

AGREEMENT

This agreement (the "Agreement") between the Cross Valley Water District ("Cross Valley"), and the Woodinville Water District ("Woodinville") (collectively the "Districts") is dated this 30th day of September 1998.

Whereas, the Districts are special purpose municipal corporations formed to provide potable water to customers within their respective jurisdictions; and

Whereas, the Districts are required by state law to plan for a water supply and infrastructure to meet their current and reasonably foreseeable future needs; and

Whereas, Cross Valley, the Alderwood Water District and the Silver Lake Water District (the "Clearview Participants") are jointly developing water facilities known as the "Clearview Project," to meet water supply requirements of southwest Snohomish County for at least thirty years; and

Whereas, the Clearview Project contemplates conveying water from the City of Everett's water supply system through transmission facilities located in south-central Snohomish County in the vicinity of State Highway 9 to a reservoir in Clearview; and

Whereas, Cross Valley originally intended to participate in the cost of the project at a level that would supply it with 18 million gallons of water per day (18 MGD), but has decided to reduce its participation in the cost of the pumping facilities, the reservoir and pipelines A & B to 6 MGD, while paying for 18 MGD capacity in the river crossing; and

Whereas, such reduction means that a 36-inch pipeline will be constructed rather than a 42-inch pipeline; and

Whereas, Northshore, Woodinville and Everett are attempting to develop a source of supply in Snohomish County identified as the "Weyerhauser Project;" and

Whereas, contribution to the cost of over sizing certain facilities of the Clearview Project by Northshore and Woodinville would eliminate either the possible future duplication or an expensive upgrade of those facilities when Northshore and Woodinville need to use those facilities; and

Whereas, over-sizing the transmission line to 42-inches increases capacity in the line so that Woodinville could convey water exchanged with the City of Everett and also provide additional capacity for Silver Lake Water District ("Silver Lake") should it need such capacity; and

Whereas, Cross Valley is willing to participate in the transmission line component of the Clearview Project as it had originally intended to do, but only if Woodinville purchase 12 MGD of

Cross Valley's capacity in the transmission line of the Clearview Project under the following terms and conditions;

Now, Therefore, the Districts agree that:

1. For the purposes of this Agreement:

a. "Capacity" or "Capacity in the Clearview Project" mean the right to convey a specific quantity of water, measured in million gallons per day (MGD), through the Transmission Line and the Pumping Facilities of the Clearview Project and through any replacement facility funded through the sinking fund identified in paragraph 8 (c).

b. "Transmission Line" means the 42-inch line that will convey water from Everett's pipeline #5 to the Clearview Reservoir and includes Pipeline "A," Pipeline "B," and the River-crossing.

c. "Incremental Cost" means the cost included in Phase II Project Costs which are incurred to over-size the Transmission Line from 36-inches to 42-inches and to expand the Pumping Facilities to provide Capacity for Woodinville and to provide additional Capacity for Silver Lake. The Incremental Costs of the facilities are:

Pipeline A: 12.93% of total construction costs of that Pipeline.

Pipeline B: 12.93% of total construction costs of that Pipeline.

River-crossing: 15% of total construction costs of the River-crossing.

Pumping Facilities Upgrade: estimated to be \$221,414.00.

d. "Phase I Project Costs" means preliminary engineering, permitting and Environmental Impact Statement costs reasonably allocable to the Transmission Line and the Pumping Facilities and in which the Clearview Participants share.

e. "Phase II Project Costs" means all those costs of the Clearview Project, not included in Phase I Project Costs, which are reasonably allocable to the Transmission Line and the Pumping Facilities and in which the Clearview Participants share. Phase II Project Costs shall be allocated to Woodinville and Silver Lake according to the following ratio: 15 MGD over 48.5 MGD, with 3 MGD of the numerator allocated to Silver Lake and 12 MGD of the numerator allocated to Woodinville.

f. "Pumping Facilities" means the pump station and integral facilities designed by Montgomery Watson to convey water from Everett's pipeline #5 to the Clearview Reservoir and planned to be located at 64th Street S.E., Snohomish, WA.

