

RESOLUTION NO. 2287-21

A RESOLUTION OF THE COMMISSION OF PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY, WASHINGTON, APPROVING THE FIDALGO ISLAND WATER SYSTEM ASSET TRANSFER AND IMPROVEMENT AGREEMENT BETWEEN THE DISTRICT AND THE CITY OF ANACORTES

WHEREAS, the District is a municipal corporation formed in 1936 as part of Washington Public Utility District law to own and operate water systems in Skagit County, including the cities of Mount Vernon, Burlington, and Sedro Woolley, and

WHEREAS, the District is the largest water purveyor in Skagit County, serving potable water to more than 26,000 customers and 80,000 people using a network of over 650 miles of pipeline, reservoirs, and pump stations, and

WHEREAS, the District owns a water distribution system that serves approximately 720 customers located in an unincorporated area of Skagit County on Fidalgo Island, names the "Fidalgo Island Water System" or "FIWS," and

WHEREAS, the District has a water supply agreement to purchase water from the city of Anacortes to provide to the FIWS customers, and

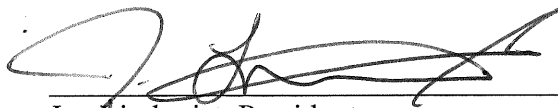
WHEREAS, due to the proximity of the FIWS to the retail service areas of the Anacortes water system and the city's continued provision of water supply to the FIWS under the supply agreement, the parties have determined that transferring the ownership of the FIWS to Anacortes will improve maintenance and emergency response times while resulting in economic and water service-related efficiencies in the continued operation, maintenance, and improvement of the FIWS.

NOW, THEREFORE, BE IT RESOLVED, that the District approves the form of the Fidalgo Island Water System Asset Transfer and Improvement Agreement between the city of Anacortes and the District, attached as Exhibit A ("Agreement"). The Recitals in Section 2 of the Agreement are true and correct

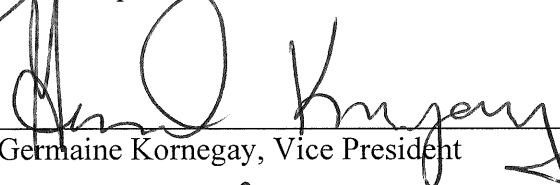
BE IT FURTHER RESOLVED, that the best interests of the District, the ratepayers in the FIWS service area, and of the public health, safety, and welfare are served by the District entering into the Agreement.

BE IT FURTHER RESOLVED, that the General Manager and all appropriate officers, agents, and representatives of the District are authorized to take any further action necessary or advisable to implement this resolution and give effect to the Agreement. All actions taken consistent with the terms of this resolution and in furtherance of the Agreement are ratified and confirmed in all respects.

ADOPTED by the Commission of Public Utility District No. 1 of Skagit County, Washington, at a regular meeting held this 24th day of August 2021.



Joe Lindquist, President



Germaine Kornegay, Vice President

ATTEST



Andrew Miller, Secretary

Exhibit A

Fidalgo Island Water System Asset Transfer and Improvement Agreement

## THE FIDALGO ISLAND WATER SYSTEM ASSET TRANSFER AND IMPROVEMENT AGREEMENT

### 1. AGREEMENT

This Fidalgo Island Water System Asset Transfer and Improvement Agreement (“Agreement”) is entered into as of the date of the last signature below (“Effective Date”) by and between the City of Anacortes, Washington (“City”), and Public Utility District No. 1 of Skagit County, Washington (“District”) (each a “Party” and collectively the “Parties” to this Agreement). The Parties agree as follows.

### 2. RECITALS

2.1 City Water System. The City owns and operates a municipal water supply and distribution system (“Water System”), which has been combined with the City’s sanitary sewage system, storm and surface water drainage system and garbage and refuse collection and disposal system (collectively, “Utility System”). The City operates the Water System for the purpose of delivering an adequate supply of water to customers and to provide for future use and expansion of the Water System.

