

## **APPENDIX H**

### **Sample Wholesale Agreements**



# SAMPLE

## AGREEMENT FOR WHOLESALE SUPPLY OF WATER

This Agreement for the wholesale supply of water between the City of Issaquah, a municipal corporation ("City") and Sammamish Plateau Water and Sewer District, , a special purpose municipal corporation NEED TO CONFIRM STATUS ("District"), is effective this \_\_\_\_ day of \_\_\_\_\_, 2013.

### 1. RECITALS.

1.1 The City, pursuant to Title 35 RCW, supplies potable water to customers within its boundaries through a public water system and, pursuant to the terms and conditions of this agreement for wholesale supply of water, will provide water to the District. The City's public system is comprised of source of supply (wells with attendant water rights and purchased water), storage, transmission, and distribution mains. The City's water supply is in excess of its present and reasonably foreseeable future demand.

1.2 The District is organized under the laws of the State of Washington as a special purpose municipal corporation to supply potable water to customers within its boundaries.

1.3 The District is in need of supply to meet demand within its service area.

1.4 The City's comprehensive plan allows it to serve the District.

1.5 The City is willing to supply the District with wholesale water on the terms and conditions provided for herein, and the District is willing to purchase wholesale water from the City on such terms and conditions.

### 2. AGREEMENT.

The Parties agree to the following terms and conditions.

#### 2.1 DEFINITIONS.

For purposes of this Agreement the capitalized and italicized terms shall mean:

2.1.1 "*Capital Improvements*." Improvements, upgrades, and replacements constructed or installed in whole or in part by the City to provide wholesale water to the District including reservoirs, primary and secondary transmission mains, interties, controls and communication equipment, wells, well pumps, booster pumps, and water treatment. Capital Improvements, when constructed, are System Wholesale Facilities, Customer Wholesale Facilities, or Joint Facilities. Capital Improvements include any equipment with a service life of one year or more.

2.1.2 "*Capital Improvement Cost.*" The original cost of Capital Improvements, including amounts paid for: (1) preparing planning studies, engineering plans and specifications, and acquiring permits and franchises for the Capital Improvements, including those costs incurred by the City prior to execution of this Agreement; (2) work performed under contracts for construction, installation, and inspection of the Capital Improvements; (3) recorded pay and expenses of employees of the City directly and indirectly related to the design, construction, installation, and inspection of the Capital Improvements, including capitalized City G&A, and including costs incurred prior to execution of this Agreement; (4) materials, equipment, and supplies directly related to the Capital Improvements; (5) acquiring and condemning land, easements, and rights-of-way for or related to the Capital Improvements; (6) professional services related to the financing, planning, acquisition, construction, installation, and inspection of the Capital Improvement or for negotiating, resolving, or litigating any disputes related thereto; (7) reasonable expenses incurred to mitigate the impact of the Capital Improvements upon the natural or physical environment, including but not limited to expenses for landscaping, buffering, and wetland mitigation; (8) other expenses reasonably related to the planning, design, construction, and construction management of the Capital Improvements.

2.1.3 "*Cash Basis.*" The City's cost of water determined according to the principles established in Section 2.6.3C except that the District's related annual bond or loan debt service and repayment obligations to the City for principal and interest shall be included in the annual cost calculation, which will include a charge and a volume charge, and the return on rate base and annual depreciation expense shall be excluded.

2.1.4 "*Coverage.*" The number of times by which gross annual revenues less Maintenance and Operation Cost and G&A exceed annual debt service. The City's Coverage shall never be less than that required by City bond covenants.

2.1.5 "*District.*" Sammamish Plateau Water and Sewer District, a Washington special purpose municipal corporation that is purchasing wholesale water from the City, including the District's agents or designees.

2.1.6 "*District Meters.*" Meters that will measure the quantity and flow of water provided to the District by the City. The locations of District Meters are identified on Exhibit B. Whenever the City delivers water through a third party, the District Meters may be a combination of a City meter located at an intertie with a third party and District Meters located at an intertie with a third party.

2.1.7 "*City.*" The City of Issaquah, a municipal corporation located in King County, including its agents or designees.

2.1.8 "*Existing Water Rights.*" Permits, certificates, or claims of the City obtained to serve the City's retail customers Wholesale Customers. Existing Water Rights are shown on Exhibit A.

2.1.9 "*GPM*," "*GPD*," "*MGD*." Gallons Per Minute; Gallons Per Day; Million Gallons per Day.

2.1.10 "*General and Administrative Cost*," "*G&A*." The City's general and administrative, supervisory and other indirect costs, including financial (budgeting, accounting, bookkeeping) data processing, clerical, management and administration, personnel, and non-capitalized professional services, including engineering and financial planning. State revenue related excise and B&O taxes, and any other costs not assigned to Maintenance and Operation Cost; but excluding any local government utility tax or franchise fee.

2.1.11 "*Internal System*." (1) With respect to the District, all present and future reservoirs, primary and secondary transmission mains, interties, controls and communication equipment, wells, well pumps, booster pumps, and water treatment owned, operated, and maintained by the District; and (2) With respect the City, all present and future reservoirs, primary and secondary transmission mains, interties, controls and communication equipment, wells, well pumps, booster pumps, and water treatment owned, operated, and maintained by the City, excluding any Wholesale Facilities and separate stand-alone satellite systems owned or operated by the City.

