

## **SETTLEMENT AGREEMENT**

THIS AGREEMENT is entered into as of April 17, 2008, between KING COUNTY, a political subdivision of the State of Washington, hereinafter referred to as "County," and LAKE FOREST PARK WATER DISTRICT, a municipal corporation, hereinafter referred to as "District." County and District may also be collectively referred to as the "Parties."

### **RECITALS**

A. On December 5, 2003 the Parties entered into a written agreement (the "2003 Agreement") under which the County was obligated to perform certain tasks related to mitigating possible adverse impacts to the District's water supply as a result of the County's tunneling for, or operation of, the Brightwater Wastewater Treatment Project. Section 5 of Attachment 1 of the 2003 Agreement described a Water Supply Replacement Program.

B. On March 9, 2007 the County sent the District a letter which led to a dispute about the Parties' obligations under Section 5 of the 2003 Agreement.

C. Pursuant to Section VI(E) of the 2003 Agreement the Parties engaged in confidential mediation to resolve their dispute as to the County's obligations under the 2003 Agreement.

D. The County's performance of the obligations set forth in this Settlement Agreement will fully satisfy and discharge the County's obligations set forth in Section 5 of Attachment 1 in the 2003 Agreement.

E. This Settlement Agreement does not in any way modify or rescind the 2003 Agreement, with the exception of Section 5 of Attachment 1 of that Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements set forth in this Agreement, the Parties agree as follows:

### **1. DEFINITIONS**

- 1.1 "Funds" means two million dollars (\$2,000,000) which the County shall pay to the District in cash or other immediately available funds.
- 1.2 "Impairs" means causes an inability to produce a collective quantity of water equal to the Target Replacement Supply or the daily water system demand, whichever is less.
- 1.3 "Incremental Purchased Water" means the water the County is required to purchase for the District if the County's tunneling work or operation or use of the tunnel Impairs the District's deep well water supply and is calculated as

the difference between (1) the Target Replacement Supply or the daily water system demand, whichever is less and (2) the quantity of water actually available from the District's three existing deep wells and any new wells constructed by the District under this Agreement.

- 1.4 "Infeasible" means that the District is unable to (a) obtain Department of Health approval for a well site; (b) obtain Department of Ecology approval to incorporate a new source of supply under the District's existing water rights or (c) is physically or economically unable to complete at least one well that is capable of providing a substantial source of supply. For the purpose of this definition, a substantial source of supply shall be a ground water source capable of producing at least 250 gallons per minute on a reliable and continuous basis meeting Washington State Department of Health standards for Group A systems and federal and State water quality standards.
- 1.5 "New Well Timeline" means four years from when the District receives the Funds from the County, unless an extension is granted upon the mutual written agreement of the Parties or to the extent of an Uncontrollable Force that prevents or delays performance by the District.
- 1.6 "SPU" means Seattle Public Utilities.
- 1.7 "SPU Intertie Project" means a new connection with Seattle Public Utilities Tolt Pipeline at Location C (as set forth in a County prepared map entitled "Possible Intertie Locations," attached as Exhibit A), a transmission main to the District's existing water supply system as shown on Exhibit B, and associated appurtenances as necessary for the safe delivery of water into the District's water supply system.
- 1.8 "Target Replacement Supply" means 750 gallons per minute (and an annual quantity consistent with the District's deep well water rights as of the date of this Agreement) on a reliable and continuous basis meeting Washington State Department of Health standards for Group A systems and federal and State water quality standards.
- 1.9 "Uncontrollable Force" means an event or circumstance beyond the control of the parties, such as war, strike, riot, crime, or act of nature, but excludes land acquisition or access decisions or permit decisions (and the like) by governmental agencies or private property owners.
- 1.10 "Water Supply Replacement Project" means a District-conducted program to locate a supply of groundwater that is likely capable of producing the Target Replacement Supply on a reliable and continuous basis from one or more wells and meeting Washington State Department of Health standards for Group A systems and federal and State water quality standards.

