

**EVERETT AND ALDERWOOD WATER AND WASTEWATER DISTRICT  
WATER SUPPLY CONTRACT**

**THIS CONTRACT** is made and entered into by and between the City of Everett, a municipal corporation of the State of Washington, hereinafter referred to as "the City," and the Alderwood Water and Wastewater District, a municipal corporation of the State of Washington, hereinafter referred to as "District."

**WHEREAS**, the City owns and operates a water supply system located in the Sultan Basin of Snohomish County, Washington. Said system has regional supply capability for domestic, commercial and industrial water consumption; and

**WHEREAS**, pursuant to RCW Chap. 35.92 and RCW Chap. 39.94, the City is authorized to enter into contracts with other municipalities and districts to supply such other municipalities and districts with water. Pursuant to WAC 246-290-100 (2001), the City prepared a Water System Plan, which identifies the District as being within the City's water supply area; and

**WHEREAS**, the City has been the sole water supplier to the District for many years; and

**WHEREAS**, the District and the City desire to execute a water supply agreement designating the City as the source of supply for the District;

**NOW, THEREFORE**, for the mutual benefits to be derived, the parties agree as follows:

1. **Delivery of Water.** The City hereby agrees to provide and sell to the District, and the District agrees to purchase from the City, a maximum of one hundred six million gallons of water per day (106 MGD). A maximum of fifty-five million gallons per day (55 MGD) shall be allowed at any single specific connection point. The City shall be the District's primary source of water. The District may utilize existing ground-water rights and re-use water. The District may use other sources of water with the prior written consent of the City.
2. **Point of Delivery.** The City shall deliver water to the District at agreed connection sites. The agreed connection sites are the District's Clearview pump station and the District's Evergreen Way pump stations. Other connection points will be established by mutual written agreement, which agreement shall not be unreasonably withheld by the City. The District shall install, at its cost, a master meter system at

agreed connection points. The master meter installation(s) shall meet the specifications and approval of the City and shall become the property of the City after installation. The actual point of delivery at each connection point shall be the downstream flange of the valve downstream of each master meter. If the master meter is not connected directly to the City's pipeline, the actual point of delivery shall be the downstream flange of the valve nearest the City's pipeline.

3. **Quantity of Water.** The City and the District agree that each have made, and will continue to make, significant capital investments in water supply facilities that are interdependent and that coordinated planning will be required throughout the term of this contract to maximize public benefits and minimize costs. The parties acknowledge that peak day demands of the District will not exceed one hundred six (106) million gallons per day. Estimated average daily demands and peak day demands of the District and its major wholesale customers for the near future are shown on Attachment A attached hereto. The quantity of water delivered shall be measured by the master meters referred to in paragraph 2 above.
  
4. **Quality of Water.** The City agrees that all water delivered to the District at the connection point(s) shall be of the same standard and quality as normally delivered to the City's other customers. The City shall be responsible for meeting state and federal standards for drinking water at the connection points. All water supplied by the City for use or sale by the District shall be upon the express condition that after water passes the connection points, it becomes the property of the District, and the City shall not be liable for any degradation of water quality and resulting damages that may occur beyond said point. The City shall not be responsible for acts of sabotage that might degrade the quality of water delivered to the District.
  
5. **Rates and Charges.**
  - A. **Rates for Water** – The District shall be billed and pay to the City for each million gallons of water delivered as determined in the following manner:
    1. Demand charge of \$30.65 per million gallons shall be set and remain in effect until December 31, 2011. After that date, the City reserves the option of reasonably modifying the demand charge by using industry accepted rate-making methodology.
    2. A commodity charge of \$184.35 per million gallons shall be set and remain in effect until at least March 1, 2005. Future commodity charges will be based on cost of service studies

using modern cost of service principles. Commodity charges will be reviewed no less frequently than every two years and adjusted, as needed, effective with the mid-March master meter reading of year of adjustment. The commodity charge shall include a rate multiplier (based on the sum of both demand and commodity charges) of 1.20. There shall be no rate multiplier for filtration. At any time during the term of this agreement the District may change from a rate multiplier charge to a connection fee charge based on the mutual agreement and execution by both the District and the City.

3. Any increase in or additional excise, utility or other taxes imposed by the federal, state, or other governmental agency, including such taxes which may be imposed upon the water and filtration utility by the Everett City Council, shall be borne by all classes of users of the City's water, including the District to whom such tax may be applicable, in proportion to the total revenues received from such users.

