

**AMENDMENT NO. 1 TO THE
AGREEMENT FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF
JOINT-USE WATER STORAGE AND PUMPING FACILITY**

This AMENDMENT No. 1 to the AGREEMENT FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF JOINT-USE WATER STORAGE AND PUMPING FACILITY is made and entered into by and between the City of Bellevue and the City of Redmond, this _____ day of _____, 2021 as follows:

WHEREAS, Redmond and Bellevue entered into an Agreement for Construction, Operation and Maintenance of a Joint-Use Water Storage and Pumping Facility on September 28, 1990 (“1990 Agreement” or “the Agreement”), providing for the joint use and ongoing operations of certain facilities; and

WHEREAS, for the joint benefit of Bellevue and Redmond, facilities were constructed in accordance with the 1990 Agreement, including the NE 40th Reservoir, Pump Station, Valve Vault and buried piping located at 4075 148th Avenue NE, the Meter Vault located in the right-of-way at 14080 NE 40th Street, and associated buried 16” and 20” pipelines in NE 40th Street right-of-way and in easements at 14520 NE 40th Street (“the Facilities”); and

WHEREAS, the 1990 Agreement did not anticipate certain future capital improvements and ongoing costs for the Facilities, including planning, engineering, and construction necessary to maintain service and reliability, conform to changing codes and industry standards, protect water quality, ensure safety, improve resiliency, enhance efficiency, and achieve other purposes that benefit Bellevue and Redmond; and

WHEREAS the 1990 Agreement stipulates that Bellevue shall obtain ownership and be responsible for operation and maintenance of the Facilities, and that Redmond accepts a 44 percent interest in the Facilities and agrees to reimburse Bellevue for 44 percent of certain costs, and

WHEREAS, it is in the interests of the public served by both Bellevue and Redmond to amend various terms of said Agreement;

NOW, THEREFORE, the parties agree as follows:

Purpose

The purpose of this Amendment No. 1 is to clarify ongoing responsibilities and sharing of costs for future capital improvement work related to the Facilities, originally constructed in 1990. Although certain sections referencing the initial construction phases are out-of-date, the guiding principles and procedures are still applicable to the ongoing implementation of the Agreement.

Section 3. Scope of Work of the 1990 Agreement is amended to add a new paragraph as follows:

The scope of this agreement shall also include mutually beneficial costs and work associated with the Facilities. This includes all work necessary to maintain reliable customer service at the lowest overall life-cycle cost of the Facilities, in accordance with industry best practices.

Section 6. Sharing of Costs of the 1990 Agreement is amended to add a new paragraph as follows:

Bellevue shall be responsible for paying all mutually beneficial costs associated with Amendment No. 1, for which Bellevue shall receive reimbursement from Redmond of forty-four percent (44%) of that amount. Costs include, but are not limited to Land, Asset Management, Engineering and Construction costs listed above, and other work associated with the Facilities, including labor, materials, administration, taxes, permits, fees, and other costs necessary to achieve the purpose of the agreement and Amendment No. 1.

Section 7. Method of Payment of the 1990 Agreement is deleted in its entirety and replaced with the following:

Bellevue will prepare and forward a monthly invoice to Redmond for its share of costs for the normal operation and maintenance activities covered in Section 9 and for implementation of capital improvements covered in Section 10 for the Facilities, together with a copy of all bills/invoices received by Bellevue from its consultants, contractors, and other third parties for costs identified for reimbursement. Redmond shall pay such costs within sixty (60) days of receipt of invoice from Bellevue. Redmond shall provide Bellevue with an accounting of its costs chargeable to the Project and Bellevue shall pay or offset such allowable expenses within sixty (60) days of receipt thereof. If either Redmond or Bellevue fails to make full invoice payment within said sixty (60) days, then penalty interest shall accrue on the unpaid amount at one (1) percent per month. Bellevue and Redmond shall account for such penalty interest and include the interest amount on the following monthly invoice.

