

**CITY OF SULTAN**  
**WATER SUPPLY PIPELINE CONSTRUCTION,**  
**OPERATION AND MAINTENANCE**  
**AGREEMENT**

## TABLE OF CONTENTS

1. General.....	1
2. Intent .....	3
3. Project General Description.....	3
4. Project Design, Permits, Contract Administration and Construction: Payment of Costs, and Terms of Payment.....	4
5. Pipeline Crossing of Sultan River: District Contribution; Project Delays Due to Permitting .....	7
6. Ownership and Maintenance.....	8
7. Water Supply-Capacity Ownership .....	10
8. Time of the Essence.....	11
9. Project Cost Over-runs/Cost Savings: Sharing.....	11
10. Indemnification .....	12
11. Notices and other Communications .....	13
12. Relationship of the Parties .....	14
13. Dispute Resolution .....	14
14. Miscellaneous.....	15
15. Audit Rights.....	17

**WATER SUPPLY PIPELINE CONSTRUCTION,  
OPERATION AND MAINTENANCE  
AGREEMENT**

THIS AGREEMENT is entered into effective this 21 day of June, 2001, by and between Public Utility District No. 1 of Snohomish County, a municipal corporation of the State of Washington (the "District"), and the City of Sultan, Washington (the "City") (herein referred to collectively as the "Parties").

WHEREAS, provision for an adequate and safe water supply to serve the immediate and long-term needs of their respective present and future residents and water service customers is important to the City and to the District, and is required to carry out their individual comprehensive water plans and the growth management plans and goals of Snohomish County, and

WHEREAS, the City and the District collaborated in 1998 to fund a Regional Water Supply Alternatives Study relating to the City's urban growth area and the District's adjacent Skykomish Water Service Area, and such study recommended construction of a new water pipeline to deliver City of Everett treated water from the City of Everett Transmission Line No. 5 to the City's existing system in order to meet the City's current and future needs, and

WHEREAS, the District has determined that participation in such a water pipeline project would protect and enhance the District's Jackson Hydroelectric Project and provide it an opportunity to secure capacity in the proposed water pipeline to support its future, long-term ability to economically meet its responsibilities under the North Snohomish County Coordinated Water System Plan, and

WHEREAS, the Parties have recognized the mutual benefits that would be derived from cooperation in a joint pipeline project utilizing their combined resources and expertise for design, construction and maintenance of the proposed water pipeline, and

WHEREAS, the Parties are authorized to enter into this Agreement under the Interlocal Cooperation Act, chapter 39.34 RCW,

NOW, THEREFORE, the City and the District agree as follows:

1. GENERAL

- A. Projected water demand within the City and its urban growth area is beginning to exceed the capacity of the existing developed water supply, especially in the summer months, and the City may not have sufficient reliable supplies to meet its needs. Current projections show that the City can expect to experience substantial growth for the foreseeable future. Therefore, the City desires to participate in a project capable of meeting its immediate and long-term needs.

- B. The District does not currently anticipate the need for additional water resources within its Skykomish Water Service Area east of the City for a period of at least ten years or more, but recognizes the reasonable likelihood that existing resources may quickly become insufficient after such time, and such projection may be subject to change based upon conditions such as ground water contamination, future water right use restrictions based upon the federal Endangered Species Act or other law, the provision of sanitary sewers, and continued acceleration of population and business growth. Therefore, the District believes it prudent to participate in a project capable of meeting its long-term needs, even though it has no current plans for utilization or expansion of the facilities to be constructed hereunder.
- C. As owner and operator of the Jackson Hydroelectric Project (the "Jackson Project"), the District owns or holds rights to use and occupancy of a substantial portion of the property that would necessarily be crossed by any water pipeline installed to supply City of Everett water to the Parties. As a result of the potential risks, liabilities and costs associated with installation, and long-term operation and maintenance of a critical water service pipeline, crossing the Sultan River in the immediate vicinity of its Jackson Project Powerhouse, Lake Chaplain Return Line and high-pressure penstock facilities, the District requires that it be able to exercise complete control over the design, construction, maintenance, repair and replacement of such pipeline facility within such vicinity (subject to the reasonable review of the City) and that such pipeline be constructed of a size and design to minimize the likelihood of any future related stream crossing or construction disturbances occurring within the vicinity. The District agrees to be responsible for and to pay the costs of all future ordinary maintenance and repair of the water pipeline and river crossing, from the point of attachment of such pipeline to the City of Everett No. 5 Pipeline, extending to the point at which the District's Jackson Project Powerhouse access road turns eastward to join 116<sup>th</sup> Street SE, and for any relocation of such water supply pipeline made necessary as a result of any improvements the District makes to the Jackson Project Powerhouse or penstock facility.
- D. Based upon the facts described in the immediately-preceding paragraph, the Parties agree that construction specifications shall require installation of a sixteen-inch pipeline from the tap into the City Of Everett No. 5 Pipeline, extending from such point, southerly to the vicinity of the Jackson Project Powerhouse, then crossing the Sultan River and proceeding easterly and then southerly, generally following the Jackson Project Powerhouse access road, to the point at which such pipeline is attached to the City's existing ten-inch DI water main.
- E. The Parties recognize that any delay of the proposed Project will result in the risk of higher cost and shortage of water supplies for the City, and that District participation will avoid the need for a duplicate installation or upsizing of the facility, and the need for a second stream crossing should the District desire to utilize the facility at some point in the foreseeable future.
- F. A fundamental incentive for the Parties to enter into this Agreement is their commitment to cooperate toward regional solutions for long-range water supply needs through the year 2020.

## 2. INTENT

- A. The general intent of the Parties is to cooperatively plan, design, engineer, construct, operate and maintain water transmission pipelines and related facilities as described generally below and in Exhibits A and B (the "Project"), which Exhibits are attached hereto and incorporated herein by this reference, for the long-term benefit of both Parties and their existing and future water service customers.
- B. The specific intent of this Agreement is to delineate the particular responsibilities of each of the Parties in order to accomplish their general intent expressed above, to allocate the ownership and capacity of the pipeline facility to the Parties, and to provide a framework for future cooperative operations and use of the facility.

