


CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: June 22, 2020

AGENDA ITEM:	
Third Amendment to the 1995 Agreement Between City of Marysville and the Tulalip Tribes to Wheel Water	
PREPARED BY:	DIRECTOR APPROVAL: 
Karen Latimer, Utility Manager	
DEPARTMENT:	
Public Works – Water Division	
ATTACHMENTS:	
1. Third Amendment to the 1995 Agreement Between City of Marysville and the Tulalip Tribes to Wheel Water 2. Exhibit A	
BUDGET CODE:	AMOUNT:
N/A	N/A
SUMMARY:	

On September 5, 1995, the City of Marysville (City) and the Tulalip Tribes (Tribes) entered into a water wheeling agreement to convey water originating at the Joint Operating Agreement (JOA) pipeline through the City water distribution system to the Tribes water system. The City and Tribes are currently working to negotiate a replacement agreement; however, this work will not be completed before the current agreement expires on July 1, 2020. The City and Tribes desire to extend the agreement for one year, to give time for conclusion of negotiations and approval by the respective governing bodies.

RECOMMENDED ACTION:

Staff recommends that Council authorize the Mayor to sign and execute Amendment No. 3 to the 1995 Agreement Between City of Marysville and the Tulalip Tribes to Wheel Water.

RECOMMENDED MOTION:

I move to authorize the Mayor to sign and execute Amendment No. 3 to the 1995 Agreement Between City of Marysville and the Tulalip Tribes to Wheel Water.

THIRD AMENDMENT TO THE 1995 AGREEMENT BETWEEN CITY OF MARYSVILLE
AND THE TULALIP TRIBES TO WHEEL WATER

This Third Amendment to the 1995 Agreement between the City of Marysville and the Tulalip Tribes to Wheel Water (the "Wheeling Agreement"), is made and entered into as of the date of the last signature below by and between the CITY OF MARYSVILLE, a municipal corporation, and the TULALIP TRIBES.

WHEREAS, the parties hereto executed the Wheeling Agreement on September 5, 1995, attached hereto as **Exhibit A**; and

WHEREAS, the term of Wheeling Agreement is set to expire on July 1, 2020; and

WHEREAS, parties desire to extend term of the Wheeling Agreement by one year.

NOW, THEREFORE, the Wheeling Agreement between the City of Marysville and the Tulalip Tribes, dated September 5, 1995, is amended as follows:

1. Section XI of the Wheeling Agreement, titled "Term and Expiration," is amended to read as follows:

“(1) The term of this contract shall be from the date of its mutual acceptance by all parties until July 1, 2021, plus such extensions as may be mutually agreed upon.”

2. Each and every provision of the Wheeling Agreement shall remain in full force and effect, except as modified herein.

[SIGNATURES ON FOLLOWING PAGE]

DATED _____, 2020

THE CITY OF MARYSVILLE

JON NEHRING, Mayor

Attest/Authenticated:

Tina Brock, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney

DATED _____, 2020

TULALIP TRIBES

By _____

Its _____

1995

AGREEMENT BETWEEN

CITY OF MARYSVILLE AND THE TULALIP TRIBES

TO WHEEL WATER

IT IS HEREBY AGREED by and between the CITY OF MARYSVILLE, a municipal corporation of Snohomish County, Washington, hereinafter referred to as the "CITY," and the TULALIP TRIBES, hereinafter referred to as "TRIBES."

WHEREAS, the CITY and the TRIBES have a joint operating agreement (JOA) dated January 10, 1991, which envisions coordination in implementation of an adequate and safe water supply for North Snohomish County.

WHEREAS, the CITY hereby agrees to provide the following services to the TRIBES. Conveyance of water originating at the JOA pipeline through the City's existing distribution system and administration of payment to the City of Everett for water utilized through the JOA pipeline.

WHEREAS, it is proposed that a "Wheeling Charge" in accordance with Section 4E of the JOA be established which will fairly and reasonably compensate the City for conveying water through the City's existing water distribution system from the terminus of the Phase I JOA pipeline to the points of connection with the TRIBES as established by this agreement.

NOW, THEREFORE, IT IS AGREED as follows:

I

DEFINITIONS

As used in this Agreement, the following words and phrases shall have the meanings hereinafter set forth unless the context shall clearly indicate that another meaning is intended.

(1) The term "Transmission Main" shall mean that part of the supply system having a primary purpose of carrying a supply of water between the source and the distribution systems and has no direct service connections except by variance by the City Council to individuals or final users tapped into this main.

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

(3) The term "Distribution Main" shall mean any size water main which has service connections tapped directly to the water main supplying an individual or final consumer.

(4) The term "Distribution Facilities" shall mean that system of pipes and appurtenances used for receiving a supply of water and distributing it directly to the consumers or final users. For the purpose of this contract, it shall be further understood to mean that the "distribution facilities" are separate parts of a water system and as such are all operated and controlled by either the TRIBES or the CITY individually, but not jointly.

(5) The term "Service Meters" shall mean the meter or measuring device installed on a service line or service connection for the purpose of measuring the water service furnished to the final consumer.

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

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

(8) The term "Cubic Foot" shall mean a unit of measurement of flowing water equal to 7.48 gallons past a given point, usually a meter.

(9) The term "JOA Water Rates" shall include all applicable costs, including the Everett water cost, maintenance and operating costs allocated to the JOA pipeline, power costs, direct overhead costs of the City of Marysville Utility Department, and indirect city overhead costs, all divided by the quantity of water conveyed from Everett from the preceding year in 100 cubic feet increments.

(10) The term "Wheeling Charge" shall include all applicable costs, including Marysville system costs, direct overhead costs of the utility department, and indirect city overhead costs, all divided by the quantity of water metered in the system in 1,000-gallon increments. In addition, there will be a fixed charge levied on a periodic basis for costs associated with meter operation, maintenance, and calibration; meter reading; billing expense; and reports and collection.

(11) The term "Terminal Storage Reservoir" defines a storage reservoir used primarily to provide reserves against transmission failure from the supply, supply or pumping failure, and which permits a reduced sizing in the supply transmission and pumping system to the terminal storage reservoirs.

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

II

FUTURE FACILITY ACQUISITIONS

The TRIBES and the CITY agree that, at some future time it may be desirable for the CITY to extend its CWSP boundaries to include a part of the TRIBES service area, the "Distribution Facilities" used exclusively to serve such area may become the property of the CITY at the discretion of the TRIBES and the CITY shall pay to the TRIBES as follows:

If the TRIBES has or should construct additions or replacements to its "Distribution Facilities" in any area within its boundaries and said area becomes the service area of the CITY, the CITY shall pay the TRIBES upon acquiring these facilities the amount of money expended by the TRIBES from general TRIBES or Construction Funds, not covered by assessments for the construction of these improvements computed on a straight line depreciation formula. For these purposes, the depreciation rate for cast or ductile iron pipe shall be 100 years and for concrete cylinder, 3/16" shell or heavier steel pipe or reservoirs shall be 50 years. TRIBES records showing the original cost to be depreciated will be made available to the CITY for verification if and when desired by the CITY. Payment for the facilities acquired by the CITY shall be computed as herein specified but in no case shall it be less than that required under bond covenants for all outstanding revenue obligations of the TRIBES.

Upon City service in areas where facilities were installed under Local Improvement Districts or private plat developments, the CITY shall pay the TRIBES an amount equal to that required under the bond covenants for all outstanding revenue obligations of the TRIBES before acquisition from the TRIBES.

When the CITY serves a future area of the TRIBES's service area, the CITY shall pay for the improvements installed by the TRIBES as outlined above within 180 days from the date of service. Upon final payment, conveyance of said improvements shall be made by issuance of a Bill of Sale by the TRIBES to the CITY.

It is further understood and agreed by the TRIBES and CITY that these provisions with respect to the acquisition of facilities owned by the TRIBES do not apply to existing "Transmission Mains" or appurtenances or those which may be constructed and provided by the TRIBES for the single purpose of supplying water to distribution systems operated independently by the TRIBES or any legally constituted municipality owned and operated distribution system supplied by the TRIBES.

III

DEDICATED TRIBAL WATER LINE

Should the TRIBES be required or elect to install and maintain a water transmission line or lines within the CITY corporate limits to supply water to the TRIBES' service and/or storage area, the TRIBES agree to apply for, and the CITY agrees to grant, subject to all CITY rules, policies, regulations and ordinances, necessary permits, franchises and rights-of-way to the TRIBES as reasonably required provided further that the TRIBES shall pay for all acquisition of rights-of-way required to be obtained on other than public streets and public properties of the CITY. All necessary permits and/or franchise fees required shall be paid by the TRIBES. The TRIBES agrees to construct along the rights-of-way covered by the leases, permits, and franchises by the CITY's Public Works Department and permitted by the CITY's codes and ordinances. The TRIBES agrees to maintain all the facilities constructed by it within the corporate limits of the CITY in good working order and will save harmless the CITY from any and all claims for damages to property or persons resulting from its failure to comply with this agreement or from acts of omissions by its agents.

IV

POINTS OF CONNECTION

The CITY agrees to deliver peak day water needed by the TRIBES at the agreed connection points on the regional supply main within the CITY's existing distribution facilities at rates as hereinafter set forth, subject to limits of the "Everett and JOA Participant - Water Supply Contract." Said agreed connection points and peak day water volumes include:

- Single point of connection at 88th Street N.E. with a peak day water demand of 210 gallons per minute.

