage II, including interest. The amount of such interest shall be in an amount computed at a rate of interest equal to that paid by the District on its bonds or other evidence of indebtedness sold or issued by the District for the purpose of financing of the construction of Stage II, or any part thereof. Such payments to be made as follows:

- (a) All payments shall commence and interest shall be computed

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(b) Within thirty (30) days after "time of minimum water usage," the City will pay unto the District a sum equivalent to all water costs. Any balance not so paid by the City within said time shall bear interest at the rate of five per cent (5%) per annum from the "time of minimum water usage."

(c) Commencing thirty (30) days after the "time of minimum water usage," the City shall pay unto the District monthly an amount which, together with the payments provided under Joint Costs - Stage I, shall be sufficient to amortize over a period of forty (40) years, a sum equivalent to the City's remaining balance of Joint Cost - Stage I plus one-half of all Joint Costs of Stage II, including interest thereon computed from the "time of minimum water usage." The amount of interest to be charged unto the City shall be computed all in the manner as set forth in Section 2-b above.

Section 4. Stage II - Water Purposes.

If and in the event the City should desire to construct Stage II for the use of additional water, but the District shall not then be ready to complete its portion of Stage II for "hydroelectric purposes," and shall not exercise its option to sell as provided in Article VI, then and in that event, the District shall proceed with the construction of such portions of Stage II as hereinabove defined as Stage II - Water Purposes. The City shall pay to the District a sum equivalent to all Water Costs, and one-half of all Joint Costs of Stage I and all Joint Costs of Stage II, as follows:

(a) The District shall monthly submit statements to the City for expenses incurred in connection with Water Costs - Stage II, and the City shall, within thirty days after receipt of such statement, reimburse the District in the amount of such expenditures as set forth in said statement. Any balance not regularly paid by the City at the time and in the manner above set forth, shall bear interest at the rate of five per cent (5%) per annum from the date of said statement.

(b) Commencing thirty days after receipt from the District of the notification of the substantial completion of the construction of Stage II, Water

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Purposes only, the City shall pay unto the District monthly an amount which, together with the payments provided under Joint Costs - Stage I, shall be sufficient to amortize over a period of forty (40) years a sum equivalent to the City's remaining balance of Joint Costs - Stage I plus all of the Joint Costs - Stage II - Water Purposes only, including interest thereon computed from the date of such notification of substantial completion. The interest to be charged unto the City shall be in an amount computed at a rate of interest equal to that paid by the District on its bonds or other evidence of indebtedness sold or issued by the District for the purpose of financing the construction of said Stage II - Water Purposes Only or any part thereof. If, at any time thereafter, the District shall elect to complete the construction of Stage II for hydroelectric purpose, then and in that event the City shall immediately be credited with a sum equivalent to one-half of all such Joint Costs - Stage II which may have been incurred in the construction as provided under this paragraph, and the monthly payments herein provided for shall be proportionately reduced to absorb such credit. If the amount of the credit to the City under this provision shall exceed the sums which would otherwise be due to the District by the City, the amount of such credit shall be paid to the City by the District in Cash.

Section 5

(a) Notwithstanding any other provision in this Article, the effective interest rate which the District shall agree to pay upon its aforesaid bond indebtedness, and the aforesaid bond amortization schedule, in no event shall exceed the maximum rate provided by the statutes of the State of Washington.

(b) The amounts which the City shall pay hereunder shall constitute payment for all sale, storage, and delivery of water to the City under the terms of this contract.

(c) All amounts payable by the City to the District hereunder shall not be, or constitute, a general obligation of the City and no portion thereof shall be payable from the general funds of the City, but all said amounts shall be paid exclusively from the net operating revenues of the City's Municipal Water System.

and/or any other monies in the City's Water Revenue Fund in the following manner:

(1) The obligations of the City with respect to the payment of the costs of the Stage I and, subsequently, those costs of Stage II allocable to the remaining balance due by the City for the costs of Stage I, shall take precedence over and be paid before all other obligations of the Water Revenue Fund except for those obligations in the form of City Water Revenue Bonds which shall or may be outstanding at the time of execution of this Agreement. Provided, that if the District shall not have received its license from the Federal Power Commission within eighteen (18) months from date of execution of this contract and the City shall desire to sell additional revenue bonds for extensions and improvements of its water system, then the City shall have the right to cause such additional bonds to be issued and sold and such new bonds shall take precedence over the obligation of the City to the District as created hereunder. If, however, prior to the issuance and sale of such bonds or prior to the City's call for bids for work requiring the issuance of such bonds the District shall have commenced construction of the project, then the terms of this proviso shall be inapplicable.

