

**AMENDED AGREEMENT FOR
WHEELING WATER
BETWEEN
THE CITY OF SEATTLE
AND THE
OLYMPIC VIEW WATER AND SEWER DISTRICT**

September 29, 2015

TABLE OF CONTENTS

| | <u>Page(s)</u> |
|---|----------------|
| RECITALS | 3 |
| SECTION I. DEFINITIONS | 3 |
| SECTION II. TERM OF CONTRACT AND GUARANTEES | 4 |
| <i>II.A. Term of Contract</i> | <i>4</i> |
| <i>II.B. Agreement to Wheel Water</i> | <i>4</i> |
| <i>II.C. Service Delivery</i> | <i>4</i> |
| <i>II.D. Infrastructure</i> | <i>4</i> |
| <i>II.E. Water Quality</i> | <i>5</i> |
| SECTION III. WHEELING COSTS | 6 |
| <i>III.A. Cost Recovery</i> | <i>6</i> |
| <i>III.B. Billing</i> | <i>7</i> |
| <i>III.C. Rate Adjustments</i> | <i>8</i> |
| SECTION IV. ADMINISTRATION | 8 |
| <i>IV.A. Severability</i> | <i>8</i> |
| <i>IV.B. Consent</i> | <i>8</i> |
| <i>IV.C. Emergency Situations</i> | <i>8</i> |
| <i>IV.D. No Joint Venture - Individual Liability</i> | <i>9</i> |
| <i>IV.E. Complete Agreement</i> | <i>9</i> |
| <i>IV.F. Venue, Jurisdiction and Specific Performance</i> | <i>9</i> |
| <i>IV.G. Default</i> | <i>9</i> |
| <i>IV.H. Force Majeur</i> | <i>9</i> |
| <i>IV.I. No Third Party Beneficiaries</i> | <i>9</i> |
| <i>IV.J. Successors</i> | <i>10</i> |
| <i>IV.K. Exhibits</i> | <i>10</i> |

**AGREEMENT FOR WHEELING WATER
BETWEEN
THE CITY OF SEATTLE
AND
OLYMPIC VIEW WATER AND SEWER DISTRICT**

THIS AGREEMENT is entered into between the CITY OF SEATTLE (“Seattle”), a municipal corporation of the State of Washington, and the OLYMPIC VIEW WATER AND SEWER DISTRICT (“Utility”), a municipal corporation of the State of Washington.

RECITALS

1. Seattle owns and operates a system for the supply, transmission and distribution of water and is authorized to sell and distribute water to its residents and other customers located outside its corporate limits, and
2. The Utility entered into a Wholesale Water Supply Contract with Seattle, to purchase water supply, and
3. Seattle, within its Wholesale Water Supply Contract, has defined those assets that comprise the Regional Transmission System used to deliver water throughout the region, and
4. The delivery of water beyond the bounds of Seattle’s Regional Transmission System is not a component of the Utility’s Wholesale Water Supply Contract with Seattle, and
5. The Utility cannot be readily served directly from the Regional Transmission System,

NOW, THEREFORE, in consideration of mutual covenants herein, it is agreed as follows:

SECTION I. DEFINITIONS

For the purposes of this Agreement, the following terms have been defined as:

"Point(s) of Delivery" - The metered connections between the Utility's distribution system and Seattle's Northwest Sub-regional System.

"Northwest Sub-regional System" - Those assets identified in Exhibit A.

"Northwest Sub-regional System Allocation" – The allocation of assets, described in percentage terms in Exhibit A, used for the purposes of this agreement to establish cost sharing responsibility of those parties sharing the use of these assets.

"Seattle Regional Transmission System" - Those transmission mains, pumps and storage facilities serving Seattle’s retail and wholesale customers with water as set forth in the Wholesale Water Supply Contract.

"Wheeling" - The process of delivering water through a set of facilities from one agency to another.

"Wholesale Water Supply Contract" - The Agreement for the provision of water supply between the City of Seattle and Olympic View Water District.