2.1.12 "*Joint Facilities*." That portion of the City's present and future Internal System that benefits the District or are necessary to supply wholesale water to the District, including improvements, upgrades, and replacements.

2.1.13 "*Leased Water*." Water leased or purchased by the City and used for the purpose of supplying the District.

2.1.14 "*Maintenance and Operation Cost*." All direct and indirect costs and expenses incurred by the City in treating and supplying water, including leased or purchased water, and complying with applicable regulatory requirements, including supply, treatment, pumping, labor, utilities, equipment, tools, materials, inspection, insurance, and non-capitalized equipment leases, repair and rehabilitation, and the markup provided for herein.

2.1.15 "*Party*," "*Parties*." The City and/or the District.

2.1.16 "*Supply Schedule*." A mechanism to enable the City to provide the Total Water Requirement when it is needed by the District by accommodating both the City's need to plan for and develop supply and infrastructure and the District's need for an increasing supply. The Supply Schedule will identify maximum quantities of water that the City will supply to the District during specific periods of time during the term of this Agreement.

2.1.17 "*Total Annual Revenue Requirement*". The City's cost of water determined according to the principles established in Section 2.6.3.C of this Agreement.

2.1.18 "*Total Water Requirement.*" \_\_\_\_\_ MGD, the daily maximum quantity of water the City will supply to the District during the term of this Agreement. The Total Water Requirement is used for allocating cost under this Agreement.

2.1.19 "*Water Right.*" Any water right (permit or certificate) obtained by the City for the purpose of acquiring water to supply the City and/or the District and put to use for that purpose.

2.1.20 "*Water Right Cost.*" The original cost incurred by the City to secure the Water Right, including amounts paid for: (1) preparing planning studies, engineering plans and specifications, and acquiring permits and franchises, including those costs incurred by the City prior to execution of this Agreement; (2) recorded pay and expenses of employees of the City directly and indirectly related to securing the Water Right, including capitalized City G&A, and including costs incurred prior to execution of this Agreement; (3) materials, equipment, and supplies directly related to securing the Water Right; (4) professional services related to the financing, planning, acquisition of the Water Right, or for participating in administrative proceedings with respect to securing the Water Right, or negotiating, resolving, or litigating any disputes related thereto; (5) reasonable expenses incurred to mitigate the impact of the Water Right upon the natural or physical environment; and (6) other expenses reasonably related to the acquisition of the Water Right.

2.1.21 "*Wholesale Facilities.*" All water supply and transmission facilities, including, but not limited to, wells, water lines, storage facilities, and transmission mains owned, operated, and maintained by the City for the sole purpose of supplying water to the District. When the term Wholesale Facilities is used in this Agreement, that term includes both City and District Wholesale Facilities.

2.1.22 "*Wholesale Water.*" The total quantity of water available from the City for sale to the District, including, but not limited to, water allocated by the City and designated for sale as Wholesale Water from its Existing Water Rights or from the Water Right or from Leased Water. Whenever the term "quantity of Wholesale Water" is used for the purpose of allocating cost, the term refers to MGD. As authorized by the City's Council, the volume designated as Wholesale Water shall be not less than \_\_\_\_\_ MGD.

## **2.2 SUPPLY AND PURCHASE OF WATER**

2.2.1 So long as this Agreement is in effect, the City shall plan for, develop, treat, and annually supply to the District potable water in an amount not to exceed the District's Total Water Requirement according to the Supply Schedule and to the terms and conditions herein, subject to acts of God or other events beyond the reasonable control of the City or the District. The City's obligation to provide the District with wholesale water is limited by the following Supply Schedule:

UPDATE OR REPLACE AS APPROPRIATE

A. Present to XX/XX/2013	Quantity X GPD	X GPM
B. XX/XX/2013 to XX/XX/2015	Quantity XXM GPD	YY GPM
C. XX/XX /2015 to XX/XX /2018	Quantity XX M GPD	YY GPM
D. XX/XX /2018 and thereafter	Quantity XX M GPD	YY GPM

2.2.2 The District shall pay for its share of the cost of water as provided herein: Before the District begins to take water from the City, the District shall pay only for the fixed portion of the District's Total Water Requirement. After the District begins taking water from the City and so long as this Agreement is in effect, the District shall purchase water from the City and pay for the District's Total Water Requirement and water supply received by the District according to the Supply Schedule and the terms and conditions herein, subject to acts of God or other events beyond the reasonable control of the City or the District. On an annual basis in a letter of understanding between the District and the City, the City may allow for a temporary upward modification of the Supply Schedule.

2.2.3 This Agreement shall remain in effect for twenty (20) years, subject to automatic renewal for additional twenty (20)-year periods unless either Party notifies the other Party not less than five (5) years before the expiration date of any twenty (20)-year period of its intent to terminate the agreement, provided that, with respect to the City, the meaning of the term "termination" shall be limited to the right to open the agreement to renegotiation. However, if the City is acquired by a third party, then the District may terminate this Agreement no sooner than ten years from the effective date of this Agreement. If the District chooses to exercise this right of early termination, then the party assuming or acquiring the City shall pay to the District an amount equal to the total Capital Improvement Cost paid by the District plus interest at the City's average weighted cost of debt, times the number of years remaining on the agreement on the date the right of early termination is exercised, divided by twenty (20) years. Along with the notice of early termination, the District shall submit to the third party an invoice with supporting documentation for the amount claimed. The invoice shall be due and payable within thirty (30) days of its date, and thereafter the unpaid balance shall bear interest at 12 percent per annum.