## **2. TERMS OF SETTLEMENT**

### **2.1. SPU Intertie Project**

- 2.1.1. County shall design and construct at its sole expense the SPU Intertie Project.
- 2.1.2. In addition to the work described in Paragraph 1.7, County will construct at its sole expense an additional 8-inch pipeline (the “twin line”) as roughly depicted in Exhibit B attached hereto and incorporated herein by this reference, located within the District’s watershed parcel and extending as close as practicable to the corner of NE 187<sup>th</sup> Street and 46<sup>th</sup> Avenue NE (approximate lineal footage is 350 feet). District will provide its existing design specifications, survey, geotechnical and environmental reports and documents, permits, bid documents and other relevant work and materials to County at no cost within thirty (30) days. The twin line will be installed, disinfected, tested and left capped with blind flanges at both ends. The location of the ends of the pipe shall be clearly marked at the ground surface.
- 2.1.3. Beginning upon the mutual execution of this Agreement the County shall pay District \$300.00 per month (the average monthly base service charge under the existing SPU/District Contract) until the new well(s) come on line or the end of the New Well Timeline, whichever comes first.
- 2.1.4. County shall pay for SPU engineering and inspection costs relating to the SPU Intertie Project.
- 2.1.5. County shall select an engineer and commence work as soon as practicable. Early and frequent communications are encouraged between the Parties during the design phase. Design shall be subject to District review comment and approval, which shall proceed as follows:
  - 2.1.5.1. County shall hold a project planning meeting within two weeks of the execution of this Agreement.
  - 2.1.5.2. County shall provide 30% design packet to District, after which District shall have ten business days to review and comment. In the first five business days, County shall hold a design review meeting with District.
  - 2.1.5.3. County shall provide 60% design packet to District, after which District shall have ten business days to review and comment. In the

first five business days, County shall hold a design review meeting with District.

- 2.1.5.4. County shall provide 90% (permitting stage) design packet to District, after which District shall have ten business days to review and give its approval, which shall not be unreasonably withheld, delayed or conditioned.
- 2.1.6. County shall design to the Washington State Department of Health Water System Design Manual and the District's design specifications attached hereto as Exhibit C.
- 2.1.7. All work outside of the District's watershed parcel is presumed to be in City of Lake Forest Park right-of-way. If not, easements to be obtained at County's sole cost. District shall support County in its acquisition of any necessary, temporary, permanent or access easements. District shall allow County access to District property for design and construction of the SPU Intertie Project and shall not impede County access or construction.
- 2.1.8. County to obtain all permits and let/administer all contracts for the work, all at its sole cost. District shall cooperate in the County's permitting and construction of the SPU Intertie Project. District shall sign permit applications when requested by County to do so to aid in obtaining approvals or permits.
- 2.1.9. County shall proceed under its "Metro" authority unless issues arise with the County's use of that authority, by the City of Lake Forest Park. The Parties acknowledge that District does not presently have a franchise agreement with the City of Lake Forest Park; nothing in this Agreement requires District to obtain a franchise. County shall not be required to negotiate a franchise with the City of Lake Forest Park or to pay any fee or cost associated with such franchise or lack thereof.
- 2.1.10. County shall use best efforts to complete the SPU Intertie Project before the Brightwater tunnel boring machine enters the LFP aquifer area (currently anticipated as December 31, 2008). Any delay due to the lack of a current franchise with the City of Lake Forest Park shall excuse County's performance for the duration of such delay(s) provided that County will use best efforts consistent with the other provisions of this agreement to minimize any such delay(s).
- 2.1.11. County shall construct the SPU Intertie Project in a good and workmanlike manner.

- 2.1.12. County shall coordinate turn-ons and turn-offs of service with the District.
- 2.1.13. District shall have the right to inspect the work at any time. District inspector shall provide construction inspection input solely to the County project representative (not to contractor).
- 2.1.14. County shall reimburse District for actual construction inspection costs incurred, but not more than 1 hour per day and at an hourly rate not to exceed \$65 per hour.
- 2.1.15. County shall require contractor to name District as an additional insured and to indemnify District from construction claims or accidents.
- 2.1.16. County will provide a construction progress report, and District and County will meet every 90 days to review construction progress on the SPU Intertie Project.
- 2.1.17. Upon completion of the SPU Intertie Project, County shall:
  - 2.1.17.1 Deliver warranty bill of sale for the facilities to District at no charge.
  - 2.1.17.2 Assign any easements issued to County for the facilities at no charge.
  - 2.1.17.3 Remedy the work in the event of defects within the scope of the contractor/equipment warranties, or assign contractor/equipment warranties to District so that District can enforce.
  - 2.1.17.4 Deliver record drawings to District within 12 months of completion of improvements.
- 2.1.18. District shall amend Exhibit 2a of its Existing Water Supply Agreement with SPU to add the SPU Intertie.
- 2.1.19. Upon completion of improvements, District shall assume obligation for all operation and maintenance of the facilities.