**B. Rates for Filtration**

1. In addition to water rates discussed above, the District agrees to pay for **cost of filtering water** in accordance with the following formula:

$$R = \frac{P}{X} \frac{(M + C + DS + FDS + O)}{Q}$$

- R = Additional cost for filtered water – (to be added to current water rate) computed to nearest ten-thousandth of a Dollar per 100 cubic feet.
- M = Maintenance & Operation cost for Lake Chaplain Filtration plant for preceding year less any credit from the sinking fund.
- C = Additional Capital Outlay costs attributable to Filtration plant for preceding year, less funds collected and used from the sinking fund. (See Section 2).
- DS = Annual debt service, exclusive of reserve interest income, if reserve funded from bond proceeds, attributable to total project costs for initial construction of Lake Chaplain Filtration plant, including coverage.
- FDS = Annual debt service, exclusive of reserve interest income, if reserve funded from bond proceeds, attributable to total project costs for future

construction of Lake Chaplain Filtration plant, including coverage, with total project cost reduced by the amount of funds in sinking fund at the time of issuing bonds.

- O = Annual overhead attributable to Filtration plant to be determined from previous years expense as follows:
    - 2% of Filter plant material and supply costs excluding power and 14% of labor costs at filter plant including fringe benefits.
  - P = District Maximum Daily Demand (day of highest use in preceding year) divided by the District Average Daily Demand (for preceding year)
  - Q = Quantity of water produced in previous year expressed in 100 cubic feet. (Filter Plant Meter Reading)
  - X = System Maximum Daily Demand (day of highest use IN preceding year) divided by the System Average Daily Demand for preceding year)
2. The City agrees to establish a Sinking Fund made up of the bond coverage funds required for the Annual Debt Service (DS) for initial construction cost and Annual Debt Service (FDS) for future construction costs of the Lake Chaplain filtration plant facilities. Bond coverage funds collected from all wholesale and retail customers under the Rate Formula (R) in Paragraph 5(B)(1) above shall be placed in this Sinking Fund and the principal and interest from investments from the Sinking fund shall be used for Additional Capital Outlay Costs (C) attributable to the Lake Chaplain filtration plant before other City funds are used thereby reducing the (C) value in the Rate Formula (R) by the amount used; or if revenue bonds are required for future construction (FDS) the amount of bonds required shall be reduced by the amount collected or remaining in the Sinking Fund including interest on investments at the time of issue of the bonds for future construction.

In the event the Sinking Fund balance exceeds \$2 million during the term of the bond issue(s), funds in excess of \$2 million shall be used to defray O&M costs. At the expiration of the term of the bond issue(s) any balance remaining in the Sinking Fund shall be credited to O & M until fully utilized.

The filtration rate shall be adjusted annually and be effective with the April 1<sup>st</sup> meter read for that year.

6. **Payment.** On a monthly basis, the City shall bill the District for water delivered through pipeline master meters. Said bills shall be payable within thirty (30) days after issuance of the invoice. Bills delinquent for any period greater than sixty (60) days after issuance of the invoice shall be assessed interest in the amount equal to one percent a month or such greater amount as allowed by City ordinance. The City shall also bill the District for Reservoir 3 land lease charges on a monthly basis. In case of billing errors, or errors caused by misadjusted meters, the City may collect back to date of last meter calibration to a maximum of twelve months.
  
7. **Resale or Distribution of Water.** After water has passed the points of delivery and has entered the District's system, said water becomes the property of the District and under its exclusive authority, subject only to the following express limitations:
  - a. The District agrees not to allow any new customer connections to its water system larger than twenty (20) inches, or supply a new customer more than five million gallons per day at peak, unless the District first provides written notification to the City for said connection.
  - b. The District will distribute water received from the City in a manner consistent with the City Water System Plan, and the District's Water System Plan, as approved by the Washington State Department of Health if appropriate.
  - c. The District shall not serve water received from the City, pursuant to the terms of this Agreement, in areas outside the City's approved service area shown in Attachment B attached hereto, without prior written approval of the City.
  - d. In the event of annexations of the District's service area, by Everett, the City reserves the right to assume service to those customers who have been annexed into the City in accordance with State law.
  
8. **Lease of Property.** The City agrees to lease to the District, and District agrees to make lease payments to the City for, all sites leased to the District as described in this section and shown in Attachments C & D. The amount due shall be made in monthly payments hereby established as \$5,150.00 per month. The Rent shall be adjusted annually to an amount equal to the percentage increase or decrease of the Seattle-Tacoma-Bremerton Consumer Price Index (CPI) for All

Urban Consumers. All items (1982-1984=100) published by the United States Department of Labor, Bureau of Labor Statistics (the "Bureau"). If the Bureau discontinues publishing the CPI the parties mutually shall agree on a substitute index of comparable statistics on the cost of living for Snohomish County by an agency to the United States or by a responsible financial periodical of recognized authority. The annual Rent adjustment shall take effect on January 1 of each year.