2.2.4 So long as this Agreement remains in effect, the District shall not enter into any other agreements to sell water to another water purveyor without first obtaining the written consent of the City, which consent shall not be unreasonably withheld; provided, that in no event shall the District sell water outside the place of use assigned to the Water Right or to any other water rights, including water rights for Leased Water.

2.2.5 So long as this Agreement remains in effect, the City shall not enter into any other agreements to supply water to another purveyor that will impair the City's ability to supply the District's Total Water Requirement.

## **2.3 CONDITIONS OF SERVICE -The City.**

2.3.1 Except as provided in paragraph 2.3.4 and 2.3.7, the City shall provide the normal flow identified in the Supply Schedule with required minimum hydraulic gradient at interties with the District's Internal System of not more than \_\_\_\_\_ GPM and emergency flow of not more than the GPM available as measured by Customer Meters. Flows for additional interties shall be established by separate agreement. Cost incurred to change normal flow shall be borne by the party requesting the change.

2.3.2 Except as provided in paragraph 2.3.7, the City shall provide continuous service to the District, to the extent feasible, in the same manner and extent that it provides service to its direct service customers.

2.3.3 Restrictions placed upon the District's water use to address conservation shall be adopted and applied consistent with restrictions placed upon the City's direct service customers. The City may implement emergency or conservation measures, and the District agrees to comply with such measures. The City and the District shall establish a working group to develop an emergency response plan and a water shortage plan that will identify the measures to be imposed to respond to emergencies or shortages, the mechanisms for imposing and repealing such measures, and penalties for failure to comply therewith. The City may impose unilateral measures until the City and the District approve such plans. The City or the District may convene the working group for the purpose of reviewing adopted plans, proposing amendments thereto, or monitoring implementation of plans; provided, that any amendments must have the concurrence of the City.

2.3.4 The City may interrupt or reduce delivery of water to the District, if the City, acting in good faith, determines that system emergencies or maintenance and repair so require. An emergency shall include a natural act or act of man that renders the City's water system incapable of supplying its retail customers or leaves the City without adequate water supply to supply its own customers. Except for emergencies, the City shall give the District reasonable written notice of interruption or reduction, the reason therefore, and the likely duration thereof. In the event of an emergency requiring interruption of service, the Parties shall pursue restoration of service cooperatively and with the exercise of due diligence.

2.3.5 Except as provided in paragraph 2.3.7, the quality and content of water supplied to the District at the Customer Meters under this Agreement shall comply with or exceed applicable federal, state, and local rules and regulations governing water quality applicable to the City, except in cases of emergency

2.3.6 A minimum hydraulic gradient for each intertie connection shall comply with Department of Health (DOH)-approved project report and construction document criteria. Except as provided in paragraph 2.3.7, the City shall use its best efforts to supply water from its system to the District at the intertie connection(s) at not less than the minimum hydraulic gradient pressure identified in DOH-approved project reports and to the extent possible under emergencies or maintenance and repair periods at the inlet side of District Meters of 30 psi.

The hydraulic gradient for additional District Meters shall be established by separate agreement. Cost incurred to change the hydraulic gradient shall be borne by the party requesting the change.

2.3.7 Whenever the City delivers water through a third party's water system, the City's obligations under paragraphs 2.3.1, 2, 5, and 6 are satisfied when the water supplied to that third party meets the requirements of those paragraphs. District releases City from any claim for damages or injury sustained as a result of the third party or its water system failing to meet the requirement of paragraphs 2.3.1, 2, 5, and 6.

#### **2.4 CONDITIONS OF SERVICE-Customer.**

2.4.1 The District's demand upon the City's water supply shall not exceed the Total Water Requirement at the rates of flow provided for in paragraph 2.3.1.

2.4.2 The District shall limit retail sales of water to customers within its current or future service area as described in the District water comprehensive plan; provided that, the District shall not be prohibited from providing service to retail customers outside of its service area so long as the District does not exceed the supply limitations of this Agreement.

2.4.3 The District shall not interconnect any part of its Internal System with any other municipal or private water system without the prior written consent of the City (prior oral consent in an emergency), which consent shall not be unreasonably withheld. Interconnections in place as of the date of this Agreement and identified in Exhibit B are deemed approved.

2.4.4 The District at its expense shall install, own, and operate District Meters; provided that, the selection of meters will be subject to the prior approval of the City. District Meters shall be calibrated annually in the presence of City representatives and shall be maintained to be accurate within 2 percent plus or minus. The City shall have free and unlimited access to District Meters for inspection and testing at the City's expense. The City shall read District Meters monthly and bill the District for water supplied according to the terms of this Agreement; provided, however, that whenever the City delivers water through another water system, the wheeling agreement shall establish meter-reading procedures for billing for water supplied according to the terms of this Agreement.

#### **2.5. CAPITAL IMPROVEMENTS.**

2.5.1 The City agrees to construct and recover the cost of the Capital Improvements as provided herein.

2.5.2 The Capital Improvements Cost of Wholesale Facilities shall be borne entirely by the District through rates and/or cash payments from the District.