SECTION II. TERM OF CONTRACT AND GUARANTEES

II.A. Term of Contract

1. This Agreement shall take effect concurrently with the Utility's Wholesale Water Supply Contract and shall remain in effect during the term of the Wholesale Water Supply Contract, so long as the Utility uses the Northwest Sub-regional System to receive water from Seattle.
2. This Wheeling Agreement may be assigned to another jurisdiction in the event of the transfer of assets identified in Exhibit A.

II.B. Agreement to Wheel Water

Seattle agrees to facilitate delivery of water pursuant to the terms and conditions of the Wholesale Water Supply Contract by Wheeling water from its Regional Transmission System to the Utility's Points of Delivery.

II.C. Service Delivery

1. Standard Level of Service. Seattle shall maintain a minimum hydraulic gradient or head at a maximum flow rate in amounts and at locations described in Exhibit C for each Point of Delivery from the Northwest Sub-regional System.
2. Interruptions of Service. Seattle may temporarily interrupt or reduce delivery of Wheeled water to the Utility if Seattle determines that such interruption or reduction is necessary or reasonable in case of system emergencies or in order to install equipment, make repairs, replacements, investigations and inspections or perform other maintenance work on the Northwest Sub-regional System facilities. Except in cases of emergency, Seattle shall give the Utility reasonable notice of any such interruption or reduction in service. Notice should include the reasons and probable duration of the interruption. Seattle shall use its best efforts to minimize service interruptions to the Utility.

II.D. Infrastructure

1. *Assets*. The Northwest Sub-regional System consists of those facilities identified in Exhibit A. The percentage attributed to each facility in Exhibit A represents the proportion of the asset that is deemed to be a sub-regional use and is referred to as the Northwest Sub-regional System Allocation (Allocation). The remaining proportion is considered to be a local use and not used for the sake of calculation in this Agreement. For the Richmond Highlands Tanks and Foy Standpipe as listed in Exhibit A, the Allocation is based on the methodology in Seattle's "2015-2018 Northwest Wheeling

Rate Study” using 0’, 10’ and 0’ operating bands for Tanks 1 and 2, and Foy Standpipe respectively. This will remain in effect unless there is a major change to these assets, such as reactivation of a refurbished or replaced Richmond Highlands Tank 1 or Foy Standpipe, or deactivation of Richmond Highlands Tank 2.

2. Operation and Ownership. Seattle owns, operates and maintains the assets used for Wheeling under this Agreement. Nothing in this Agreement shall convey ownership rights or responsibilities of Seattle’s assets to the Utility.
3. Meters. Seattle shall own and maintain appropriate metering devices at each of the Utility’s Points of Delivery to measure the amount of water delivered to the Utility. At the Utility’s request and expense, Seattle shall install and maintain equipment selected by the Utility and approved by Seattle to transmit signals to the Utility’s recording equipment (at locations determined by the Utility) of the amount of water delivered as measured by Seattle’s meter(s).
4. Points of Delivery. Water will be Wheeled to the Utility’s Points of Delivery identified in Exhibit C. In the event Seattle or the Utility find it necessary to add, replace, repair or eliminate a Point of Delivery, the costs for doing so will be billed to the Utility and paid within 30-days.
5. Facility Review. Every five years from the effective date of this Agreement, Seattle, in coordination with the Utility, shall conduct a review of the Northwest Sub-Regional System. The purpose of this review being to assess whether the individual assets listed in Exhibit A continue to serve a similar function to that performed at the inception of this Agreement. Seattle shall modify exhibit A as necessary to reflect any changes in assets or operations.
6. Capital Facilities Plan Review. When Seattle updates or amends its Comprehensive Facilities Plan (“Plan”) and such update or amendment includes a project relating to an asset in the Northwest Sub-regional System, Water Utility shall have an opportunity to review and comment on that portion of the Plan prior to submission to the Seattle City Council. This review shall be coordinated with the Comprehensive Capital Facilities Plan review under section VI.D. of the Partial Requirements Water contracts, i.e. Water Utility shall respond within 60 days of receipt of the Plan, or its approval shall be presumed to be given. The response submitted by Water Utility regarding the Northwest Sub-regional System shall be seriously considered by Seattle. Seattle will reply to Water Utility’s comments within 90 days of receipt. Water Utility and Seattle shall use their best efforts to arrive at a mutually acceptable plan. Final decisions and authority to approve capital projects relating to the Northwest Sub-regional System shall rest with the Seattle City Council.

