

2003

AGREEMENT BETWEEN
CITY OF MARYSVILLE
AND
PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY
FOR WATER SUPPLY

THIS AGREEMENT IS ENTERED into by and between the CITY OF MARYSVILLE, a municipal corporation of Snohomish County, Washington, hereinafter referred to as the "City," and PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, hereinafter referred to as "PUD," and is effective upon execution by both parties.

WHEREAS, the City and the PUD are participants in a joint operating agreement (JOA) dated January 10, 1991, which envisions coordination in the implementation of an adequate and safe water supply for the City and North Snohomish County, Washington; and

WHEREAS, the PUD and the City each own capacity rights in and utilize for their respective water utility purposes a 30-inch pipeline (the "JOA-I Pipeline" or "Pipeline") which was built by the City pursuant to the JOA; and

WHEREAS, the City owns, operates and maintains the JOA-I Pipeline and the PUD has agreed to compensate the City for the PUD's share of Pipeline operation and maintenance costs; and

WHEREAS, the City agrees to make City of Everett water available to the PUD at points along the JOA-I Pipeline based on the PUD's "assigned capacity share" in the Pipeline, in accordance with the JOA; and

WHEREAS, it is proposed that a charge be established which will fairly and reasonably compensate the City for operation and maintenance costs associated with making water supply from Everett available to the PUD through the JOA-I Pipeline to the point of connection with the PUD as established in this Agreement.

NOW, THEREFORE, IT IS AGREED as follows:

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 "Transmission Main" shall mean that part of the water supply system having as its primary purpose carrying a supply of water between the Everett source of supply and either Party's respective water distribution facilities.

(2) The term "Service Connections" shall mean those separate connections between a distribution system main and the final consumer.

(3) The term "Distribution Main" shall mean any size water main which has service connections tapped directly to the water main and having as its primary purpose supplying an individual or final consumer. Unless the parties expressly agree otherwise, however, this term shall not include a transmission main with incidental retail customer service connections.

(4) The term "Distribution Facilities" shall mean that system of pipes and appurtenances, including but not limited to distribution mains, used primarily for receiving a supply of water from a transmission main and distributing such water directly to the consumers or final users. For the purpose of this contract, it shall be understood that "distribution facilities" are separate parts of a discrete water system and as such are all respectively owned, operated, and controlled by either the PUD or the City individually, but not jointly.

(5) The term "Everett Wholesale Rate - PUD" shall mean the cost, in dollars per 100 cubic feet, which is charged by the City of Everett for water received by the PUD through the JOA-I Pipeline. Such rate may be based in part upon the PUD's peaking factor.

(6) For the purpose of this Agreement, the term "JOA-I Pipeline" is that portion of the existing Everett - Marysville water transmission line beginning at approximately Hewitt Avenue at 87th Avenue SE and extending northerly to the intersection of 44th Street NE and 83rd Avenue NE.

(7) The term "Master Meter" shall mean the measuring device placed in the flow of a large main not being a service connection.

(8) The term "Everett and JOA Participants - Water Supply Contract" shall mean that certain agreement, dated January 10, 1991, between the City of Everett and Joint Operating Agreement participants (specifically the City of Marysville, Public Utility District No. 1 of Snohomish County and the Tulalip Tribes of Washington) as it now exists and as it may be amended in the future.

(9) The term "Peak Day Water" is the 24-hour average flow rate for the maximum usage day during a calendar year.