## **2.2. Water Supply Replacement Project.**

- 2.2.1. County shall pay District the Funds within forty-five (45) days of mutual execution of this Settlement Agreement.
- 2.2.2. District shall establish and deposit the Funds into a single purpose construction fund for the benefit of the Water Source Replacement Project.

- 2.2.3. District shall use the Funds and interest accrued thereon solely for Water Source Replacement Project costs. Such costs shall include reasonable amounts for engineering, hydrogeological and legal services and costs of administration and overhead directly related to the Water Source Replacement Project. The applicable rules, regulations, and public accounting guidelines of the State Auditor shall determine whether an expense incurred by the District qualifies as a Water Source Replacement cost. County reserves the right to request or conduct such an audit.
- 2.2.4. District shall construct the Water Supply Replacement Project as follows:
  - 2.2.4.1. District shall sequentially explore, test and analyze aquifers at one or more of the sites set forth as follows:
    - 2.2.4.1.1. District shall conduct exploration, testing and analysis at one of the following three sites: (a) the SPU “triangle” property, (b) the Horizon View Park property, or (c) the Onnuri Church property. Exploration, testing and analysis will not proceed to a second or third site unless the prior site is fully developed by District with a production well or is determined to be “Infeasible” as defined herein.
    - 2.2.4.1.2. If all three sites listed above are “Infeasible” as defined herein, District may explore for the existence of aquifers at up to two other locations; however, before any such exploration is commenced, District must receive assurances from the State Departments of Ecology and Health (and transmit those assurances to the County) that those departments would likely permit the District to acquire the right to withdraw water from the targeted aquifer(s).
  - 2.2.4.2. District shall acquire fee or easement interests in one or more of such sites that are recommended by the District’s groundwater hydrogeologist for permanent production wells based on such exploration, testing and analysis.
  - 2.2.4.3. District shall develop and construct such permanent wells and related structures, piping and appurtenances to connect the well or wells to the District’s water distribution system.
  - 2.2.4.4. The District shall use its best efforts to complete the Water Source Replacement Project within the New Well Timeline. Beginning upon mutual execution of this Agreement, the District shall provide progress and accounting reports to the County every ninety (90) days.
  - 2.2.4.5. Notwithstanding any other provisions in this subsection, District’s obligation is limited to availability of Funds unless District chooses to supplement such Funds as provided in subsection 2.2.4.6.

- 2.2.4.6. The Parties recognize that the Water Supply Replacement Project may be infeasible for the reasons stated in the 2003 Agreement, as modified herein. In defining when or under what circumstances the Water Supply Replacement Project is deemed to be Infeasible, the intent of the parties is for the District to have a fair and reasonable opportunity to investigate new groundwater sources and for there to be no waste of the Funds. The District shall have the option of contributing its own funds to the Water Supply Replacement Project if additional funds are necessary to make the Water Supply Replacement Project feasible.
- 2.2.4.7. If any of the Funds remain in the District's dedicated construction fund after expiration of the New Well Timeline, including extensions, if any, completion of the Water Source Replacement Project or if the Water Source Replacement Project is determined to be Infeasible, whichever is earlier, then the District shall account for the costs incurred on the Water Source Replacement Project and refund the remaining balance of said Funds to the County within forty-five (45) days after expiration of the New Well Timeline, completion of the Water Source Replacement Project or the determination that the Water Source Replacement Project is Infeasible.