## 3. PROJECT GENERAL DESCRIPTION

- A. "Phase 1" of the Project shall consist of attachment of a sixteen-inch ductile iron ("DI") water main and "master meter" (such meter to be owned by the City of Everett following installation) to the City of Everett No. 5 Water Supply Pipeline, at a point approximately 1,500 feet NNW of the District's Jackson Project Powerhouse, as shown on Exhibit A; underground installation of such water main approximately 6,000 linear feet along a route to be determined (utilizing where possible existing easements owned by the District); installation of a sixteen-inch pipeline segment and steel truss bridge crossing the Sultan River at a point in the vicinity of and upstream from the Jackson Project Powerhouse; and extension of the sixteen-inch DI main from the river crossing easterly to the Jackson Project Powerhouse access road, then following such access road southerly to the point at which such sixteen-inch pipe leaves the District access road (116<sup>th</sup> St.) and enters the existing City of Sultan easement "Phase 2," reducing to a 12" pipeline, all as depicted in Exhibit A.
- B. "Phase 2" of the Project shall consist of construction of approximately 3,500 linear feet of twelve-inch ductile iron water main from the point of attachment to the Phase 1 pipeline, extending generally southward and parallel to the City's existing ten-inch DI pipeline, and ending at the City's water treatment plant and water storage reservoirs. "Phase 2" of the Project shall be as described more particularly in Exhibit A.
- C. Both the Phase 1 and Phase 2 portions of the Project may include installation of one or more control valve vaults, a "reducer" and "tee," valves, and other incidental facilities to be determined at the time of the final design. All costs arising from inclusion of such items in the Project shall be added to the Project cost described in Section 9 below.
- D. The "Project" shall include both Phase 1 and Phase 2 segments as described above, and shall further include, but not be limited to, all engineering, surveying, permits, mitigation measures, contract administration for construction, Project inspection and oversight, and all other activities and work reasonably necessary to complete installation of the water pipeline facilities and appurtenances described in the approved plans and drawings, including the Sultan River crossing. Provided, however, the City's payment responsibility for the Sultan River crossing shall be limited as described in Section 4 and 5 below.

4. PROJECT DESIGN, PERMITS, CONTRACT ADMINISTRATION AND CONSTRUCTION:  
PAYMENT OF COSTS, AND TERMS OF PAYMENT

- A. The District shall provide design and construction engineering for both Phase 1 and Phase 2 of the Project, subject to the reasonable review and approval of the City. The District also shall develop plans and specifications ready for construction, and construction cost estimates for both Phase 1 and Phase 2 of the Project. The Parties shall agree upon the detailed scope of work for the Project and the plans and specifications shall be subject to approval of the City before any contract for construction is advertised. The preliminary scope of work for Phase 1 and Phase 2 of the Project shall be as described in Exhibit B.
- B. In consideration of the District's agreement to design and engineer the Project, and to develop construction plans and specifications for the Project, the City shall pay to the District the sum of **Two Hundred Thousand Dollars (\$200,000.00)**, such sum to be paid to the District upon completion of the plans and specifications and approval of same by the City; such approval shall not be unreasonably withheld.
- C. The District shall, to the extent reasonably possible, be responsible to procure all necessary permits and approvals from governmental agencies, and all necessary easements to complete the desired Project; Provided, that the City shall be the "Lead Agency" with regard to SEPA environmental review. Except for the matters described in Subsections 4.A and B, immediately above, all work performed by District staff in accomplishment of District tasks shall be at the expense of the District, and shall not be a Project Cost to be paid by the City. All work performed by City staff and consultants in accomplishment of any of the City's tasks and obligations hereunder, including but not limited to SEPA review, shall be at the expense of the City, and shall not be a Project Cost under this Agreement.

PROVIDED FURTHER, that:

- 1) Permits shall be obtained on behalf of the District or the City, or both parties, as appropriate or required for Phase 1 or Phase 2 portions of the Project, or for mitigation measures required for Project construction.

Whenever any public agency or circumstance requires that a particular permit or authorization be obtained by or on behalf of the City only, the City shall provide all necessary assistance to the District in procuring such permit or authorization. All costs incurred by the City in assisting the District in procuring the required permit or authorization, shall be Project Costs.

- 2) Except as provided in Subsection 4.E. below with regard to certain "professional services contracts," all "external," out-of-pocket costs incurred by the District in obtaining permits or authorization for Project construction, including but not limited to costs of studies; contracts for consultants to assist with permitting; federal and state agency "consultations," biological opinions or habitat conservation plans under the federal Endangered Species Act (16 USC § 1531 et seq.); easements, licenses or compensation for environmental damages, fees and charges levied by governmental agencies (not including the District), and any other matter reasonably necessary to secure required governmental authorization, and all costs of any measures required by any governmental agency for mitigation of Project impacts, shall be "Project Costs."

- 3) The parties understand and agree that it will be necessary and convenient to acquire certain real property interests for construction, operation and maintenance of the Project in accordance with prudent utility practices, or to obtain required permits. The parties further understand and agree that one or both of them may find it necessary and convenient to acquire certain real property interests for their own respective separate public utility purposes, as they may relate to the Project. The District and the City shall enter into an Amendment to this Agreement confirming their intentions and understanding with regard to acquisition of real property and rights to carry out the purposes of this Agreement; such Amendment shall address the division of costs of acquisition, and division of ownership, of property and rights acquired pursuant hereto, whether through negotiation and purchase, condemnation and purchase, or otherwise; and including but not limited to the cost of reasonable attorney fees, court costs and purchase price.

Except as otherwise expressly agreed herein, the cost of acquisition of property and rights reasonably necessary for Project purposes, whether or not such property and rights have incidental benefits to one or both parties individually, shall be a Project Cost.

- D. The District agrees to cooperate with the City in completing the necessary environmental review and to be responsive to environmental findings and requirements for Project execution.
- E.
  - 1) Contract Management Services Provided by the District, and Contracts for Such Services. The District shall provide all public works contract drafting and preparation, advertisement, bidder evaluation, public works contract award and administration, work inspection and approval, contractor payment and administration of contractor claims. All work performed by District staff in accomplishment of such tasks shall be at the expense of the District, and shall not be a Project Cost to be paid by the City. Should the District determine to enter a "professional services contract" for the performance of any of the professional services specifically assigned to the District in this section, contract administration and payment for services under such contract shall be at the District's expense.
  - 2) Public Works Contracts Entered by the District for Project Construction. At its discretion, and with the approval of the City, which shall not be unreasonably withheld, the District may enter into one or more public works contracts for specific portions of the Project construction work in order to provide economic and efficient administration; Provided, that Project construction work costs are a Project cost to be paid by the City.
  - 3) Contractor Insurance. The District shall require of each of its contractors for the Project "Builders Risk Insurance" in a form acceptable to the City and the District, and sufficient to cover all property losses, which may occur to the Project during construction. Such insurance shall remain in force until the Project is accepted as complete by the City and the District.