II.E. Water Quality

Seattle shall deliver water to the Utility’s system that meets or exceeds all applicable Federal and State regulations as the same may change from time to time.

SECTION III. WHEELING COSTS

The following general principles shall apply to the establishment of all rates and charges for Wheeling hereunder.

- Seattle shall utilize generally accepted accounting principles consistently applied as a basis for developing the financial information upon which rates and charges are based.
- The rate structure should be simple to administer and easily understandable.
- The rate structure should be fair and equitable while balancing the needs of all parties.

III.A. Cost Recovery

In accordance with the foregoing principles, Seattle shall develop Wheeling rates for the Utility as follows:

1. Identification of Costs. Cost recovery pertains to those facilities listed in Exhibit A and includes both capital, and operation and maintenance costs.
 - a. Operations and Maintenance. For purposes of calculating a Wheeling rate, operations and maintenance costs are limited to (i) the cost of power used at the pumping stations listed in Exhibit A to meet average annual demand and (ii) extraordinary maintenance or repairs on any facility in Exhibit A. The extraordinary maintenance or repair costs would be allocated to the Northwest Sub-regional System by the percentage shares displayed in Exhibit A.
 - b. Capital. Total infrastructure costs shall be calculated using the utility basis. Under the utility basis, the infrastructure cost for a facility in any year shall be the sum of 1) the annual depreciation expense recorded for that facility and, 2) the product of the net book value of that facility and the rate of return on investment, which shall be 1.5% plus Seattle's average cost of debt as defined in the Wholesale Water Supply Contract.
 - i. Asset Accounts. An asset account shall be established and maintained for each facility listed in Exhibit A. Within that account Seattle shall record the original cost of the facility plus betterments and less retirements.
 - ii. Depreciation. Facilities shall be depreciated according to Standard Water System Asset Lives and a record of life-to-date depreciation shall be maintained for each facility. For future facilities no depreciation shall be recorded in the first calendar year of operation of that facility. A full year's depreciation shall be recorded in every subsequent year.
 - iii. Net Book Value. The net book value of each facility shall be its original cost plus betterments and less retirements as recorded in its facility asset account, less life-to-date depreciation.
 - iv. Capacity. Costs associated with increasing capacity of Northwest Sub-regional System facilities over and above that necessary to provide the level of service outlined in Section II.C.1 shall be borne by the party (ies) creating the need for said expansion.

2. Wheeling Rate. The Wheeling rate shall be calculated by dividing the annual cost of the Northwest Sub-regional System Allocation by the amount of water used by retail and wholesale customers using the facilities. The amount of water used will be calculated as an average of the three most recent years' of total water used by retail and wholesale customers using the facilities. The rate as of the effective date of this contract shall be \$0.03 per hundred cubic feet. Subsequent rates shall be established pursuant to Section III.C.

III.B. Billing

1. Determination of Bill. The quantity of water applied to the Wheeling rate is that measured at the Utility's Points of Delivery.
2. Payment. Seattle shall bill the Utility on a monthly basis for all charges due under this Agreement. The Utility shall pay such charges within 30-days of the billing date. Seattle, at its option, may add these charges to billings sent to the Utility in association with the purchase of water from the Wholesale Water Supply Contract.
3. Penalties for Late Payment. All late payments or monies owed shall accrue interest at 1% per month.

