

CITY OF RENTON and KING COUNTY WATER DISTRICT NO. 90  
INTERLOCAL AGREEMENT FOR PROVISION OF  
WATER SERVICE BY DISTRICT WITHIN CITY

THIS AGREEMENT, made and entered into this <sup>27<sup>th</sup></sup>~~21<sup>st</sup>~~ day of ~~July~~<sup>October</sup>, 2009, by and between the CITY OF RENTON, a Washington municipal corporation, hereinafter referred to as "the City", and KING COUNTY WATER DISTRICT NO. 90, a Washington municipal corporation, hereinafter referred to as "the District", both being duly organized and existing under and by virtue of the laws of the State of Washington,

WITNESSETH:

WHEREAS, the District is a public agency authorized by law to engage in furnishing water service, and this Agreement will not limit that statutory authorization; and

WHEREAS, the City may, through the City Council, enter into interlocal agreements with respect to the rights, powers, duties, and obligations of municipal parties regarding the use of public rights of-way and other public property, the provision of services, the maintenance and operation of facilities, the performance of contractual obligations and any other matters arising out of the provision of District service to areas within the City, all pursuant to and in accordance with RCW Sections 39.34.080, 35.92.010, 35A.47.040, and Ch. 57.08; and

WHEREAS, the District has the ability and authority to provide water service to the areas described in Exhibit A, the East King County Coordinated Water System Plan;

NOW, THEREFORE:

IT IS HEREBY AGREED by and between the parties hereto as follows:

**SECTION 1.** *District Facilities Within City.* The City and the District hereby agree that the District, its successors and assigns, for a period of fifteen (15) years, commencing on the effective date of this Agreement shall exercise its right and privilege to lay down, construct, relay, connect, replace and/or maintain such and so many pipes, conduits and mains, and all other appurtenances, appendages, and facilities thereto, in, along, through, and under the avenues, streets, highways, and road rights-of way controlled by the City now, and as hereafter amended through annexations, as specifically described in Exhibit A, attached hereto and incorporated herein by this reference, as may be necessary, convenient and/or proper in order to provide water service to the public, and for that purpose to make any and all connections which may be necessary, convenient and/or proper, in accordance with the terms and conditions set forth herein. Exhibit B, attached hereto for administrative convenience, is the current City of Renton Annexation Map showing the current City limits. The City will provide the District an updated Exhibit B annually.

**SECTION 2.** *Authority To Manage, Regulate, and Control System.* After the construction of the water facilities as contemplated under this Agreement, the District shall have

the sole responsibility to maintain, manage, conduct and operate its water system as installed within the area described in Exhibit A, together with any additions, extensions and betterments thereto.

**SECTION 3.** *Authority to Fix Service Rates.* The rates charged to the area described in Exhibit A, shall be fixed, altered, regulated, and controlled solely by the District, pursuant to the limitations on such authority as set forth in Ch. 57.08 RCW, or any applicable regulations promulgated thereafter by the state on the subject of rates and charges for water service.

**SECTION 4.** *Non-Exclusive.* The rights described in this Agreement shall not be deemed or held to be exclusive. Except for provision of water service to the public within the areas described in Exhibit A, it shall in no manner prohibit the City from entering into other agreements or franchises of a like nature or franchises for other public or private utilities, in, over, along, across, under, and upon any of the streets, avenues, highways, alleys, or public places, or ways as herein described, and shall in no way prevent or prohibit the City from using any of said streets, avenues, etc., or affect its jurisdiction over them or any part of them with full power to make all necessary changes, relocations, repairs, or maintenance of same as it deems fit.

**SECTION 5.** *Approval of Plans.* Prior to construction, repair, or replacement of any of the pipes, conduits, mains, facilities, and appurtenances in the area described in Section 1 herein that are located within the property or rights of way of City, the District shall submit to the Utility Systems Director or his designee ("Director") for review and approval, the requested number of plan sets drawn to an accurate scale, showing the exact location, character, position, dimension, depth, and height of the work to be done. The plans shall accurately depict the relative position and location of all pipes, conduits, mains, manholes, facilities, and appurtenances to be constructed, laid, re-laid, installed, replaced, repaired, connected or disconnected, and the existing street, avenue, alley, highway, right-of-way or property lines. All streets, avenues, highways, alleys, lanes, or ways denoted thereon shall be designated by their names and number and the local improvements therein such as roadway pavement, shoulders, sidewalks, curbs, gutters, ditches, driveways, parking strips, telephone or electric distribution poles, conduits, storm, gas, or water pipe lines as may exist on the ground or area sought to be occupied shall be outlined.

