

**INTERLOCAL GOVERNMENTAL AGREEMENT
BETWEEN
PUBLIC UTILITY DISTRICT NO. 1 OF ASOTIN COUNTY
AND
THE CITY OF ASOTIN**

This Agreement is by and between PUBLIC UTILITY DISTRICT NO.1 OF ASOTIN COUNTY, Washington, (hereinafter referred to as the "PUD") and the CITY OF ASOTIN, (hereinafter referred to as the "CITY").

**ARTICLE I
PURPOSE**

- 1.01 Purpose:** The purpose of this Agreement is to set forth the terms and conditions under which the PUD will provide water system management and operation for the CITY. This Agreement is limited to this purpose and does not apply to any other power, privilege or authority that may be exercised by either the PUD or the CITY.

**ARTICLE II
OWNERSHIP AND CONTROL**

- 2.01 CITY Water System.** The CITY shall own the water system.

**ARTICLE III
DUTIES OF PARTIES**

- 3.01 Duties in General.** The CITY owns, operates and maintains a water utility within parts of its jurisdiction. The CITY is seeking the following services from the PUD:

A. Water system management and operation.

- 3.02 Duties of the PUD.** The PUD shall have the following duties with respect to this Agreement:

- A. Weekly inspection of pumping equipment, treatment system and chlorine residual monitoring.
- B. Weekly flow and well water level recording.
- C. Monthly bacteriological sample collection and submittal to certified laboratory.
- D. Annual source water compliance monitoring and submittal to certified laboratory.
- E. Annual reservoir inspection (interior).
- F. Annual valve operation and maintenance.
- G. Semi-annual distribution main flushing.
- H. On call response to water emergencies 24 hours per day 7 days per week.
- I. New service installation
- J. Service rehabilitation
- K. Management, administration and record keeping.
- L. Provide monthly water system operation report to CITY Council.
- M. Inform CITY of equipment problems and/or pending equipment failure.
- N. Provide repair of facilities, equipment and distribution system when authorized by the CITY Council with charges to the CITY based on time, material and equipment costs.

3.03 Duties of the CITY. The CITY shall have the following duties with respect to this Agreement:

- A. Maintain ownership responsibility of the water system.
- B. Remain responsible for authorizing any repairs or maintenance of the system.
- C. Pay costs associated with laboratory services
- D. Pay costs of materials and supplies associated with facility and equipment repairs, distribution system repairs, service rehabilitation and new service installation.
- E. CITY facilities, tools and equipment will be made available for use by the PUD.
- F. Provide copies of all Department of Health correspondence to PUD.
- G. Perform other ownership duties as required by Department of Health.
- H. Designate one individual of the CITY as the contact person with PUD.

**ARTICLE IV
COMPENSATION FOR SERVICES**

4.01 Compensation. The CITY shall compensate the PUD as follows:

- A. The sum of \$3,500.00 per month for water system management and operation.
- B. Upon presentation of an invoice for services by the PUD, the CITY shall make payment to the PUD within thirty (30) days of receipt. All accounts 30 days or more past due shall bear interest at 12% per annum.

4.02 Payment. Unless otherwise stated, terms for payment shall be thirty (30) days from the customer's receipt of PUD's invoice for service rendered. Payments delayed beyond such thirty (30) day time period shall be subject to interest calculated on a daily basis, at a 12% annualized rate, until paid.

4.03 Taxes. The prices quoted for service do not include any applicable sales, privilege, use, excise or similar tax. The amount of any such taxes, which PUD shall be required to pay as a result of providing the stated service, shall be added to the total amount due and payable by the customer.

4.04 Compensation for Large Scale Repairs or Emergencies. The PUD shall be compensated on a actual cost basis for time, overtime, material and labor, over and above the monthly compensation, for repairs made to the CITY water system that occur as a result of a catastrophic event or a large-scale emergency.

4.05 Compensation Review and Adjustment. Annually the PUD shall review compensation for providing water system management and operation services for the CITY. If the PUD determines that an adjustment or increase is warranted, such compensation increase will not become effective until thirty days after such written notification to the CITY.

**ARTICLE V
DURATION AND TERMINATION OF AGREEMENT**

5.01 Duration and Termination. This Agreement shall commence immediately upon execution by both parties. Either party through written notification of thirty (30) days may terminate this Agreement.

5.02 Disposition of Property. The PUD is not directly financing any acquisition, design, construction, operation or maintenance of the water system. Accordingly, upon the partial or complete termination of this Agreement, ownership of the water and sewer system shall remain vested in the CITY.

