

## PUBLIC FIRE HYDRANT TRANSFER AGREEMENT

This Public Fire Hydrant Transfer Agreement (the "Agreement") is made and entered into effective the 8<sup>th</sup> day of July, 2019, between the City of Mount Vernon, a Washington municipal corporation (the "City") and the Public Utility District No. 1 of Skagit County, a Washington municipal corporation (the "District") known collectively as "the Parties".

### RECITALS

- A. The City and the District each separately own and maintain public fire hydrants and associated piping within the municipal limits;
- B. The District owns, operates and maintains the potable water system that serves the City, other municipalities and unincorporated areas within Skagit County, and all public fire hydrants connect to this system;
- C. The District requires access to and control over all public fire hydrants for system flushing, and repairs to protect public health and maintain system integrity;
- D. The City desires to improve service, increase safety and reduce costs associated with maintenance, repair, and replacement of public hydrants;
- E. The District has the expertise and resources to properly and efficiently maintain, repair, and replace public hydrants in the City as needed; and
- F. The City and the District have a common customer base and it is in the best interest of safety and economics for customers to transfer ownership of all public fire hydrants to the District. The transfer will improve fire hydrant maintenance, operation, and replacement, and ensure all rules and regulations governed by the District are met.

Now, therefore, in consideration of the foregoing, the Parties do hereby agree as follows:

## AGREEMENT

### **Section 1. Definitions.**

The following definitions shall apply:

A. “Public Fire Suppression Water Facilities” shall mean fire hydrants and any related appurtenances attached thereto located: i) typically, within the City right of way, ii) owned by the City, and iii) designed for the delivery of fire suppression for the general public. Facilities include those set forth in Exhibit “A” attached hereto and incorporated herein by this reference.

B. “Public hydrants” shall mean all fire hydrants serving the general public located within the City limits (now or hereafter modified) either owned or controlled by the City typically located in the public right of way and that are not Private Fire Service Facilities.

C. “Private Fire Suppression Facilities” shall mean fire hydrants, pipes, vaults, pumping stations, reservoirs, valves, controls, telemetry systems, other underground and above grade infrastructure, and other necessary or reasonably convenient appurtenances thereto located within, and on the customer side of, a backflow protection assembly, or located on private property. Private Fire Suppression Facilities are not included within the definition of Public Fire Suppression Water Facilities and are not a part of this Agreement.

D. “Maintenance Costs” shall mean actual costs directly associated with maintenance, repair, and replacement of Public Fire Suppression Water Facilities located within the City consisting of all labor, materials, and pro rata share of administrative costs including specific District tasks set forth in the Agreement such as inspection, pressure check, flow test, valve maintenance testing, and painting.

## **Section 2. Transfer of Ownership.**

Sixty days after the effective date of this Agreement, ownership of the City's Public Fire Suppression Water Facilities is hereby transferred and conveyed to the District. Upon transfer and conveyance, the District assumes ownership and responsibility for the City's Public Fire Suppression Water Facilities subject to and upon the terms and conditions set forth in this Agreement. Transfer and conveyance of the City's Public Fire Suppression Water Facilities shall occur by operation of this Agreement regardless whether or not such facilities are identified in Exhibit "A" so long as the improvements satisfy the definition set forth herein.

A separate agreement between the City and property owners of Private Fire Service may be instituted at a later date

## **Section 3. Consideration.**

A. Testing and inspections. The District shall be responsible for an annual program to inspect and test Public Fire Suppression Water Facilities. The District shall conduct a pressure check, flow test and valve maintenance at a minimum of once every five years for each public hydrant. The District shall keep records regarding testing, inspections, and maintenance and agree to share such records among the Parties and the Washington Surveying & Rating Bureau at the City's or Bureau's request.

B. Public Hydrant Maintenance and Repairs. The District is obligated to maintain all Public Fire Suppression Water Facilities in an operable condition; provided however, the District may temporarily lock out a Public Hydrant for reasonable cause and shall provide written notice as soon as reasonably foreseeable to the City as directed. In the event a Public Hydrant is observed to be inoperable, the City shall contact the District to make repairs. After giving advance notice of the repair requirement or in the event of a lockout, if the City determines, in its sole discretion, an emergency exists that cannot wait for District repair

service or lockout to continue, the City may enter upon the property and take such actions as are necessary to place the Public Hydrant back in service. The District shall reimburse the City for costs for such emergency repairs that the City reasonably incurs.