- Single point of connection at Marine Drive with a peak day water demand of 440 gallons per minute.

- Simultaneous delivery at two points of connection at Marine Drive and 88th Street N.E. with a peak day water demand of 366 gallons per minute and 176 gallons per minute, respectively, for a total of 542 gallons per minute; and an average day water demand of 473 gallons per minute and 240 gallons per minute, respectively, for a total of 713 gallons per minute.

The actual point of delivery at each connection point shall be the upstream flange of the valve downstream of each "Master Meter" and check valve. If the CITY's supply is limited by Everett, the TRIBES' supply will be limited in the same proportion as the entire CITY will be limited. The TRIBES may be delivered water at other points in the CITY's system; however, the amount of water available is limited. The TRIBES may improve the distribution system to increase flow with permission of the CITY.

The agreement to supply water by the CITY to the TRIBES shall be subject to and limited by unavoidable accidents, acts of God, and any conditions beyond the control of the CITY. If the CITY declares an emergency on limited water available through accident, catastrophe, or limitations by Everett by contract or its own emergency and notifies the TRIBES of the limitations imposed by the CITY, the TRIBES shall comply with those limitations or be subject to the CITY's controlling delivery of water at the "Master Meters" during that emergency. The CITY will treat any major interruption to the supply to the TRIBES as an urgent matter and will attempt to restore or cause to be restored normal service to the TRIBES as expeditiously as possible. As such, the TRIBES agrees to save and hold harmless the CITY, its officers, agents, and employees, from and against any and all liabilities, claims, actions, or damages by the TRIBES and customers thereof relating to or arising out of unavoidable accidents, acts of God, catastrophe, limitations by Everett either through contract or its own emergency, and any and all other conditions beyond the control of the CITY. Any and all claims arising out of such circumstances by customers of the TRIBES shall be referred directly to the TRIBES and it shall review, adjust, and/or defend said claims at its own expenses, as appropriate.

The quantity of water delivered shall be measured by the "Master Meters" referred to in Section VI herein. Nothing herein, however, should be construed as obligating the TRIBES to take or purchase any minimum quantity of water from the CITY at any time.

V

STORAGE DEFICIENCY DEMAND CHARGE

The CITY shall implement a demand charge based on the TRIBES' deficient water storage or control thereof and the equivalent cost to provide storage, when the instantaneous flow rate for the sum of all supply points exceeds 4.09 million gallons per day as determined by the 15-minute peak instantaneous flow rate, and such demand charge shall be applied only if the average demand factor exceeds 1.3 as outlined in the following paragraphs.

Such demands charge and method of application thereof shall be as follows:

(1) The policy of the CITY is to supply "Peak Day Water" to the TRIBES at the 24-hour average flow rate. The TRIBES shall provide or pay for storage for peaking rates above such average flow rate as described herein.

(2) A demand charge will be applicable to the TRIBES when it is found to have deficient storage as determined in the following paragraphs.

(3) The "Master Meter" or meters to the TRIBES will be monitored by the CITY to determine applicability of the demand charge. Demand metering equipment telemetered to the CITY's Public Works Department will be installed on "Master Meters" at the TRIBES expense and maintained by the CITY.

(4) A day for purposes of the schedule commences at 9:00 a.m. and ends at 9:00 a.m. the following calendar day.

(5) The demand factor for each "Master Meter" service is the peak flow rate as defined in subparagraph 13 of this section divided by the 24-hour average flow rate of the same day as shown on the telemetered chart in the CITY's Public Works Department for each "Master Meter."

(6) The 10 maximum flow days each year for each "Master Meter" service will be used to determine the average demand factor from which storage deficiency will be calculated. (Such, 10 maximum flow days need not necessarily be consecutive.) The average demand factor is the average of the demand factors of the 10 maximum flow days for each "Master Meter" service each year.

(7) A demand charge for each "Master Meter" service shall be applied only when the average factor for that meter exceed 1.3.

(8) The deficient storage volume of each "Master Meter" service for charge calculation rate shall be $S = 0.22 (F - 1.0) Q$: Where S = storage deficiency in gallons. F = average demand factor and Q = average daily quantity of water in gallons used in the 10 maximum flow days for each "Master Meter" for each year.

(9) The demand charge shall be calculated by applying a storage deficiency rate per month per thousand gallons of deficient storage. The base rate beginning in 1995 is \$5.50 per month per thousand gallons based on an Engineering News Record Index of Construction Costs for 20 cities of 5,432.08. The rate in subsequent years will be adjusted based upon the ratio of the current ENR index in January of the year in which the demand charge is applied to 5,432.08.

(10) The demand charge will be calculated by the first of November of each year after evaluation of the summer months (June, July, and August) water delivery flow rates. The monthly storage deficiency demand charge billing shall commence in January of the year following the instantaneous flow rate exceeding 4.09 million gallons per day and the demand factor exceeding 1.3 and continue for one calendar year until the following January at which time a new charge, if any, shall be applied.

(11) Peak flow caused by accidents in the TRIBES' water system will be excluded in determining the demand charge. Documentation shall be provided by the TRIBE to the Public Works Director of the CITY within 30 days after an accident.

(12) Artificially created flow rates shall be disallowed in calculating the demand charge, such as a catastrophe causing fires or water line ruptures and electrical storms interfering with the telemetering signals.

(13) The peak flow rate under paragraph (5) above shall be the average of not less than a 15-minute peak rate as shown on the telemetered chart.

VI

MASTER METER

All water supply delivered by the CITY to the TRIBES through the permanent supply points at Marine Drive and 88th Street N.E. shall be measured through the "Master Meter." Said "Master Meter" shall include telemetry of flow data and any necessary control functions and shall meet all specifications and approval of the CITY. All costs of installation, maintenance, repair, and replacement thereof shall be borne by the TRIBES. The "Master Meter" and facilities to the downstream face of the meter vault shall be owned by the City of Marysville.

Access to the meter and the flow records shall be made available to the CITY at all times. The CITY shall maintain, repair, and replace the remote control recording equipment at the meter at TRIBES expense. The meter shall be checked by the CITY for accuracy on an annual basis as part of normal maintenance. However, either party to this agreement may, at its option, request or cause to be tested the main line meter for accuracy at any other time between the annual checks. All tests shall be conducted in a manner agreeable to both parties and the costs of the testing other than the annual check shall be borne in the following manner: If both parties agree to the test, then costs will be shared equally. If either of the parties singularly requests the test, then the cost shall be borne by the party causing the test to be performed providing the test indicates the meter to be performing within 2% of the degree of accuracy guaranteed by the manufacturer of the equipment. In the event the meter is not performing within the allowable limits (2% of the manufacturer's guaranteed accuracy) then the party benefiting as a result of the malfunction shall bear the cost of the test that the meter is not functioning within the herein agreed tolerance, then an adjustment in charges for water supply shall be determined as follows:

The meter error percentage determined from the test shall be used to adjust recorded deliveries and shall apply for a period of time being one-half the time between the last satisfactory test and the test at which the malfunction was determined, plus all of the time between discovery of the error and completion of repairs or adjustment of the meter. Either a credit or additional billing at the rates hereinafter provided for water supply shall accrue to the appropriate party. The "Master Meter" installation shall include a blank meter case with cover plate for testing meter immediately downstream of the "Master Meter" at Marine Drive and 88th Street N.E. with appropriate valving and bypass around said meter and meter case to facilitate testing of meter. The CITY will provide and insert test meter for accuracy certification of "Master Meter." A strainer immediately upstream of "Master Meter." will be included as part of the "Master Meter" installation.

The CITY shall construct, purchase, and install a new "Master Meter" facility meeting all CITY specifications at each connection point and at such other locations as mutually agreed between the parties. Within thirty (30) days of the construction, purchase, and installation of

such meter facility, the TRIBES shall reimburse the CITY for all expenses associated with the metering facility. Said meters shall be installed in an adequately drained vault separate from pressure-reducing equipment. The CITY shall operate, maintain, repair, and test the "Master Meters" and may bill the TRIBES for the cost of such services in the month following the month in which the costs are incurred. The CITY shall provide documentation of all maintenance, repairs, and testing to the TRIBES, along with its billing for such services.

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

VII

WATER QUALITY

The CITY will make every reasonable effort to deliver a quality of water to the TRIBES equal to the quality delivered to the CITY by the City of Everett under Section 4G of the "Everett and JOA Participants Water Supply Contract," and the CITY makes no other promise, representation, or warranty regarding the quality of water delivered to the TRIBES. In the event sources of other water, such as from the CITY's well system are available and the CITY determines in its discretion to supply such water, and the TRIBES agrees to accept such water, the quality of such water shall be "well water" and the CITY shall not be required to treat, filter, or otherwise modify the water provided by such other supplies.

The TRIBES shall provide means, at its own expense, to assure that water will not backflow into the CITY system. The CITY further agrees that it will continue to cooperate on an ongoing basis with the City of Everett to pursue compliance with the Federal Safe Drinking Water Act - Public Law 93-523.