III.C. Rate Adjustments

1. Comprehensive Rate Review. Every five years, from the effective date of this Agreement Seattle shall conduct a comprehensive review of the Wheeling rate including an update by Seattle of the allocation of the Utility's allocated percentage with the Northwest Sub-regional System facilities.
2. Mutual Agreement to Review Rates. Within the timeframe of the five-year review period, but no more frequently than annually, either party may request in writing a comprehensive review in accordance with III.C.2. Upon mutual agreement, Seattle shall conduct such a review. The five-year time frame and dates for annual reviews shall remain intact, even if a review is conducted under this clause.

SECTION IV. ADMINISTRATION

IV.A. Severability

If any provision of this Agreement or its application is held by a court of competent jurisdiction to be illegal, invalid, or void, the validity of the remaining provisions of this Agreement or its application to other entities, or circumstances shall not be affected. The remaining provisions shall continue in full force and effect, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular invalid provision; provided, however, if the invalid provision or its application is found by a court of competent jurisdiction to be substantive and to render performance of the remaining provisions unworkable and non-feasible, is found to seriously affect the consideration and is inseparably connected to the remainder of the Agreement, the entire Agreement shall be null and void.

IV.B. Consent

Whenever it is provided in this Agreement that the prior written consent or approval of either party is required as a condition precedent to any actions, in each such instance said consent or approval shall not be unreasonably withheld, and in each such instance where prior consent is sought, failure of the party to respond in writing within 90 days of the request shall be deemed as that party's consent or approval unless expressly stated herein. This provision does not apply to requests for amendments of this Agreement.

IV.C. Emergency Situations

Nothing in this Agreement shall be deemed to require service under this agreement nor to preclude either party from taking necessary action to maintain or restore Wheeling services and water supply in emergency situations and such actions shall not be deemed a violation of this Agreement.

IV.D. No Joint Venture - Individual Liability

This is not an agreement of joint venture or partnership, and no provision of this Agreement shall be construed so as to make the Utility individually or collectively a partner or joint venturer with any other Wholesale Customer or with Seattle. Neither party is an agent of the other. Neither Seattle nor the Utility shall be liable for the acts of the other in any representative capacity whatsoever.

IV.E. Complete Agreement

This 'Agreement for Wheeling Water' represents the entire agreement between the parties hereto concerning the subject matter hereof. This Agreement may not be amended except as provided herein.

IV.F. Venue, Jurisdiction and Specific Performance

In the event of litigation between the parties, venue and jurisdiction shall lie with the King County Superior Court of the State of Washington, at Seattle. The parties shall be entitled to specific performance of the terms hereof.

IV.G. Default

In the event of default of any provision of the Agreement, the non-defaulting party shall issue written notice to the other party setting forth the nature of the default. If the default is for a monetary payment due hereunder, the defaulting party shall have thirty (30) days to cure the default. In the event of other defaults, the defaulting party shall use its best efforts to cure the default within ninety (90) days. If such default cannot be reasonably cured within such ninety (90) day period, the defaulting party shall, upon written request prior to the expiration of the ninety (90) day period be granted an additional sixty (60) days to cure the default.

IV.H. Force Majeure

The time periods for Seattle's performance under any provisions of this Agreement shall be extended for a reasonable period of time during which Seattle's performance is prevented, in good faith, due to fire, flood, earthquake, lockouts, strikes, embargoes, acts of God, war and civil disobedience. If this provision is invoked, Seattle agrees to immediately take all reasonable steps to alleviate, cure, minimize or avoid the cause preventing such performance.

IV.I. No Third Party Beneficiaries

This Agreement does not create, and shall not be construed to create, any rights enforceable by any person that is not a party to this Agreement.

IV.J. Successors

This Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns.

IV.K. Exhibits

Exhibits A through C are attached hereto and are hereby incorporated by reference as if set forth in full herein.

IN WITNESS WHEREOF, the parties hereby execute this Agreement.