II

ANNEXATION OF AREAS SERVED BY PUD – AND PUD FACILITY ACQUISITIONS BY THE CITY

A. At such time as the City extends its corporate boundaries to include areas within that “overlap area” described in Exhibit 1, attached hereto and incorporated herein by this reference, any applicable service area and any part(s) of the PUD’s “Distribution Facilities” used to serve PUD water utility customers within such areas, upon the written request of the City, shall to the extent and in the manner provided by law, be conveyed by the PUD to the City. Provided, that in adjusting their water system boundaries within the “overlap area” pursuant to the previous sentence, the parties shall endeavor to make such adjustments in a reasonable manner which takes into account each party’s respective water system hydraulics and prudent engineering and water system operating practices. Provided further, that in no event shall the PUD’s capacity share be modified or reduced by any or all annexations by the City to less than 16.55% of JOA-I Pipeline capacity or 3.42 million gallons per day (MGD), whichever is greater. The purchase price to be paid by the CITY for facilities subject to such conveyance shall be based upon the annexed customers’ pro-rated share of the PUD’s outstanding water system bonded indebtedness, including any bonded indebtedness related to the JOA-I Pipeline, as determined by the revenues derived by the PUD from the annexed customers compared to the total rate revenues of the PUD water system.

B. It is understood and agreed by the PUD and the City that conveyance of utilities under this section shall not include transmission main or other facilities, including facilities defined in this Agreement as “distribution facilities” which are reasonably required by the PUD to serve its customers outside the conveyed service area, until such time as all of those areas served by the facilities have been annexed by the City. The facilities as shall be conveyed hereunder are, from the time of conveyance, sold and purchased “as is” and shall become the sole responsibility of the City; Provided, that until the time of conveyance, the PUD shall continue to operate and maintain such facilities in accordance with its usual and customary utility practices. At the time of conveyance of facilities to the City, the PUD shall transfer copies of “as-builts” and other records describing such facilities as are in the possession of the PUD.

C. With regard to facilities conveyed to the City under this section, the City shall become responsible for administering any applicable unexpired PUD latecomer agreements; and the PUD shall assign to the City such latecomer agreements and provide applicable records related thereto.

D. The City and PUD agree that neither shall serve any customer within the other party’s service area without the prior express written consent of the other party.

III

POINTS OF CONNECTION, PIPELINE CAPACITY, PUD CAPACITY SHARE, AND LIMITATION OF LIABILITY

A. The City agrees to make available peak day water desired by the PUD at the agreed connection point on the JOA-I Pipeline for an operation and maintenance charge as hereinafter set forth, subject to limits of the "Everett and JOA Participants – Water Supply Contract." The currently agreed connection point is:

Soper Hill Road (28th Street N.E.) and 83rd Avenue N.E.

The actual point of delivery at the connection point shall be the downstream flange of the valve upstream of each "Master Meter" and check valve. If the JOA-I Pipeline supply is limited by Everett, the PUD's Everett supply will be limited in the same proportion as each Party's capacity allocation in the JOA. Additional points of connection may be authorized by letter agreement between the Parties, subject to all other provisions of this Agreement.

The Parties stipulate and agree that the PUD's "assigned capacity share" in the JOA-I Pipeline is 16.55% or 3.42 MGD, whichever is greater. The respective JOA-I Pipeline capacity shares of the parties hereto is described in Exhibit 2, attached hereto and incorporated herein by this reference.

At the time of execution of the JOA, the parties to such agreement reserved 7.21% of the JOA-I Pipeline capacity for service to the "overlap area" described in Exhibit 1. The PUD has agreed to relinquish, to the City, any and all right the PUD may have in the pipeline capacity reserved for the "overlap area." Notwithstanding such relinquishment of pipeline capacity, the PUD agrees to continue to serve its customers within the "overlap area" until annexed by the City.

Further, the Parties stipulate and agree that the PUD has paid to the City the sum of \$1,018,357.52 for its assigned capacity share of JOA-I Pipeline capacity, a sum which represents full compensation for such share.

B. This Agreement by the City to make water supply available to the PUD shall be subject to and limited by unavoidable accidents, acts of God, and any conditions beyond the reasonable control of the City. The City will treat any major interruption to the supply to the PUD as an urgent matter and will attempt to restore or cause to be restored normal service to the PUD as expeditiously as reasonably possible. Accordingly, the PUD agrees to save and hold harmless the City, its officers, agents, elected officials, and employees, from and against any and all liabilities, claims, actions, or damages (including costs of defense and reasonable attorneys fees) by the PUD and customers thereof relating to or arising out of unavoidable accidents, acts of God, catastrophe, limitations by Everett either through contract or its own emergency, and any and all other conditions beyond the reasonable control of the City. Any and all claims arising out of such circumstances by customers of the PUD shall be referred directly to the PUD and it shall review, adjust, and/or defend said claims at its own expense, as appropriate.