VIII

WATER RATE

The City will be compensated for City of Everett water utilized through the JOA pipeline defined as "JOA Water Rate" and through a "wheeling charge" for water transmittal through the City's existing water distribution system." The cost to the TRIBES shall be the sum of the "Wheeling Charge" plus the "JOA Water Rate." The cost to the Tribes shall be adjusted yearly on December 31st based upon costs and water quantities established one year prior to the effective date (e.g., December 31, 1995, adjusted cost based upon 1994 costs and water quantities).

The rate to be paid by the TRIBES to the CITY for water shall be based on the sum of the "JOA Water Rate" plus the "Wheeling Charge" computed from the following formulas:

1. "JOA Water Rates" at termination of JOA pipelines – storage needs provided by each purveyor.

$$R = E + \frac{(P + M)(1.0 + OH) + 1.25DS + TD}{QE}$$

- R = JOA water rate (per 100 cf)
- E = Everett cost (per 100 cf)
- P = Power cost for preceding year
- M = Maintenance and operating cost for preceding year allocated to pipeline
- OH = Water utility overhead rate
- DS = Future debt service
- TD = Transmission Depreciation
- QE = Quantity of water conveyed from Everett for preceding year in 100 cf

2. "Wheeling Charge" to JOA participants for water furnished through the Marysville distribution system from any source. Storage needs provided by each purveyor.

$$W = \frac{(MV)(1.0 + OH)}{QM} + C$$

- W = Wheeling Charge (per 1,000 gallons)
- MV = Marysville system costs (per 1,000 gallons)
- OH = Water utility overhead rate
- QM = Quantity of water metered into the system exclusively for Marysville and the Tribes from all sources, including water metered at JOA pipeline (per 1,000 gallons)
- C = Customer costs associated with meter maintenance, operation and replacement, meter reading, billing expense, and reports and collection

3. Total cost to TRIBES will be "Wheeling Charge" and "JOA Water Rates."

4. Rate Component Descriptions.

Everett Cost = E:

The Everett Water Cost shall be the then current water charges paid by the CITY as determined by the "Everett and JOA Participants – Water Supply Contract" and any additional charges as agreed to in the future between the City of Everett and the CITY of Marysville or as determined by law. The rate shall continue to be computed to the nearest ten thousandth of a dollar.

Power Cost = P:

Power cost shall include all electrical and heating charges at the CITY's existing water supply facilities, such as, standby wells, reservoirs, and the meter pits for the preceding year and such other wholesale facilities as may be constructed by the CITY.

Maintenance and Operations Cost = M:

Maintenance and Operation Costs shall include all repairs of pumps, motors, and heaters at the standby wells serving the wholesale customers, telemetering repairs or additions, all labor costs for above and daily maintenance and operation of standby wells, transmission and distribution system maintenance, telemetering, "Master Meter" readings, and other maintenance and operation costs attributable to either "JOA Water Rate" or "Wheeling Charge" and the equipment necessary to perform said work.

JOA Transmission Depreciation = TD:

Is defined as the total cost including but not limited to material, labor, engineering, sales tax, legal, administration, etc. of various segments of the JOA transmission line divided by the useful life. For this purpose, the depreciation rate for cast or ductile iron pipe shall be 100 years and for concrete cylinder, PVC, 3/16-inch shell or heavier steel pipe shall be 50 years. City records showing the original or estimated cost to be depreciated will be made available to the Tribes for verification if and when desired by the Tribes.

Depreciation shall continue until the useful life of the facility, defined above, is reached. At such time it is assumed a replacement facility will be constructed. The cost of the replacement facility will be borne by the City of Marysville. At the time the facility is replaced, the depreciation cost to the Tribes will be revised to reflect the replacement costs.

Marysville System Costs = MV:

The following is a breakdown of system costs by expense item for JOA participants using the Marysville distribution system:

- i) Supply – Supply meters other than JOA pipeline.
- ii) Pumping and Treatment Costs
 - Operation of equipment
 - Power
 - Supplies
 - Maintenance of structures
 - Maintenance of equipment

iii) Transmission and Distribution Costs:

- Outside engineering
- Trans. and distr. line expense
- Supplies, excluding meters
- Other operating expenses
- Maintenance of structures and improvements
- Maintenance of mains
- Maintenance of miscellaneous plant, excluding storage, meters, and hydrants

iv) Wheeling Charge Depreciation:

Depreciation will include distribution pipelines associated with wheeling water from the JOA pipeline to the points of connection with the Tulalip Tribes. For this purpose, the depreciation rate for cast or ductile iron pipe shall be 100 years and for concrete cylinder, 3/16-inch shell or heavier steel pipe shall be 50 years. City records showing the original or estimated cost to be depreciated will be made available to the Tribes for verification if and when desired by the Tribes.

Depreciation shall continue until the useful life of the facilities, defined above, is reached. At such time it is assumed that replacement facility(ies) will be constructed. The cost of the replacement facility(ies) will be borne by the City of Marysville. At the time portions of the distribution system are replaced, the depreciation cost to the Tribes will be revised to reflect the replacement costs.

Water Utility Overhead Rate = OH:

The formula for determining the overhead reate is attached as Exhibit B and includes the following components.

- General and specific overhead direct and indirect associated with water service excluding meter reading and billing cost
- Professional services
- Insurance
- Taxes and assessments: It is understood that the Tribes are not subject to the same taxes as the City. At the Tribes' option and expense they may seek to have its portion of such taxes exempted from payment by the City, in which case the credit would be passed on to the Tribes. Written proof of such exemption shall be provided to the City reflecting such tax exemption, if any.
- Transmission and distribution supervision

Future Debt Service = DS:

Future debt service shall include bonded debt service required for any future pumping, or distribution lines as may be required. Cost will be included in the appropriate formula added to this agreement at the second billing period to the TRIBES after sale of bonds issued for construction of the above future facilities. In the event the CITY elects to finance any future facilities out of CITY general construction funds, then such total costs will be added to this agreement by the second billing period of the following year and paid for under maintenance and operation costs.

The CITY bond covenants require a bond coverage of 1.25 times the Debt Service which is incorporated in the rate formula. The CITY policy is to use any coverage money not required for the bond reserve fund, refunding of bonds, or the retirement of bonds for JOA pipeline improvements to the extent possible.

It is understood that debt service is an alternative to depreciation in the formula. With both parties' concurrence, a facility(ies) can be exempt from depreciation charge if future replacement or repair is anticipated to be financed through issuing bonds. Whereby the annual cost for facility replacement would be included as debt service. Specific facilities that were exempt from depreciation would be attached as an addendum to this agreement.

(5) Initial Water Rates:

The initial water rate to the TRIBES shall be 0.5539 cents per 100 cubic feet for "JOA Water Rate," 0.24 cents per 1,000 gallons for "Wheeling Charge," and a flat rate of \$250 per month for customer fixed costs associated with meter maintenance, operation, replacement, reading, billing expense, reports, and collection. Such rates will be effective the following month after date of execution of this agreement and actual connection to the City's distribution system; and billings to the TRIBES for water consumed after this date shall be computed at this rate through December 31, 1996.

IX

NOTICE OF NEGOTIATION

A thirty (30) day advance notice of negotiation with the City of Everett for any future rate change or any other change to the Everett and JOA Participants Water Supply Contract which may impact the TRIBES shall be given to the TRIBES by written notice, and the TRIBES shall have the right to be present at such meetings.

X

BILLING AND PAYMENT

The period of billing for water supplied under this agreement shall be on regular monthly intervals.

The "Master Meter" shall be read and recorded near the last normal workday of the month in which the service was furnished. Billing to the TRIBES will be made by the 10th day of the month following, and payment to the CITY becomes due by the 30th day of the month in which the statement is received. If any payment or portion thereof due to the CITY shall remain unpaid for 15 days following its due date, the TRIBES shall be charged with and pay to the CITY interest on the amount unpaid from its due date until paid at the rate of 12% per annum. In the event the CITY is required to collect any delinquent fees, rates, costs, or billings which become past due, both parties stipulate and consent to both venue and jurisdiction of the Snohomish County Superior Court. The substantially prevailing party in such action shall be entitled to its cost and reasonable attorney fees from the other party.

XI

TERM AND EXPIRATION

(1) The term of this contract shall be from the date of its mutual acceptance by all parties until July 1, 2020, plus such extensions as may be mutually agreed upon.

XII

DISPUTE RESOLUTION

The parties desire to avoid and settle without litigation future disputes which may arise between them relative to this agreement. Accordingly, the parties agree to engage in good faith negotiations to resolve any such dispute. In the event they are unable to resolve any such dispute by negotiation, then such dispute concerning any claim arising out of or relating to this agreement or the performance or interpretation thereof shall be submitted to arbitration in accordance with the arbitration rules of the American Arbitration Association (hereinafter "Rules") then in effect, and the award rendered by the arbitrator shall be binding as between the parties. The judgment on such award may be entered in any court having jurisdiction thereof.

The written demand for arbitration shall contain a statement of the question to be arbitrated and the name of the independent arbitrator appointed by that party. The other party to this agreement shall, within ten (10) days of the receipt of the written demand, appoint an independent arbitrator and give notice in writing thereof to the party who commenced arbitration. A third independent arbitrator shall be appointed by requesting a list of five (5) arbitrators from the American Arbitration Association. The selection of the third independent arbitrator shall be

made by each party to this agreement taking turns striking names from said list until one such name shall remain. A coin shall be tossed to determine which party strikes the first name. The arbitrator selected from the list, hereafter "independent arbitrator", shall select a time, date, and place for hearing, and shall give each party not less than thirty (30) days' notice in writing thereof.