Each of the Project contractors shall provide evidence of liability insurance in a form acceptable to the City and the District, in the minimum amount of Five Million Dollars (\$5,000,000).

All insurance provided by the District's contractors shall name the City and the District as additional insureds, and shall contain a 30-day cancellation notice provision.

Each policy of insurance shall be with an insurance company rated as A- or better in the most current "Best's Insurance Guide."

- F. The District shall review all contractor claims and change orders with the City prior to approval or payment. The City shall promptly review any contractor claims and cooperate with the District in resolving such claims. The District shall pay only those contractor claims and change order amounts deemed by it to be reasonable and appropriate. Disagreement between the City and the District regarding payment of any particular claim or amount shall not delay conduct of work or reimbursement of the District for payments made by it under any public works contract executed pursuant hereto.
- G. The District shall contribute toward the costs of the Project the first **Two Hundred Thousand Dollars (\$200,000.00)** in costs billed by the contractor under the Public Works Contract to be entered into by the District and the successful contractor awarded the Project pipeline construction work pursuant to this Agreement. **In consideration of such contribution by the District, and all of the other obligations undertaken by the District under this Agreement, and except as specifically provided otherwise in this Agreement, the City shall be responsible for payment or reimbursement of all Project Costs.** Any dispute regarding a cost or payment shall be resolved through the Dispute Resolution Process provided herein below, upon completion of Project construction.
- H. The District shall invoice the City monthly, for those costs to be paid or reimbursed by the City under this Agreement, based on actual payments made by the District to the contractor(s), beginning thirty days following award of any contract for construction under this Agreement.
- The City shall pay each invoice within forty-five (45) days from the date of such invoice. Amounts remaining unpaid after forty-five (45) days shall be subject to interest at the rate of one percent (1%) per month assessed upon the outstanding unpaid balance due.
- I. Project Costs, if any, which are billed directly to the City, shall be paid directly by the City, in a timely manner.
- J. The District and the City agree that permits, easements, and other rights as may be necessary for construction and operation of the Project across the property, including easements, of either Party, shall be granted for the life of the Project without charge by either Party to the other Party.
- K. The Parties agree to expedite commencement of the Project, with a goal of completion of all construction by the fall of 2003 or the summer of 2004. . PROVIDED, HOWEVER, that the District and City acknowledge and agree that the timeliness and assurance of construction permitting and authorization as required for project construction are beyond the reasonable control of either Party; that due to regulatory developments associated with environmental laws, including but not limited to, the federal Endangered Species Act and associated state and local regulation, it is reasonably foreseeable that construction permitting and construction may be delayed for an unknown or indefinite period pending completion of required studies and consultations, project design modifications, permit reviews, mitigation,



legal analysis or litigation and other matters. Neither of the Parties shall be in breach of any of its obligations under this Agreement so long as it in good faith makes timely application for any permits and authorization required for construction of the Project, and proceeds reasonably with any consultation, study, analysis or other application or condition for permit approval.

Any prevention, delay or interference with the issuance of necessary permits due to such matters as described in this subsection shall be deemed a "force majeure" so long as the obligated Party acts with due diligence.

- L. In execution of its obligations under this Agreement, and except as expressly provided otherwise herein, the District will follow its usual and customary public works contracting practices, and shall require of its contractor(s) compliance with all applicable laws and regulations, insurance and indemnification conditions consistent with its other contracted work of similar scope and nature, and warranties consistent with standard utility industry practice. The District will require that the City and its consultants be listed as an additional named insured on any insurance required by the District of its contractors. The City will promptly respond to any requests for review or approval received from the District.
  - M. Notwithstanding anything else to the contrary in this Agreement, the costs and expenses, including but not limited to reasonable attorney and expert fees, incurred with regard to defense of appeals and/or litigation arising as a result of third party appeals to the permitting of the Project shall be a Project Cost. The District and the City shall jointly procure and contract with counsel and necessary experts for such purpose.
5. PIPELINE CROSSING OF SULTAN RIVER; DISTRICT CONTRIBUTION; PROJECT DELAYS DUE TO PERMITTING

- A. The Sultan River pipeline crossing shall be accomplished by means of installation of a steel truss bridge, with all necessary and appropriate supports and attachments for carrying and protecting a sixteen-inch water pipeline, and suitable for carrying light motor vehicle and truck traffic in addition to the water pipeline.
- B. In consideration of the independent and immediate value to the District of the construction of the steel truss bridge as a part of the project's Sultan River pipeline crossing, the District agrees to contribute the sum of **One Hundred Thousand Dollars (\$100,000.00)** toward the cost of such bridge. The District's contribution of such sum shall be in the form of payment of the first **One Hundred Thousand Dollars (\$100,000.00)** in costs billed by the contractor under the Public Works Contract to be entered into by the District and the successful contractor awarded the steel truss bridge construction work pursuant to this Agreement.
  - i) As further consideration, the District shall, at its own expense, provide all necessary maintenance and repair upon the bridge for its useful life.
  - ii) As of the date of execution of this Agreement, the District and the City understand that there may be a contribution from the City of Everett toward the Project Cost of bridge construction. Should negotiations between the District and the City of Everett result in an actual contribution, any monetary payment received by the District from the City of Everett shall be retained by the District and applied to the District's contribution toward the cost of the bridge, as provided in this subsection.

A contribution from the City of Everett shall entitle that City to utilize the bridge for Jackson Hydroelectric Project/City of Everett Water Filtration Plant purposes, in accordance with a separate agreement to be negotiated between the District and the City of Everett, and subject to the reasonable approval of the City of Sultan with regard to the scope of use by the City of Everett.