In the construction proposed by the District, all materials and equipment shall be as specified in the District's general conditions and standards and as approved by the City. The exact class and type to be used shall be shown on the plans, as will the equipment to be used and the mode of safeguarding and facilitating the public traffic during construction, The manner of excavation, construction installation, backfill, and temporary traffic control measures (such as traffic turnouts, road barricades, etc.) shall meet with the approval of, pass all requirements of, and be constructed in conformance with approved plans, permit conditions, and specifications under the inspection supervision of the Director. Prior to approval of any work under this Agreement, the Director may require such modifications or changes, as he deems necessary to properly protect the public in the use of the public places, and may fix the time or times within and during which such work shall be done.

The District shall pay to the City such amounts as called for in any applicable City permitting fees and, in the judgment of the Director, are reasonably necessary to investigate and process any plans for construction work, to inspect such work, to secure proper field notes for location, to plot such locations on the permanent records of the City's public works department, to supervise such work, or to inspect or re-inspect as to maintenance, during the progress of or after the repair of, any of the initial construction authorized by this Agreement. The City shall make its best efforts to complete all inspections in a timely manner.

**SECTION 6.** *Protection Of Public.* Whenever an accident, faulty operation, or excavation or fill associated with the construction, installation, maintenance or repair of the facilities authorized under this Agreement has caused or contributed to a condition that appears to substantially impair the structural integrity of the adjoining street or public place, or endangers the public, and adjoining public place, street utilities or City property as determined solely by the Director, the Director may direct the District, at its own expense, to take actions to protect the public, adjacent public places, City property and street utilities, and may require compliance within a prescribed time.

In the event that the District fails or refuses to take the actions directed promptly, or fails to fully comply with such directions given by the Director, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the structural integrity thereof, including placing of temporary shoring, backfilling, alterations of drainage patterns and any other actions reasonably necessary to decrease the possibility of earth movement, or actions regarded as necessary safety precautions; and the District shall be liable to the City for the costs thereof.

**SECTION 7.** *Repair of Streets, Sidewalks, Public Places and/or Facilities.* After construction, maintenance, or repair of the facilities authorized by this Agreement, the District shall repair and restore any damaged or injured streets, avenues, highways, public places, City facilities, or affected portions of same, to their approximate condition that existed prior to the work or better. The Director shall have final approval of the condition of such streets and public places after completion of construction. The District shall comply with the City's trench restoration standards and traffic control standards.

**SECTION 8.** *Indemnification.* The District hereby releases, covenants not to bring suit and agrees to indemnify, defend, and hold harmless the City, its officers, officials, 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 of which the negligent acts or omissions of the District, its agents, servants, officers, or employees in performing this agreement are the proximate cause.

This covenant of indemnification shall include, but not be limited by this reference to, claims against the City arising as a result of the negligent acts or omissions of the District, its agents, servants, officers, or employees in barricading or providing other warnings of

any excavation, construction, or work in any public right-of-way or other public place in performance of work or services permitted under this agreement. Inspection or acceptance by the City of any work performed by the District at the time of completion shall not be grounds for avoidance of any of these covenants of indemnification, Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation, provided that the District shall not be liable to indemnify the City for any settlement of any action or claim effective without the consent of the District, but if settled with the consent of the District, the District shall indemnify and hold harmless the City from and against loss or liability by reason of such settlement. The District shall be obligated to indemnify the City regardless of whether the settlement of the action on the claim is made with the consent of the District if the District has refused to defend the City.

In the event that the District refuses the tender of defense in any suit or 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 District, then the District shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorney's fees and the reasonable costs of the City, including reasonable attorney's fees for recovery under this indemnification clause.

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

**SECTION 9.** *Insurance.* The District shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to the District, its officers, officials, agents, or employees. The District shall provide a copy of such insurance policy to the City for its inspection prior to the adoption of this agreement.

a. *Minimum Scope of Insurance.* District shall obtain insurance of the types described below:

(1) Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

(2) Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage

and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, and personal injury and advertising injury and liability assumed under an insured contract, The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse, or underground property damage. The City shall be named as an additional insured on a primary noncontributory manner under the District's Commercial General Liability insurance policy with respect to work performed for the City using ISO Additional Insured Endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

(3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

b. *Minimum Amounts of Insurance.* The District shall maintain the following insurance limits:

(1) Automobile Liability insurance with a minimum combined single limit or bodily injury and property damage of \$1,000,000 per accident.