The parties agree that after any such demand for arbitration has been made, they shall, before the hearing thereof, make discovery and disclosure of all matters relevant to such dispute, to the extent and in the manner provided by the Federal Rules of Civil Procedure. All questions that may arise with respect to the obligation of discovery and disclosure and the protection of the disclosed and discovered materials shall be referred to the independent arbitrator. A stenographic record shall be made of any arbitration hearing.

The parties shall share the cost of arbitration.

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

The substantially prevailing party in any arbitration action or action to enforce judgment or any appeal thereof shall be entitled to all costs and its reasonable attorney fees.

XIII

WAIVER, ASSIGNMENT, NOTICES, AND ENTIRETY

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

(2) Assignment: Except where one of the parties merges or combines with another entity, neither this agreement nor any of the rights, interest, or obligations created hereunder may be assigned by either party without the written consent of the other party. This agreement shall be binding upon and inure to the benefit of the respective customers and assigns of the parties.

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

To The Tulalip Tribes:

Chairman, Board of Directors
The Tulalip Tribes
6700 Totem Beach Road
Marysville, WA 98271-9715

To The City:

Honorable Mayor
City of Marysville
Marysville City Hall
514 Delta Avenue
Marysville, WA 98270

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

(4) Entirety: Except as provided the Settlement and Compromise Agreement between the parties dated April 25, 1983 which shall remain in full force and effect, unchanged, and except as provided in the JOA between the parties, all prior negotiations and agreements between the parties hereto relating to the subject matter hereof are merged into and superseded by this agreement, and shall constitute the entire agreement between the Tribes and the City concerning the sale of water to the Tribes for the use as hereinbefore provided.

DATED this ~~4~~ 5th day of September, 1995

TULALIP TRIBES

By: Stanley H. Jones Sr.
Title

Attest: Charman
Title

(Seal)

CITY OF MARYSVILLE

By: Daniel Cairns
Mayor

Attest: Mary P. Swenson
City Clerk

(Seal)

**AGREEMENT BETWEEN TULALIP TRIBES OF WASHINGTON
AND CITY OF MARYSVILLE, WASHINGTON**

THIS AGREEMENT is entered into this 31st day of March, 2005 by and between the Tulalip Tribes of Washington, a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, as amended, and governed by the Board of Directors of the Tulalip Tribes of Washington, hereinafter referred to as "the Tribe" and the City of Marysville, a municipal corporation of the State of Washington, hereinafter referred to as "the City".

I. RECITALS.

A. The City is undertaking the construction of certain roadway improvements at the intersection of State Avenue and 116th Street, N.E. and within the 116th Street, N.E. corridor between State Avenue and Interstate 5. The project is being funded in part by Transportation Improvement Board (TIB) funds. In order to receive said funds the City must be able to certify that it possesses all real property rights necessary to construct said street and intersection improvements.

B. Certain property within the 116th Street, N.E. corridor is owned by the Tribe and/or is held in trust for the Tribe by the United States government. An easement in favor of the City for street, utility and other public purposes is necessary to enable the construction of the improvements referenced in I(A) above.

C. The City owns certain real property located within the Tribe's Reservation which is surplus to the needs of the City and which can serve as consideration for the grant of the easement described in I(B) above.

D. The Tribe and the City wish to memorialize other and further agreements relating to the planning of a future transportation center station, wheeling of water, annexation and other jurisdictional and planning issues as more specifically described herein.

II. **EASEMENT.** The Tribe agrees to grant a easement to the City within the 116th Street corridor in the form attached hereto as **Exhibit A**. The grant and execution of the easement shall be concurrent with the execution of this agreement. The Tribe further covenant and agree to take such actions as may be necessary to provide an easement in the form necessary to permit the City to acquire title insurance insuring the interest granted in the easement. If necessary to provide insurable title, the Tribe covenant and agree to secure proper execution of the easement attached as

EXHIBIT B hereto by the Bureau of Indian Affairs/Department of the Interior and deliver the same to the City for recording not later than thirty (30) business days after execution of this agreement by both parties.

III. **DEEDING OF PROPERTY.** The City agrees to deed certain real property to the Tribe located within the boundaries of the Tulalip Reservation. The form of the deed is attached hereto as **Exhibit C**. The deed shall be executed concurrent with the execution of this agreement.

IV. **WATER WHEELING AGREEMENT ADDENDUM.** The City and the Tribe agree to execute an Addendum to the 1995 Water Wheeling Agreement between the parties in the form attached hereto as **Exhibit D**. The Addendum shall be executed by the parties concurrent with the execution of this agreement.

V. **FUTURE TRANSPORTATION CENTER.** The parties agree that a future transportation center will be located south of 116th Street, N.E. and west of State Avenue (Smokey Point Boulevard). The City agrees to utilize a Master Plan approach to aid in facilitation of a future transportation center at that location and will encourage and support the participation by the Tribe in such process to facilitate inter-modal transportation connections between the two communities.

VI. **URBAN GROWTH AREA OF CITY.** The City, its employees and agents agree to not request Snohomish County to modify the City's Urban Growth Area to include any portion of the Tulalip Indian Reservation as it exists at the date of this agreement. The Tribe agrees that it will not apply for trust status of any real property it owns within the N.W. quarter and of the S.W. quarter of Section 9, Township 30 North, Range 5 East, W.M. situated in Snohomish County, Washington. The Tribe agrees to withdraw and cease to process any application for trust status which may be pending within said Area. This growth agreement summarized here is memorialized in a Contract attached hereto as **Exhibit E** and made a part of this agreement.

VII. **FUTURE ROADWAY.** The City and Tribe agree to plan for and cooperate concerning the design and construction of a new roadway located on the west side of Interstate 5 between 172nd Street, N.E. and 140th Street, N.E.

VIII. **EMERGENCY INTERTIE.** The City agrees that the current sewer connections at 88th street/I-5 highway may be used by the Tribe on an emergency basis for the conveyance of wastewater to the capacity of the lift station at that location. The use of said emergency sewer intertie shall be subject to payment to the City by the Tribe of the applicable, utility rates and compliance with applicable provisions of the City's Utility Code. This waste water agreement summarized here is memorialized by an addendum (see **Exhibit F**) to the April 12, 1999 Wastewater agreement between the Tribe and the City.

IX. SOUTHBOUND EASEMENT. The Tribe agree to grant an easement to the City in the form attached hereto as **Exhibit G**. This ninety foot wide north/south easement (explicitly depicted as a north/south roadway in the promulgated 'Marysville Comprehensive Plan', figure 10, effective at the date of this writing) is for public street and utility purposes across that portion of the NW quarter and of the SW quarter of Section 9, Township 30 North, Range 5 East, W.M. situate in Snohomish County, Washington known as tax parcel ID number: 300509-003-033-00. The deed shall be executed concurrent with the execution of this agreement. If necessary to provide insurable title, the Tribe covenant and agree to secure proper execution of the easement attached as **EXHIBIT G** hereto by the Bureau of Indian Affairs/Department of the Interior and deliver the same to the City for recording not later than thirty (30) business days after execution of this agreement by both parties.

X. WASTEWATER CAPACITY TRANSFER: The Tribe constructed and paid fees for a waste water intertie at the 88th Street/I-5 highway intersection connection to the City's wastewater system in the 1990's. This intertie connection will remain in place and operational solely for the purposes as agreed in VIII paragraph above. This 50,000 gpd capacity/service in the City's pipes and plant is being transferred by this agreement to the intersection at 116th Street, N.E. and State Avenue with a tee to provide future sewer service to the above-described property. Service shall be subject to the terms of the MOA dated April 12, 1999 and the Tribes compliance with City development and utility codes and standards whether any of said property is in trust status. It is specifically understood that no sewer service at said location shall be provided without compliance with said codes and payment of applicable fees.

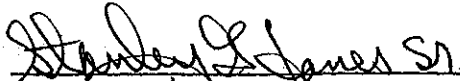
XI. ENTIRE AGREEMENT. This agreement, with the attachments incorporated herein by reference, constitutes the entire agreement between the parties and there are no verbal agreements, nor will there be any verbal agreements, which modify or amend this agreement. Time is of the essence in this agreement.

XII. SEVERABILITY. If any section, subsection, sentence, clause, phrase or word of this agreement should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this agreement.

XIII. VENUE/DISPUTES. The parties each agree and consent to the resolution of any dispute relating to the breach, interpretation, or application of this agreement to the Superior Court of Snohomish County Washington.

DATED this 31st day of March, 2005.