2.5.3 The Capital Improvement Cost of Joint Facilities shall be allocated as follows:

- A. The Capital Improvement Cost of existing Joint Facilities shall be allocated between the City and the District according to the ratio of the quantity of Wholesale Water that has been designated to the District over the maximum quantity of water authorized by all the City's water rights; provided, however, the portion of Capital Improvement Cost of Joint Facilities that are existing transmission mains to be allocated to the District, net of accumulated depreciation, shall be determined by multiplying the cost of all City mains recorded on the City's books, less the cost of all City mains used exclusively for Wholesale Facilities, times the ratio of the lineal feet of mains eight inches and greater over the total lineal feet of all City mains, less the lineal feet of all mains used exclusively for Wholesale Facilities.
- B. The Capital Improvement Cost of a planned Joint Facility shall be allocated between the City and the District, after the facility is constructed, according to the ratio of the quantity of Wholesale Water designated to the District over the maximum quantity of water authorized by all City's water rights.
- C. The portion of the Capital Improvement Cost of Joint Facilities shall be allocated to the District according to the ratio of Total Water Requirement of the District over the quantity of Wholesale Water.

2.5.4 The Water Right Cost shall be allocated among Wholesale Customer according to the ratio of the Total Water Requirement of a Customer over Wholesale Water. **NOTE: This paragraph may not be applicable. However, if the City acquires additional water rights in the future, the water right cost may be allocated between the City and the District as described.**

2.5.5 The City reserves the right to issue bonds and other obligations in accordance with applicable law.

2.5.6 If the city is required by growth, accident, emergency, failure, or applicable law or regulation to improve, upgrade, replace, or expand the Water Right, Wholesale Facilities, or Joint Facilities, or to provide a higher level of water treatment, the District shall share in those future Capital Improvement Costs as provided in paragraphs 2.5.2, 2.5.3, or 2.5.4.

2.5.7 Capital Improvements shall be constructed as public works projects awarded pursuant to law. The City shall design, construct, and maintain the Capital Improvements according to accepted water utility standards. The City shall administer the planning, design, construction, and construction management of the Capital Improvements to the best of its ability. Any construction change order changing the scope of a project or increasing the estimated Capital Improvement Cost of a project by 5 percent or \$50,000.00, whichever is greater, shall be approved only after consultation with the District.

## **2.6 COST OF WATER.**

2.6.1. The Capital Improvement Cost and Water Right Cost shall be allocated between the City and the District as provided in Section 2.5. The City shall price the water as provided in this Section 2.6.

2.6.2. From the date of this Agreement until modified as provided herein, water will be priced according to the Cash Basis of cost recovery to be included in the Total Annual Revenue Requirement, but the price will never be less than the price established by the Cash Basis in year one of this Agreement. The Cash Basis shall be composed of two pricing components (1) a fixed charge based on the District's Total Water Requirement and (2) a unit charge per 100 cubic feet (CCF). The Cash Basis of cost recovery shall continue until the City can sell to the District sufficient water to recover the City's Total Annual Revenue Requirement for three consecutive years. Thereafter, water shall be priced as provided in Section 2.6.3C and the District's wholesale water rate shall be composed of: (1) a fixed charge to recover depreciation, a return on Rate Base, and G&A; and (2) a unit charge per 100 cubic feet (CCF) of the District's consumption to recover Maintenance and Operation Cost, including a markup of 10 percent.

2.6.3. The following shall determine the wholesale water rate to be paid to the City by the District after the Cash Basis of cost recovery is discontinued:

A. The City will treat the District as a customer separate from the City's direct service customers;

B. All costs of serving the District will be recovered by a combination of annual fixed charges and water volume charge to the District; and

C. The cost of serving the District shall include depreciation expense, Return on Rate Base, Maintenance and Operation, and G&A components determined as follows:

1. G&A shall be an annual cost per connection established by multiplying total G&A by two-thirds, dividing that by the total number of water service connections, with the District counted as one connection, plus one-third of annual G&A divided by the prior year's total City Internal System consumption, plus the projected increase in current year's total consumption for the District; multiplied by the District's projected current consumption as provided by the District to the City no later than December 31 of each year.

2. Annual depreciation shall be determined dividing the original Capital Improvement Cost recorded on the City's books by the City's standard application of estimated life of that facility or for that class of water assets.

3. Return on Rate Base shall be determined as follows:

a. Wholesale Facilities. The Capital Improvement Cost, net of accumulated depreciation, allocable to the District less any upfront cash payment made by the District, multiplied by 6 percent.

b. Joint Facilities. The Capital Improvement Cost net of accumulated depreciation multiplied by 6 percent per year from the date of this Agreement.

c. Water Right. The Water Right Cost allocable to the District multiplied by 12 percent per year for 20 years after the Agreement date and thereafter multiplied by 9 percent per year.

d. Existing Water Rights. The Water Right Cost per MGD will be \_\_\_\_\_ (City to determine).

4. Maintenance and Operation Cost of Joint Facilities and Wholesale Facilities shall be annually determined separately, totaled, and increased by 10 percent per the City's fiscal year.

a. The Maintenance and Operation Cost of Joint Facilities shall be determined as follows:

i. Pumping, Treatment, and Storage Costs. The annual City pumping, storage, and treatment costs divided by the prior year's total City Internal System consumption, plus the projected increase in current year total consumption for the District, multiplied by the District's projected current year's total consumption as provided by the District to the City no later than December 31 of each year.

ii. Transmission Costs. The annual City transmission and distribution costs multiplied by the ratio of the lineal feet of mains eight inches and greater, less the lineal feet of mains used exclusively for the District, divided by the prior year's total City Internal System consumption, plus the projected increase in current year's total consumption for the District, multiplied by the District's projected current year's consumption as provided by the District to the City no later than December 31 of each year.

b. The annual City Maintenance and Operation Cost of Wholesale Facilities shall be allocated to the District.

