

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

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**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 116th 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 (116th 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,