TULALIP TRIBES OF WASHINGTON THE CITY OF MARYSVILLE


Stanley G. Jones, Sr.
Chairman

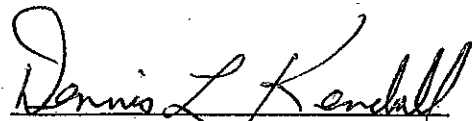

Dennis L. Kendall, Mayor

EXHIBIT A

AFTER RECORDING RETURN TO:

City of Marysville
1049 State Ave.
Marysville, WA 98270

CITY OF MARYSVILLE

EASEMENT FOR PUBLIC STREET AND UTILITIES

Grantor: TULALIP TRIBES OF WASHINGTON
Grantee: CITY OF MARYSVILLE
Legal Description: Ptn. SW ¼ & NW ¼ 9-30-05 Add'l on page 1 & 2
Tax Parcel ID#: 300509-003-033-00

THIS INDENTURE is made this 31st day of March, 2005, between TULALIP TRIBES OF WASHINGTON, a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C §476, governed by the Board of Directors of the Tulalip Tribes of Washington as provided in Article VI of the Constitution and Bylaws of the Tribes, and recognized as a "public agency" as defined in RCW 39.34.020, hereinafter referred to as "Grantor," and the CITY OF MARYSVILLE, a municipal corporation of the State of Washington, hereinafter referred to as "Grantee"; WITNESSETH:

WHEREAS, Grantor is the owner of certain lands and premises situated in the County of Snohomish, State of Washington described as follows:

That portion of the Northwest Quarter and of the Southwest Quarter of Section 9, Township 30 North, Range 5 East, W.M., as described in those conveyances to the United States of America recorded under Auditor's file numbers 746345 and 746283 and transferred to the Tulalip Indian Nation under Auditor's file number 889496 and known as the Wye Connection Depot Railroad.

Situate in the County of Snohomish, State of Washington.

and,

WHEREAS, Grantee is desirous of acquiring certain rights and privileges across, over, under and upon said lands and premises;

NOW, THEREFORE, Grantor, for valuable consideration, the adequacy and receipt of which is hereby acknowledged, hereby conveys and warrants to the Grantee, its successors and assigns, and its contractors, employees, permittees and licensees, a perpetual, nonexclusive right-of-way for public street and utilities, including, but not limited to, water, sanitary sewers and storm sewers, and other public purposes over, under, through, across and upon the following-described lands and premises situated in the County of Snohomish, State of Washington, to-wit:

That part of the above-described parcel described as follows:

The South 37.00 feet of the Northwest Quarter and the North 53.00 feet of the Southwest Quarter of Section 9, Township 30 North, Range 5 East, W.M. except that portion lying within the existing right-of-way of 116th Street NE.

CONTAINING 9,292 SQUARE FEET, MORE OR LESS

TOGETHER WITH the perpetual right, privilege and authority to construct, reconstruct, alter, change, improve, repair, renew, operate, maintain and patrol the public street and utility improvements, pipes and appurtenances, and the right at anytime to remove said public street, utility lines and appurtenances, or any of them.

AND TOGETHER WITH the right to remove the pump station currently located within the right-of-way area, at Grantee's expense.

The Grantor shall make no use of the right-of-way area which is inconsistent with the rights granted to the Grantee hereunder or which endangers the public safety.

The Grantor shall not erect any buildings or structures of any nature in the right-of-way area or undertake any activity on the right-of-way area which would disturb the right-of-way improvements or endanger the lateral support of the improvements. If Grantor violates this paragraph, Grantee shall have the right to remove, or require removal of, any obstruction, or to restore, or require restoration of, the right-of-way

area to the condition which existed before violation of this paragraph; either of which shall be accomplished within a reasonable period of time and at Grantor's expense.

Grantee shall indemnify and hold Grantor harmless from any and all claims or causes of action arising out of Grantee's exercise of the rights conveyed herein, except where such claim or cause of action arises out of or on account of the actions of Grantor.

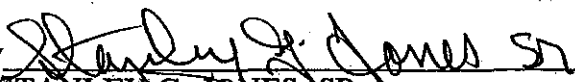
The Grantor covenants to and with the Grantee that Grantor is lawfully seized and possessed of the land aforesaid; has a good and lawful right and power to sell and convey same; that same is free and clear of encumbrances, except as above indicated; and that Grantor will forever warrant and defend the title to said right-of-way and the quiet possession thereof against the lawful claims and demands of all persons whomsoever. The Grantor further represents, warrants and covenants that the Board of Directors of the Tulalip Tribes of Washington has approved this right-of-way and has authorized the undersigned to execute this right-of-way, and that the undersigned has the requisite authority to bind the Grantor, without further approval of any other public agency including, but not limited to, the Bureau of Indian Affairs and the Federal Department of the Interior.

This conveyance shall be a covenant running with the land, and shall be binding on the Grantor and Grantor's heirs, successors and assigns forever.

The rights, title, privileges and authority hereby granted shall be enforceable in the Snohomish County Superior Court, State of Washington, and shall continue to be in force until such time as the Grantee, its successors or assigns, shall permanently remove said public street, utilities and appurtenances from said lands, or shall otherwise permanently abandon said public street, utilities and appurtenances, at which time all such rights, title, privileges and authority hereby granted shall terminate.

IN WITNESS WHEREOF, this instrument has been executed the day and year first above written.

TULALIP TRIBES OF WASHINGTON, Grantor

By 
STANLEY G. JONES, SR.
Chairman, Tribal Board of Directors

ACCEPTED:

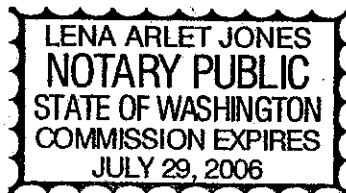
CITY OF MARYSVILLE

By Dennis L. Kendall
DENNIS L. KENDALL, Mayor

STATE OF WASHINGTON)
)ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that STANLEY G. JONES, SR. is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Chairman of the Tribal Board of Directors of TULALIP TRIBES OF WASHINGTON to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 1st day of April, 2005.



Lena Arlet Jones
Lena Arlet Jones
(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at Tulalip
My commission expires 7-29-06

EXHIBIT B

AFTER RECORDING RETURN TO:

City of Marysville
1049 State Ave.
Marysville, WA 98270

CITY OF MARYSVILLE

EASEMENT FOR PUBLIC STREET AND UTILITIES

Grantor:	UNITED STATES OF AMERICA IN TRUST FOR THE TULALIP TRIBES OF THE TULALIP INDIAN RESERVATION, WASHINGTON
Grantee:	CITY OF MARYSVILLE
Legal Description:	Ptn. SW ¼ & NW ¼ 9-30-05 Add'l on page <u>1 & 2</u>
Tax Parcel ID#:	300509-003-033-00

THIS INDENTURE is made this _____ day of _____, 2005, between UNITED STATES OF AMERICA IN TRUST FOR THE TULALIP TRIBES OF THE TULALIP INDIAN RESERVATION, WASHINGTON, hereinafter referred to as "Grantor," and the CITY OF MARYSVILLE, a municipal corporation of the State of Washington, hereinafter referred to as "Grantee"; WITNESSETH:

WHEREAS, Grantor is the owner of certain lands and premises situated in the County of Snohomish, State of Washington described as follows:

That portion of the Northwest Quarter and of the Southwest Quarter of Section 9, Township 30 North, Range 5 East, W.M., as described in those conveyances to the United States of America recorded under Auditor's file numbers 746345 and 746283 and transferred to the Tulalip Indian Nation under Auditor's file number 889496 and known as the Wye Connection Depot Railroad.

Situate in the County of Snohomish, State of Washington.

and,

WHEREAS, Grantee is desirous of acquiring certain rights and privileges across, over, under and upon said lands and premises;

NOW, THEREFORE, Grantor, for valuable consideration, the adequacy and receipt of which is hereby acknowledged, hereby conveys and warrants to the Grantee, its successors and assigns, and its contractors, employees, permittees and licensees, a perpetual, nonexclusive right-of-way for public street and utilities, including, but not limited to, water, sanitary sewers and storm sewers, and other public purposes over, under, through, across and upon the following-described lands and premises situated in the County of Snohomish, State of Washington, to-wit:

That part of the above-described parcel described as follows:

The South 37.00 feet of the Northwest Quarter and the North 53.00 feet of the Southwest Quarter of Section 9, Township 30 North, Range 5 East, W.M. except that portion lying within the existing right-of-way of 116th Street NE.

CONTAINING 9,292 SQUARE FEET, MORE OR LESS

TOGETHER WITH the perpetual right, privilege and authority to construct, reconstruct, alter, change, improve, repair, renew, operate, maintain and patrol the public street and utility improvements, pipes and appurtenances, and the right at anytime to remove said public street, utility lines and appurtenances, or any of them.

AND TOGETHER WITH the right to remove the pump station currently located within the right-of-way area, at Grantee's expense.

The Grantor shall make no use of the right-of-way area which is inconsistent with the rights granted to the Grantee hereunder or which endangers the public safety.

The Grantor shall not erect any buildings or structures of any nature in the right-of-way area or undertake any activity on the right-of-way area which would disturb the right-of-way improvements or endanger the lateral support of the improvements. If Grantor violates this paragraph, Grantee shall have the right to remove, or require

removal of, any obstruction, or to restore, or require restoration of, the right-of-way area to the condition which existed before violation of this paragraph; either of which shall be accomplished within a reasonable period of time and at Grantor's expense.

Grantee shall indemnify and hold Grantor harmless from any and all claims or causes of action arising out of Grantee's exercise of the rights conveyed herein, except where such claim or cause of action arises out of or on account of the actions of Grantor.