2.2 Fidalgo Island Water System of the District. The District owns a water distribution system that serves approximately 720 customers located in an unincorporated area of Skagit County on Fidalgo Island, the facilities of which are more particularly described in Section 3.1 (“Fidalgo Island Water System” or “FIWS”). Pursuant to the Water Supply Agreement 2017-2036 between the City and the District, last dated January 6, 2017 (“Supply Agreement”), the Water System provides water supply to the FIWS to serve District customers connected to the FIWS. The Supply Agreement authorizes transfers of service areas among customers of the City, including the District, and expansion of the City’s service area.

2.3 Transfer of Fidalgo Island Water System to the City. Due to the proximity of the FIWS to other retail service areas of the Water System and the City’s continued provision of water supply to the FIWS under the Supply Agreement, the Parties have determined that transferring the FIWS to the City will improve maintenance and emergency response times and result in economic and water service-related efficiencies in the continued operation, maintenance and improvement of the FIWS. Corresponding service area adjustments necessary for the FIWS transfer are identified in applicable water system comprehensive plans approved by the Washington State Department of Health and accordingly are incorporated by reference in the Skagit County coordinated water system plan. It is therefore in the best interests of the City, the District and the FIWS ratepayers for the District to transfer ownership of the FIWS to the City.

2.4 Improvements to the Fidalgo Island Water System. The Parties have also determined that the costs of certain priority capital projects within the FIWS described in Section 4.1 (“FIWS Improvements”) are properly allocated to the capital facilities component of rates and charges already paid by FIWS ratepayers to the District. The Parties therefore agree that the District will undertake the FIWS Improvements before the Closing Date (defined below).

2.5 Purpose. This Agreement governs the terms and conditions of: (i) the transfer of the FIWS and associated real and personal property, contracts and intangibles from the District to the City; and (ii) the District's construction of the FIWS Improvements.

### 3. TRANSFER OF THE FIDALGO ISLAND WATER SYSTEM

3.1 Acquisition of the Fidalgo Island Water System. The District, for the rights and benefits under this Agreement and other good and valuable consideration the receipt of which it acknowledges, grants, conveys, assigns and delivers to the City, and the City accepts, the Fidalgo Island Water System, as more specifically described as follows:

3.1.1 Similk Property. The District conveys to the City the real property and improvements associated with the former Similk Reservoir (to be abandoned—i.e., removed and decommissioned—by the District prior to Closing as provided in Section 4) pursuant to a Quitclaim Deed, substantially in the form attached as Schedule 1 (the first of five schedules titled “Quitclaim Deed”), which consists of one parcel of approximately 0.25 acres, together with and subject to all improvements, appurtenances, easements, rights-of-way and right-of-access licenses thereto. (The real property interests and improvements in this Section 3.1.1 are collectively referred to as the “Similk Property”).

3.1.2 Summit Park Reservoir. The District conveys to the City the real property and improvements associated with the Summit Park Reservoir pursuant to a Quitclaim Deed, substantially in the form attached as Schedule 2 (the second of five schedules titled “Quitclaim Deed”), which consists of one parcel of approximately 0.24 acres and an approximately 100,000 gallon concrete reservoir, together with and subject to all improvements, appurtenances, easements, rights-of-way and right-of-access licenses thereto. (The real property interests and improvements in this Section 3.1.2 are collectively referred to as the “Summit Park Reservoir”).

3.1.3 Fidalgo Heights Reservoir. The District conveys to the City the real property and improvements associated with the Fidalgo Heights Reservoir pursuant to a Quitclaim Deed, substantially in the form attached as Schedule 3 (the third of five schedules titled “Quitclaim Deed”), which consists of one parcel of approximately 0.50 acres and an approximately 550,000 gallon welded steel reservoir, together with and subject to all improvements, appurtenances, easements, rights-of-way and right-of-access licenses thereto. (The real property interests and improvements in this Section 3.1.3 are collectively referred to as the “Fidalgo Heights Reservoir”).

3.1.4 Bridgeway Reservoirs. The District conveys to the City the real property and improvements associated with the Bridgeway Reservoir 1 and the Bridgeway Reservoir 2 pursuant to a Quitclaim Deed, substantially in the form attached as Schedule 4 (the fourth of five schedules titled “Quitclaim Deed”), which consists of two parcels of approximately 0.07 and 0.02 acres and two approximately 50,000 gallon each concrete reservoirs, together with and subject to all improvements, appurtenances, easements, rights-of-way and right-of-access licenses thereto. (The real property interests and improvements in this Section 3.1.4 are collectively referred to as the “Bridgeway Reservoirs”).