- C. The District and the City understand and agree that there exists at the time of contracting a reasonable likelihood that environmental issues may cause a delay in the permitting of the proposed steel truss bridge for the water pipeline, despite their reasonable efforts. In the event of such a delay, the Parties shall proceed with construction of all other portions of the Project, which may be built in the absence of such permits, as near as may be in accordance with the schedule herein provided. In such event, upon the request of the City, the Parties agree that they will, if reasonably feasible from an economic, engineering, and safety standpoint, construct a temporary river crossing, utilizing an existing District conduit beneath the Sultan River, to convey water and to make the Project useable until such time that a bridge-mounted river crossing may be constructed.
- D. The City acknowledges that capacity through such temporary river crossing is limited, and that such use will be considered an emergency measure only, to reduce the risk of water shortage to the City. Any such temporary river crossing shall be in accordance with terms and conditions agreed to by the Parties, and set forth in the form of an Amendment to this Agreement. Use of such temporary river crossing shall not replace the intent of the Parties to accomplish installation of the steel truss bridge crossing at the earliest practicable time.
- E. The District and the City acknowledge that as of the date of execution of this Agreement there exists a drought within the State of Washington and the immediate geographical areas of the Project which may require emergency installation of a temporary river crossing and other temporary water facilities to serve the City with City of Everett water. All emergency water service measures to serve the City shall be undertaken by the parties in accordance with terms and conditions agreed to by the Parties, and set forth in the form of an Amendment to this Agreement.
- F. The Washington State Department of Natural Resources has proposed a "Powerhouse Gravel Sale" relating to its property immediately adjacent to, or in the vicinity of, portions of the Project Pipeline. The City and the District agree to cooperate in good faith in the resolution of issues of mutual concern relating thereto.

## 6. OWNERSHIP AND MAINTENANCE

- A. Upon completion of Project construction, and acceptance of the Project by the Parties, the District shall become sole owner of Phase 1 of the Project (except for the "master meter," which is to be owned by the City of Everett and subject to the City's ownership of Project pipeline capacity as set forth in Section 7A), and shall thereafter be solely responsible, at District cost, for all operation and maintenance of all components of the Phase 1 facilities including, but not limited to, ordinary maintenance, cleaning and disinfecting, repair, relocation, reconstruction, river crossing maintenance, relocation, repair or reconstruction, and risk of loss, for its useful life.

Upon completion of Project construction, and acceptance of the Project by the Parties, the City shall become sole owner of Phase 2 of the Project (subject to the District's ownership of Project pipeline capacity, as set forth in Section 7A), and shall thereafter be solely responsible, at City cost, for all operation and maintenance of all components of the Phase 2 facilities including, but not limited to, ordinary maintenance, cleaning and disinfecting, repair, relocation, reconstruction, and risk of loss, for its useful life. The District and the City will each prepare a Maintenance and Operations Manual for Phase 1 and Phase 2, respectively. Each will review and approve the other's Manual for consistency.

- B. Each Party, at its own cost, shall fully insure against risk of loss or damage and liability to third Parties its respective portion of the Project, and shall provide to the other Party proof of such insurance coverage upon request. Any insurance proceeds shall first be applied against necessary repairs or replacement in the event of casualty. Either Party may self-insure its primary insurance coverage responsibility under this Agreement, upon demonstration to the other of proof of sufficient ability to do so.
- C. All maintenance and repair by either Party shall be timely and done in accordance with prudent water utility practice. Whenever one of the Parties deems it necessary in its sole judgment to conduct any repair which may require the shut down or dewatering of its portion of the pipeline for any reason, it shall, except in the event of emergency threatening property damage or personal injury, provide reasonable notice to the other Party of such proposed action. Any such work shall be conducted as quickly and with as little impact as reasonably possible under the circumstances. To the extent allowed by law, neither Party shall be liable to the other or to any third party for any damage or loss caused as a result of an emergency repair, or any other repair following reasonable notice.
- D. Each Party shall at the reasonable request of the other, execute a bill of sale or other document confirming the division of title to the Project facilities as described herein.
- E. Any Party failing to reasonably and prudently maintain or repair its portion of the Project in a timely manner in order to keep the Project fully functional and reliable for the benefit of both Parties shall be liable for the reasonable cost of repairs performed by the other Party on the failing Party's behalf. Each Party shall have the right and license, after giving reasonable notice under the circumstances and receiving no timely or adequate response, to enter upon the property of the other to accomplish any necessary emergency repairs, but shall coordinate with the other regarding such emergency repairs. PROVIDED, that in no event shall such repairs be undertaken without prior adequate provision for public and worker safety. Any disputes regarding maintenance or repairs shall be resolved utilizing the Dispute Resolution Process provided in Section 13 below.
- F. Notwithstanding anything else to the contrary in this Agreement:
  - 1) Replacement of any portion of the Project pipeline at the end of its service life shall be a cost shared by the Parties proportionately based upon ownership of capacity, to be determined as of the time of replacement.
  - 2) Replacement of the steel truss bridge at the end of its service life shall be a cost shared equally by the Parties, except as may otherwise be expressly agreed to in writing by the Parties.

## 7. WATER SUPPLY-CAPACITY OWNERSHIP

- A. The City and the District agree that the District does not presently require the water service capacity represented by the Project pipeline, and that the District may not utilize its proportionate share of the Project capacity for a period of years following completion. The Parties mutually agree that immediate District participation in the Project with regard to design, construction contribution, engineering, contract administration, construction oversight, immediate operation and maintenance responsibility, and acceptance of risks attendant with construction, maintenance and use of a water service pipeline extending across, under and through the District's Jackson Hydroelectric Project facilities provides valuable consideration equal to the value of the Project pipeline capacity to be owned by it hereunder. Total Project pipeline capacity is estimated to range from approximately 3.89 to 5.76 million gallons per day (MGD). The capacity available to each Party at any time shall be equal to that Party's ownership percentage share of the total Project pipeline capacity available at that time. It is understood that until the District commences use of the Project pipeline (other than occasional, temporary minor water withdrawals from a pipeline hydrant by the District for Jackson project purposes), the City shall have the authority to utilize the District's share of the pipeline's capacity. The City shall own 66.7% of the pipeline capacity of the Project. The District shall own 33.3% of the pipeline capacity of the Project.
- B. Either one of the Parties may assign its rights under this Agreement to another person at any time, subject to the reasonable approval of the other Party; however, such assignment shall in no manner relieve the assigning Party of any of its obligations hereunder, except as otherwise specifically agreed by the Parties in the form of a written Amendment to this Agreement.
- C. Unless the Parties agree otherwise in writing to negotiate with the City of Everett for a regional wholesale water contract rate, each of the Parties shall negotiate its own respective contract with the City of Everett for its wholesale purchase of water through the Project pipeline, and be severally responsible to pay for its own water use. The attachment to the City of Everett No. 5 Pipeline will include a meter to record deliveries of water through the Project pipeline; any expense associated with maintenance of such meter shall be the City of Everett's responsibility. At such time as the District commences use of the Project pipeline to receive water, it will install, at its own expense, a meter and appurtenances at the point of connection of its water distribution system to the Project pipeline or to the City's distribution system.
- D. This Agreement shall have no impact upon the respective approved water service areas of the Parties.
- E. Neither one of the Parties shall guarantee service to the other by means of the Project pipeline, provided that each of the Parties agrees to exercise due care in carrying out its obligations under this Agreement. Except to the extent it has by act or omission impacted the quality of the City of Everett water delivered through the Project pipeline, neither one of the Parties shall guarantee its quality as delivered to the other.
- F. Neither one of the Parties shall charge the other at any time for the privilege of transporting, or "wheeling," water through any part of the Project pipeline. This charging prohibition shall also apply to assignees of the Parties. The City, however, may levy and collect from the District a reasonable charge for the District's use of the City's water distribution system to