C. Adaptors/Specialty Items. The City may request that the District install after-market components, adaptors, and specialty items on Public Hydrants at the City's own expense. The District shall not unreasonably withhold approval for after-market component, adaptor, and specialty item installation.

D. Replacement. The District agrees to replace or repair inoperable Public Hydrants and Public Hydrants that reach their useful life due to age according to the District's schedules. The District shall create, approve, and periodically update a replacement and maintenance schedule to: i) replace or repair any inoperable Public Hydrants and ii) replace Public Hydrants that reach or are soon to reach their useful life due to age. The District's replacement schedule shall set forth reasonably foreseeable timelines in achieving replacements or repairs based on budget factors, demonstrable revenue projections, maintenance schedules, and pipeline replacement projects. The City may request that the District accelerate replacement of Public Hydrants earlier than the District's replacement schedule or upgrade the replacement of Public Hydrants upon the condition that the City provides the District with the replacement hydrants at the City's own expense. The District shall not unreasonably withhold approval for the replacement of hydrants at the City's expense.

E. Upgrades/Improvements. This Agreement shall not create a duty on the District for the costs of any upgrades or improvements to existing Public Fire Suppression Water Facilities as may be requested by the City or private parties unless specifically provided for herein. Further, the District shall not be responsible for any incidental costs or consequential

damages, such as increased insurance premiums, permitting or development costs, or lost tax revenue, arising out of the District's decision to maintain the existing system rather than implement requested improvements or upgrades at the District's own expense. This provision shall not reduce, infringe, nor prevent the City's lawful use of its police powers on behalf of the public safety, health and welfare of its citizens if the City finds it necessary to adopt law, regulations, or to grant or request franchises with lawful conditions.

F. Fire Department Use. The District agrees to provide water for fire department use (training and actual firefighting) at no charge to the City or other emergency providers of fire suppression water services operating lawfully in the City. A reasonable attempt shall be made to schedule and coordinate with the District to ensure system operations can support the demand and for all usage to be recorded and reported to the District through a fire hydrant meter. The City shall reimburse the District for all costs related to damages or service interruptions caused by the City's use of the Public Fire Suppression Water Facilities, including main breaks due to water hammering.

G. Permits. The District shall be required to obtain all permits from the City necessary for work within City rights-of-way associated with Public Fire Suppression Water Facilities and other District construction activities and comply with all the regulations and design standards adopted by the City now or hereafter for work in the City rights-of-way. Given that the City and District have a shared customer base, and in further consideration of this Agreement, the District shall not be subject to permit fees for the District's activities within the City rights-of-way to operate and maintain the District's potable water system that serves the City or for the District's pipe replacement projects.

H. Cost Sharing. The City shall reimburse the District for Maintenance Costs associated with the transferred Public Fire Suppression Water Facilities as follows:

1. The City's cost sharing shall be limited to a maximum of twenty percent (20%) of the total number of Public Fire Water Facilities transferred and conveyed to the District in each of the first five years after the effective date of this Agreement. If the District chooses to perform maintenance on more than twenty percent (20%) of the Public Fire Water Facilities in any of the first five years, the Maintenance Costs for any amount over twenty percent (20%) of the Public Fire Water Facilities shall be borne solely by the District.

2. The City shall reimburse one hundred percent (100%) of the Maintenance Costs in the first year,

3. The City shall reimburse eighty percent (80%) of the Maintenance Costs in the second year

4. The City shall reimburse sixty percent (60%) of the Maintenance Costs in the third year,

5. The City shall reimburse forty percent (40%) of the Maintenance Costs in the fourth year

6. The City shall reimburse twenty percent (20%) of the Maintenance Costs in the fifth year.

After the fifth year, the District shall be solely responsible for all Maintenance Costs. The City shall have no further financial responsibility to the District related to the Public Fire Water Facilities and Maintenance Costs unless specifically provided for herein.

**Section 4. Closing.** In order to close this transaction, the District shall approve of the Agreement by resolution and the City shall approve the Agreement by ordinance, resolution or motion as may be required. The Parties shall also execute and deliver any Bill of Sale and Assignment, and any other documents that shall be reasonably necessary to complete the

transaction to the satisfaction of both Parties within sixty (60) days after the effective date of this Agreement.

**Section 5. Mutual Representations.** Both Parties represent that they have the authority to enter into this Agreement, that all approvals necessary for this Agreement to be binding have been obtained, and that each person signing on behalf of a Party was authorized to do so. The Parties also represent that they have complied with all public notice and hearing requirements, and any other legal requirements, for the transfer of the public fire hydrants.