3.1.5 Gibraltar Pump Station. The District conveys to the City the real property and improvements associated with the Gibraltar Pump Station pursuant to a Quitclaim Deed, substantially in the form attached as Schedule 5 (the fifth of five schedules titled “Quitclaim Deed”), which consists of one parcel of approximately 0.08 acres and a domestic water pump station, together with and subject to all improvements, appurtenances, easements, rights-of-way and right-of-access licenses thereto. (The real property interests and improvements in this Section 3.1.5 are collectively referred to as the “Gibraltar Pump Station”).

3.1.6 FIWS Pipeline Facilities. The District conveys to the City that certain portion of the District’s water distribution system of pipeline and related facilities that are not located on District-owned real property pursuant to a Bill of Sale, substantially in the form attached as Schedule 5 (“Bill of Sale”) and graphically depicted for illustrative purposes on the diagrams attached as Exhibit A of Schedule 5, which includes approximately 94,774 feet of pipelines, certain sample stations, pressure reducing valves and hydrants, other water distribution system pipelines and related facilities and all improvements, upgrades, and appurtenances, now existing or in the process of construction that comprise of or are used by the FIWS Pipeline Facilities. (The facilities in this Section 3.1.1 are collectively referred to as the “FIWS Pipeline Pipelines.”).

3.1.7 FIWS Easements. The District grants, conveys, assigns and delivers to the City all of the District’s rights and interests in land on which the FIWS is located outside of Skagit County rights-of-way and not transferred to the City under this Agreement, pursuant to an Omnibus Assignment and Assumption of Easements, substantially in the form attached as Schedule 6 (the “Omnibus Assignment and Assumption Easements”), which consists of all easements acquired by the District over, under, along, across, upon and through private property necessary for purposes of installing, maintaining and operating certain portions of the FIWS. (The easement interests in this Section 3.1.7 are collectively referred to as the “FIWS Easements.”).

3.1.8 Assignment of Contracts and Intangibles. To the extent transferable by the District, the District assigns to the City the following contracts and intangibles related to the FIWS pursuant to an Assignment of Contracts and Intangibles substantially in the form attached as Schedule 7 (the “Assignment of Contracts and Intangibles”): (i) all engineering contracts, drawings, plans and specifications (including as-built), consulting agreements, engineer’s reports, soils reports, environmental reports, utility management reports, plans and recommendations, design contracts, construction contracts, construction subcontracts and supply agreements with subcontractors, suppliers and materialmen, together with copies of all change orders or modifications thereto; (ii) all warranties and guarantees; (iii) all ownership permits, operations permits, licenses and approvals; and, (iv) all rights and duties under any other existing contracts. (The contract and intangible rights and obligations in this Section 3.1.8 are collectively referred to as the “Contracts and Intangibles”).

3.1.9 Unknown FIWS Facilities. If the District or the City discover a portion of the FIWS within three (3) years after Closing, and the District’s and the City’s right to own, maintain and use that portion of the FIWS is not evidenced by a legally sufficient

instrument, the District shall acquire the legal right to own, maintain and use that portion by negotiation, quiet title, declaratory action or condemnation, with the Parties sharing equally in the cost and expense. After the discovery and the acquisition, to the extent necessary, the District shall transfer the legal right to that portion of the FIWS to the City free and clear of all liens, liabilities and encumbrances, in a form of document approved by the City, which approval shall not be unreasonably withheld or delayed.

3.2 Purchase Price. The exclusive consideration for the FIWS transfer are the mutual rights, obligations and covenants described in this Agreement, and except as provided in this Agreement, neither the District nor the City will be obligated to pay any other monetary consideration to each other. The Parties find and determine that this exchange of consideration represents the true and full value of the FIWS and the mutual rights, obligations and covenants described in this Agreement.