D. The City will recalculate the G&A costs and Maintenance and Operation costs annually by using the current year's total consumption and the City's annual costs; and, in

the following year, the fixed charge portion of the District's wholesale water rate shall be increased or decreased accordingly.

2.6.4. A. The City shall install telemetry systems at the District meters for the purpose of monitoring delivery of water to the District. Such telemetry shall be operational when the City commences to supply the District with water under this Agreement. The City shall advise the District whenever the District's demand for water threatens to exceed the limits of the quantity limitation in the Supply Schedule or the District's Total Water Requirement. Upon receipt of such notice, the District shall operate its system so that peaking demand shall be satisfied from the District's water supply and not from water supplied under this Agreement. The City shall notify the District when the District's demand no longer threatens to exceed the quantity limitation in the Supply Schedule or the District's Total Water Requirement.

B. If, in any calendar month, the District exceeds the limits of the quantity limitation in the Supply Schedule or the District's Total Water Requirement (an "Exceedance"), the City shall hand deliver written notice of such Exceedance to the District. If, after three days from the notice, such Exceedance continues, the City shall hand deliver a second notice of Exceedance. If, after three days from the second notice the Exceedance continues, then, in addition to a 100 percent surcharge on the unit charge component of the wholesale water rate payable on all water used in excess of the quantity limitation in the Supply Schedule or the District's Total Water Requirement, the District shall pay to the City an amount equal to 75 percent of the prior year's total annual payment (which includes both the unit charge and the fixed charge) to the City for wholesale water.

C. In any calendar year that the District exceeds the quantity limitation of the Supply Schedule times 365 or its Total Water Requirement times 365, as applicable, the District's wholesale water rates shall be subject to a surcharge on the exceedance of 100 percent of the unit charge component of the wholesale water rate.

D. The District shall reimburse the City for any penalties imposed on the City for using more water than allowed by the City's water rights arising from the District's use of water in excess of the use provided for herein.

2.6.5. The City has adopted Resolution No. B-1284 that establishes financial policies and a Rehabilitation and Repair Account, Account No. 136. The City agrees that it will not modify its financial policies in a manner detrimental to the District nor discontinue Account No. 136 without making adequate provision for its obligation to fund its share of depreciation as provided herein. The City will establish in Account No. 136 a sub-account entitled "Sammamish Plateau Water and Sewer District R&R" for the purpose of recording funded depreciation and into which the City shall deposit, at a minimum the annual depreciation expense recovered from the District through rates. Amounts deposited into the "Sammamish Plateau Water and Sewer District R&R" sub-account shall be restricted to payment for repair and rehabilitation projects for the Wholesale and Joint Facilities, and unavailable to the City by way of interfund transfer or loan; provided, that the City may invest such funds as prescribed by law. The return on such investment shall be deposited to the "Sammamish Plateau Water and Sewer District

R&R"" sub-account and credited against revenue requirements for the Wholesale and Joint Facilities. Funding of the "Wholesale Customer's R & R account shall begin only after all other revenue requirement cost and rate of return elements are recovered in wholesale rate revenues in whole.

At the option of the District, on or before the effective date of the dissolution of the City, its merger or consolidation with another special purpose district, or its assumption by another city, funds received from the District and deposited into the " Sammamish Plateau Water and Sewer District R&R" sub-account shall be deposited into an account established by District and restricted by for the duration of this Agreement to payment of the District's share of Wholesale and Joint Facilities rehabilitation and repair projects. Thereafter, the District's portion of rates allocated to depreciation expense shall be deposited therein and restricted for payment of Wholesale and Joint Facilities rehabilitation and repair projects. If the District chooses to terminate the agreement as provided in 2.2.3, the funds in the " Sammamish Plateau Water and Sewer District R&R"" shall be refunded as provided in 2.2.3.

2.6.6. The City shall establish a "SPWSD Cash Payment Capital Account" to deposit cash payments made by the District in advance of costs incurred by the City for serving the District. The "SPWSD Cash Payment Account" will be a separate bank account for the sole purpose of depositing these funds at a local banking institution. This account will earn interest monthly and will be deposited on a monthly basis. Each year that the City earns revenue for annual depreciation and return on rate base, the City will reduce both the "SPWSD Cash Payment Capital Account" and the District's annual fixed charge respectively by the same amount and record earned revenue for the City. If the District is delinquent in paying its wholesale water bill to the City for 60 days or more, the City may apply any cash balance in the "SPWSD Cash Payment Capital Account" to the District's wholesale water bill to cure the delinquency.

When Wholesale Facilities are constructed, funds in the "SPWSD Cash Payment Capital Account" may, at the discretion of the District, be used to offset the Capital Improvement Costs of the new facility. Money withdrawn from the "SPWSD Cash Payment Capital Account" to fund capital projects shall reduce the Capital Improvement Costs allocated to the District to calculate Return on Rate Base. Annual depreciation of a Wholesale Facility will be computed on the total Capital Improvement Cost of that Wholesale Facility without any deduction for cash payments made by the District. If the District chooses to terminate the agreement as provided in 2.2.3, the funds in the "SPWSD Cash Payment Capital Account" shall be refunded as provided in 2.2.3.