(2) Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate, and a \$2,000,000 products-completed operations aggregate limit.

(3) Professional Liability insurance shall be written with limits of no less than \$1,000,000 per claim.

c. *Municipal Risk Management Pool Participation.* Notwithstanding the provisions of subsections a. and b. of this Section 9, District may satisfy all of its insurance obligations under this agreement by participating in a risk management pool available to Washington municipal corporations providing reasonably equivalent or better insurance coverage than required in such subsections a. and b. The District's obligation to cause the City to be named as an additional insured shall be subject to the terms, conditions and policies of the District's risk management pool as they may be adjusted from time to time.

**SECTION 10.** *Relocation of Lines and Facilities.* The District agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate, or remove from any street or public place within the Agreement area, any of its installations when so required by the City by reason of traffic conditions or public safety, dedications, or new rights-of-way and the establishment and improvement thereof, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity, provided that the District shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same street upon approval by the City, any water line or portion thereof required to be temporarily

disconnected or removed; and provided further, that this provision will not apply to District installations located within easements owned by the District.

The City shall consult all as-built maps and plans filed by the District pursuant to this Agreement or any permits authorized under this agreement, in order to determine whether the District has placed pipe or facilities in any area affected by a proposed City project. The City will use all reasonable effort and attempt to design or redesign streets, avenues, alleys or public places or ways, and other City utilities to minimize the impact thereof on the District's existing water system, including the need to require the District's facilities to be relocated and shall coordinate with the District in accordance with RCW 35.21.905. PROVIDED HOWEVER, that the City shall make the final determination on the need for relocation of the District's facilities.

Whenever the City determines that any of the above circumstances necessitate the relocation of the District's then existing facilities, the City shall notify the District in writing, and provide the District with copies of pertinent portions of the plans and specifications for such project so that the District is able to relocate its facilities to accommodate the City's project. The City shall provide notice to the District and require relocation of the facilities in a period of time that is reasonable given the circumstances surrounding the project. The City understands that pursuant to RCW 57.08.050, the District is required to comply with certain notice and bid procedures prior to commencement of any construction project. Whenever practical, given the circumstances surrounding the City's project, the City shall provide the District with sufficient notice to enable the District to comply fully with RCW 57.08.050 without resorting to emergency powers granted therein. Upon the District's failure to complete relocation of its installations and facilities as directed by the City, the City may remove same at the District's expense. The District shall complete the relocation work at least ten (10) days prior to the project's commencement unless the parties agree on a different schedule.

If, after reviewing the as-built maps and plans submitted by the District, the City determines that the District's pipe or facilities will not be affected by a proposed City project, no notice shall be given to the District. The City may then commence construction and if the City finds that the District's as-built maps and plans are inaccurate through the actual discovery of pipe and facilities in the construction area, the City shall notify the District and allow the District twenty-four (24) hours, when reasonable, to remove and/or relocate its pipe and facilities. However, should the District be unable to remove and/or relocate its pipe and facilities within this twenty-four (24) hour period after notification, the City may remove and dispose of same at the District's cost. Should the City not have the appropriate fittings to remove and/or relocate the pipe and facilities, the project shall be delayed until the appropriate fittings can be obtained and engineering review done.

**SECTION 11.** *Abandonment of Pipe and System Facilities.* No pipe, conduit, main, appurtenances, appendages or water facilities located within the City's rights of way or property may be abandoned by the District without the express written consent of the City. Abandonment procedures may be initiated by application of the District to the City, which application shall detail, to the City's satisfaction, the location of all pipe or facilities to be abandoned by providing to the City with the abandonment application current as-built drawings showing the exact location of all pipes or facilities to be abandoned, and the procedures the