(2) The obligations of the City with respect to the payment of the costs of Stage II not attributable to Stage I costs shall take precedence over and be paid before all other obligations of the Water Revenue Fund except for those obligations in the form of City Water Revenue Bonds which shall or may be outstanding (i) at the time of the service of a notice in writing by the District upon the Commissioner of Public Works that the District intends to proceed with the construction of Stage II - joint construction, provided that the District shall commence construction within nine (9) months after the date of the service of such notice, or (ii) for the purposes of Stage II - hydroelectric purposes at the "time of minimum water usage," or (iii) for the purposes of Stage II - Water Purposes, at the time the City notifies the District of the City's desire to proceed with the construction of Stage II.

The amount payable hereunder for the purposes of this paragraph

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shall not be deemed expenses of maintenance and operation of the City's Municipal Water System.

The City hereby covenants to charge sufficient water rates and to collect sufficient revenues to meet its obligation under this Agreement.

A R T I C L E VI

OPTION OF DISTRICT TO SELL TO CITY

If at any time after the completion of Stage I of the Project, or after completion of Stage II - Water Purposes that the District should determine that the completion of the Project is not in the best interests of the District, and that the Project or so much thereof as may then be completed, is no longer material, necessary to or useful in the operation of the District, then the District shall have the option to request the City to buy the interest of the District in the Joint Facilities of the Project, and the City shall thereupon become obligated to purchase such interest of the District.

As consideration for sale to the City of the interest of the District in the Joint Facilities the City shall pay to the District a sum equal to the Joint Costs of Stage I and Stage II as above defined, less that amount which has been paid by the City to the District, but including all amounts for which the City shall already have become obligated so to pay. The City shall not become obligated to make such additional payments unto the District until the City shall be using from the Project an average minimum of 140,000,000 gallons per day as hereinbefore described under the term "time of minimum water usage." Provided further, that if at the time of exercising its option to sell, the District shall have commenced construction of Stage II - Water Purposes Only, but shall not have completed the same, the City shall not then become obligated to purchase the interest of the District in such Joint Facility for a period of ten (10) years after commencement of such construction of Stage II.

In the event of the acquisition by the City of the interest of the District in said facilities as provided in this Section, payment thereof shall be made

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by the City to the District within eighteen (18) months from the date upon which the City shall become obligated to purchase as herein provided; provided, however, that the obligation of the City to consummate such purchase and make such payment shall be subject to its ability to issue and sell Water Revenue Bonds at an effective interest rate which will make the purchase feasible. In the event the payment cannot be made by such means, then monthly payments shall continue on the then existing schedule until payment in full or until such subsequent time as such bonds can be issued and sold.

In the event the City shall purchase the interest of the District in the Project and shall desire to use all or any portion of the hydroelectric features of the Project, then and in that event, the City will pay to the District, in addition to the payment for all water and all joint costs as above provided, a sum equivalent to the cost of all hydroelectric features so utilized by the City. The City shall not use the hydroelectric features for hydroelectric purposes without the consent of the District.

ARTICLE VII

BASIC WATER POLICY

Section 1.

It is agreed that insofar as the same shall be economically feasible, it is the responsibility of the City to provide an adequate supply of good quality potable water at the lowest possible cost for the present and reasonable foreseeable future needs of the City of Everett and all of the communities within Snohomish County for domestic use and to facilitate industrial development and growth.

Section 2.

Within the limits of available supply and its power so to do the City shall undertake to the fullest extent, consistent with sound business judgment, to furnish water to all inhabitants in Snohomish County who are in need of a water supply. 32

Section 3.

