

1981

AMENDED AGREEMENT BETWEEN

PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY

AND THE CITY OF EVERETT

FOR MULTIPURPOSE DEVELOPMENT OF THE SULTAN RIVER

DRAFT DATE 11/6/81

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AMENDED 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 17<sup>th</sup> day of November, 1981, by and between PUBLIC UTILITY DISTRICT No. 1 OF SNOHOMISH COUNTY, WASHINGTON (hereinafter called the "District") and the CITY OF EVERETT, WASHINGTON, a municipal corporation (hereinafter called the "City"),

W I T N E S S E T H :

WHEREAS, the City and the District previously entered into an Agreement for multipurpose development of the Sultan River which was dated the 21st day of July, 1960, as amended; and

WHEREAS, subsequent to the initial Agreement a license was issued by the Federal Power Commission (FPC); and certain project facilities as agreed to were constructed and are presently in operation for furnishing water for domestic use to the residents of Everett and their customers residing in Snohomish County, Washington; and said Stage I dam will serve as a base for expansion to a Stage II dam and reservoir for the purpose of furnishing electrical energy to the residents of all Snohomish County; and

WHEREAS, subsequent to the issuance of the original FPC license order dated the 16th day of June, 1961, FPC has

issued supplemental orders and directives providing principally for fish water releases all in the manner as therein provided; and

WHEREAS, the District is desirous of raising Culmback Dam and the level of Spada Lake to the heights contemplated in said Agreement; however, it was determined by the District advisable to revise the plans for raising the dam and constructing power resources and facilities all as more specifically set forth in the Application for Amended License (Amended Application) filed by the District and City with the Federal Energy Regulatory Commission (FERC) (the successor of the Federal Power Commission); and.

WHEREAS, the order authorizing the amended license was issued on October 16, 1981; and

WHEREAS, it is also considered advisable by the parties and desirable by all directly affected agencies that a filtration plant be built in accordance with a plan designed by Gray & Osborne with some exceptions and which plant will filter the City's water for its consumers except paper and lumber mills. The District has agreed to aid in the costs of such construction, but such plant shall not be deemed as part of the Sultan Project as herein defined nor shall the District be involved in the operation or maintenance of the filtration plant except as may be specifically agreed to by the parties.

WHEREAS, although an Amended Application has presently

been filed with FERC and certain detailed and extensive studies have been done and applications have been made pertaining to permits, licenses, obtaining rights-of-way and all other related features, the Sultan Project may be delayed or discontinued because of financing difficulties or other conditions imposed by the license. Accordingly, the parties desire to provide for the conditions: first, in the event the Project proceeds in the general manner as herein outlined, and second, if the Sultan Project should fail to proceed as to the conditions then existent and controlling; and

WHEREAS, it was contemplated in the initial Agreement that the completion of the original application might be either for Stage 2A, Water Purposes, Stage 2B, Hydroelectric Purposes, Stage 2C, Joint Purposes. The parties now agree that the City does not need to raise the dam for the storage of additional water.

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

## A R T I C L E 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 "Sultan Project" shall mean the complete Sultan River Hydroelectric Development, together with joint water and hydro facilities and such other facilities as may be for water purposes only and included in the Project but not included in the City's separate water system. Work to be done under the Amended Plan by the District is designated as the "Sultan Project". The term "Sultan Project" shall include all the matters contained in the Amended Application for the license filed with the FERC on the 6th day of July, 1979, together with any and all future amendments or revisions, changes or construction as may be approved by the parties or contained in the amended license issued by FERC which may be accepted by the parties. The term encompasses facilities consisting essentially of the following:

Raising Culmback Dam to approximately elevation 1470 feet, modifying the spillway and outlet works, the flood control facilities, if any, which may be incorporated into the Project, the power intake channel and structure, including gates, the power tunnel upstream portal section access road required by the Project, recreation facilities; reservoir clearing; the power tunnel and pipeline leading from Spada Lake to the powerhouse and the Sultan River; construction of the powerhouse and related facilities; the water return line and fish water return line for purposes of supplying the City's water supply and for releases to a point near the Lake Chaplain end



diversion tunnel from the Sultan River to Lake Chaplain; all improvements to existing conduit between the diversion dam and tunnel to Lake Chaplain if necessary; all further electric transmission lines and roads to adequately complete and utilize the Project facilities.

(2) The term "Stage I" shall mean the facilities in the Sultan Basin as presently constructed, including Culmback Dam, Spada Lake and all other completed facilities, including the morning glory spillway, tunnels, valves, roads and completed structures, but not including matters specifically done in connection with the furtherance of the Sultan Project.

(3) The term "Joint Facility" shall mean those facilities and improvements, or portion thereof, contained in the construction of the Sultan Project which shall have value to both the District and the City and shall include but not be limited to the following: The raising of Culmback Dam to the elevation as presently contemplated in the amended application, the raising of the morning glory spillway without provision for multi-level water releases, and all roads and all clearing necessary to construct said dam and required by the raising of Spada Lake to its contemplated level. No facilities below Culmback Dam shall be deemed to be a joint facility unless expressly agreed to by the parties.