C. The quantity of water made available shall be measured by the "Master Meter" referred to in Section IV herein. Nothing herein, however, should be construed as obligating the PUD to take any minimum quantity of water through the Pipeline at any time.

D. The PUD may desire, at a future date, to connect to the City system beyond the JOA-I Pipeline. The City agrees that such future connections may be allowed, subject to a letter of agreement between the parties prior to the time of connection.

IV

MASTER METER AND TESTING

A. All water supply delivered by the City to the PUD through the supply point at the intersection of Soper Hill Road and 83rd Avenue N.E. shall be measured through the "Master Meter." Said "Master Meter" shall include telemetry of flow data and any necessary control functions and shall meet all specifications and approval of the City. All installation, maintenance, repair, and replacement of the Master Meter shall be by the PUD, at its own cost. Provided, however, that prior to any maintenance, repair or replacement of the Master Meter, the PUD shall give at least 24 hours written notice to the City Director of Public Works. Provided, further that such notice need not be given in the case of routine maintenance or a bona fide emergency.

B. Access to all meters and the flow records shall be made available to the City at all times. The PUD, at its own cost, shall maintain, repair, and replace its own remote control recording and other telemetry equipment controlling and monitoring water supply through the "Master Meter." The City shall maintain all equipment used by it to monitor the PUD's remote control and recording equipment. All meters shall be checked by the PUD for accuracy every two years as part of normal maintenance. However, either party to this Agreement may, at its option, request or cause the Master Meter to be tested for accuracy at any other time between the biennial checks. The PUD shall provide the City with notice of its biennial test of the Master Meter sufficient to provide the City with reasonable opportunity to observe the testing process. The PUD will provide a copy of written results to the City concerning biennial testing within ten days following completion of such testing. All tests shall be conducted in a manner agreeable to both parties and the costs of the testing other than the biennial check shall be borne in the following manner: If both parties agree to the test, then costs will be shared equally. If either of the parties singularly requests the test, then the cost shall be borne by the party causing the test to be performed, providing the test indicates the meter to be performing within 2% of actual delivery amount. In the event the meter is not performing within the allowable limit, then the party benefiting as a result of the malfunction shall bear the cost of the test. Also, in such event an adjustment in charges for water supply shall be determined as follows:

The meter error percentage determined from the test shall be used to adjust recorded deliveries and shall apply for a period of time being one-half the time between the last satisfactory test and the test at which the malfunction was determined, plus all of the time between discovery of

the error and completion of repairs or adjustment of the meter. Either a credit reimbursement or additional billing at the "Everett Wholesale Rate – PUD" shall accrue to the appropriate party.

C. The "Master Meter" installation shall include test ports for testing of the "Master Meter," with appropriate valving and bypass around said meter to facilitate testing. The PUD will provide and insert a test meter for accuracy certification of the "Master Meter." A strainer immediately upstream of the "Master Meter" will be included as part of the "Master Meter" installation.

D. Should the test meter record a different consumption than the master meter, consumption will be adjusted to the test meter as aforementioned. Consumption will continue to be based upon an adjustment to the test meter unless the master meter is recalibrated.

V

WATER QUALITY AND PRESSURE; EMERGENCY WATER SUPPLY

A. The City will make every reasonable effort to deliver a quality of water to the PUD connection point equal to the quality delivered to the City by the City of Everett under Section 4G of the "Everett and JOA Participants Water Supply Contract," and the City makes no other promise, representation, or warranty regarding the quality of water delivered to the PUD.