Section 9. Operation and Maintenance of the 1990 Agreement is modified to delete the last paragraph of Section 9 and replace with the following:

Redmond shall remit invoice payment to Bellevue within sixty (60) days after receipt of invoice. If Redmond fails to make full invoice payment within said sixty (60) days, then penalty interest shall accrue on the unpaid amount at one (1) percent per month.

Section 10. Pump Station Change of the 1990 Agreement is hereby deleted in its entirety and replaced with the following:

10. Asset Management, Rehabilitation, and Replacement of the Facilities

Bellevue shall take proactive measures to maintain reliable customer service, optimize operational efficiency, adapt to changes in technology, and conform to current codes and standards by identifying, planning, designing, and constructing capital improvements. Bellevue shall be responsible for providing and procuring the necessary personnel,

consultant services, and contractors associated with the implementation of capital improvements that fall outside of normal operations and maintenance activities covered in Section 9. Capital improvement projects may include, but are not limited to, the following elements: specialized inspections, condition assessments, preliminary planning and engineering, performance analyses and audits, design, public outreach, permitting, seismic retrofits, construction, and construction administration. All consultant and contractor agreements shall be processed in accordance with Washington State statutes and Bellevue's purchasing and procurement procedures and policies.

Bellevue may initiate a joint capital improvement project by submitting a project notice to Redmond that includes a purpose or need statement, joint benefit description, proposed scope of work, schedule, budget, and an overview of any anticipated future phases of the project that may follow the initial work. A project with an initial work budget such that each city's respective share is less than the approval limits delegated to each of the signatories of this Amendment No. 1 may be authorized by written approval of Bellevue's Deputy City Manager and Redmond's Mayor or their designees.

Projects that require approval of the legislative body of either city shall be authorized by a written Project Agreement. The Project Agreement shall include a purpose or need statement, joint benefit description, proposed scope, schedule, budget, and an overview of any anticipated future phases of the project that may follow the initial work. The Project Agreement shall include procedures for each city's review and approval of the scoped tasks, including, but not limited to, the development of construction plans, specifications, and estimates, performance of inspections, and the final acceptance of said capital improvement project. The Project Agreement will also provide for procedures to modify scope of work, budget, schedule, and any other provisions deemed necessary by either city.

The cities agree that nothing in this Amendment No. 1 or the 1990 Agreement shall limit either party's right to initiate a capital project to add capacity to the Facilities in response to changes in applicable land use plans or zoning in the service area. The cities will follow the regular procedures described above to authorize improvement projects necessary for the sole purpose of increasing Facility capacity. At that time, the parties will amend the agreement to reallocate cost based on their proportional share.

In the case of emergencies that damage or otherwise cause immediate impact to the functionality of the Facilities, such as natural disaster (earthquake, flood, volcanic eruption, etc.), sabotage, terrorism, fire, equipment failure, or other adverse event, Bellevue shall take measures necessary to restore reliable operations. As soon as possible, engineering and maintenance staff from both cities shall work together and take such measures as are deemed necessary for repair, rehabilitation, and/or replacement to reestablish service to customers. Bellevue shall make reasonable efforts to obtain timely approval from Redmond for emergency costs, including, but not limited to, labor, materials, evaluations, repair, mitigation, taxes, and additional operations and maintenance. Redmond agrees not to unreasonably withhold such approval.

Non-emergency replacement and repair projects should generally be planned at least two years ahead and coordinated between the cities so that the project can be properly budgeted in the respective city budgets. Payment for projects shall be in accordance with Section 7 of this agreement and shall include all applicable costs. The cities may mutually elect to amend this agreement at any time to reapportion interests and/or costs associated with the Facilities.

Except as modified by this Amendment No. 1, the 1990 Agreement remains in full force and effect.

HEREBY AGREED TO AND ACCEPTED on this the ____ day of _____, 2021.

CITY OF BELLEVUE

CITY OF REDMOND

By: _____
Nathan McCommon, Deputy City Manager

By: _____
Angela Birney, Mayor

Approved as to form:

Approved as to form:

By: _____
Brian Wendt, Assistant City Attorney

By: _____
James E. Haney, City Attorney