3.3 Conditions of Assets and Title.

3.3.1 Assets. The City acknowledges it has examined the FIWS and that it accepts the same in its condition as of the Closing Date, “as is and where is,” except as specifically set forth in this Agreement.

3.3.2 Title. If requested by the City, the District shall deliver to the City a preliminary commitment for title insurance, at a cost to be paid for by the City at Closing, together with copies of all exceptions and encumbrances for all or any portion of the FIWS that is transferred to the City.

3.3.3 Encumbrances. The District shall convey the FIWS to the City free and clear of all District-caused liens, liabilities and encumbrances. The City may waive in writing any liens, liabilities or encumbrances.

3.4 Closing and Possession; Acceptance of Documents. The transfer of the FIWS will occur on a date mutually acceptable to the Parties after completion by the District and acceptance by the City of the FIWS Improvements, as provided in Section 4 (“Closing” or “Closing Date”), on and after which the City is entitled to possession of the same. The FIWS Improvements are anticipated to be undertaken in 2022 and 2023. Upon establishment of the Closing Date, the General Manager of the District is authorized and directed to execute and cause the recording of, as necessary, the Quitclaim Deeds, the Bill of Sale, the Omnibus Assignment and Assumption Easements and the Assignment of Contracts and Intangibles (collectively, “Schedules”) on or before the Closing Date. The Parties will cooperate in the execution and recording of all documents necessary to complete the FIWS transfer.

3.5 Contingencies. All obligations of the City under this Agreement are subject to the fulfillment on or before Closing of each of the contingencies set forth below. If any of the contingencies are not met in full or fail to occur before Closing, for any reason whatsoever, the City may, in its sole discretion, either waive such contingencies and proceed with Closing or terminate this Agreement without liability or further obligation.

3.5.1 Representations. The representations and warranties of the District contained in this Agreement must be true and correct in all respects material to the validity

and enforceability of this Agreement and the District's ability to transfer the FIWS on and as of Closing as though they were made on the Closing Date or, in the case of representations and warranties made as of a specified date earlier than the Closing Date, on and as of such earlier date.

3.5.2 Inspections. The City will have completed, to the City's satisfaction, all inspections and reviews of the FIWS as the City desires. The District will make all of its records and documents relating to the FIWS available at reasonable times for the City to review and inspect.

3.5.3 Performance. The District will have performed and complied with, in all material respects, all agreements and conditions required by this Agreement to be performed or complied with by the District before Closing.

3.5.4 No Adverse Change. On the Closing Date, there will be no substantial adverse change in the financial or physical condition of the FIWS from the Effective Date, except for ordinary wear and tear.

3.5.5 Consents for Transfer. The District will have obtained any and all deeds, consents, assignments and approvals required to transfer or convey the FIWS.

3.6 Representations and Warranties of the District. The District represents and warrants to the City as follows:

3.6.1 Organization and Authority. The District is a Washington public utility district duly organized, validly existing and in good standing under Title 54 RCW. The District has the right, power and authority to enter into this Agreement, to execute all documents and instruments contemplated by this Agreement, to consummate this transaction and to perform all other obligations to be performed by the District under this Agreement. The execution, delivery and performance of this Agreement and all agreements, documents and instruments contemplated by this Agreement have been duly authorized by all necessary action on the part of the District.

3.6.2 Title to Assets. Except as otherwise disclosed to the City in writing, as of the Effective Date, the District has good and marketable title to the FIWS, and none of the same are subject to any mortgage, pledge, lien, conditional sale, title redemption agreement, lease, encumbrance or other claim or charge that will not be discharged at Closing.

3.6.3 No Litigation. There are no suits, claims, proceedings, judgments or pending actions against the District relating to its interest in or operation of the FIWS.

3.6.4 No Violation. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the performance by the District of, and compliance by the District with, this Agreement will violate federal, state or local laws, regulations, approvals or permits.