2.6.7. Before the City recovers its cost according to the utility basis of calculating the Total Annual Revenue Requirement, the City will recover its cost according to the Cash Basis of cost recovery as provided in Section 2.6.2. If the District prepays all or any portion of its share of a wholesale capital project, the District shall have its annual fixed charge reduced in an amount equal to the percentage that the cash payment reduces the District's share of the capital construction cost times the directly assigned annual debt service payments included in

the annual fixed cost payable by the District; provided, that the reduction in the fixed costs can be applied only to the portion of the annual fixed cost applicable to a specific capital project or group of projects.

~~2.6.8. Once the City recovers its cost according to the utility basis of calculating the Total Annual Revenue Requirement, as provided in Section 2.6.3, the annual fixed charge of Wholesale Customers making cash payments shall be reduced in an amount equal to the reduction in the Return on Rate Base of those Wholesale Customers not making cash payments; and the annual fixed charge of a Customer not making cash payments shall be increased in an amount equal to that Customer's reduction in return on rate base. (MAY NOT BE APPLICABLE)~~

## **2.7 INTERNAL SYSTEMS.**

2.7.1. Each Party shall own, maintain, and operate its Internal System at its sole expense, except as provided herein. Each Internal System shall be maintained and operated with the highest practicable standards and practices in construction, operation, and maintenance, with particular attention to cross-connection control, water quality, and efficient and economical utility operation. Either Party may notify the other of conditions within the other's internal System that constitute violations of law, regulation, or permit. Each Party shall cooperate with the other to rectify such conditions. If by reason of the District's act or failure to act, the City is penalized for failure to maintain or operate the Wholesale Facilities as required by applicable law or regulation, the District shall indemnify the city for the penalty and all costs, including reasonable attorney's fees associated with investigating and defending against such penalty.

2.7.2. The District shall pay the charges described in paragraph 2.6 out of the revenues of the District's Internal System. District's payments to the City pursuant to this Agreement and payments otherwise required or provided for by this Agreement shall be maintenance and operation expenses of the District's Internal System, prior to and superior to any debt or charge or lien of any revenue bond or other obligation issued by the District that is payable from the revenues of its Internal System. The District shall establish rates and collect fees and charges for water service sufficient to pay for the maintenance and operation of its Internal System, including payments to the City, and the principal and interest on any and all District debt obligations.

2.7.3. The City shall establish rates and collect fees and charges for water service sufficient to pay for the maintenance and operation of its Internal System, and the principal and interest on any and all City revenue obligations that constitute a charge against the revenue of the City's Internal System.

2.7.4. The City shall keep full and complete books of accounts in compliance with current standards required by the State Auditor. Either Party may request independent audits by a public accounting firm at that Party's expense.

## **2.8 ADMINISTRATION.**

2.8.1. The City shall, if necessary, amend its comprehensive plan and/or water rights to authorize it to serve the District. The City, as planning authority for the water supply requirements of this contract, shall examine and investigate water supplies suitable and adequate for its present and reasonable future needs, including any wholesale supply requirements. The City shall prepare and adopt a plan for acquiring and supplying such water, including provision for water and water rights, real property, and facilities required for storage and transmission and delivery of water.

The City shall establish an operation committee to include a representative of the District. The committee shall advise the City on all matters related to wholesale water supply, participate in the preparation of emergency plan(s), review and comment upon the City's comprehensive plan(s), review and comment upon planning for, design of, and cost of Capital Improvements; provided however, the City's decisions concerning Capital Improvements shall be final and not subject to arbitration.

2.8.2. Each Party shall purchase and maintain insurance for its Internal System equal to or greater than coverage in force for such system as of the date of this Agreement.

2.8.3. The District grants to the City a right of first refusal to acquire the District's Internal System in lieu of a sale to a third-party purchaser on terms and conditions acceptable to the Parties.

2.8.4. The City shall bill the District for water supplied by monthly invoice due and payable within thirty (30) days of the date thereof. Delinquent and unpaid balances shall bear interest at 12 percent per annum. Each monthly bill shall be composed of 1/12th of the estimated annual fixed cost plus a unit charge on volume used during the billing period. The District may dispute the accuracy of a monthly invoice by providing written notice to the City within thirty (30) days of the date of invoice that specifies the nature of the dispute and by paying any undisputed amount. The City shall rule on the dispute in a timely fashion, and the District shall pay the disputed amount or submit the dispute to arbitration as provided herein within thirty (30) days of the City's decision. Disputed amounts shall not bear interest until thirty (30) days after the City's decision or the arbitrator's decision.

2.8.5. Except as otherwise provided in this Agreement, a dispute arising out of the terms and conditions of this Agreement, except for a billing dispute, shall be submitted for mediation to a mediator agreed to by the Parties. If mediation is unsuccessful, the dispute shall be arbitrated by \_\_\_\_\_.

Arbitration, shall be conducted in accordance with Title 7.04 RCW; provided, the Parties may conduct discovery pursuant to the Superior Court Rules of Civil Procedure. The arbitrator's decision shall be final and shall award reasonable attorney's fees and costs of arbitration to the prevailing party. Requests for reconsideration or modification may be submitted as provided by Superior Court Rules of Civil Procedure. The arbitrator's decision shall be reduced to judgment as provided by Title 7.04 RCW. The provisions of this paragraph do not apply to arbitration of a billing dispute, which shall be conducted informally.

