

**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN
CITY OF ANACORTES
AND
PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY**

THIS AGREEMENT (herein "Agreement") is made and entered into by and between CITY OF ANACORTES, a Washington municipal corporation (herein "City") and PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY, a Washington municipal corporation (herein "District") pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT. City and the District may be individually referred to herein as a "Party" and may be collectively referred to herein as the "Parties." In consideration of the following, the Parties mutually agree as follows:

1. PURPOSE: The purpose of this Agreement is to allow each Party to provide mutual assistance and perform work and services for the other Party (herein the "Project[s]"), pursuant to and subject to the terms of this Agreement. Such Project work and/or services shall be limited and infrequent in nature and may include, but is not necessarily limited to: technical assistance and staffing support; certified water operators; engineering services and mapping; the use of equipment owned by the Parties; water line repair and maintenance, water line and appurtenances; other services as may be requested. Neither Party is obligated to pay, provide, or expend any funds, and/or provide and/or perform any other services or other duties, unless otherwise specified herein.

2. RESPONSIBILITIES: In accordance with and subject to the Purpose of this Agreement (as provided above per Section 1), either Party may, but shall not be required to perform Project work and/or services, provide Project materials, and allow for the use of each Party's equipment for Project work as may be requested by the other Party, to be reimbursed to the Party providing said Project work, materials, equipment, etc., as further provided and described per Section 4 of this Agreement, below. In the event that either Party uses any equipment owned by the other Party pursuant to this Agreement, the Parties agree that any user and/or operator of such equipment shall be an operator properly trained and/or certified in accordance with applicable law and industry standards. The Parties further agree that the borrowing Party's insurance shall be primary as to the equipment during any time that the equipment is in the possession of the borrower.

2.1 In any particular instance or in all instances, either Party may choose not to perform requested Project work and/or services for the other Party, in the event that such Party determines that it would be undesirable, unsafe, impracticable, or otherwise not feasible for any reason.

3. TERM OF AGREEMENT: The term of this Agreement shall be 60 months (5 years) from the date of agreement execution unless sooner terminated pursuant to the terms herein.

4. MANNER OF FINANCING: The Parties agree that where applicable reimbursement for Project work as may be performed by either Party shall be made as follows:

4.1 District may perform work, provide materials, and/or provide the use of District's equipment (to be operated by a District operator), for work on City's facilities upon City's request and acceptance by District, to be reimbursed by City to District at the actual cost incurred by District for said work, materials, use of District's equipment, and wages for District's staff provided by District. In any pay period, hour assisting the City will be charged last. In addition thereto, ten percent (10%) of the total cost shall be added for overhead costs for accounting, billing, and administrative services, provided that District shall submit to City a certified statement of the costs, and within thirty (30) days thereafter, City shall pay to District the amount of said statement. Upon the request of City, District shall provide adequate supporting documentation for any and all amounts billed to City by District pursuant to the terms of this Agreement.

4.2 City may perform work, provide materials, and/or provide the use of City's equipment (to be operated by a City operator), for work on District's facilities upon District's request and acceptance by City, to be reimbursed by District to City at the actual cost incurred by City for said work, materials, use of City's equipment, and wages for City's staff provided by City to operate the equipment. In any pay period, hour assisting the District will be charged last. In addition thereto, ten percent (10%) of the total cost shall be added for overhead costs for accounting, billing, and administrative services, provided that City shall submit to District a certified statement of the costs, and within thirty (30) days thereafter, District shall pay to City the amount of said statement. Upon the request of District, City shall provide adequate supporting documentation for any and all amounts billed to District by City pursuant to the terms of this Agreement.

5. **ADMINISTRATION:** The following individuals are designated as representatives of the respective Parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the Party making the change shall notify the other Party.

5.1 District's representatives shall be the Operations Manager and Engineering Manager, or their designees.

5.2 City's representative shall be the Director of Public Works, or their designee.

6. **INSURANCE:** Parties shall provide liability insurance coverage for the duration of this Agreement for its officers, agents and employees' activities while they are involved in the performance of this Agreement in an amount not less than one million dollars (\$1,000,000).

7. **TREATMENT OF ASSETS AND PROPERTY:** No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.

8. **NO PARTNERSHIP OR JOINT VENTURE:** No partnership and/or joint venture exists between the Parties, and no partnership and/or joint venture is created by and between the Parties by virtue of this Agreement. No agent, employee, contractor, subcontractor, consultant, volunteer, and/or other representative of the Parties shall be deemed an agent, employee, contractor, subcontractor, consultant, volunteer, or other representative of the other Party.