### **2.3. Incremental Purchased Water**

- 2.3.1. County will pay for the costs of the Incremental Purchased Water as defined herein if the County's tunneling work or operation or use of the tunnel Impairs the District's water supply.
- 2.3.2. For such water used, through December 31, 2011, County shall reimburse District at the rate applicable to the District under the current District/SPU water supply contract, even if the District and SPU enter into a new contract that takes effect before December 31, 2011. After December 31, 2011, County shall reimburse District at whatever the rate is then under the District/SPU contract.
- 2.3.3. If the SPU water is needed to partially supplement the District's supply, the parties acknowledge that the blending of the District's groundwater and SPU surface water may cause the District to treat the water based on federal and State laws governing water quality. If blending is required to meet federal and/or state water quality standards, then the costs of installation and operation of facilities associated with such water treatment shall be reimbursed to the District by the County.
- 2.3.4. After completion of the SPU Intertie Project, if SPU water is needed to supplement or replace the District's supply, nothing in this Section 2.3 shall be construed to prohibit the County from mitigating its damages by

developing or utilizing a less costly alternative if one is available that meets federal and State standards for municipal water supply.

### **3. MISCELLANEOUS PROVISIONS**

- 3.1 **Representations.** County represents that it has the statutory authority to site regional essential public facilities, to mitigate project impacts and to enter into settlements of disputed claims; that this Settlement Agreement, and the consideration described herein, is directly related to the purposes of supplying regional wastewater treatment services and water pollution abatement facilities; and that this settlement Agreement is not arbitrary, capricious or unreasonable and is not in conflict with any limitations of the County.
- 3.2 **Governing Law.** This Agreement is intended to and shall be governed by the laws of the State of Washington, without regard to its rules regarding conflict of laws.
- 3.3 **Agreement Still in Force.** This Settlement Agreement does not in any way modify or rescind the 2003 Agreement, with the exception of Section 5 of Attachment 1 of that Agreement.
- 3.4 **Discharge of County's Obligations.** The County's performance of the obligations set forth in this Settlement Agreement shall fully satisfy and discharge the County's obligations set forth in Section 5 of Attachment 1 in the 2003 Agreement.
- 3.5 **Remedies not Exclusive.** This Agreement in no way waives any remedies available to either party under common law or statute, with the sole exception that upon County's performance of its obligations under this Agreement the Parties release any right to bring any claim based upon Section 5, Attachment 1 of the 2003 Agreement.
- 3.6 **Construction of Agreement.** The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after extensive negotiation, with consideration by and participation of counsel for both Parties. The Agreement shall be construed according to the fair intent of the language taken as a whole, and not for or against either party.
- 3.7 **Waiver.** The waiver by one party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.
- 3.8 **Effectiveness of Agreement; Counterparts.** This Agreement shall become effective upon its execution by all of the persons for whom signature spaces have been provided below. The Parties and their counsel may execute this



Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all signatories had signed the same instrument.

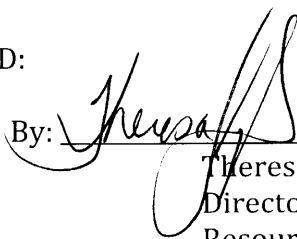
3.9 **Savings Clause.** If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

3.10 **Authority.** Each individual signing this Agreement warrants that he or she has the authority to enter into this Agreement on behalf of the party for which that individual signs.

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

AGREED TO AND ACCEPTED:

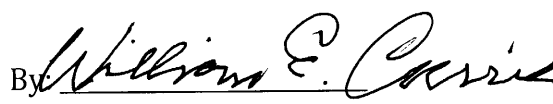
DATED: April 17, 2008

By:   
Theresa Jennings  
Director, Department of Natural  
Resources and Parks  
For King County

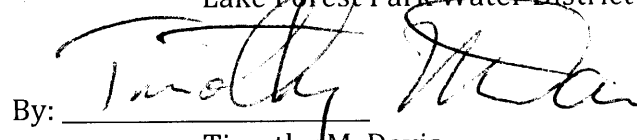
DATED: April \_\_\_\_\_, 2008

By: \_\_\_\_\_  
Dr. Gordon E. Hungar  
Commissioner,  
Lake Forest Park Water District

DATED: April 17, 2008

By:   
William E. Currie  
Commissioner,  
Lake Forest Park Water District

DATED: April 17, 2008

By:   
Timothy M. Davis  
Commissioner,  
Lake Forest Park Water District