3.6.5 Hazardous Materials. To the District' knowledge: there are no Hazardous Materials on, under or about the FIWS; no Hazardous Materials have at any time been generated, manufactured, released or disposed of on, under or about the FIWS; there are no past, current or threatened Hazardous Materials Claims. For the purposes of this paragraph, "Hazardous Materials" includes, but is not limited to, any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any federal, state or local environmental statute, regulation or ordinance presently in effect (collectively, "Hazardous Material Laws"). For the purposes of this paragraph, Hazardous Materials Claims means any enforcement, cleanup, removal, remedial or other governmental or regulatory notices, actions, agreements or orders threatened, instituted or completed pursuant to any Hazardous Materials Laws, together with any and all claims made or threatened by any third party against the District or the property relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials.

3.6.6 Representations and Warranties True at Closing. The representations and warranties made by the District in this Agreement will be correct as of the Closing Date with the same force and effect as though such representations and warranties had been made as of the Closing Date.

3.7 Representations and Warranties of the City.

3.7.1 Organization and Authority. The City is a Washington code city duly organized, validly existing and in good standing under Title 35A RCW. The City has the right, power and authority to enter into this Agreement, to execute all documents and instruments contemplated by this Agreement, to consummate this transaction and to perform all other obligations to be performed by the City under this Agreement. The execution, delivery and performance of this Agreement and all agreements, documents and instruments contemplated hereby have been duly authorized by all necessary action on the part of the City.

3.7.2 No Violation. Neither the execution and delivery of this Agreement, the consummation of the transaction contemplated hereby, nor the performance by the City of, and compliance by the City with, this Agreement will violate federal, state or local laws, regulations, approvals or permits.

3.7.3 No Litigation. There are no suits, claims, proceedings, judgments or pending actions against the City relating to its interest in or operation of the FIWS.

3.7.4 Representations and Warranties True at Closing. The representations and warranties made by the City in this Agreement will be correct as of the Closing Date with the same force and effect as though such representations and warranties had been made as of the Closing Date.

3.8 12-Month Warranty. The District will repair, replace or otherwise finance necessary improvements to the FIWS due to a catastrophic failure that occurs within the 12-month



period following Closing. A catastrophic failure does not include operation or maintenance expenses incurred in the normal course of business for water utilities of similar size and scope as the FIWS.

3.9 Meter Reading, Billing and Revenue Collection. The District will provide meter reading, billing and revenue collection services up to the Closing Date. After the Closing Date, the City will be responsible for reading the meters, billing and collecting revenue. The District agrees to assist the City in this transition and provide meter reading data to the City with respect to existing District transponders on FIWS meters for up to 12 months after the Closing Date or the earlier replacement of District transponders by the City. The City will reimburse costs reasonably incurred by the District for providing meter reading data and related services to the City after the Closing Date, as such costs are mutually agreed to by the Parties.

3.10 Conduct of Business Prior to Closing. Prior to Closing, the District covenants as follows and the Parties agree as follows:

3.10.1 Agreement Changes. Prior to Closing, the District may not make or agree to any changes in the District's agreements or leases relating to the FIWS without delivering prior written notice to the City.

3.10.2 New Contracts. Prior to Closing, the District may not enter into any agreement or commitment relating to the FIWS that is not terminable at will without delivering prior written notice to the City.

3.10.3 Operation and Maintenance. Prior to Closing, the District will: (i) operate, maintain and repair the FIWS so that the FIWS remains in the same condition as its condition on the Effective Date, except for ordinary wear and tear; (ii) hold itself out as the water purveyor for the FIWS service area; (iii) operate or cause to be operated the properties of the FIWS and the business in connection therewith in an efficient manner and at a reasonable cost; and (iv) operate and maintain the FIWS in compliance with water quality standards of the Washington State Department of Health and the U.S. Environmental Protection Agency. Between the Effective Date and the Closing Date, the City may inspect any improvement or construction performed on the FIWS, as the case may be.

3.10.4 Damage to the FIWS. Prior to Closing, if any of the FIWS is damaged through the grossly negligent or willful actions or omissions of the District between the Effective Date and the Closing Date (other than normal wear and tear), the District will repair or replace the same.

3.10.5 City Installation of Meter Reading Equipment. Prior to Closing, the District authorizes the City to install meter reading equipment reasonably necessary for the City to undertake its meter reading responsibilities under Section 3.9. The installation and operation of such meter reading equipment may not interfere with the District's meter reading responsibilities under Section 3.9.