The Grantor covenants to and with the Grantee that Grantor is lawfully seized and possessed of the land aforesaid; has a good and lawful right and power to sell and convey same; that same is free and clear of encumbrances, except as above indicated; and that Grantor will forever warrant and defend the title to said right-of-way and the quiet possession thereof against the lawful claims and demands of all persons whomsoever.

This conveyance shall be a covenant running with the land, and shall be binding on the Grantor and Grantor's heirs, successors and assigns forever.

The rights, title, privileges and authority hereby granted shall be enforceable in the Snohomish County Superior Court, State of Washington, and shall continue to be in force until such time as the Grantee, its successors or assigns, shall permanently remove said public street, utilities and appurtenances from said lands, or shall otherwise permanently abandon said public street, utilities and appurtenances, at which time all such rights, title, privileges and authority hereby granted shall terminate.

IN WITNESS WHEREOF, this instrument has been executed the day and year first above written.

UNITED STATES OF AMERICA IN TRUST FOR
THE TULALIP TRIBES OF THE TULALIP
INDIAN RESERVATION, WASHINGTON

By _____

CITY OF MARYSVILLE

By Dennis L. Kendall
DENNIS L. KENDALL, Mayor

STATE OF Washington)
)ss.
COUNTY OF Snohomish)

I certify that I know or have satisfactory evidence that Dennis L. Kendall
_____ is the person who appeared before me, and said
person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized
to execute the instrument and acknowledged it as the Mayor
of City of Marysville
_____ to be the free and voluntary act of such party for the uses and purposes mentioned in the
instrument.

DATED this 1st day of April, 2005.

Lillie Lein

Lillie Lein

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of

residing at Marysville
My commission expires 07-01-05

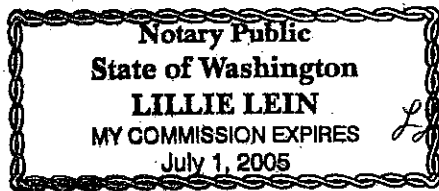


EXHIBIT C

After Recording Return to:

TULALIP TRIBES OF WASHINGTON
6700 TOTEM BEACH
MARYSVILLE, WA 98271

QUIT CLAIM DEED

THE GRANTOR, CITY OF MARYSVILLE, a municipal corporation of the State of Washington, for and in consideration of fulfillment of agreements in connection with the City of Marysville's State Avenue / 116th Improvement Project and other agreements set forth in that certain agreement between Grantor and Grantee dated 31st Mar, 2005, conveys and quit claims to the TULALIP TRIBES OF WASHINGTON, a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, the following-described real estate, situated in the County of Snohomish, State of Washington, including any interest therein which Grantor may hereafter acquire:

PARCEL 1:

The West half of the Southeast quarter of the Southwest quarter of the Northeast quarter of Section 1, Township 30 North, Range 4 East, W.M. in Snohomish County, Washington.

Assessor's Tax Parcel ID#: 300401-001-010-00

PARCEL 2:

The Southwest quarter of Government Lot 3 and the Northwest quarter of Government Lot 4, in Section 19, Township 30 North, Range 5 East, W.M., in Snohomish County, Washington.

Assessor's Tax Parcel ID#: 300519-003-002-00

DATED this 31st day of Mar, 2005.

CITY OF MARYSVILLE

By Dennis L. Kendall
DENNIS L. KENDALL, Mayor

STATE OF WASHINGTON)
)ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that DENNIS L. KENDALL is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of CITY OF MARYSVILLE to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 1st day of April, 2005.

Lillie Lein
Lillie Lein
(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at Marysville
My commission expires 07-01-05

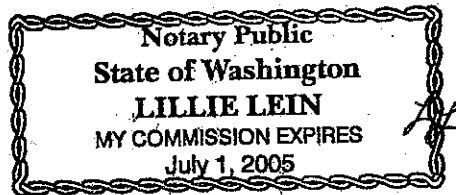


EXHIBIT D

Addendum to 1995 Agreement Between The City of Marysville And The Tulalip Tribes of Washington to Wheel Water

This Addendum is hereby entered into by and between the City of Marysville, a municipal corporation of Snohomish County, Washington hereinafter referred to as the "City" and the Tulalip Tribes of Washington, hereinafter referred to as the "Tribes," as follows:

1. This Addendum is intended to supplement and amend that certain agreement between the parties entitled "1995 Agreement Between City of Marysville and the Tulalip Tribes to Wheel Water" dated September 5, 1995.
2. The purpose of this Addendum is to modify the existing Wheeling Agreement at Sections IV "Points of Connection", and Section XI "Term and Expiration". In Section IV, the following bullets will be deleted from the existing agreement.

- Single point connection 88th Street N.E. with a peak day of water demand of 210 gallons per minute.
- Single point of connection at Marine Drive with a peak day water demand of 440 gallons per minute.
- Simultaneous delivery at two points of connection at Marine Drive and 88th Street N.E. with a peak day water demand of 366 gallons per minute and 176 gallons per minute, respectively, for a total of 542 gallons per minute; and an average day water demand of 473 gallons per minute and 240 gallons per minute, respectively, for a total of 713 gallons per minute.

AND REPLACE WITH THE FOLLOWING:

Simultaneous delivery at three service points of connections: Marine Drive, 88th Street N.E., and the 116th Street N.E. with a peak day demand of 440 gallons per minute at Marine Drive (170 zone), and the simultaneous peak day water demand for the 88th Street N.E. plus 116th N.E. (240 zone) shall not exceed 2,400 gallons per minute.

3. Section XI shall be omitted and replaced with the following: "The term of this contract shall be from the date of its mutual acceptance by all parties until the expiration of the Everett and JOA Participants-Water Supply Contract, plus such

extensions as may be mutually agreed upon."

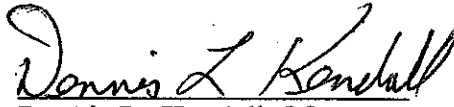
4. All other parts and paragraphs of this agreement remain as written and continue with full force and effect.

TULALIP TRIBES OF WASHINGTON

THE CITY OF MARYSVILLE



Stanley G. Jones, Sr.
Chairman



Dennis L. Kendall, Mayor

AFTER RECORDING, RETURN TO:

Tulalip Tribes of Washington (McK)
8802 27th Ave NE
Tulalip, WA 98271

CONTRACT AGREEMENT

THE TULALIP TRIBES OF WASHINGTON AND THE CITY OF MARYSVILLE, WA

This contract is made this ___st day of March, 2005 between The Tulalip Tribes of Washington, a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. § 476, governed by the Board of Directors of the Tulalip Tribes of Washington as provided in Article VI of the Constitution and Bylaws of the Tribes, and recognized as a "public agency" as defined in RCW 39.34.020, hereinafter referred to as "The Tribe" and the City of Marysville, a Municipal Corporation of the State of Washington, hereinafter referred to as "The City".

WHEREAS, The Tribe has granted a right-of-way and easement on a portion of "Trust" real property (see legal title in Attachment A) who's title is held by the United States of America for the benefit of The Tribe, and

WHEREAS, the Exterior Boundaries of the Tulalip Indian Reservation were established by the United States of America by the Treaty of Point Elliott in the year 1855, and

WHEREAS, The City respects these Exterior Boundaries of the Tulalip Indian Reservation as established by the United States, and

WHEREAS, The City respects the right and privilege of The Tribe to govern, control, and to establish laws, regulations, and ordinances for all real property within the exterior boundaries of the Reservation, and

NOW, THEREFORE BY THIS CONTRACT AGREEMENT, The City agrees not to take any action and/or make any effort whatsoever to amend boundaries, annex, include, or incorporate any real property within the Exterior Boundaries of the Reservation, and

FURTHER, BE IT CONSUMMATED BY THIS CONTRACT AGREEMENT, The City will not amend, modify, adjust, change, nor advocate, recommend or urge any other Government to change the City's legal boundaries to incorporate, or include any portion of the boundaries of the Federally recognized) Tulalip Indian Reservation, and

FURTHER, BE IT CONSUMMATED BY THIS CONTRACT AGREEMENT, that in the event an effort is made by the government body, an elected official, contractor, consultant or employed staff of The City at any time in the future to annex or incorporate any properties within the Exterior Boundaries of the Reservation, the aforementioned right-of-way and easement agreement is of no further force and its effect is null and void.

Contract Agreement between The Tulalip Tribes of Washington and the City of Marysville, WA Page 1 of 2
Listed here as Exhibit E

FURTHER, BE IT CONSUMMATED BY THIS CONTRACT AGREEMENT, both parties to this contract agree that this agreement is binding on both parties and their governments in perpetuity and is forever linked to the aforementioned real property lease in that if the terms of the real property right-of-way agreement are violated, this agreement is null and void and has no further force or effect, and

FURTHER, BE IT CONSUMMATED BY THIS CONTRACT AGREEMENT, that the names and signatures of the officials appearing below are authorized to sign for the respective governments, have executed the necessary legal instruments to cause this contract agreement to be binding upon the respective party.

IN WITNESS WHEREOF, this instrument has been executed the day and year first above written.