B. The City shall deliver water supply to the PUD's point(s) of connection on the JOA-I Pipeline at an hydraulic grade line equal to the grade line at the point of connection of the Pipeline to the City of Everett's water transmission pipeline, less pipeline head friction losses. A flow control valve to maintain such hydraulic grade, if necessary, shall be installed at the PUD's request at a point downstream of the PUD's last point of connection to the JOA-I Pipeline. The PUD agrees that it shall pay the cost of installation of such a valve, not to exceed the sum of ten thousand dollars (\$10,000.00); the City agrees that it shall cause such valve to be installed within a reasonable time following the PUD's request for installation. Payment for valve installation shall be within 30 days following operational completion of valve installation.

C. Should the City of Everett water supply through the JOA-I Pipeline be limited or interrupted for any reason, the PUD may request emergency supply from the City. In the event other water supply, such as from the City's well system is available through the Pipeline to respond to a request for such emergency supply and the City determines in its discretion to supply such water, and the PUD agrees to accept such water, the quality of water supplied shall be equal to the water that the City supplies to its own customers in the affected area. Should the City supply and the PUD accept water under this paragraph, such supply shall be at the City's regular industrial water rate, as provided in Chapter 14.07 Marysville Code.

D. The PUD shall provide means, at its own expense, to assure that PUD water will not backflow into the City system. Both parties agree that they will continue to cooperate on an ongoing basis with the City of Everett to pursue compliance with the Federal Safe Drinking Water Act – Public Law 93-523.

VI

OPERATION AND MAINTENANCE CHARGE

The City will be compensated for its operation and maintenance costs of the JOA-I Pipeline. The charge to the PUD shall be billed yearly on March 31 based upon the following elements and computation formulas:

PUD will pay Everett directly for its wholesale water delivered through the JOA-I Pipeline. PUD will pay to Marysville a yearly lump sum payment for JOA-I Pipeline operation and maintenance based upon the previous year's costs as described below, multiplied by the percentage of PUD "assigned capacity rights" in the Pipeline (as it existed at the time the operation and maintenance costs accrued to the CITY), plus an annual charge associated with administration of this Agreement, as described below.

COMPUTATION OF CHARGE

The JOA-I operation and maintenance cost

$$R = [(P + M)(1.0 + OH)] (CR)$$

- R = JOA-I O&M Costs
- P = Power cost for preceding year
- M = Operation and Maintenance cost for preceding year allocated to Pipeline (excluding overhead)
- OH = Water utility overhead rate
- CR = PUD "assigned capacity rights" in JOA-I Pipeline (16.55% as of the effective date of this Agreement)

Power Cost = P:

Power cost (P) shall include all electrical charges associated with the JOA-I Pipeline.

Operation and Maintenance Cost = M:

Operation and Maintenance costs (M) shall include all direct and indirect costs, including repairs and replacement due to casualty, but shall exclude overhead attributable to the JOA-I Pipeline.

Water Utility Overhead Rate = OH:

The formula for determining the overhead rate (OH) is attached as Exhibit B and includes the following components.

- General and specific overhead direct and indirect associated with water service excluding meter reading and billing cost
- Professional services for O&M
- Insurance
- Taxes and assessments
- Transmission and distribution supervision

NOTE: Because the formula set forth in Section VII does not include Pipeline depreciation, it is understood that the PUD intends to pay for its share of capital facilities replacement or new capital facilities through a cash contribution at the time of replacement or new construction. However, the PUD is not obligated under this section to participate in replacement of the JOA-I Pipeline. If it participates in replacement of the Pipeline, the PUD's share shall be based upon its percentage share of allocated capacity in the JOA-I Pipeline as determined at the time of the capital facilities replacement or new construction. Payment by the PUD for its agreed pipeline capacity share shall be made within sixty (60) days of the date that Marysville gives notice to the PUD of the completion of the capital facility and the actual cost of the same.

METER READING AND ADMINISTRATION CHARGES

The PUD shall pay an annual administrative charge of \$100 for costs associated with meter reading, billing expense, reports, and collection.