District plans to implement in order to comply with all local, state, and federal regulations pertaining to abandonment of water pipe and facilities constructed of asbestos cement or other materials containing asbestos. The District shall, at its sole cost and expense, and pursuant to all local, state, and federal regulations, remove and properly dispose of all abandoned pipes and facilities when so directed by the City for any reason, with cause. PROVIDED, that in no event shall the City direct or require the District to remove abandoned pipes or facilities on the basis of standards not equally applied by the City to require the removal of pipes or facilities abandoned by the City in similar circumstances. The District will commence the removal and disposal of the abandoned facilities within thirty (30) calendar days, and will fully complete the removal within one hundred eighty (180) calendar days from the date the City directs the removal, unless the City agrees, in writing, to extend the time for removal. In addition to and in clarification of the indemnity provisions in Section 8, the District specifically shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the abandonment and/or removal of pipe and facilities constructed of asbestos cement or other material containing asbestos. In the case of street vacations, the City shall, to the extent possible, retain and grant an easement to the District for any pipe and facilities then in use by the District. The City shall give notice to the District of any proposed project or street vacation requiring removal of abandoned pipe and facilities as set forth in Section 10. If the District does not comply within the time period set by the City, the City may arrange for the removal and proper disposal of all such pipes and facilities at the District's cost.

**SECTION 12.** *Excavation.* During any period of installation, relocation, maintenance, or repair of the District's facilities and installations located within the City's rights of way and property, all surface structures, if any, shall be erected and used in such places and positions within said public rights-of-way and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property, and the District shall at all times post and maintain proper barricades during such period of construction as required by state law or City ordinance.

Whenever the District shall excavate in any public right-of-way or other public property for the purpose of installation, repair, maintenance, or relocation of its facilities, it shall apply to the City for a permit to do so and except in the case of an emergency, shall give the City at least three (3) working days notice thereof. In the event that emergency work is required, the District may, without prior written notice to the City, request permits by telephone. The Director shall grant or deny such permits by telephone, but the District shall follow-up all phone emergency permit requests with a written application within three (3) working days of the telephone notification to the Director. In all other cases, the City shall approve the District's applications for permits as soon as reasonably possible. During the progress of the work, the District shall not unnecessarily obstruct the passage or proper use of the right-of-way, and shall file maps or plans with the City (as described in Section 5 herein) showing the proposed and final location of the water facilities.

If either the City or the District shall at any time plan to make excavations in any area covered by this Agreement and as described in this section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to

share such excavation, PROVIDED THAT: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and (3) either party may deny such request for safety reasons.

Prior to commencement of any construction authorized by this agreement, the District shall reference all monuments and markers of every nature relating to subdivision plats, highways and all other surveys for review and inspection by the City. The reference points shall be so located that they will not be disturbed during the District's operations under this Agreement. The method of referencing these monuments or other points to be referenced shall be approved by the Director before placement. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit and as directed by the Director. The costs of monuments or other markers lost, destroyed, or disturbed and the expense of replacement by approved monuments shall be borne by the District.

**SECTION 13.** *Permits Required.* This Agreement does not release the District from any of its obligations to obtain applicable local, state, and federal permits necessary to install, construct, operate, maintain, remove, repair, reconstruct, replace, use and inspect its water system.

**SECTION 14.** *Compliance With Laws.* The District shall indemnify the City, its officers, officials, agents, employees or representatives against any claim or liability arising from or based upon the violation by the District of any laws, ordinances or regulations.

**SECTION 15.** *City Construction Adjacent to District Installation.* The laying, construction, maintenance, and operation of the said District's system of water lines, pipes, conduits, mains, etc., authorized under this Agreement shall not preclude the City or its accredited agents and contractors from excavating, grading or doing other necessary road work contiguous to the said District's pipe lines, provided that the District shall have forty-eight (48) hours notice of said excavation, grading or road work in order that the District may protect its line of pipe and property.

**SECTION 16.** *Modification.* The City and 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 17.** *Bond.* The City and the District acknowledge RCW 35A.21.250. The District shall not be required to furnish any bond before undertaking any of the work, improvements, repair, relocation, or maintenance authorized by this Agreement.

**SECTION 18.** *Enforcement.* If the District or the City willfully violates or fails to comply with any of the provisions of this Agreement, then the non-breaching party may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling compliance with the provisions of this Agreement and to recover damages and costs incurred by reason of the failure to comply.



**SECTION 19.** *City Ordinances and Regulations.* Nothing herein shall be deemed to direct the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Agreement, including any reasonable ordinance made in the exercise of its police powers in the interest of the public safety and for the welfare of the public. The City shall have the authority at all times to control by reasonable and appropriate regulations the location, elevation and manner of construction and maintenance of any water facilities by the District, and the District shall promptly conform with all such regulations, unless compliance would cause the District to violate other requirements of law.

**SECTION 20.** *Cost of Publication.* The cost of publication any ordinance adopting this Agreement shall be borne by the District.