so "wheel" water should such use occur in the future. Authorization for the District to "wheel" its water through the City's distribution system shall not be unreasonably denied. Any improvements reasonably required of the City's water distribution system to accommodate use, or future use, by the District shall be at the District's sole expense unless otherwise agreed to in writing by the Parties.

G. During such time that the City is the sole user of water through the Project pipeline (other than occasional, temporary minor water withdrawals from a pipeline hydrant by the District for Jackson Project purposes), the City shall be responsible for all Project pipeline flushing activities and expenses.

8. TIME OF THE ESSENCE

A. The Parties agree to act in good faith to conduct their actions under this contract to assist one another in completion of the Project by the fall of 2003 or summer of 2004 subject, however, to the conditions described in Sections 4K and 5C above; and they agree to seek all reasonable and lawful means to expedite completion in accordance within the desired completion date. Accordingly, the Parties agree that time is of the essence in the performance of activities agreed and contemplated under this Agreement, except as provided otherwise herein.

9. PROJECT COST OVER-RUNS/ COST SAVINGS: SHARING

A. Except as specifically provided otherwise in this Agreement or any Amendment hereto, the City is responsible for all Project Costs. The Parties agree that the estimated Project Cost at the time of execution of this Agreement (excluding any specific contract administration, SEPA or similar matters, as described above, for which either the City or the District, respectively, is expressly and solely responsible, and excluding the cost of acquisition of real property and rights under any Amendment to this Agreement, but including the District's combined total \$300,000 payment in contribution toward Project Costs, as described in Sections 4 and 5, above), is ~~\$1,690,000~~ <sup>1,690,000</sup>. Following the statutory competitive bidding process required of public utility districts, the District will award Project construction work to the lowest responsible and responsive bidder(s) meeting the published plans and specifications. Provided, that in the event the lowest responsive and responsible bid exceeds the Project engineer's estimate for public works construction contract(s) for the Project by greater than ten percent (10%), mutual agreement of the parties, in writing, shall be required for contract award; should the parties not agree upon award, all bids shall be rejected and new bids requested after review by the parties of the engineer's estimate, and agreement upon a new engineer's estimate. Upon award of the bid(s) for Project construction, the Parties shall amend this Agreement to establish a "Final Estimated Project Cost," to reflect inclusion of the selected contractor's or contractors' actual bid amount(s), including any separate bid amount for the river crossing bridge described in Section 5 above, and any other separate bid items.

“wheel” water should such use occur in the future. Authorization for the District to “wheel” its water through the City’s distribution system shall not be unreasonably denied. Any improvements reasonably required of the City’s water distribution system to accommodate use, or future use, by the District shall be at the District’s sole expense unless otherwise agreed to in writing by the Parties.

- G. During such time that the City is the sole user of water through the Project pipeline (other than occasional, temporary minor water withdrawals from a pipeline hydrant by the District for Jackson Project purposes), the City shall be responsible for all Project pipeline flushing activities and expenses.

8. TIME OF THE ESSENCE

- A. The Parties agree to act in good faith to conduct their actions under this contract to assist one another in completion of the Project by the fall of 2003 or summer of 2004 subject, however, to the conditions described in Sections 4K and 5C above; and they agree to seek all reasonable and lawful means to expedite completion in accordance within the desired completion date. Accordingly, the Parties agree that time is of the essence in the performance of activities agreed and contemplated under this Agreement, except as provided otherwise herein.

9. PROJECT COST OVER-RUNS/ COST SAVINGS: SHARING

- A. Except as specifically provided otherwise in this Agreement or any Amendment hereto, the City is responsible for all Project Costs. The Parties agree that the estimated Project Cost at the time of execution of this Agreement (excluding any specific contract administration, SEPA or similar matters, as described above, for which either the City or the District, respectively, is expressly and solely responsible, and excluding the cost of acquisition of real property and rights under any Amendment to this Agreement, but including the District’s combined total \$300,000 payment ~~in~~ contribution toward Project Costs, as described in Sections 4 and 5, above), is \$1,690,000. Following the statutory competitive bidding process required of public utility districts, the District will award Project construction work to the lowest responsible and responsive bidder(s) meeting the published plans and specifications. Provided, that in the event the lowest responsive and responsible bid exceeds the Project engineer’s estimate for public works construction contract(s) for the Project by greater than ten percent (10%), mutual agreement of the parties, in writing, shall be required for contract award; should the parties not agree upon award, all bids shall be rejected and new bids requested after review by the parties of the engineer’s estimate, and agreement upon a new engineer’s estimate. Upon award of the bid(s) for Project construction, the Parties shall amend this Agreement to establish a “Final Estimated Project Cost,” to reflect inclusion of the selected contractor’s or contractors’ actual bid amount(s), including any separate bid amount for the river crossing bridge described in Section 5 above, and any other separate bid items.

- B. Because the District is responsible under this Agreement for preparation of specifications and contract documents, and for effective oversight of construction in order to minimize costs and keep them predictable, the Parties agree that the District should receive a reasonable share of the benefit of efficient execution of its obligations hereunder, and also that the District should bear a reasonable share of the burden of cost overruns exceeding a specified level.