THE TULALIP TRIBES OF WASHINGTON

CITY OF MARYSVILLE

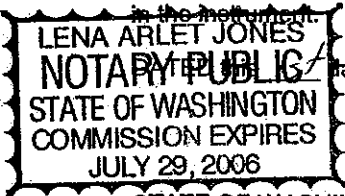
Stanley G. Jones Sr.
Stanley G. Jones, Sr.
Chairman

Dennis L. Kendall
Dennis L. Kendall
Mayor

STATE OF WASHINGTON
COUNTY OF SNOHOMISH

I certify that I know or have satisfactory evidence that STANLEY G. JONES, SR. is the person who appeared before me, and said person acknowledged that he signed this instrument on oath stated that he was authorized to execute the instrument and acknowledged it as the Chair of the Tribal Board of Directors of the TULALIP TRIBES OF WASHINGTON, to be the free and voluntary act of such party for the uses and purposes mentioned

in the instrument.



April
day of ~~March~~, 2005

Lena Arlet Jones
Wendy Church: NOTARY PUBLIC in and for
the State of Washington, residing at Tulalip, WA
My commission expires 7-29, 2006

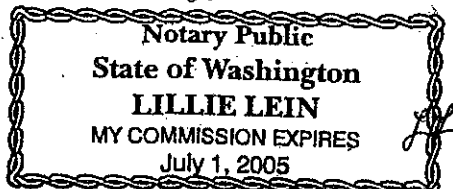
STATE OF WASHINGTON
COUNTY OF SNOHOMISH

I certify that I know or have satisfactory evidence that DENNIS KENDALL is the person who appeared before me, and said person acknowledged that he signed this instrument on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Marysville, Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 1st day of ~~March~~, 2005

Lillie Lein *Lillie Lein* *RE*

Wendy Church: NOTARY PUBLIC in and for *Marysville*
the State of Washington, residing at *Tulalip*, WA My
commission expires 07-01, 2005



Contract Agreement between The Tulalip Tribes of Washington and the City of Marysville, WA Page 2 of 2
Listed here as Exhibit E

**ATTACHMENT A
TO A CONTRACT AGREEMENT**

THE TULALIP TRIBES OF WASHINGTON AND THE CITY OF MARYSVILLE, WA

The United States holds in Trust for The Tulalip Tribes certain lands and premises situated in the County of Snohomish, State of Washington described as follows:

That portion of the Northwest Quarter and of the Southwest Quarter of Section 9, Township 30 North, Range 5 East, W.M., as described in those conveyances to the United States of America recorded under Auditor's file numbers 746345 and 746283 and transferred to the Tulalip Indian Nation under Auditor's file number 889496 and known as the Wye Connection Depot Railroad all situated in the County of Snohomish, State of Washington.

This right-of-way and easement concerns that part of the above-described parcel described as follows:

The South 37.00 feet of the Northwest Quarter and the North 53.00 feet of the Southwest Quarter of Section 9, Township 30 North, Range 5 East, W.M. except that portion lying within the existing right-of-way of 116th Street NE.

CONTAINING 9,292 SQUARE FEET, MORE OR LESS

EXHIBIT F

ADDENDUM TO THE
MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF MARYSVILLE
AND THE TULALIP TRIBES OF WASHINGTON
DATED APRIL 12, 1999

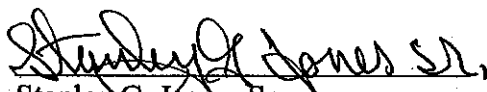
By this writing, the Memorandum of Agreement between the City of Marysville and the Tulalip Tribes of Washington dated April 12, 1999 concerning wastewater service at the 88th street pump station is hereby amended by adding to the original writing in section 1 - Policy Issue by inserting paragraph (b.) as written below:

1. The City Agrees that the current sewer connections at 88th street may be used by the Tribe on an emergency basis for the conveyance of wastewater to the capacity of the lift station at that location. The use of said emergency sewer intertie shall be subject to payment to the City by the Tribe of the applicable utility rates and compliance with applicable provisions of the City's Utility Code.
2. The Tribe constructed and paid fees for a waste water intertie in the amount of 50,000 gpd at the 88th Street intersection connection to the City's wastewater system in the 1990's. This intertie connection will remain in place and operational. This 50,000 gpd capacity/service at 88th Street in the City's pipes and plant is hereby transferred by this agreement to the intersection at 116th Street, N.E. and State Avenue with a tee to provide for sewer service to the above-described property

All other parts and paragraphs of this agreement remain as written and continue with full force and effect.

TULALIP TRIBES OF WASHINGTON

THE CITY OF MARYSVILLE


Stanley G. Jones, Sr.
Chairman

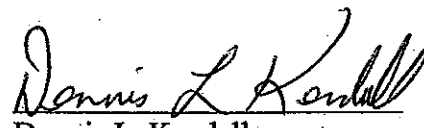

Dennis L. Kendall
Mayor

EXHIBIT G

AFTER RECORDING RETURN TO:

City of Marysville
1049 State Ave.
Marysville, WA 98270

CITY OF MARYSVILLE

EASEMENT FOR PUBLIC STREET AND UTILITIES

Grantor: TULALIP TRIBES OF WASHINGTON
Grantee: CITY OF MARYSVILLE
Legal Description: Ptn. SW ¼ & NW ¼ 9-30-05 Add'l on page 1 & 2
Tax Parcel ID#: 300509-003-033-00

THIS INDENTURE is made this 31st day of March, 2005, between TULALIP TRIBES OF WASHINGTON, a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C §476, governed by the Board of Directors of the Tulalip Tribes of Washington as provided in Article VI of the Constitution and Bylaws of the Tribes, and recognized as a "public agency" as defined in RCW 39.34.020, hereinafter referred to as "Grantor," and the CITY OF MARYSVILLE, a municipal corporation of the State of Washington, hereinafter referred to as "Grantee"; WITNESSETH:

WHEREAS, Grantor is the owner of certain lands and premises situated in the County of Snohomish, State of Washington described as follows:

That portion of the Northwest Quarter and of the Southwest Quarter of Section 9, Township 30 North, Range 5 East, W.M., as described in those conveyances to the United States of America recorded under Auditor's file numbers 746345 and 746283 and transferred to the Tulalip Indian Nation under Auditor's file number 889496 and known as the Wye Connection Depot Railroad.

Situate in the County of Snohomish, State of Washington.

and,

WHEREAS, Grantee is desirous of acquiring certain rights and privileges across, over, under and upon said lands and premises;

NOW, THEREFORE, Grantor, for valuable consideration, the adequacy and receipt of which is hereby acknowledged, hereby conveys and warrants to the Grantee, its successors and assigns, and its contractors, employees, permittees and licensees, a perpetual, nonexclusive easement for public street and utilities, including, but not limited to, water, sanitary sewers and storm sewers, and other public purposes over, under, through, across and upon the following-described lands and premises situated in the County of Snohomish, State of Washington, to-wit:

That part of the above-described parcel described as follows:

A PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 30 NORTH, RANGE 5 EAST, W.M. DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER; THENCE ALONG THE WEST LINE OF SAID NORTHEAST QUARTER SOUTH 00°52'23" EAST A DISTANCE OF 598.90 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WEST LINE SOUTH 00°52'23" EAST A DISTANCE OF 345 FEET MORE OR LESS TO THE NORTH LINE OF "PARCEL A" OF THE LAND CONVEYED BY AUDITORS FILE NUMBER 7811170059; THENCE EASTERLY ALONG SAID NORTH LINE TO A POINT WHICH LIES 90.00 FEET FROM SAID WEST LINE, WHEN MEASURED AT RIGHT ANGLES TO SAID WEST LINE; THENCE PARALLEL TO AND 90.00 FEET FROM SAID WEST LINE NORTH 00°52'23" WEST A DISTANCE OF 355 FEET MORE OR LESS TO A POINT WHICH BEARS SOUTH 88°46'44" EAST FROM THE POINT OF BEGINNING; THENCE NORTH 88°46'44" WEST A DISTANCE OF 90.06 FEET TO THE POINT OF BEGINNING.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

TOGETHER WITH the perpetual right, privilege and authority to construct, reconstruct, alter, change, improve, repair, renew, operate, maintain and patrol the public street and utility improvements, pipes and appurtenances, and the right at anytime to remove said public street, utility lines and appurtenances, or any of them.

AND TOGETHER WITH the right to remove the pump station currently located within the easement area, at Grantee's expense.

The Grantor shall make no use of the easement area which is inconsistent with the rights granted to the Grantee hereunder or which endangers the public safety.

The Grantor shall not erect any buildings or structures of any nature in the easement area or undertake any activity on the right-of-way area which would disturb the easement improvements or endanger the lateral support of the improvements. If Grantor violates this paragraph, Grantee shall have the right to remove, or require removal of, any obstruction, or to restore, or require restoration of, the easement area to the condition which existed before violation of this paragraph; either of which shall be accomplished within a reasonable period of time and at Grantor's expense.

In accepting this easement, Grantee recognizes the Tribe's right and privilege to construct a sixty foot wide transit rail line or roadway in an east to west direction across the above granted easement and makes the City's easement expressly subordinate to the Tribe's right granted herein.

Grantee shall indemnify and hold Grantor harmless from any and all claims or causes of action arising out of Grantee's exercise of the rights conveyed herein, except where such claim or cause of action arises out of or on account of the actions of Grantor.