### **Property Legal Descriptions**

#### **Pump station #1 site (See Attachment C)**

Beginning at the E $\frac{1}{4}$  corner of Section 6, Township 28N, Range 5E, WM, thence westerly along the south line of the NE $\frac{1}{4}$  of said Section 6, a distance of 2,466.68' to a point which is the NW corner of the 13.98 acre parcel owned by the City of Everett and comprising a portion of the tract known as City of Everett Reservoir No. 3 Site, (recorded June 7, 1923 in Box 129 of Deed, page 511) and which point lies on the easterly boundary of Washington Primary State Highway No. 1, thence southerly along the easterly boundary of said Washington Primary State Highway No. 1 a distance of 45'; thence turning an angle of 90° left; thence easterly a distance of 80' to the true point of beginning; thence continue on the same straight line a distance of 110'; thence turn an angle of 90° right; thence southerly and parallel to the easterly boundary of said Washington Primary State Highway No. 1 a distance of 130'; thence turn an angle of 90° right; thence westerly a distance of 110'; thence turn an angle of 90° right; thence northerly and parallel to the easterly boundary of said Washington Primary State Highway No. 1 a distance of 130' to the true point of beginning and containing approximately 0.33 acres.

#### **Pump station # 2 site (See Attachment D)**

In Section 6, Township 28 north, Range 5 east, W.M. Snohomish County, Washington, described as follows:

Beginning at the east  $\frac{1}{4}$  Cor. of said Section 6.

Thence westerly along the south line of the NE  $\frac{1}{4}$  of said Section 6 a distance of 2,466.68' to a point described as the NW corner of tax lot 4-009, said tax lot owned by the City of Everett. Said tax lot 4-009 also known as the City of Everett Reservoir No. 3 site (recorded June 7, 1923 in Book 1 29 of Deeds, Page 511). Said NW Cor. of said tax lot 4-009 lies on the easterly margin of Washington Primary State Highway No. 99.

Thence S 10°41'41"E along the easterly margin of said Highway 99 a distance of 45' to the T.P.O.B.

Thence S 79° 18'19"E, 80.00';

Thence S 10° 41'39"W, 130.00';

Thence S 79° 18'19"E, 110.00';  
Thence S 10° 41'41"W, 54.54';  
Thence N 79° 56'07"W, 125.78' more or less to a southern corner  
of the reservoir No. 3 property;  
Thence N 87° 49'50"W along the southern property line, 64.94'  
more or less to the east margin of State Highway 99;  
Thence N 10° 41'41"E along the easterly margin of said State  
Highway 99 a distance of 195.55' more or less to the T.P.O.B.

**Pump station No 1 Pipeline Easement** (See Attachment E)

Beginning at a point on Everett's existing 36" water pipeline at  
the 36" tee which point lies approximately 130' easterly and  
approximately 30' southerly of the NW corner of the 13.98 acre  
parcel owned by the City of Everett and comprising a portion of  
the Tract known as City of Everett Reservoir No. 3 Site (Recorded  
June 7, 1923 in Book 1 29 of Deed, page 511)' thence southerly on  
a straight line into and through the proposed Alderwood Water  
District pumping station located within the site above described  
in Description "C"; and continue southerly to the south boundary  
of said pumping station site; thence southerly on a straight line  
parallel to the easterly boundary of Washington Primary State  
Highway No. 1 a distance of 5'; thence turn an angle of 23° left;  
thence southeasterly a distance of 670' more or less; thence turn  
an angle of 15° right; thence southerly a distance of 20' more or  
less to a point in the north boundary line of Berkshire Drive  
which point is also on the southerly boundary of the 13.98 acre  
parcel referred to above, and which point lies 30' westerly of the  
NW corner of Lot 11, Blk. 2 of Beverly Hills Division No. 2.

The entire pumping station site and pipeline description referred  
to as Descriptions "C" and "D" above, are contained wholly  
within the NW¼ of the SE¼ of Section 6, Township 28N, Range  
5E, WM.

**Pump station No 2 Pipeline Easement** (See Attachment F)

In Section 6, Township 28 north, Range 5 east, W.M. Snohomish County,  
Washington, described as follows:

Beginning at the east ¼ Cor. of said Section 6.

Thence westerly along the south line of the NE ¼ of said Section  
6 a distance of 2,466.68' to a point described as the NW corner of  
tax lot

4-009, said tax lot owned by the City of Everett. Said tax lot 4-  
009 also known as the City of Everett Reservoir No. 3 site  
(recorded June 7, 1923 in Book 129 of Deeds, Page 511). Said  
NW Cor. of said tax lot 4-009 lies on the easterly margin of  
Washington Primary State Highway No. 99.