To the extent that a local municipality is now in the water distribution business and desires additional or supplemental supply, the City will, within the limits of available supply and its power so to do, upon request and where possible, supply such municipality with its water supply at reasonable rates.

Section 4.

If, within the limits of available supply and its power so to do, the City shall fail or refuse to furnish water to an area in Smohomish County at reasonable rates, or if the City is not selling water either directly or indirectly in said area, the City will sell water to the District at reasonable rates from a point where water is available for re-sale in said area by the District and the District agrees to re-sell said water at reasonable rates.

Section 5.

For the purpose of this agreement, both the City and the District shall base reasonable rates upon the following components:

- (a) Production costs and expenses at source or reasonable allocation thereof.
- (b) Costs and expenses of transmitting the water from the source of supply to the gateway or point of delivery of the utilizing system or a reasonable allocation thereof.
- (c) Costs and expenses shall include the following:
 - 1. Expenses incident to the operation and maintenance of the facilities dedicated to such services, including equitable allocation of indirect, supervisory and administrative and general expenses.
 - 2. Taxes or payments in lieu of taxes.
 - 3. Payments of, or amounts reserved or otherwise provided for, interest and principal payments on indebtedness properly assignable to the facilities dedicated to such

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4. Reasonable earnings in order to provide an adequate allowance for renewal and replacement of the facilities when required and to pay for normal betterments and improvements to such facilities.

Section 6.

Funds derived from the sale of water outside the City shall not be diverted from the water system. This restriction shall not limit the right of the City to loan surplus moneys in its water fund to any other solvent fund or funds of the City, provided that any such funds so loaned from the water fund shall be repaid whenever needed to fulfill the City's obligations under this contract.

ARTICLE VIII - STRUCK IN ITS ENTIRETY BY ONLY SECTION 4
GENERAL PROVISIONS
2007 SUPPLEMENTAL AGREEMENT

Section 1. Uncontrollable Forces.

Neither party hereto shall be considered to be in default in respect to any obligations hereunder if prevented from fulfilling such obligation by reason of uncontrollable forces. For purposes of this Agreement, the term "uncontrollable forces" means any cause beyond the control of the party affected, including, but not limited to, floods, earthquakes, storms, lightning, fires, epidemics, wars, riots, civil disturbances, labor disputes, sabotage, failure of facilities, or restraint by court or public authority, which by the exercise of due diligence and foresight such party could not have reasonably been expected to avoid.

Either party rendered unable to fulfill any obligation hereunder by reason of an uncontrollable force shall exercise due diligence to remove such uncontrollable force with all reasonable dispatch.

Section 2. Insurance.

The District shall maintain, in connection with the construction and/or operation of the Project, adequate insurance as determined by the District with a responsible company or companies to protect the parties hereto against any damages or liability resulting from either partial or complete failure of any

structure constructed by the District as part of the Project. The cost of said insurance shall be considered a Joint Cost. All moneys received from such insurance payments, shall be used to repair or replace the damage or loss sustained by the Project.

Section 3. Term of Contract.

The term of this contract shall be for a period of fifty years, and for any additional time for which the District's Federal Power Commission license, or that of the governmental agency succeeding to the powers of the Federal Power Commission, shall be extended, renewed, or a new license issued, and/or for any further time as may be allowed by law or regulation of the controlling governmental authority.

Section 4. City to Apply for F.P.C. License.

The City agrees that if necessary it will immediately make an application and will join in the application of the District to the Federal Power Commission for the issuance of a license for the Project, and in the event there should be any delay in the issuance of such license caused solely by reason of such application of the City, then the times for performance by the District as herein set forth shall be extended an equal amount.

*Stricken by
2007
Settlement
Agreement*

Section 5. Successors of Parties to Interests.

This Agreement shall apply to and be binding upon the successors and assigns of the parties hereto.

Section 6. Contract Reference in Future Bond Issues of City.

The City agrees that it shall make specific reference to this Agreement, and incorporate it, within any water revenue bond ordinance enacted subsequent to the execution of this Agreement and that any bonds issued hereafter payable from the City's Water Revenue Fund or general obligation bonds issued to provide facilities herein mentioned shall be made subject to the applicable provisions of this Agreement.