The Grantor covenants to and with the Grantee that Grantor is lawfully seized and possessed of the land aforesaid; has a good and lawful right and power to sell and convey same; that same is free and clear of encumbrances, except as above indicated; and that Grantor will forever warrant and defend the title to said easement and the quiet possession thereof against the lawful claims and demands of all persons whomsoever. The Grantor further represents, warrants and covenants that the Board of Directors of the Tulalip Tribes of Washington has approved this easement and has authorized the undersigned to execute this easement, and that the undersigned has the requisite authority to bind the Grantor, without further approval of any other public agency including, but not limited to, the Bureau of Indian Affairs and the Federal Department of the Interior.

This conveyance shall be a covenant running with the land, and shall be binding on the Grantor and Grantor's heirs, successors and assigns forever.

The rights, title, privileges and authority hereby granted shall be enforceable in the Snohomish County Superior Court, State of Washington, and shall continue to be in force until such time as the Grantee, its successors or assigns, shall permanently remove said public street, utilities and appurtenances from said lands, or shall otherwise permanently abandon said public street, utilities and appurtenances, at which time all such rights, title, privileges and authority hereby granted shall terminate.

IN WITNESS WHEREOF, this instrument has been executed the day and year first above written.

TULALIP TRIBES OF WASHINGTON, Grantor

By Stanley G. Jones Sr
STANLEY G. JONES, SR.
Chairman, Tribal Board of Directors

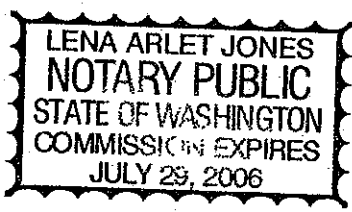
ACCEPTED:
CITY OF MARYSVILLE

By Dennis L. Kendall
DENNIS L. KENDALL, Mayor

STATE OF WASHINGTON)
)ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that STANLEY G. JONES, SR. is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Chairman of the Tribal Board of Directors of TULALIP TRIBES OF WASHINGTON to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 1st day of April, 2005.



Lena Arlet Jones
Lena A Jones
(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at Tulalip
My commission expires 7-27-06

SECOND AMENDMENT TO
1995 AGREEMENT BETWEEN CITY OF MARYSVILLE AND THE TULALIP TRIBES TO
WHEEL WATER

WHEREAS, on September 5, 1995 the City of Marysville and Tulalip Tribes entered into an agreement entitled "1995 Agreement Between City of Marysville and the Tulalip Tribes to Wheel Water"; and

WHEREAS, that agreement was first amended in 2005 by an "addendum" document which added a third point of connection at 116th Street; and

WHEREAS, the parties now wish to further amend said 1995 wheeling agreement by revising Section VIII entitled "WATER RATE";

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. The agreement entitled "1995 Agreement Between City of Marysville and the Tulalip Tribes to Wheel Water" is hereby amended, as set forth in this second amendment.
2. Section VIII of the original 1995 agreement is deleted in its entirety and substituted with the language set forth in paragraph 4 below.
3. Except as set forth in paragraph 4 below, all other provisions of the 1995 Agreement Between City of Marysville and the Tulalip Tribes to Wheel Water and the first amendment thereto shall remain unchanged.
4. From and effective on the date of signature by all parties below, Section VIII is amended to read as follows:

VIII

WATER RATE

1. *The City will be compensated under this Agreement for delivering City of Everett water to the Tulalip Reservation through the JOA pipeline and through the City's existing water distribution system.*

2. *The cost to the Tribes for such water delivery shall be a water rate equal to the sum of the "JOA Water Rate" and a "Wheeling Charge" as those terms are defined in this Agreement. The cost shall be adjusted yearly on December 31st based upon costs and water quantities established one year prior to the effective date. (For example, the JOA Rates will be determined on December 31, 2007, based upon water quantities used and costs incurred in 2006.)*

3. The "JOA Water Rate" under this Agreement shall be determined under the following equation:

$$R = E + \frac{(P + M)(1.0 + OH) + 1.25DS + TD}{QE}$$

Where:

- R = JOA water rate (per 100 cf)
- E = Everett cost (per 100 cf)
- P = Power cost for preceding year
- M = Maintenance and operating cost for preceding year Allocated to pipeline
- OH = Water utility overhead rate
- DS = Future debt service
- TD = Transmission Depreciation
- QE = Quantity of water conveyed from Everett for Preceding year in 100 cf

Storage needs shall be provided by each purveyor.

4. The "Wheeling Charge" is a charge to JOA participants for water furnished through the Marysville distribution system from any source, and shall be determined by the following equation:

$$W = \$6,300 + (OM \times QM) + C$$

Where:

- W = Wheeling Charge (Monthly)
- OM = 150%(R-E), wheeling operation and maintenance cost (per 100 cf) for the City of Marysville water distribution system, see "JOA Water Rate" for R, and E
- QM = Quantity of water metered into the Tribes system from the City of Marysville during the billing period (per 100 cf)
- C = Customer costs associated with meter maintenance, operation, and replacement, meter reading, billing expense, and reports and collection

Storage needs shall be provided by each purveyor.

5. Other definitions:

Everett Cost = E

The Everett Water Cost shall be the then current water charges paid by the CITY as determined by the "Everett and

JOA Participants - Water Supply Contract" and any additional charges as agreed to in the future between the City of Everett and the CITY of Marysville or as determined by law. The rate shall continue to be computed to the nearest ten thousandth of a dollar.

Power Cost = P

Power cost shall include all electrical and heating charges at the CITY's existing water supply facilities, such as, standby wells, reservoirs, and the meter pits for the preceding year and such other wholesale facilities as may be constructed by the CITY.

Maintenance and Operations Cost = M

Maintenance and Operation Costs shall include all repairs of pumps, motors, and heaters at the standby wells serving the wholesale customers, telemetering repairs or additions, all labor costs for above and daily maintenance and operation of standby wells, transmission and distribution system maintenance, telemetering, "Master Meter" readings, and other maintenance and operation costs attributable to either "JOA Water Rate" or "Wheeling Charge" and the equipment necessary to perform said work.

JOA Transmission Depreciation = TD

Is defined as the total cost including but not limited to material, labor, engineering, sales tax, legal, administration, etc. of various segments of the JOA transmission line divided by the useful life. For this purpose, the depreciation rate for cost or ductile iron pipe shall be 100 years and for concrete cylinder, PVC, 3/16-inch shell or heavier steel pipe shall be 50 years. City records showing the original or estimated cost to be depreciated will be made available to the Tribes for verification is and when desired by the Tribes.

Depreciation shall continue until the useful life of the facility, defined above, is reached. At such time it is assumed a replacement facility will be constructed. The cost of the replacement facility will be borne by the City of Marysville. At the time the facility is replaced, the depreciation cost to the Tribes will be revised to reflect the replacement costs.

Water Utility Overhead Rate = OH

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

- General and specific overhead direct and indirect associated with water service excluding meter reading and billing cost
- Professional services
- Insurance
- Taxes and assessments: It is understood that the Tribes are not subject to the same taxes as the City. At the Tribes' option and expense they may seek to have its portion of such taxes exempted from payment to the City, in which case the credit would be passed onto the Tribes. Written proof of such exemption shall be provided to the City reflecting such tax exemption, if any.
- Transmission and distribution supervision

Future Debt Service = DS

Future debt service shall include bonded debt service required for any future pumping, or distribution lines as may be required. Cost will be included in the appropriate formula added to this agreement at the second billing period to the TRIBES after sale of bonds issued for construction of the above future facilities. In the event the CITY elects to finance any future facilities out of CITY general construction funds, then such total costs will be added to this agreement by the second billing period of the following year and paid for under maintenance and operation costs.

The CITY bond covenants require a bond coverage of 1.25 times the Debt Service which is incorporated in the rate formula. The CITY policy is to use any coverage money not required for the bond reserve fund, refunding of bonds, or the retirements of bonds for JOA pipeline improvements to the extent possible.

It is understood that debt service is an alternative to depreciation in the formula. With both parties' concurrence, a facility(ies) can be exempt from depreciation charge if future replacement or repair is anticipated to be finance through issuing bonds. Whereby


the annual cost for facility replacement would be included as debt service. Specific facilities that were exempt from depreciation would be attached as an addendum to this agreement.

[END OF SECTION VIII]

DATED this 9 day of Oct, 2008.

THE TULALIP TRIBES OF WASHINGTON

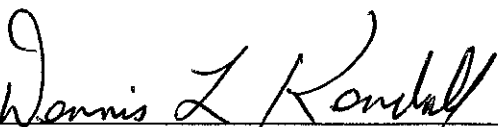
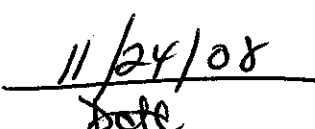
By: 
Chairman, Board of Directors

Attest: 
Secretary, Board of Directors

APPROVED AS TO FORM:

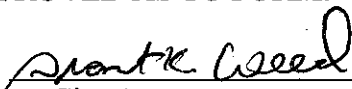
By: 
Ofc .of Reservation Attorney

CITY OF MARYSVILLE

By:  
Mayor date

Attest: 
City Clerk

APPROVED AS TO FORM:

By: 
City Attorney