Should the actual, final invoiced Project Cost, after resolution of all claims of either the contractors or the Parties, exceed by more than 5% the final estimated Project Cost, as described above in this Section, the District shall contribute 33.3% of such excess cost over the estimated Project Cost.

- C. Should the actual, final invoiced Project Cost, after resolution of all claims of either the contractors or the District, be less than 95% the final estimated Project Cost, as described above in this section, the District shall be paid by the City 33.3% of any savings making such cost less than 95% of such estimate.
- D. Any payment made under this section shall be issued not later than sixty days following determination of the actual, final invoiced Project Cost.

#### 10. INDEMNIFICATION

- A. The District hereby indemnifies and agrees to hold harmless and release the City and its officials, officers, employees and agents and each of the heirs, personal representatives, successors and assigns of any of the foregoing from and against any and all losses, claims, damages, costs, demands, fines, judgments, penalties, obligations, payments and liabilities, together with any reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and out-of-pocket expenses and reasonable costs and expenses of investigation) incurred in connection with any of the foregoing, resulting from, relating to or arising out of or in connection with (i) any failure of the District duly to perform or observe any term, provision, covenant, agreement or condition hereunder to be performed or observed by or on behalf of the District or (ii) any negligence or intentional misconduct of the District. The District hereby specifically and expressly waives any and all immunity of the District under industrial insurance, Title 51 RCW, and agrees that the Parties mutually negotiated the foregoing waiver. Further, the indemnification obligations of the District under this Agreement shall not be limited in any way by insurance or any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefits acts or other employee benefits acts; provided, however, that the District's waiver of immunity by the provisions of this section extends only to claims against the District by the City and does not include, or extend to, any claims by the District's employees directly against the District.
- B. The City hereby indemnifies and agrees to hold harmless and release the District and its elected and other officials, officers, employees, and agents and each of the heirs, personal representatives, successors and assigns of any of the foregoing from and against any and all losses, claims, damages, costs, demands, fines, judgments, penalties, obligations, payments, and liabilities, together with any reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and out-of-pocket expenses and reasonable costs and expenses of investigation) incurred in connection with any of the foregoing, resulting from,

relating to or arising out of or in connection with (i) any failure of the City duly to perform or observe any term, provision, covenant, agreement or condition hereunder to be performed or observed by or on behalf of the City or (ii) any negligence or intentional misconduct of the City. The City hereby specifically and expressly waives any and all immunity of the City under industrial insurance, Title 51 RCW, and agrees that the Parties mutually negotiated the foregoing waiver. Further, the indemnification obligations of the City under this Agreement shall not be limited in any way by insurance or any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefits acts or other employee benefits acts; provided, however, that the City's waiver of immunity by the provisions of this section extends only to claims against the City by the District and does not include, or extend to, any claims by the City's employees directly against the City.

- C. With respect to any portions of this Agreement subject to RCW 4.24.115 in the event of any concurrent negligence on the part of the District and the City, the indemnification obligations of the indemnitor under this Agreement shall be valid and enforceable only to the extent of the negligence of the indemnitor.
- D. Notwithstanding any other provision of this Agreement, neither the District nor the City shall be liable under or pursuant to this Agreement for indirect, incidental, special, exemplary or consequential damages, including but not limited to damages for lost profits or benefits, even if such Party has been advised of the possibility or existence of such damages.
- E. Notwithstanding any other provision of this Agreement, in no event shall either Party have any responsibility or liability whatsoever for or with respect to any claim by or on behalf of any retail customer of the other Party relating to water service provided by such other Party within its retail water service area.
- F. Notwithstanding any other provision of this Agreement, in the event any lawsuit or other claim is made against either Party or both, arising from the act or omission of either, the Parties agree that they will cooperate in the settlement or litigation of such claim by asserting mutual defenses without waiving or compromising potential claims against each other. In the event such claim or litigation exposes the Parties to joint and several liability, either Party may seek dismissal by motion prior to, during, or after trial, but neither Party shall make any claim of indemnity or contribution or seek any relief against the other in such litigation until completion of such litigation and entry of final judgment of joint and several liability. Following final judgment, either Party shall have the right to seek mediation and binding arbitration of the issue of comparative liability and contribution to the satisfaction of the judgment on the basis of standard rules of comparative fault in the State of Washington. The award granted shall include reasonable allocation of costs and attorneys fees and interest on any portion of any judgment paid by one Party on behalf of the other at the prevailing rate for investments within the state pool.

## 11. NOTICES AND OTHER COMMUNICATIONS

- A. Any notice required or permitted to be given under or pursuant to this Agreement shall be in writing and shall be delivered to the intended recipient Party either in person or by United States mail at its address set forth below. Notices delivered in person shall be effective upon delivery. Notices sent by mail shall be effective on the third day after mailing.



If to the District:

Public Utility District No. 1 of Snohomish County, Washington  
2320 California Street  
P.O. Box 1107  
Everett, WA 98206  
Attn: Zeda Williams  
Tel. (425) 783-8307  
FAX (425) 783-8238

If to the City

City of Sultan  
703 First Street  
Sultan, WA 98294  
Attn: Laura Koenig, City Clerk  
Tel. (360) 793-2231  
FAX (360) 793-3344

- B. Either Party may change the address to which notices should be sent by giving notice of such change in accordance with the requirements of Section 11A.

## 12. RELATIONSHIP OF THE PARTIES

- A. This Agreement describes the entire relationship of the Parties with regard to the subject matter herein concerned. Except as maybe explicitly provided otherwise herein, the Parties are independent contractors and shall not be deemed to be partners, joint venturers, principals, or agents of each other for any purpose whatsoever. Each Party shall have and maintain sole and complete control over all of its employees, agents, and operations. Except as may otherwise be explicitly provided herein, or in separate agreement, each and all of the obligations, responsibilities, and liabilities of the Parties under and in connection with this Agreement are several, and not joint, and no separate legal or administrative entity will be created to fulfill the purposes of this Agreement.

While the District shall be obligated to pay the Project construction contractor(s) for all work it duly performs; the City shall incur no obligation with regard to such contractor under any agreement the District enters with any contractor.