3.11 Conduct of Business after Closing. On and after the Closing Date, and for so long as the City owns the FIWS, the City will:

3.11.1 Hold itself out as the water purveyor for the FIWS service area.

3.11.2 Operate or cause to be operated the properties of the FIWS and the business in connection therewith in an efficient manner and at a reasonable cost.

3.11.3 Maintain, preserve and keep the properties of the FIWS in good repair, working order and condition.

3.11.4 Make all necessary and proper additions, betterments, renewals and repairs to and improvements, replacements and extensions of the FIWS, except for the FIWS Improvements required to be constructed by the District under this Agreement.

3.11.5 Operate and maintain the FIWS in compliance with water quality standards of the Washington State Department of Health and the U.S. Environmental Protection Agency.

#### 4. FIDALGO ISLAND WATER SYSTEM IMPROVEMENTS

4.1 Construction and Ownership. The District agrees to construct the FIWS Improvements to standards consistent with the customary practices for domestic water facilities in the State of Washington of similar size and scope with an anticipated completion date no later than December 31, 2023. Upon construction by the District, acceptance by the City and as of the Closing Date, the City will own the FIWS Improvements in fee simple. The FIWS Improvements consist of the following improvement projects and estimated costs in 2020 dollars:

4.1.1 Similk Reservoir Abandonment and PRV Relocation: \$309,000.

4.1.2 Bridgeway Reservoirs Abandonment, Connection to Anacortes Transmission Main (350 LF) and PRV Placement: \$396,000.

4.1.3 Saterlee, Gibraltar Road to Mashie Street Pipe Replacement (1,450 LF): \$446,000.

4.2 Costs. The District is responsible for all costs to construct the FIWS Improvements, including without limitation:

4.2.1 Design, development, construction and installation costs.

4.2.2 Architect, surveyor, engineer and project manager costs.

4.2.3 Labor, materials, supplies and equipment costs.

4.2.4 Permit costs.

4.2.5 State and local sales taxes, business and occupation taxes and other taxes, fees or assessments.

4.2.6 Insurance costs.

4.2.7 Any additional costs reasonably incurred in connection with the construction of the FIWS Improvements, as determined by the project engineer.

4.3 Extraordinary Costs. The Parties understand that the total costs of the FIWS Improvements are expected to be approximately \$1,151,000. If costs reasonably related to the construction of the FIWS Improvements but not listed in this Section 4.2 are incurred, either Party may request a fair and appropriate allocation of those costs under the mutual cooperation process in Section 5.1.

4.4 12-Month Warranty. The District will provide, or will cause its applicable contractors to provide, a 12-month warranty for each FIWS Improvement beginning on the date of completion and acceptance by the City of each respective FIWS Improvement constructed after Closing.

## 5. GENERAL

5.1 Mutual Cooperation Process. Upon mutual agreement between the Parties, or upon the request of either Party under Section 4.3, the Parties will resolve issues related to this Agreement under the following process:

5.1.1 The Parties will first attempt to resolve the issue through routine meetings and communications in the ordinary course of business.

5.1.2 If either the Public Works Director of the City or the General Manager of the District determines that routine meetings and communications will not resolve the issue, the Parties will then attempt to resolve the issue through formal meetings or negotiations between representatives of the Parties appointed by their respective governing bodies.

5.1.3 If either representative of the respective governing bodies of the Parties determines that formal meetings or negotiations will not resolve the issue, then either Party may demand mediation through a process mutually agreed to in good faith between the Parties within 30 days of the demand, which may include binding or nonbinding decisions or recommendations. The mediator(s) must be individuals skilled in the legal and business aspects of this Agreement. The Parties will share equally the costs of mediation and assume their own costs.

5.1.4 If mediation does not resolve the issue, the Parties may pursue any and all available remedies under applicable law.