Section 7. Agreement to Hold Harmless.

The City will hold the District harmless in any legal action brought by a third party in respect to the quality or quantity of the water supplied by the City from the Project, or from other causes arising from the actions of the District under this contract or from the use of the Project by the City except to the

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extent that the damages sustained by such third party are caused by the breach of this Agreement by the District.

The District will hold the City harmless in any legal action brought by a third party arising out of actions of the District under this contract, or from the use of the Project by the District, except to the extent that any damages sustained by such third party are caused by the breach of this Agreement by the City, and except, as to the quality or quantity of water, to the extent that the damages sustained by such third party are caused by the breach of this Agreement by the District.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first hereinabove mentioned.

PUBLIC UTILITY DISTRICT NO. 1 of SNOHOMISH COUNTY, WASHINGTON

By Thomas Quast, Pres.

By P. M. Black, Vice Pres.

By William B. Berry, Sec.
Commissioners

CITY OF EVERETT, WASHINGTON, a municipal corporation

By [Signature]

Mayer

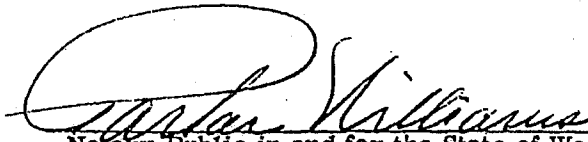
Attest:

By Elmer J. Lewis
City Clerk

STATE OF WASHINGTON)
) SS
COUNTY OF SNOHOMISH)

On this 21st day of July, 1960, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared THOMAS QUAST, P. M. BLACK, and WILLIAM B. BERRY, well-known to be the President, Vice President and Secretary, respectively, of PUBLIC UTILITY DISTRICT NO. 1 of SNOHOMISH COUNTY, WASHINGTON, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.


Notary Public in and for the State of Washington
residing in Everett.

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

On this 21st day of July, 1960, before me, the under-
signed, a Notary Public in and for the State of Washington, duly commissioned and
sworn personally appeared T. W. Tebest ^{Elmer J. Lewis} and JOHN L. SUGARS, to
me known to be the Mayor and City Clerk, respectively, of
CITY OF EVERETT, WASHINGTON, a municipal corporation, the corporation that
executed the foregoing instrument, and acknowledged the said instrument to be the
free and voluntary act and deed of said corporation, for the uses and purposes
therein mentioned, and on oath stated that they were authorized to execute the said
instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

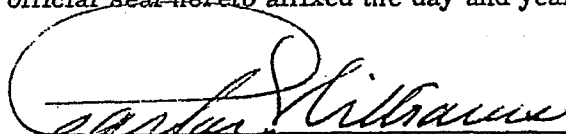

Notary Public in and for the State of Washington
residing at Everett

EXHIBIT 11
 PROJECT COSTS EXPENDED
 BY DISTRICT PRIOR TO DATE
 OF CONTRACT

The cost incurred by the District for engineering studies and investigation which are included in the Cost of Construction as set forth in Article III, Section 4 are as follows:

Cost Incurred During 1949-1950

Bulldozing	\$ 16,622.35
Core Drilling	22,969.53
Churn Drilling	10,190.77
Aerial Photography	14,104.39
Field Camp	<u>2,066.17</u>
Sub total 1949-1950	\$65,953.21

Costs Incurred During 1957-1958

Seismic Surveys	\$ 5,548.93
Bulldozing	494.79
Diamond Drilling	7,148.00
Geological Survey	350.00
Reservoir Maps	500.00
Arch Dam Design and Layout	<u>16,509.20</u>
Sub total 1957-1958	\$ 30,550.92
Total	<u>\$ 96,504.13</u>

Exhibit "A" and made a part hereof by this reference as though the same was set forth at length herein, and

Vice President

BE IT FURTHER RESOLVED that the President/and Secretary of the District are hereby authorized and empowered to execute such

A RESOLUTION authorizing the execution of a contract between Public Utility District No. 1 of Snohomish County and the City of Everett for the construction of a dam and other items pertaining to the multipurpose development of the Sultan River.