**Section 6. Indemnification.** The District hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by the District's own employees to which the District might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property, monetary losses, including refunds of charges or fees paid by customers, of which it is alleged or proven that the acts or omissions of the District, its agents, servants, officers or employees in performing testing, maintenance, repair, or replacement of the Public Fire Suppression Water Facilities caused or contributed thereto.

The City hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the District, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by the City's own employees to which the City might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property, monetary losses, of which it is alleged or proven that the acts or omissions of the City, its agents, servants, officers or employees caused or contributed thereto, including claims arising against the District in part by virtue of the City's control of City's Public Hydrants prior to entering into this Agreement.

In the event that the indemnitor refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the Parties shall agree to decide the matter), to have been a wrongful refusal on the part of the indemnitor, then the indemnitor shall pay all of the indemnitee's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the indemnitee, including reasonable attorneys' fees of recovering under this indemnification clause.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the District and the City, its officers, employees and agents, the indemnitor's liability hereunder shall be only to the extent of the indemnitor's own negligence unless otherwise provided by law. It is further specifically and expressly understood that the indemnification provided herein constitutes the Parties' waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties.

The provisions of this Section shall survive the expiration or termination of this Agreement.

**Section 7. Annexation and Development.** Whenever any Skagit County roads and/or rights-of-way shall fall within the city limits as a consequence of annexation, the City conveys and transfers all ownership and rights it may have associated with Public Fire Suppression Water Facilities located within the annexed areas, if not already owned by the District, which shall immediately become the property of the District and shall be subject to the terms of this agreement. Whenever new Public Fire Suppression Water Facilities within the City are



installed as a consequence of development or redevelopment, the District shall accept the conveyance and transfer of the new Public Water Facilities hydrants which shall be owned by and be property of the District subject to the terms of this Agreement. It is expressly agreed to and stipulated by the Parties, that this scope Agreement excludes conveyance to the District: i) of any Private Fire Suppression Facilities located within the City as a result of annexation, ii) of any other public fire suppression facilities located within the City as a result of annexation unless owned by the District or the City. Any conveyance of such fire suppression facilities shall require separate agreement between the Parties.

**Section 8. Modification.** The City and the District hereby reserve the right to alter, amend or modify the terms and conditions of this agreement upon written agreement of both parties to such alteration, amendment, or modification.

**Section 9. Compliance with Laws and Regulations.** At all times during the term of this Agreement, both the City and the District shall fully comply with all applicable federal, state, and local laws and regulations currently in effect or subsequently amended as related to the transferred fire hydrants.

**Section 10. Dispute Resolution.**

A. If there is any dispute or alleged default with respect to performance under this Agreement, the party raising the dispute (“Disputing Party”) shall provide notice to the other party in writing (“Receiving Party”), stating with reasonable specificity the nature of the dispute or alleged default. Within ten (10) business days of its receipt of such notice, the Receiving Party shall provide written response to the Disputing Party that shall acknowledge receipt of such notice and state the Receiving Party’s intentions with respect to how it shall respond to such notice. The Receiving Party shall further have thirty (30) days (the “Cure Period”) from its receipt of such notice to:

1. Respond to the Disputing Party, contesting the assertion(s) as to the dispute or any alleged default and requesting a meeting, or;

2. Resolve the dispute or cure the default, or;

3. Notify the Disputing Party that the Receiving Party cannot resolve the dispute or cure the default within thirty (30) days, due to the nature of the dispute or alleged default. Notwithstanding such notice, the Receiving Party shall promptly take all reasonable steps to begin to resolve the dispute or cure the default and notify the Disputing Party in writing and in detail as to the actions that will be taken and the projected completion date. In such case, the Disputing Party may set a meeting in accordance with Section 10(B).

B. If any dispute is not resolved or any alleged default is not cured or a meeting is not requested or set in accordance with Section 10(A), then the Parties shall promptly schedule a meeting to discuss the dispute or any alleged default. The Disputing Party shall notify the Receiving Party of the meeting in writing and such meeting shall take place not less than ten (10) business days after the Receiving Party's receipt of notice of the meeting. Each party shall appoint a representative who shall attend the meeting and be responsible for representing the party's interests. The representatives shall exercise good faith efforts to resolve the dispute or reach agreement on any alleged default and/or any corrective action to be taken. Any dispute (including any dispute concerning the existence of or any corrective action to be taken to cure any alleged default) that is not resolved within ten (10) business days following the conclusion of the meeting shall be referred by the Parties to the senior management of the Parties for resolution. In the event senior management is unable to resolve the dispute within twenty (20) business days of such referral (or such other period as the Parties may agree upon), each party may pursue resolution of the dispute or any alleged

default through other legal means consistent with this agreement. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence unless otherwise prohibited by law.