2. Cross Valley agrees to sell 12 MGD of Capacity in the Clearview Project to Woodinville, and Woodinville agrees to buy 12 MGD of such Capacity, all according to the terms and conditions provided for herein.

3. The Clearview Project is a proposed water supply facility composed of pumping facilities, a transmission line and a reservoir designed by Montgomery Watson on behalf of the Alderwood Water District (AWD), the Silver Lake Water District (SWD) and the Cross Valley Water District (CVWD) and incorporated in plans and specifications prepared by Montgomery Watson. The cost of the Clearview Project is allocated to the Clearview Participants according to the capacity each desires. Under the terms of this Agreement, Cross Valley shall purchase 6 MGD of Capacity in the Transmission Line and Pumping Facilities of the Clearview Project, in addition, it shall purchase 12 MGD of incremental Capacity in those facilities; however, the base Capacity shares of the Clearview Participants will be as follows:

	AWD	SWD	CVWD	TOTAL
Pumping Facilities	18.5 MGD	9.0 MGD	6.0 MGD	33.5 MGD
Storage Reservoir	18.5 MGD	2.4 MGD	2.0 MGD	22.9 MGD
Transmission Line:				
Pipeline "A"	18.5 MGD	9.0 MGD	6.0 MGD	33.5 MGD
Pipeline "B"	18.5 MGD	1.2 MGD	6.0 MGD	25.7 MGD
River-crossing	18.5 MGD	9.0 MGD	6.0 MGD	33.5 MGD

4. In consideration of payment of the Incremental Cost of 12 MGD of Capacity as provided herein and the other payments called for herein, Cross Valley agrees to sell 12 MGD of Capacity to Woodinville (WWD), while Silver Lake has agreed with the remaining participants in the Clearview Project to purchase 3 MGD of incremental Capacity, so that upon the sale of Capacity as provided for herein, the respective Capacity shares will be as follows:

	AWD	SWD	CVWD	NUD	WWD	TOTAL
Pumping Facilities	18.5 MGD	9.0 MGD	6.0 MGD			33.5 MGD
Storage Reservoir	18.5 MGD	2.4 MGD	2.0 MGD			22.9 MGD
Transmission Line:						
Pipeline "A"	18.5 MGD	12.0 MGD	6.0 MGD		12.0 MGD	48.5 MGD
Pipeline "B"	18.5 MGD	4.2 MGD	6.0 MGD		12.0 MGD	40.7 MGD
River-crossing	18.5 MGD	12.0 MGD	6.0 MGD		12.0 MGD	48.5 MGD

5. Woodinville agrees to purchase 12 MGD of Cross Valley's Capacity and to pay its share of the Incremental Cost included in the Phase II Project Costs, including change orders and any unanticipated capital costs incurred related to placing the Transmission Line and Pumping Facilities in operation.

6. When the construction contract for Phase II is awarded, Woodinville will make an advance payment to Cross Valley of 15.0% of its share of the estimated Incremental Cost included Phase II Project Costs. Thereafter, when Cross Valley receives requests for progress payments on the Clearview Project, it shall submit requests for payment to Woodinville respectively for their share of Phase II Project Costs, supported by documentation, and Woodinville shall pay that request within thirty days of its date. Cross Valley will credit Woodinville for its advance payment in the final payment requests for the Phase II construction contract.

7. a. Provided it makes the payments required by paragraphs 5 and 6, Woodinville shall acquire from Cross Valley a eighteen year irrevocable option to purchase full ownership of its respective Capacity; provided that upon the expiration of the eighteen year period, Cross Valley may extend the option for additional ten year periods. If at the end of the eighteen year period, or at the end of any ten year option extension period, Cross Valley decides not to extend an option term, then Cross Valley shall immediately reimburse Woodinville for all payments made by them under this Agreement, plus an adjustment to be determined as provided in paragraph 8(d). If Woodinville notifies Cross Valley in writing that it relinquishes its option for Capacity in the Clearview Project, then Cross Valley shall reimburse Woodinville for all payments made under this Agreement plus an adjustment to be determined in paragraph 8(d) whenever that 12 MGD of Capacity is put to use by any agency.