## 5.2 Indemnification.

5.2.1 To the extent permitted by law, the District agrees to defend, indemnify and hold harmless the City and its elected officials, officers, employees and agents from all claims, demands, suits, penalties, losses, damages, judgments, liabilities, expenses, costs and reasonable attorneys' fees arising out of or in any way resulting from a breach of the District's duties, obligations, representations or warranties under this Agreement and its Schedules. Should a court of competent jurisdiction determine this Agreement or its

Schedules are subject to RCW 4.24.115, then in the event of liability for damages caused by the negligence or concurrent negligence of the City, the District's obligation to indemnify the City will extend only to the extent of the District's negligence. The Parties specifically and expressly understand that this indemnification constitutes the District's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification and only with respect to the City. The Parties acknowledge that this waiver has been mutually negotiated.

5.2.2 To the extent permitted by law, the City agrees to defend, indemnify and hold harmless the District and its elected officials, officers, employees and agents from all claims, demands, suits, penalties, losses, damages, judgments, liabilities, expenses, costs and reasonable attorneys' fees arising out of or in any way resulting from a breach of the City's duties, obligations, representations or warranties under this Agreement and its Schedules. Should a court of competent jurisdiction determine this Agreement and its Schedules are subject to RCW 4.24.115, then in the event of liability for damages caused by the negligence or concurrent negligence of the District, the City's obligation to indemnify the District will extend only to the extent of the District's negligence. The Parties specifically and expressly understand that this indemnification constitutes the City's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification and only with respect to the District. The Parties acknowledge that this waiver has been mutually negotiated.

5.2.3 The provisions of this Section survive any expiration or termination of this Agreement and its Schedules with respect to any event occurring prior to such expiration or termination.

5.3 Agreement Costs. The Parties will share equally all costs and expenses related to the preparation, drafting and documentation of this Agreement and its Schedules, including without limitation, legal, consultant and applicable filing and recording costs.

5.4 Notices.

5.4.1 *The District.* All official notices or communications to the District under this Agreement must be submitted to the following representative or to such other representative as the District provides:

George Sidhu  
General Manager  
Skagit Public Utility District  
1415 Freeway Drive  
P.O. Box 1436  
Mount Vernon, WA 98273  
Phone: (360) 848-4436  
Email: sidhu@skagitpud.org

5.4.2 *The City.* All official notices or communications to the City under this Agreement must be submitted to the following representative or to such other representative as the City provides:

Fred Buckenmeyer  
Public Works Director  
City of Anacortes  
904 6th Street  
P.O. Box 547  
Anacortes, WA 98221  
Phone: (360) 293 1919  
Email: fredb@cityofanacortes.org

5.5 Entire Agreement. This Agreement and Schedules contains the entire understanding between the Parties and supersedes any prior understandings regarding the FIWS. No amendment of or supplement to this Agreement is valid or effective unless made in writing and executed by the Parties.

5.6 Governing Law. This Agreement and its Schedules are governed by and construed according to the laws of the State of Washington. As against the other Party, each Party may file suit to enforce this Agreement and its Schedules only in the Superior Court of Skagit County, Washington.

5.7 Successors and Assigns. All of the provisions, terms, conditions and requirements contained in this Agreement are binding upon the successors of the Parties. A Party may not assign its rights and duties under this Agreement without the consent of the other Party, which may not be unreasonably withheld.

5.8 No Third Party Rights. This Agreement is solely for the benefit of the Parties and does not grant any right to any other party or person.

5.9 Severability. The provisions of this Agreement are separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, holds

any provision of this Agreement invalid or unenforceable as to any person or circumstance, the offending provision, if feasible, is modified to be within the limits of enforceability or validity. If the offending provision cannot be modified, it is null and void with respect to the particular person or circumstance. All other provisions of this Agreement in all other respects, and the offending provision with respect to all other persons and all other circumstances, remain valid and enforceable.

5.10 Captions. Captions given to the various provisions of this Agreement are for convenience only and are not intended to modify or affect the meaning of any provision.

5.11 Counterparts. This Agreement may be executed and delivered in counterparts, each of which is considered an original and all of which together constitute one and the same agreement.

5.12 Authority. The individuals signing below represent and warrant that they have the requisite authority to bind the Parties on whose behalf they are signing.

This Agreement is executed by each Party as set forth below:

City of Anacortes

Public Utility District No. 1 of Skagit County

By: Laurie Gere

By: ly Sidhu

Its: Mayor

Its: General Manager

Date: 9/1/2021

Date: 8/31/2021