## 13. DISPUTE RESOLUTION

- A. Any dispute under or in connection with this Agreement may, upon the mutual agreement of the Parties be submitted for resolution by mediation or binding arbitration. Disputes not resolved in such manner shall be resolved in Superior Court for Snohomish County, Washington. The prevailing Party in any dispute, which is resolved through mediation, arbitration, or litigation, shall be entitled to reasonable attorney fees and costs.

## 14. MISCELLANEOUS

### A. Integration Clause

This Agreement, together with Exhibits A and B, sets forth the entire Agreement of the Parties and supersedes any and all prior agreements with respect to the subject matter of this Agreement. The rights and obligations of the Parties hereunder shall be subject to and governed by this Agreement. The headings used herein are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

### B. No Third Party Beneficiaries

Except as expressly set forth in this Agreement, none of the provisions of this Agreement shall inure to the benefit of or be enforceable by any third party.

### C. Waivers

Except as otherwise provided herein or as agreed by the parties, no provision of this Agreement may be waived except as documented or confirmed in writing. Any waiver at any time by a Party of its right with respect to default under this Agreement, or with respect to any other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter. Either Party may waive any notice or agree to accept a shorter notice than specified in this Agreement. Such waiver of notice or acceptance of shorter notice by a Party at any time regarding a notice shall not be considered a waiver with respect to any subsequent notice required under this Agreement.

### D. Invalid Provision

The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

### E. Amendment

No change, amendment, or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties. It is stipulated that any Amendment or series of Amendments to this Agreement for a total amount, or having an estimated total financial impact of not to exceed **Five Hundred Thousand Dollars (\$500,000.00)** may be executed and approved by the Parties' respective general manager and mayor, with a report of such action thereafter to each Party's governing body.

### F. Assignment and Subcontracts; Binding Agreement

Neither Party may assign this Agreement, or assign or subcontract all or any part of such Party's rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Without in any way limiting the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

G. Further Assurances

Each Party hereto covenants and agrees to do all things necessary or advisable, including but not limited to the preparation, execution, delivery and recording of any instruments or agreements, in order to confirm and better assure the intent and purposes of this Agreement.

H. Counterparts

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

I. Signature Clause

Each of the undersigned signatories represents and warrants that he or she has all necessary and proper authorization to execute and deliver this Agreement on behalf of the Party on behalf of which he or she is signing.

J. Governing law; Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The Parties (i) agree that any lawsuit or judicial action or proceeding arising out of or relating to this Agreement must be heard in the Superior Court of the State of Washington in and for Snohomish County; (ii) waive any objection to the laying of the venue of any such suit, action or proceeding; (iii) irrevocably submit to the jurisdiction of any such court in any such suit, action or proceeding; and (iv) consent to service of process by mail in respect of any such suit, action or proceeding.

K. Rule of Construction

No provision of the Agreement shall be construed in favor of or against either of the Parties hereto by reason of the extent to which any such Party or its counsel participated in the drafting thereof or by reason of the extent to which such provision or any other provision or provisions of this Agreement is or are inconsistent with any prior draft thereof.

L. Force Majeure

A "Force Majeure" shall be an occurrence which prevents, delays, or interferes with the performance of work on or for the Project, including but not limited to a strike, lockout, change in governmental law or regulation, riot, insurrection, war, sabotage, fire, flood or natural disaster, and which does not proximately result from the misconduct, negligence or failure to exercise reasonable care of the Party claiming to have been affected by the Force Majeure. A Party shall not be in breach of this Agreement as a result of such Party's failure to perform its obligations under this Agreement when such failure is caused by a Force Majeure which such Party, despite the exercise of due diligence, is unable to remove with reasonable dispatch; provided, however, that nothing in this Agreement shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.

M. Definitions

Unless otherwise required by the text of this Agreement, all technical terms contained herein shall have the meaning ordinarily assigned to them in the water utility field.

N. Recording; submission to State Government

This Agreement shall be recorded in the office of the Snohomish County Auditor and this Agreement shall be submitted to any officer or agency of the state government that has constitutional or statutory powers of control over the provision of services or facilities that are the subject of this Agreement.

15. AUDIT RIGHTS

- A. The City, upon reasonable notice to the District, shall have the right during this Agreement and for two years hereafter to inspect the records of the District pertaining to this Agreement and expenditures made hereunder for any part of the Project and to perform and audit in accordance with generally accepted audit standards. The District shall make such records available without charge to the City, during its regular business hours.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

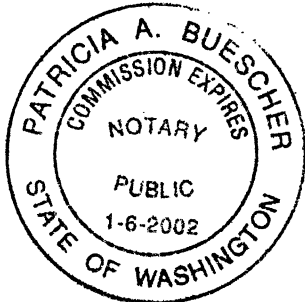
PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON

By: *Paul Elias*  
 Its: General Manager

STATE OF WASHINGTON )  
   ) ss.  
 COUNTY OF SNOHOMISH )

I certify that I know or have satisfactory evidence that Paul Elias is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that said person was authorized to execute this instrument and acknowledged it as the General Manager of PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, a municipal corporation, to be the free and voluntary act of this corporation for the uses and purposes mentioned in the instrument.

Dated this 21 day of June, 2001.



*Patricia A. Buescher*  
 (Signature of Notary)

Patricia A. Buescher  
 (Legibly Print or Stamp Name of Notary)

Notary Public in and for the state of  
 Washington, residing at Brierett

My appointment expires 1/6/02

THE CITY OF SULTAN, WASHINGTON

By: C H Rowe  
Its: Mayor

STATE OF WASHINGTON )  
                                  ) ss.  
COUNTY OF SNOHOMISH)

I certify that I know or has satisfactory evidence that C. H. ROWE is the person who appeared before me and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the MAYOR of the CITY OF SULTAN, a municipal corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this 11<sup>th</sup> day of ~~April~~, June 2001 <sup>from</sup>



Kathleen D. McCormick  
(Signature of Notary)

Kathleen D. McCormick  
(Legibly Print or Stamp Name of Notary)

Notary Public in and for the state of Washington, residing at  
Monroe  
My appointment expires 6-9-03.