b. If Woodinville exercise its option and makes all required payments, it shall own 12 MGD of capacity in the Transmission Line and the Pumping Facility; however, it shall not acquire either legal or equitable title to or ownership of any Clearview Project facilities. Until it

exercises or relinquishes its option as provided herein, Capacity that is subject to Woodinville's irrevocable option may not be sold, leased, or conveyed in any manner or used by Cross Valley or any Clearview Participant with Cross Valley's consent without the prior written agreement of Woodinville and on such terms and conditions as it may agree upon.

8. When and if Woodinville notify Cross Valley of its intent to exercise the option and as a precondition to any exercise of the option, Woodinville must pay to Cross Valley

- (a) its share of Phase II Project Costs, less amounts previously paid, such share to be determined according to the ratio used to calculate its share of Phase II Project Costs; and
- (b) its share of Phase I Project Costs as of April 30, 1998, such share to be determined according to the ratio used to calculate its share of Phase II Project Costs; and
- (c) a share of all maintenance costs and replacement sinking fund payments made by the Clearview Participants to the Clearview Project to the date Woodinville exercise its option, such share determined by the ratio used to calculate Phase II Project Costs; plus
- (d) an adjustment to the payments called for in 8 (a), (b) and (c) to be determined by the "Construction Cost Index" published by the *Engineering News and Records* (McGraw-Hill) and to be applied in the case of (a) from the date of acceptance of the project as complete to the date of payment of the Phase II Project Costs, and in the case of (b) from April 30, 1998 to the date the option is exercised, and in the case of (c) applied from April 30, 1998 to the date of payment of the Phase I Project Costs.

9. When the option is exercised as provided for herein, then from that date forward a share of maintenance and operation expenses and replacement sinking fund payments shall be allocated to and paid by Woodinville according to the ratio used to calculate their share of Phase II Project Cost.

10. The Clearview Facilities shall be operated according to a maintenance and operations agreement entered into by the Clearview Participants. Woodinville shall have an opportunity to comment upon the terms of that agreement (or any amendment thereto) before it is signed by the Clearview Participants, and Woodinville shall be bound by its terms to the same extent as the Clearview Participants; provided that such agreement does not impair its rights under the Agreement.

11. Woodinville shall reimburse Cross Valley for its out-of-pocket costs directly related to the review or administration of this Agreement or directly related to any decision to put capacity to use under this Agreement.

12. Woodinville may use its Capacity only for water supplied by the City of Everett.

13. Nothing in this Agreement prohibits Northshore and Woodinville from agreeing to any reallocation of Capacity between them, including sales thereof from one to the other. In the event either Northshore or Woodinville sells its total interest in the option to the other, then the holder of the option may exercise it; provided however, that any exercise of the irrevocable option must be for 12 MGD of Capacity.

14. All notices relating to this Agreement shall be sent to following addresses, certified mail, return receipt requested, unless the other parties are previously notified in writing:

Cross Valley Water District
Attn: General Manager
P.O. Box 131
Snohomish, WA 98291-0131

Woodinville Water District
Attn: General Manager
P.O. Box 1390
Woodinville, WA 98072--1390

15. 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 voluntarily assigned by any party without the other parties written consent, which shall not be unreasonably withheld. This document contains the entire agreement of the parties and it may be modified only by a writing executed by the parties.

16. Should any provision of this Agreement or its application is determined by a court to be illegal, invalid, or void but performance of this Agreement is not rendered impossible or infeasible, the parties intend that the validity of the remaining provisions of this Agreement or their application shall not be affected and shall continue in full force and effect.

17. This Agreement is intended to be and is a contract for the purchase and sale of capacity in water supply facilities and no provision hereof shall be construed to make the parties partners or joint ventures. No party is the agent of any other party, nor shall any party be held liable for the acts of another party on a theory of agency or any other representative capacity.

CROSS VALLEY WATER DISTRICT

By


President/Commissioner

WOODINVILLE WATER DISTRICT

By


President/Commissioner