OLYMPIC VIEW WATER AND SEWER DISTRICT

BY: _____

TITLE: _____

DATE _____

THE CITY OF SEATTLE

BY: _____

Director, Seattle Public Utilities

DATE: _____

LIST OF EXHIBITS

Exhibit A Northwest Sub-regional System Facilities

Exhibit B Northwest Sub-regional System Map

Exhibit C Points of Delivery

EXHIBIT A

NORTHWEST SUB-REGIONAL FACILITIES

| PIPELINES | NW Sub-regional Allocation |
|--|-----------------------------------|
| 1. The N. 185 Street feeder, from North City Pump Station to Aurora Avenue N, 30-inch steel pipeline, 24-inch steel pipeline across I-5. | 70% |
| 2. The N. 185 Street feeder, from Aurora Avenue N to Fremont Avenue N, 20-inch steel pipeline. | 70% |
| 3. The Fremont Avenue N Feeder, from N 185 Street to N 205 th Street, 20-inch steel pipeline. | 58% |
| 4. The N 205 Street Feeder, from Fremont Avenue N to Olympic View services, 12-inch ductile iron pipeline. | 24% |
| 5. The Aurora Avenue N feeder, from N 185 Street to N 145 Street, 24-inch steel pipeline. | 64% |
| 6. The N/NE 145 Street Feeder, from Foy Pump Station to Foy Standpipe connections near Dayton Avenue N, 24-inch steel pipeline. | 65% |
| 7. Foy Pump Station suction line in NE 145 Street from Foy Pump Station to 8 th Avenue NE, including connections to the 550 pipeline and to the 430 zone. | 65% |
| PUMP STATIONS | |
| 1. North City Pump Station, including the suction line from the pump station to the 66-inch pipeline, and the pump station bypass from the 66-inch pipeline to the pump station discharge. | 100% |
| 2. Foy Pump Station, including the 12-inch bypass between the suction and discharge lines. | 100% |
| TANKS | |
| 1. Richmond Highlands Tanks, and all associated appurtenances and connections to the 590 zone. | 19.0% |
| 2. Foy Standpipe, including its connections to the N 145 Street feeder, altitude valve, overflow, and drain. | 0.0% |

NORTHWEST SUB-REGIONAL SYSTEM MAP



The Pump Station shown near the Foy Standpipe is not a NW Sub-regional asset

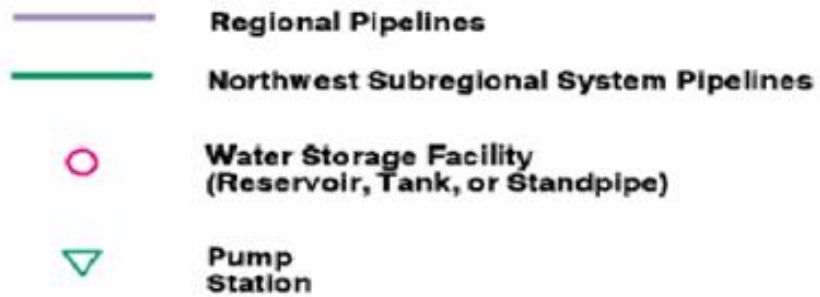


EXHIBIT C

POINTS OF DELIVERY

| LOCATION | STATION NUMBER (1) | PIPELINE SEGMENT NUMBER (1) | SIZE OF METER (IN.) | MINIMUM HYDRAULIC GRADIENT FOR PLANNING PURPOSES AT STATION UPSTREAM OF METER (FEET NAVD-88 Datum) | MAXIMUM FLOW RATE UP TO WHICH THE MINIMUM HYDRAULIC GRADIENT APPLIES (gpm) (2) |
|--|-------------------------------|------------------------------------|----------------------------|---|---|
| Fremont N. & N. 205 th St. | 109 | 6 | 8 | 570 | 250 |
| Fremont N. & N. 205 th St. | 108 | 6 | 8 | 570 | 250 |
| 8 th Ave. NW & NW 205 th St. | 107 | 6 | 8 | 565 | 900 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | TOTAL: | 1,400 |

Notes:

- (1) Station and Pipeline Segment Numbers pertain to cost allocations and the demand metering program.
- (2) City of Seattle’s estimate of Utility’s average daily demand for 2020 with a peaking factor of 2.0 for peak day use.