**EXHIBIT B**  
**SCOPE OF WORK**  
**PHASE I and II**  
**SULTAN/SKYKOMISH WATER SUPPLY PIPELINE**

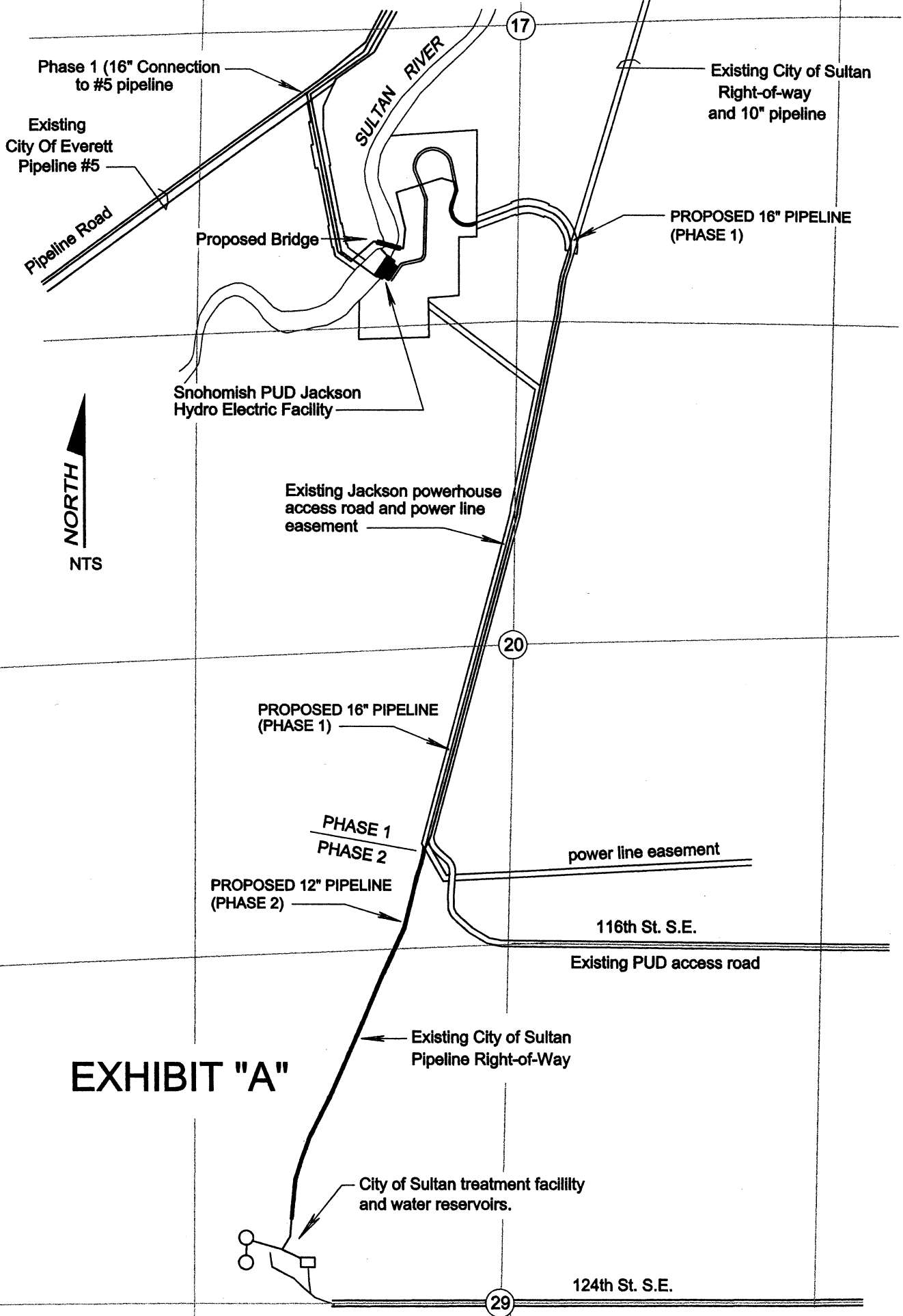
The Services to be provided by the Snohomish County PUD, include:

1. Prepare a base map of the Project alignment, tasks include ground pre-marking, aerial mapping, surveying and CAD work.
2. Research and acquire easements, or purchase real property for Project facilities utilizing condemnation authority and process as needed and as agreed by the parties (Provided, that at its own cost Sultan shall document, and provide easements for Phase II in the event Sultan determines that easements only are required for Phase II facilities).
3. Identify wetlands, sensitive areas, 100-year floodplain, and other physical features that affect permits and Project design.
4. Complete and submit applications for and secure the shoreline permit, and other permits as may be required. Review the project with agencies having jurisdiction. (Provided, that Sultan shall be the “Lead Agency” for all SEPA procedures).
5. Meet with representatives of Sultan as required to discuss design features, location of existing pipelines, control features, easements and other real property acquisitions, schedule, and other issues as may be required.
6. Secure consultants and specialists as may be required, including geotechnical, legal, surveying, structural, SCADA, wetlands, and fisheries.
7. Coordinate with City of Everett for placement and construction of a tap on 5 line to supply the Project.
8. Complete engineering design of the Project including plans and specifications, contract documents, engineer’s estimate, and bid documents. Review the design with Sultan prior to advertising for bids.
9. Advertise for bids, open, evaluate and following consultation with Sultan, award contract(s).
10. Provide field engineering, field surveying and contract administration services during construction, including inspection, payment requests, consideration, and negotiation of claims and change orders, testing and final acceptance.
11. Revise the design drawings to conform with construction as-built records, inspection reports, materials submittals, and other information for both Phase 1 and Phase 2 Projects.
12. Confirm that all contractors and subcontractors have been paid and all disputes settled.
13. Address warranty issues that may arise.

14. Prepare an Operations and Maintenance Manual for Phase 1 and review City's Operations and Maintenance Manual for Phase 2.
15. Participate in the start-up and testing of the facilities.
16. Provide hard and digital copies, when appropriate, of work product including aerial mapping, easements obtained, permits, specifications, and design and as built drawings.
17. Perform such other tasks as are reasonably necessary and appropriate to accomplish and the general purpose of the Agreement between the Parties and to carry out those obligations assigned to the District therein.



SEC. 17,20,29, T28N, R8E, W.M.



Xref: None  
Plot Scale: 1"=1000

Pc2 File: B&H1055cm.pc2

Cad File: City of Sultan\40188.00\input\ExhibitA.dwg  
Plot Date: 06/09/01

EXHIBIT "A"