Thence S 10° 41'41"W along the easterly margin of said Highway 99 a distance of 229.54'; thence S 79° 18'19E, 133.88' more or less to the easement centerline T.P.O.B.

Thence S 51° 13'40"E, 75.69';

Thence S 88° 07'16"E, 340.09';

Thence S 2° 02'58"W, 345.22';

Thence S 87° 58'38"E, 605.99';

Thence S 1° 30'11"W, 228.35' more or less to a point on the south line of said tax lot 4-009

Said easement being 15 feet in width lying 7.5 feet on each side of the heretofore described easement centerline.

The District agrees to perform or cause to be performed all construction, reconstruction, maintenance and operation in connection with the pumping station, pipeline and appurtenances legally described above, and to pay all costs associated therewith. For purposes of this Agreement, District's responsibility for construction, reconstruction, maintenance and operation, shall end at the face of the southerly branch of the 36" tee located as described above.

The District agrees that the pumping station structure and grounds shall be continuously maintained in a neat and presentable condition to the satisfaction of the City. If, in the opinion of the City, the District is not properly maintaining the structure and grounds, the City shall provide the District with written notice to this effect. If the District fails to perform the necessary maintenance or cleanup work within thirty (30) days of receipt of the written notice, the City shall have the right to perform or cause to be performed, the necessary maintenance or cleanup work and the District hereby agrees to reimburse the City for the full cost of any such maintenance or cleanup work so performed. Any additions, alterations, reconstruction or later modification to either the pumping station or the pipeline shall be submitted to the City for approval and said approval must be obtained prior to commencement of any additions, alterations, reconstruction or modification. The City shall have the right of reasonable access to the pumping station, pipeline and appurtenances, including keys to be provided by the District. The City and the District agree to work in collaboration regarding security measures at the pump station site.

The District agrees to permit the City to obtain and transmit by telemetering any and all water system operational information available at the pumping station.

If the District abandons and ceases to use the property herein leased for six consecutive months or more, the City shall send written notice to the District instructing the District to commence use of the property or abandon its lease



rights. If the City does not receive a response from the District within sixty (60) days, the City may terminate the lease.

At termination of the lease, the District shall have the right to remove all installations and improvements made by the District over the lease term provided it shall restore the land to the same condition as it existed prior to construction.

9. **Term of Contract.** The term of this contract shall be from the date of its mutual acceptance by the parties until January 1, 2055. The parties may renew this contract by mutual written agreement upon such terms and conditions as the parties may later agree. The City agrees to work with the District regarding water availability beyond the expiration date of this agreement.

10. **Continuity of Service.**

- a. To the extent feasible, the City shall continuously maintain service to the District. In the event of a general emergency or water shortage, the City and the District will share in implementing the necessary water conservation measures. Recognizing that both the City and the District have critical customers, the City will consult with the District regarding water allocations. General restrictions placed upon deliveries to the District shall be made according to the City's most recent Emergency and/or Drought Response Plan. In the event of localized emergency problems, temporary service interruptions may result.
- b. It is recognized by both parties that emergency conservation measures may have to be implemented by the City on a regional basis in order to meet an emergency condition. The District shall assist and support such emergency conservation measures.
- c. The City shall provide oral notice to the District, and may temporarily interrupt or reduce deliveries of water to the District, if the City determines that such interruption or reduction is necessary or reasonable in case of system emergencies. Except in cases of emergency, and in order that District's operations will not be unreasonably interfered with, the City shall give the District five (5) days notice of any other interruptions or reduction in services, the reason therefore, and the probable duration thereof, including any interruptions or reduction in services that will be caused by installation of equipment, repairs, replacements, investigations, inspections, or

other maintenance performed by the City on its water system or those parts of the system supplying the District.

11. **Force Majeure and Changes in Law.** None of the parties hereto shall be considered to be in default in respect to any obligations hereunder if prevented from fulfilling such obligations due to conditions beyond their reasonable control or due to changes in state or federal law. If a party is unable to perform in whole or in part because of such condition or change in the law, the party shall diligently and promptly take reasonable steps to allow it to perform.
  
12. **Construction, Operation and Maintenance of Capital Improvements.** At its sole cost and expense, the District shall construct or cause to be constructed all capital improvements to its water system necessary to implement this agreement. The District shall maintain and repair such capital improvements. All construction, maintenance and repairs shall strictly comply with any standards approved by the Washington State Department of Health as appropriate. By separate agreement, the District will contract with the City for operation of the Clearview pump station. The District shall annually provide to the City a water system report to include number of customers, peak use related to its Clearview partners and other information as reasonably required by the City to optimize operations.
  