ARTICLE VI PERFORMANCE OF AGREEMENT

- 6.01 Compliance with All Laws.** Each party shall comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of this Agreement, including without limitation all those pertaining to wages and hours, confidentiality, disabilities and discrimination.
- 6.02 Maintenance and Audit of Records.** Each party shall maintain books, records, documents and other materials relevant to its performance under this Agreement, which sufficiently and accurately reflects any and all direct and indirect costs and expenses incurred or paid in the course of performing this Agreement. These records shall be subject to inspection, review and audit by either party or its designee, the Washington State Auditor's Office, and authorized federal agencies. Each party shall retain all such books, records, documents and other materials for five (5) years following the termination of this Agreement.
- 6.03 Improper Influence.** Each party agrees, warrants and represents that it did not and will not employ, retain or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining or extending this Agreement. Each party agrees, warrants and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining or extending this Agreement.
- 6.04 Conflict of Interest.** The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

ARTICLE VII DISPUTES

- 7.01 Time.** Time is of the essence of this Agreement.
- 7.02 Conflict.** In the event of conflict among the terms and conditions of this Agreement and federal, state or local law, the inconsistency shall be resolved by giving precedence of interpretation in the following order:
- A. Applicable federal case law, statutes and regulations; then
 - B. Applicable Washington case law, statutes and regulations; then
 - C. The terms and conditions of this Agreement; then
 - D. Any other terms and conditions of this Agreement incorporated by reference.
- 7.03 Waiver Limited.** A waiver of any term or condition of this Agreement must be in writing and signed by the parties. Any express or implied waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission.

- 7.04 Attorney's Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the substantially prevailing party shall be entitled to recover reasonable attorney's fees and other costs incurred in that action, arbitration or proceeding.
- 7.05 Governing Law and Venue.** This Agreement shall be governed exclusively by the laws of the State of Washington. The Asotin County Superior Court shall be the sole proper venue for any and all legal action brought to enforce or interpret the provisions of this Agreement.

ARTICLE VIII WARRANTY

- 8.01 Warranty/Corrective Action:** PUD warrants that service performed under this agreement shall conform to the same standards of care, skill, and diligence used in the conduct of its own business and to the same laws and industry standards applicable to its own business at the time the service under this agreement is performed.

PUD's corrective action obligation relative to the provided service shall be limited to providing replacement of any non-conforming service or a refund to the customer of the price paid by the customer for such non-conforming service. The choice of corrective action shall be at PUD's sole discretion. The customer agrees to notify PUD of the need of corrective action, in writing, within ten (10) calendar days after delivery of service to obligate PUD for any corrective action under this warranty. Failure to provide such notice as required will eliminate PUD's corrective action obligations hereunder.

WARRANTY DISCLAIMER: THE WARRANTY AND REMEDY SET FORTH HEREINABOVE ARE EXCLUSIVE, AND NO OTHER WARRANTY OR REMEDY OF ANY KIND SHALL APPLY WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED AND INCLUDING, BUT WITHOUT LIMITATION, WARRANTIES OF PERFORMANCE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE IX LIABILITY

- 9.01 Limitation of Liability:** The customer expressly agrees that, to the fullest extent permitted by law, its maximum aggregate recovery for claims against PUD concerning PUD's performance of service under this agreement, including negligence, strict liability, breach of contract, or otherwise, shall be the amount paid to PUD for performance of such service. Furthermore, neither PUD or its agents, employees, or representatives shall be liable for loss of any anticipated profits, loss by reason of plant or other facility shutdown, non-operation or increased expense of operation, service interruptions, claims of customer's own clients, subcontractors, vendor or suppliers, governmental fines or penalties against customer, loss of use of capital or revenue, cost of money or for any special, indirect, incidental, or consequential loss or damage of any nature arising at any time from service performed by PUD under this agreement.

ARTICLE X INDEMNIFICATION

10.01 Indemnification: To the fullest extent permitted by law, the customer agrees to pay on behalf of, indemnify, and hold harmless PUD or its agents, representatives, and employees from and against any and all claims, defense costs including reasonable attorney fees, damages, judgments, and other liabilities arising from PUD's performance of the service described in this agreement provided that the customer shall not indemnify PUD against damages caused by or resulting from the sole negligence of PUD or its agents, representatives, or employees; and, provided further, that the customer shall indemnify PUD against liability for damages caused by or resulting from the concurrent negligence of (a) the customer, its agents, employees or representatives and (b) PUD, its agents, employees or representatives, only to the extent of the customer's negligence or the negligence of customer's agents, employees, or representatives.

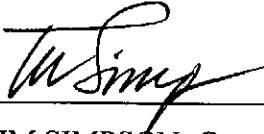
ARTICLE XI GENERAL PROVISIONS

- 11.01 Assignment.** Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.
- 11.02 Entire Agreement/Modification.** This Agreement constitutes the entire agreement between the parties. There are no understandings or agreements between parties other than those set forth in this Agreement. No other statement, representation or promise has been made to induce either party to enter into this Agreement.
- 11.03 Modification.** This Agreement may not be amended, supplemented or otherwise modified unless expressly set forth in a written agreement signed by the parties and adopted by resolution of each parties' legislative authority.
- 11.04 Invalid Provisions.** The invalidity or unenforceability of any particular term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision and this Agreement shall be construed in all respects as if such invalid or unenforceable term or provision was omitted.
- 11.05 Filing and State Approval.** Pursuant to RCW 39.34.040, this Agreement shall be filed with the Asotin County Auditor prior to its entry into force. This Agreement shall also be filed with the Secretary of the PUD and the Secretary of the CITY.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this 31st day of August 2005.

Public Utility District No. 1 of Asotin County

City of Asotin



By: TIM SIMPSON, General Manager



By: STEVE COWDREY, Mayor