2.8.6. This Agreement shall inure to the benefit of and be binding upon successors of interest and assigns of the Parties. Neither this Agreement nor obligations to perform hereunder may be assigned voluntarily by either Party without the other Party's written consent. The Parties do not intend to confer rights or benefits upon any third party. This Agreement is complete and contains the entire understanding of the Parties, and it may be modified only by a writing executed by the Parties.

2.8.7. Unless otherwise provided in this Agreement, all notices relating to this Agreement shall be sent to the following addresses, certified mail, return receipt requested, unless the other Party is previously notified in writing:

To City of Issaquah:  
TITLE AND/OR NAME  
City of Issaquah  
Address 1  
Address 2

To Sammamish Plateau Water and Sewer District:  
TITLE AND/OR NAME  
Sammamish Plateau Water and Sewer District  
Address 1  
Address 2

Billings for water supplied and payments thereof may be made by regular mail.

2.8.8. Each Party agrees to indemnify the other and hold it harmless from and against any loss, cost, damage, or expense of any kind and nature, including reasonable attorney's fees arising out of injury to person or damage to property in any manner caused by the negligence or omission of the Party in the performance of its work pursuant to or in connection with this Agreement.

2.8.9. This Agreement is intended to be and is a contract for the purchase and sale of a commodity, and no provision hereof shall be construed to make the Parties partners or joint venturers. Neither Party is the agent of the other nor shall either Party be held liable for the acts of the other on a theory of agency or any other representative capacity.

2.9.1 Notwithstanding 2.2.3, the District shall be excused from its payment obligations under this agreement to the extent that the City is prevented by a final, non-appealable order of a Washington State agency or by a final, non-appealable decision or decisions of a Washington State or Federal court or courts from delivering Wholesale Water to the District as required under the District's Supply Schedules

**Signature Block**



# **SAMPLE** Agreement for Sewage Disposal

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, between City of Issaquah, a municipal corporation of the State of Washington, hereinafter referred to as the "City", and the Sammamish Plateau Water and Sewer District, a special purpose municipal corporation of the State of Washington, hereinafter referred to as the "District."

## RECITALS:

WHEREAS, the public health, welfare and safety of the residents of the City and the tenants and users of the District require the development, maintenance, and operation of adequate systems of sewage collection and disposal, the elimination of water pollution and the preservation of the fresh and salt water resources of the area, and

WHEREAS, both the City and District are engaged in developing and operating sewage disposal systems and the City has infrastructure to enable the discharge of sewage to the King County sewer interceptor and

WHEREAS, to provide for said District connection to the City for conveyance of all sewage collected by the District to the King County sewer interceptor for treatment downstream, it is necessary that a contract be entered into establishing the respective rights and duties to the parties incidental thereto;

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

## Section 1: Delivery and Acceptance of Sewage.

(1) Residential and Commercial Sewage/City Limits. The District shall deliver to the City sewage collected by the District within the boundary of the District, shown on Exhibit "A", attached hereto, and the City shall accept and dispose of said sewage, subject to the terms of this contract; PROVIDED, however, that some areas within the District are not currently sewered and, as such additional un-sewered area is added to the District's system in the future, they shall pay all area and connection charges in effect at the time of hook-up. In no event shall anything herein be construed as a change or modification in the City's boundaries. Provided further, if elevations or other factors make delivery of sewage to the City undesirable in the opinion of the District it may deliver such sewage to facilities other than those of the City as provided in Section 20.

(2) Industrial Waste. Industrial waste can create greater problems of treatment than residential and commercial sewage. For example, the Washington State Department of Ecology (Ecology) has more stringent standards with respect to treatment of such waste since treatment plant operations may be adversely affected by such waste if not properly pretreated. At the time of this agreement the District does not release high strength waste to the City. While the City agrees to accept and treat such waste, it shall do so under the conditions that it has the right and obligation to regulate and control the conditions under which such wastewater is accepted and may, under certain circumstances, require pretreatment; PROVIDED, however, that the City shall not use this power for defacto control over District land use or other policies.

(2) Future Conditions. The District and the City may, at some future date, desire sewer service to be extended to other areas not currently served under all the conditions of this contract. Such sewer service located in the City's service area shall be deemed an extension of the City's sewage collection system. Said extension shall be accomplished under the direction of the City and be subject to review and approval by the City in accordance with the City's current published standards in effect at the time of the extension. Such sewer service located in the District's service area shall be deemed an extension of the District's sewage collection system and shall be subject to the review and approval by the City to ensure the City has adequate capacity to accept and convey this sewage to the King County sewer interceptor. The District and the City agree that they will work together in connection with servicing such areas should the same be requested; PROVIDED, however, that the City reserves the right to condition acceptance of such sewage discharge from this area upon the same terms and conditions expressed in subparagraphs (1) above.

#### Section 2: Connection charges.

Any customers that are connected to the District's system after the effective date of this contract shall pay the then current connection charge charged by the City to its customers. Such charges shall be paid to the City at the time of District connection to the City system, or when the customer connects, whichever is later. The City shall collect all connection charges imposed by the City from the District prior to accepting sewage flow from a new customer's connection.

#### Section 3: Payment for Sewage Disposal.

(1) Monthly Metered Rate. The District shall pay monthly to the City for the collection and disposal of sewage collected by the District and delivered to the City for delivery to the King County sewer interceptor at \_\_\_\_\_.

The District shall make such payment within thirty (30) days of receipt of the City bill regardless of the District's collection of rate charges from District customers.