13. **Legal Relations**
  - A. Each party shall defend, hold harmless, and indemnify the other from any and all claims, demands, suits, and judgments arising out of its conduct. If, and to the extent, the parties are both liable to a third party claimant, each party shall be responsible to the extent of its fault, and shall defend, hold harmless, and indemnify the other for its fault.
  
  - B. Notwithstanding any other provision of this Agreement, neither the District nor the City shall be liable to the other for indirect, incidental, special, exemplary or consequential damages, including but not limited to damages for lost revenues or benefits, even if such party has been advised of the possibility or existence of such damages
  
14. **No Joint Venture.** 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 agencies and shall not be deemed to be partners, joint ventures, 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.

15. **Dispute Resolution.** Any dispute under or in connection with this Agreement may, upon the mutual agreement of the parties, be submitted for resolution by mediation. Disputes not resolved in such manner shall be resolved in Superior Court for Snohomish County, Washington
  
16. **Miscellaneous.**
  - A. **Entire Agreement.** This Agreement, together with any attachments, sets forth the entire agreement of the parties.
  
  - B. **Interpretation.** The headings used herein are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.
  
  - C. **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.
  
  - D. **Waivers.** Any waiver at any time by a party of its right with respect to a 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.
  
  - E. **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.

- F. 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.
- G. 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.
- H. Governing Law Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The parties 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.
- I. 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.

17. **Notice.** Formal notice and official communications between the parties regarding this Contract shall be sent by first class mail as follows:

To Everett  
Mayor  
City of Everett  
2930 Wetmore Avenue  
Everett WA 98201

To The District  
General Manager  
Alderwood Water and Wastewater District  
3626 156<sup>th</sup> ST SW  
Lynnwood WA 98037

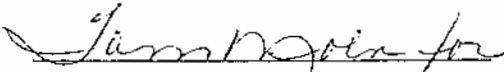
IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their proper Officers on the 28th day of January, 2005.

CITY OF EVERETT

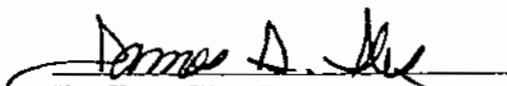


Ray Stephanson, Mayor

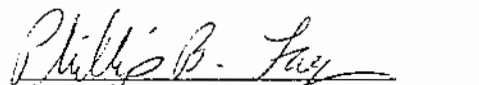
ATTEST:

  
Sharon Marks, City Clerk

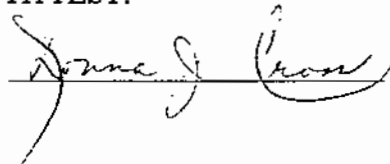
APPROVED AS TO FORM:

  
Jim Iles, City Attorney

ALDERWOOD WATER AND  
WASTEWATER DISTRICT

  
Phillip B. Lay, Board President

ATTEST:



Attachment A

**ALDERWOOD AND ITS MAJOR WHOLESALE CUSTOMERS**

**WATER DEMAND BASELINE FORECAST**

Utility Customer	2000		2006		2010		2020		2050+	
	ADD	PDD	ADD	PDD	ADD	PDD	ADD	PDD	ADD	PDD
Alderwood	12.6	27.4	14.7	32.0	16.1	35.1	18.3	39.9	23.3	51.0
Cross Valley (P)	0.3	0.5	0.8	1.5	1.1	2.2	1.7	7.6	2.2	18.0
Edmonds	3.4	6.9	3.5	7.0	3.6	7.1	3.6	7.2	4.6	9.0
Lynnwood	3.7	6.3	4.0	6.7	4.1	7.0	4.7	8.0	6.0	10.0
Mountlake Terrace	2.0	3.9	2.0	4.0	2.0	4.1	2.2	4.5	2.8	6.0
Silver Lake	2.8*	6.2	3.3	7.3	3.6	8.0	4.0	8.7	5.0	12.0
<b>TOTAL</b>	24.8	51.2	28.3	58.5	30.5	63.5	34.5	75.9	43.9	106.0

Source: Everett Public Works 2000 Comprehensive Water Plan Except for 2050+ which is also based on the Clearview Agreement between Alderwood, Cross Valley and Silver Lake.

Note: While some of the 2050+ demands may be for outside of the service area in Attachment B, service would be subject to Section 7.

ADD= Average Daily Demand in MGD

PDD = Peak Day Demand in MGD

P = Partially Supplied by Everett Source