9. NO THIRD PARTY BENEFICIARIES: This Agreement is not intended to nor does it create any third Party beneficiary or other rights in any third person or Party, including, but not limited to, the general public, property owners and residents at or in the vicinity of the Project(s), or any other organization or entity, or any agent, contractor, subcontractor, consultant, employee, volunteer, or other representative of any Party.

10. INDEMNIFICATION: Each Party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions and those of its officials, officers, agents, employees, volunteers, assigns, contractors, subcontractors, and/or consultants to the fullest extent required by law, and further agrees to save, indemnify, defend, and hold the other Party harmless from any such liability, loss, and/or expense, including but not limited to, judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the other Party, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, except to the extent such injury to persons or damage to property is due to the negligence of the other Party, its subcontractors, its elected officers, employees, volunteers, and/or their agents. It is further provided that no liability shall attach to either Party by reason of entering into this contract except as expressly provided herein.

11. GRANT OF ACCESS: Access to the infrastructure owned by each Party shall be limited specifically to the infrastructure where work is being requested under this agreement.

12. DAMAGE TO PROPERTY: Each Party warrants that the infrastructure they own and operate is in serviceable condition and free from reasonable defects and deficiencies.

13. TERMINATION: Any Party hereto may terminate this Agreement upon thirty (30) days' notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the Party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination, except that the duty to indemnify pursuant to paragraph 9 shall survive such termination.

14. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS: The Agreement may be changed, modified, amended or waived only by written agreement executed by the Parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

15. SEVERABILITY: In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.

16. ENTIRE AGREEMENT: This Agreement contains all the terms and conditions agreed upon by the Parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

17. STATUS OF AGREEMENT: This Agreement is in addition to, and is not intended to replace, substitute, modify, or otherwise amend any other agreements by and between the Parties. Any other agreements by and between the Parties shall continue in full force and effect, unless specified to the contrary herein.

18. USE OF DOCUMENTS AND MATERIALS PRODUCED: Both Parties shall have the right to use and distribute any and all documents, writings, programs, data, public records or other materials prepared by any Party (and/or any Party's contractors, consultants, and/or subcontractors), in connection with performance of this Agreement. The Parties recognize and agree that any documents and/or materials arising from and/or related to this Agreement may be subject to public disclosure pursuant to applicable law.

19. COMPLIANCE WITH LAWS AND TERMS OF GRANTS: The Parties to this Agreement shall comply with all applicable federal, state, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement. If applicable, compliance with laws shall specifically include, but not be limited to, compliance with laws pertaining to the payment of prevailing wage on public works, including, but not necessarily limited to RCW 39.12. If applicable, compliance with laws shall also specifically include, but not be limited to, compliance with laws for the procurement of contracts for architectural and engineering services, including, but not necessarily limited to RCW 39.80. If necessary, the Parties shall obtain and comply with all necessary permits and approvals from all applicable jurisdictions prior to commencing any work related to this Agreement. Each Party individually recognizes and agrees that it shall be solely and separately responsible and liable for compliance with all terms and conditions of any applicable grant(s) obtained or procured in such Party's name.

20. ASSIGNMENT AND SUBCONTRACTING: No portion of this Agreement may be assigned, contracted, and/or subcontracted to any other individual, firm, company, and/or other entity by either Party.

21. DEFAULT: Failure of the Parties to comply with the terms of this Agreement shall constitute default. The Parties shall have all remedies for the enforcement of this Agreement as provided by law.

22. VENUE AND CHOICE OF LAW: In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Skagit. This Agreement shall be governed by the laws of the State of Washington.

23. CAPTIONS & COUNTERPARTS: The captions in this Agreement are for convenience and reference only and do not define, limit, or describe the scope or intent of this Agreement. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

24. NEUTRAL AUTHORSHIP: Each of the terms and provisions of this Agreement have been reviewed and negotiated, and represents the combined work product of the Parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the Party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement. The Parties represent that they have had a full and fair opportunity to seek legal advice with respect to the terms of this Agreement and have either done so or have voluntarily chosen not to do so. The Parties represent and warrant that they have fully read this Agreement, that they understand its meaning and effect, and that they enter into this Agreement with full knowledge of its terms. The Parties have entered into this Agreement without duress or undue influence.

IN WITNESS WHEREOF, the Parties have executed this Agreement on January 23, 2020.

CITY OF ANACORTES



Laurie Gere, Mayor

**PUBLIC UTILITY DISTRICT NO. 1
OF SKAGIT COUNTY**



General Manager