(2) Rate Increases. The City has the right to set and establish rates to be charged; PROVIDED, the City shall examine, and consider any information that may be presented to it relative to the rate to be charged such that future rate increases shall reflect actual costs of operation and be system wide such that all system improvement and operation costs shall be allocated pro-rata to all customers, both in- the City and the District, using the same methodology.

(3) Flow Meters. ~~The District currently has a master sewage meter which measures all sewage flow from District property excluding specific customers of the District system where it is physically most efficient and cost effective to connect them to the City's sewage collection system and not have their wastewater flow through the master sewage meter.~~ For billing purposes, it is the City's policy to bill for sewage service based on metered water consumption for commercial customers. As the District has developed, virtually all of its sewage is equivalent to that of a commercial customer sewage flow. Therefore, the City will bill District tenants based on metered water consumption, as it does all other commercial customers. (Need to update this as appropriate to the set of the systems when established.)

Section 5: Improvements and Upgrades to the City's sewage infrastructure.

It is understood and agreed that the expense of any future additions, modifications or upgrades required to be made to the City's sewage infrastructure for accepting and/or conveying District sewage, and/or as determined by the City Council in their discretion, shall be assessed to all City and District customers and the District agrees to pay its pro rata share based upon of the volume or flow of sewage conveyed to the City facilities.

Section 6: Maintenance of Collection System.

Each party shall be individually responsible for providing maintenance and operation of its respective sewage collection system. The District shall be charged, on a pro rata basis by the City, for maintenance of the conveyance lines from the District to the King County sewer interceptor.

Section 7: Administrative Code.

Neither party hereby waives any rights they may have under the law. However, the City recognizes District users may also be subject to District or County ordinances especially when those are more stringent or different than City regulations.

Section 8: Inspection.

The City shall have the right to inspect the District collection system in order to verify and to investigate any problems associated with the quantity or quality of sewage originating from the District's system which might adversely affect the City's system. City personnel making such inspections shall contact the District Director in advance to determine whether the District desires to have its personnel accompany City personnel for informational, safety, security and/or liability reasons.

Section 9: Insurance.

Both parties shall maintain adequate insurance covering personal injury or property damage that might occur as a result of the operation and maintenance of their respective sewer systems. Such insurance shall be as is customarily maintained with respect to the sewer systems of like character.

Section 10: Action to be taken by the District.

The District agrees, upon the execution of this contract by both parties, to take appropriate steps to reduce excessive storm water infiltration and inflow and address other problems which might adversely affect the City. Such work shall be at the expense of the District. Excessive infiltration and inflow, for the purposes of this agreement, is that which exceeds the City's on a percentage basis and has been deemed so by the Washington State Department of Ecology.

Section 11: Actions to be taken by City.

The City agrees not to charge the District any additional costs other than rates for monthly service and connection charges specified in this agreement.

Section 12: Assignment.

The District shall not have right to assign this agreement or any of its rights or obligations hereunder, either by operation of law or by voluntary agreement without the written consent of the City. This agreement shall be binding upon and inure to the benefit of the respective successors and assigns hereto.

Section 13: Notice.

Whenever notice is to be given, the same shall be by registered mail, addressed to the respective parties at the following addresses unless a different address shall be hereafter designated in writing by either of the parties:

To City of Issaquah:  
TITLE AND/OR NAME  
City of Issaquah  
Address 1  
Address 2

To Sammamish Plateau Water and Sewer District:  
TITLE AND/OR NAME  
Sammamish Plateau Water and Sewer District  
Address 1  
Address 2

Section 14: Execution of Documents.

Each party agrees that it will execute any and all franchises, documents, leases, instruments, deeds, resolutions and ordinances necessary to give effect to the terms of this agreement.

Section 15: Waiver.

No waiver of either party of any term or condition of this agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed a waiver of any subsequent breach whether regarding the same or a different provision of this agreement.

Section 16: Remedies.

In addition to any other remedies provided by law, this agreement may be specifically enforced by either party.

Section 17: Entirety.

The agreement merges and supersedes all prior negotiations, representations and agreements relating to the subject matter hereof between the parties hereto, and constitutes the entire contract between the parties.

Section 18: Duration.

This Agreement shall remain in effect for twenty (20) years, subject to automatic renewal for additional twenty (20)-year periods unless either Party notifies the other Party not less than five (5) years before the expiration date of any twenty (20)-year period of its intent to terminate the agreement, provided that, with respect to the City, the meaning of the term "termination" shall be limited to the right to open the agreement to renegotiation. However, if the City is acquired by a third party, then the District may terminate this Agreement no sooner than ten years from the effective date of this Agreement. If the District chooses to exercise this right of early termination, then the party assuming or acquiring the City shall pay to the District an amount equal to the total Capital Improvement Cost paid by the District plus interest at the City's average weighted cost of debt, times the number of years remaining on the agreement on the date the right of early termination is exercised, divided by twenty (20) years. Along with the notice of early termination, the District shall submit to the third party an invoice with supporting documentation for the amount claimed. The invoice shall be due and payable within thirty (30) days of its date, and thereafter the unpaid balance shall bear interest at 12 percent per annum.

Section 19: Severability.

Any provisions of this contract which may be later determined to be unlawful as applied to any individual or circumstances shall be severable from the remainder of the contract so as to be fully enforceable as to all other individuals or circumstances.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**Signature Block**