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WHEREAS the District is engaged in the electric light and power business in Snohomish County and elsewhere and is further engaged in the business of water supply for domestic consumption to certain of the residents of Snohomish County and

WHEREAS the District is empowered by law to contract pertaining to the development of power and water resources available to the residents of Snohomish County, and

WHEREAS the City of Everett is engaged in the storage, sale and distribution of water within the City of Everett and elsewhere in Snohomish County and

WHEREAS it is deemed to the best interests of both the District and the City to construct and maintain a dam and certain other facilities upon the Sultan River for such purposes and as more specifically outlined in the application of the District to the Federal Power Commission, Commission No. 2157, of November 21, 1957, and

WHEREAS all these matters have been fully considered by the District,

NOW, THEREFORE, BE IT RESOLVED by the Commission of Public Utility District No. 1 of Snohomish County that it is in the best interests of the District that the District proceed with the construction of the project as outlined in the application of the District before the Federal Power Commission as abovementioned, and

BE IT FURTHER RESOLVED that the District enter into a contract with the City of Everett for such purpose and in the form as set forth in that agreement attached hereto and marked Exhibit "A" and made a part hereof by this reference as though the same was set forth at length herein, and

BE IT FURTHER RESOLVED that the President/and Secretary

Vice President

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BE IT FURTHER RESOLVED that the Manager of the District shall take such steps as he may deem necessary to fulfill the conditions of such contract, and shall proceed immediately to require the engineers and attorneys to do such things which may be necessary to procure the necessary license and permits from the Federal Power Commission and others, and that said engineers shall further be instructed to immediately proceed to do such further engineering work as may be required in preparation for the plans of construction of such project as may be required for issuing call and for bids/for plans and specifications and other things which may be required for issuance for call for bids for construction of said Stage One and for the sale and issuance of bonds to finance the same, and

BE IT FURTHER RESOLVED that the District does hereby consent to the City of Everett making application to the Federal Power Commission to join in the application of the District for the construction of the abovementioned project or to make such other application for the purposes of carrying out the intent of the project and as may be required by the Federal Power Commission and the Manager is hereby given authority to approve any such form or forms which said Federal Power Commission may require.

This Resolution shall become effective immediately upon the execution of said contract by the City of Everett.

PASSED AND APPROVED this 21 day of July
19 62.

Thomas J. Quinn
President

M. Black
Vice President

William B. Berry
Secretary

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C E R T I F I C A T E

I, the undersigned, do hereby certify that I am the duly elected Secretary of Public Utility District No. 1 of Snohomish County and that the attached and foregoing is a true and correct copy of a resolution, No. 792, of the District, entitled:

A RESOLUTION authorizing the execution of a contract between Public Utility District No. 1 of Snohomish County and the City of Everett for the construction of a dam and other items pertaining to the multi-purpose development of the Sultan River

that said resolution was adopted by the affirmative vote of the Commissioners of said District at a regular meeting held on July 21, 1960, at which all of the members of the Commission were present; that said resolution has not been altered or amended and the same is in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said District this 21st day of July, 1960.

William B. Berry
William B. Berry, Secretary
Public Utility District No. 1
of Snohomish County, Washington.

(SEAL)

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RESOLUTION NO. 6244

WHEREAS, the City of Everett has been negotiating for several years with Public Utility District No. 1 of Snohomish County for the execution of a contract for the construction of a dam in the Sultan River for the storage of water and development of hydro-electric power for the mutual benefit of both parties, and

WHEREAS, said contract has been carefully drawn and discussed by all parties and agreement has been reached between the parties,

NOW, THEREFORE, BE IT RESOLVED: That George Gebert, Mayor of the City of Everett, and Elmer J. Lewis, City Clerk of the City of Everett, be and they are hereby authorized and directed to execute and sign on behalf of the City of Everett an agreement between the Public Utility District No. 1 of Snohomish County and the City of Everett, a copy of which contract is hereto attached and made a part of this resolution.

C. ARVID JENSEN
Councilman Introducing Resolution

PASSED by the City Council this 21st day of July, 1960.

APPROVED this 21st day of July, 1960.

GEORGE W. GEBERT
MAYOR

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