VII

BILLING AND PAYMENT-ANNUAL ADMINISTRATION AND O&M COSTS

The PUD's share of JOA-I annual operation and maintenance costs and administration costs shall be paid within thirty (30) days of the City's billing, which shall occur on or about March 31 each year during the term hereof.

If any payment or portion thereof due to the City shall remain unpaid for thirty (30) days following its due date, the PUD shall be charged with and pay to the City interest on the amount unpaid from its due date until paid at the rate of 12% per annum. In the event the City is required to collect any delinquent fees, rates, costs, or billings which become past due, both parties stipulate and consent to both venue and jurisdiction of the Snohomish County Superior Court. The substantially prevailing party in such action shall be entitled to its cost and reasonable attorney fees from the other party.

VIII

TERM AND EXPIRATION

(1) The term of this Agreement shall be from the date of its mutual acceptance by all parties and extend for the useful life of the JOA-I Pipeline. Provided, that this Agreement shall be subject to review and modification by the parties every ten years from the effective date. The written agreement of both parties shall be required for any amendment hereof.

IX

DISPUTE RESOLUTION

The parties desire to avoid and settle without litigation future disputes which may arise between them relative to this Agreement. Accordingly, the parties agree to engage in good faith negotiations to resolve any such dispute. Such negotiations shall be first conducted at the water utility staff level and if unsuccessful, may then proceed to the level of respective water utility management, then to the CITY's Mayor and the PUD's General Manager, respectively. Should settlement negotiations prove unsuccessful, the parties may proceed to litigation.

Jurisdiction and venue for any action relating to the interpretation, enforcement, or any dispute arising from this agreement shall be in Snohomish County Superior Court.

This Agreement shall be construed, and the legal relations between the parties hereto, shall be determined in accordance with the substantive law of the State of Washington.

The substantially prevailing party in any litigation brought to enforce rights or obligations of either party under this Agreement or any appeal of judgment in such litigation shall be entitled to its costs and reasonable attorney fees.

X

WAIVER, ASSIGNMENT, NOTICES, AND ENTIRETY

(1) Waiver: No waiver by either party hereto of any terms or conditions of this Agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall the waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or any other term or condition of this Agreement.

(2) Assignment: Except where one of the parties merges or combines with another entity, neither this Agreement nor any of the rights, interest, or obligations created hereunder may be

assigned by either party without the written consent of the other party. This Agreement shall be binding upon the successors and assigns of the parties.

(3) Notices: Notices required or permitted to be given hereunder shall become effective upon being deposited as registered or certified mail in a United States Post Office, addressed as follows:

To Snohomish County Public Utility District No. 1:

President, Board of Commissioners
P.O. Box 1107
Everett, WA 98206

To The City:

Honorable Mayor
City of Marysville
Marysville City Hall
4822 Grove Street
Marysville, WA 98270

or to such other address as may be substituted in writing by the addressee.

(4) Entirety: Except as provided in the JOA between the parties, as specifically modified herein, all prior negotiations and agreements between the parties hereto relating to the subject matter hereof are merged into and superseded by this Agreement, and shall constitute the entire final and exclusive agreement between the PUD and the CITY concerning the sale of water to the PUD for the use as hereinbefore provided.

This Agreement shall be executed in two duplicate counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

DATED this 23rd day of June, 2003

PUBLIC UTILITY DISTRICT NO. 1
OF SNOHOMISH COUNTY

By: *Edward A. Hansen*
Title

Attest: *Barbara A. Tomaska*
Title

Approved
as to Form: *M. J. [Signature]*
General Counsel

(Seal)

CITY OF MARYSVILLE

By: *David Wilson*
Mayor

Attest: *Perry Becker*
City Clerk

(Seal)

Approved
as to Form: *Grant K. Weed*
City Attorney

EXHIBIT 2

**CAPACITY RIGHTS
JOA-I PIPELINE**

Entity	Percent of Pipeline Capacity
Marysville Tulalip Tribes PUD	63.65 19.80 16.55
Total	100.00