**SECTION 21.** *Assignment.* The District may not assign the rights, duties, and obligations under this Agreement without the prior, written consent of the City, which consent shall not be unreasonably withheld. If such consent is given for assignment, acceptance of the assignment shall be filed by the District's successor with the City.

**SECTION 22.** *Successors And Assigns.* All the provisions, conditions, regulations, and requirements contained in this Agreement shall be binding upon the successors and assigns of the District, and all privileges of the District shall inure to its successors and assigns equally as if they were specifically mentioned herein.

**SECTION 23.** *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 RENTON	KING COUNTY WATER
	DISTRICT NO. 90
ATTN: Utility Systems Director	ATTN: General Manager
1055 South Grady Way	15606 SE 128 <sup>th</sup> Street
Renton, Washington 98055	Renton, WA 98059
(425) 430-7239	(425) 255-9600
(FAX) (425) 430-7241	(FAX) (425) 277-4128

**SECTION 24.** *Dispute Resolution.* In the event any dispute arises between the Parties, either Party may request in writing that the issue in dispute be resolved by mediation. If the parties are unable to resolve the dispute within ninety (90) days, then either party may commence a legal proceeding in King County Superior Court for the State of Washington.

**SECTION 25.** *Survival.* All of the provisions, conditions, and requirements of Sections 6, Protection of Public; 8, Indemnification; 10, Relocation of Lines and Facilities, and 11, Abandonment of Lines and Facilities, of this Agreement shall be in addition to any and all other obligations and liabilities the District may have to the City at common law, by statute, or by contract, and shall survive this Agreement's expiration for the use of the areas mentioned in Section 1 herein including any renewals or extensions thereof for ten (10) years. All of the provisions, conditions, regulations, and requirements contained in this Agreement shall further be binding upon the successors and assigns of the District, and all privileges, as well as all

obligations and liabilities of the District shall inure to its successors and assigns equally as if they were specifically mentioned wherever the District is named herein.

**SECTION 26.** *Severability.* If any section, sentence, clause, or phrase of this Agreement should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Agreement. In the event that any of the provisions of this Agreement are held to be invalid by a court of competent jurisdiction, the City and the District reserve the right to reconsider this Agreement and by mutual agreement may amend, repeal, add, replace or modify any other provision, or either may rescind its execution of this Agreement.

**SECTION 27.** *Utility Planning.* This Agreement shall not affect the terms and conditions of existing water comprehensive plans, the East King County Coordinated Water System Plan nor that certain agreement between the parties entitled "City of Renton & King County Water District NO. 90 For the Establishment of Service Area Boundaries" dated February 8, 1999.

**SECTION 28.** *Effective Date.* This Agreement shall be effective in thirty (30) days after execution.

**SECTION 29.** *Exchange of Information.* The District and the City agree to routinely communicate and exchange information concerning their utility plans, including capital improvement plans, within the area of this agreement. The District will also provide the City with any current or future database or mapping showing the location of existing and new facilities constructed within the City; provided, that City will utilize exemptions provided by law to protect the dissemination of such documents for security purposes.

Approved by Resolution No. 4017 of the City Council of the CITY OF RENTON, Washington, at its regular meeting held on the day of September 28, 2009.



ATTEST:

CITY OF RENTON

A handwritten signature in cursive script that reads "Denis Law".  
\_\_\_\_\_  
Denis Law, Mayor

A handwritten signature in cursive script that reads "Bonnie I. Walton".  
\_\_\_\_\_  
Bonnie I. Walton, City Clerk

APPROVED AS TO FORM:

*Lawrence J. Warren*

Lawrence J. Warren  
City Attorney

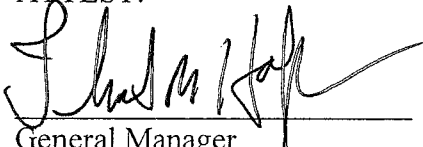
Approved by Resolution No. 911 of the Board of Commissioners of KING COUNTY WATER DISTRICT NO. 90 of King County, Washington, adopted at its regular meeting held on the 21 day of JULY, 2009.

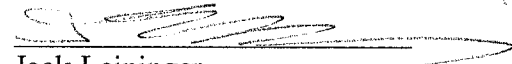
KING COUNTY WATER DISTRICT NO. 90

By:   
President of Board

By:   
Secretary of Board

ATTEST:

  
General Manager

Approved as Form  
  
Jack Leininger  
District Attorney