(4) The term "Joint Costs" shall mean the cost of

constructing as a part of this Project those improvements, a portion thereof, or their equivalents that are of value both to the District for hydroelectric purposes and to the City for water purposes or as described above under the term "Joint Facility."

(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 usage of the City measured at the City's intake works.

(6) The term "Lake Chaplain" shall mean the existing storage reservoir owned and operated by the City for water supply purposes or as the same may be altered.

(7) The term "Culmback Dam" shall mean the dam presently constructed on the Sultan River referred to in the Agreement as "Dam No. 1" and any additions or expansions which may be made by the Sultan Project.

(8) The term "Spada Lake" shall refer to all waters impounded behind Culmback Dam including the raised level of the lake as may be contemplated by the Sultan Project.

(9) The term "Diversion Dam" shall mean the presently existing diversion dam on the Sultan River extending in the Northeast Quarter of Section 32, Township 29 North, Range 8, E.W.M.

(10) The term "City Project" refers to the City of

Everett's separate water facilities shown in the studies of Gray & Osborne, dated April, 1978, or as shown in drawings and specification No. 79562 by Gray & Osborne, dated April, 1981, prepared for contractor bidding or as may be amended. Work to be done on the water filtration plant is designated as the "City Project" which shall include system separation facilities, sludge disposal facilities, pretreatment facilities and necessary appurtenant work for which final drawings have not been prepared.

(11) The term "Water Quality Control Plan" (WQCP) shall refer to that certain document prepared by Economic & Engineering Services, Inc. (EES) dated May, 1981 and consisting of text in the amount of twelve (12) pages together with exhibits attached being Exhibits 1 through 15. Copies of such WQCP are on file with both of the parties hereto and with FERC and with all parties interested in who have requested such WQCP. Wherever referred to herein, such WQCP shall apply to all of the terms and conditions thereof or the pertinent portions of the same and be recognized from time to time where changes may be made by the joint agreement of the parties and where necessary with approval of FERC or other affected agencies.

(12) The term "Water Supply Service Area" shall be the area projected to be served by the Sultan River Water Supply System as specifically designated on Exhibit A.

(13) The term "Permanent Emergency Treatment Facilities"

shall mean water treatment facilities at the outlet of the Diversion Tunnel to Lake Chaplain, as defined by E.E.S., in the WQCP - Ex. 12-B dated May, 1981, or as amended.

(14) The term "Temporary Emergency Treatment Facilities" shall mean water treatment facilities near the Diversion Dam at the inlet to the Diversion Tunnel to Lake Chaplain, as defined by E.E.S., in the WQCP - Ex. 12-A dated May, 1981, or as amended.

(15) The term "Uncontrollable Forces" shall mean 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.

## A R T I C L E 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 to its consumers and, further, to meet appropriate state and federal drinking water quality standards. It is contemplated that the City will construct a filtration plant

to assist in the protection of the quality of the drinking water during the period of construction and thereafter. The District will install and operate a temporary emergency treatment facility so that the water quality requirements of the City and the various regulatory agencies as defined in the Water Quality Control Plan are met during Sultan Project construction.

Section 2. Water Supply to Have Precedence.

The parties hereby expressly agree that the requirements of the City within the water supply service area shall have precedence over any Sultan Project requirement for power generation purposes up to a maximum water requirement of 225 MGD to the year 2020 provided the City stays within the service area described in Exhibit A. The parties agree that they will cooperate in the storage and release of waters from Spada Lake and from Lake Chaplain so that the water supply requirements of the City may be met.

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 for Sultan 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 Sultan Project. The District shall have the

right to use any and all such real property and improvements, easements, licenses, permits, rights-of-way, the use of the diversion dam and diversion tunnel with outlet, and other rights for any purpose consistent with the provisions and intent of this Agreement. The City will execute any such easements, licenses, 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 herein contemplated. If any such easements, licenses, permits and rights-of-way and other rights are not by law, or by condition, contained herein, transferrable or assignable, then the City shall act on behalf of the District to provide such easements, licenses, permits and rights-of-way and other rights at the expense of the District. 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 Sultan Project in such 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, provided

that 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. Provided, however, that in the event the construction and placement of the Sultan Project facilities in the City's rights-of-way cause increased cost to the City including construction, right-of-way and operating cost in the placement of additional water transmission lines and appurtenances, the District shall reimburse the City for any increased costs.

The present drawings in the possession of both the City and the District show the location of Sultan Project facilities upon rights-of-way and property of the City and the location of such facilities has been agreed to between the parties. In the event that the location of such facilities shall cause additional expense to the City, compensation shall be made to the City in accordance with this paragraph, and Article IV Section 3E.