C. If, at the conclusion of the steps provided for in subsection (A) and (B) above, the City and the District are unable to settle the dispute or agree upon the existence of a default or the corrective action to be taken to cure any alleged default, the City or the District may:

1. Take any enforcement or corrective action provided for in City code or District policy, as from time to time amended; provided such action is not otherwise in conflict with the provisions of this Agreement, and State and/or Federal law, and/or;

2. Take such other action to which it is entitled under this Agreement or any applicable law.

D. 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 or litigation shall be in the Skagit County Superior Court. This Agreement shall be governed by the laws of the State of Washington.

E. Unless otherwise agreed by the City and the District in writing, the City and the District shall, as may be reasonably practicable, continue to perform their respective obligations under this agreement during the pendency of any dispute.

F. This Section 10 (or any other provision of this Agreement) shall not be deemed to bar the right of the City or the District to seek or obtain judicial relief from a violation of any term or provision of this agreement.

**Section 11. Survival.** All of the provisions, conditions and requirements of this agreement shall be in addition to any and all other obligations and liabilities the Parties may have to each other at common law, by statute, or by contract, and shall survive the Agreement. All of the provisions, conditions, regulations and requirements contained in this Agreement shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the City and the District and all privileges, as well as all obligations and liabilities of the City and the District shall inure to its heirs, successors and assigns equally as if they were specifically mentioned herein.

**Section 12. Interpretation, Severability, Changes in Law.** This Agreement is intended to be interpreted to the full extent authorized by law as an exercise of each party's authority to enter into agreements. If any provisions of this Agreement are declared unenforceable or invalid by a court of law, then the Parties shall diligently seek to modify this Agreement (or seek the court's determination of whether and how the agreement is to be modified if the Parties cannot reach agreement) consistent with the Parties' intent to the maximum extent allowable under law and consistent with the court decision. If there are changes in applicable law, court decisions, or federal regulations or interpretations that make either party's performance of this Agreement impossible then the Parties shall diligently seek to modify this Agreement consistent with the Parties' intent.

**Section 13. Assignment.** This Agreement may not be assigned or transferred without the written approval of the City and the District.

**Section 14. Relationship of the Parties.** Nothing in this Agreement shall be construed to create or confer any right or remedy upon any person(s) other than the City and the District. No action may be commenced or prosecuted against any Party by any Third Party claiming as

a Third Party beneficiary of this Agreement. This Agreement shall not release or discharge any obligation or liability of any Third Party to either Party.

**Section 15. Attorneys' Fees and Costs.** In the event of any litigation initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to an award for its reasonable attorneys' fees and expenses and the fees and costs of any experts or consultants engaged in connection with such litigation

**Section 16. Notice.** Any notice or information required or permitted to be given to the Parties under this agreement may be sent to the following addresses unless otherwise specified:

City of Mount Vernon  
Attention: Finance Director  
910 Cleveland Avenue  
Mount Vernon, WA 98273  
And

City of Mount Vernon  
Attention: Fire Chief  
1901 N. LaVenture  
Mount Vernon, WA 98273

County Public Utility District No. 1 of Skagit  
PO Box 1436  
1415 Freeway Drive  
Mount Vernon, WA 98273  
Attention: General Manager

**Section 17. Term.** This Agreement shall be effective for ten years and shall automatically renew for additional ten years terms absent termination. Either party may terminate this Agreement five years after the effective date by giving the other party one hundred eighty days written notice. Termination shall not result in the District's re-conveyance of the Public Fire Suppression Water Facilities to the City.

**Section 18. Effective Date.** This Agreement shall be effective January 1, 2020 (after executed by signature below.

SIGNED this 8<sup>th</sup> day of July, 2019.

City of Mount Vernon, a Washington municipal corporation.



\_\_\_\_\_  
Mayor

Approved as to Form:



\_\_\_\_\_  
Kevin Rogerson, City Attorney

Public Utility District No. 1 of Skagit County, a Washington municipal corporation



\_\_\_\_\_  
General Manager

Approved as to Form:



\_\_\_\_\_  
Peter Gilbert, District Counsel

**ATTEST:** Dan Volosky