

**WHOLESALE WATER AGREEMENT BETWEEN
PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY
AND CITY OF SNOHOMISH**

THIS AGREEMENT is made and entered into this 20 day of November, 2020, by and between the Public Utility District No. 1 of Snohomish County, a Washington municipal corporation (the "District"), and the City of Snohomish, a Washington municipal corporation (the "City"). The District and the City are also referred to herein individually as "Party" and collectively as "Parties."

WHEREAS, the City and the District previously entered into a Wholesale Water Agreement (the "2012 Agreement") on April 17, 2012, that allowed for Temporary/Seasonal and Emergency Only Use, and subsequent Amendment No. 1 (the "Amendment") to said 2012 Agreement on April 19, 2017, that allowed the City to use the existing 2" wholesale connection full-time until a permanent wholesale agreement was executed; and

WHEREAS, it was agreed that the 2012 Agreement and subsequent Amendment to the 2012 Agreement shall remain in effect through 2018, and thereafter with an option to extend the term one year by mutual agreement; and

WHEREAS, the District and the City have worked in good faith to negotiate the terms of the new full-time water supply agreement; and

WHEREAS, the City's wholesale water supply needs have changed since the previous Agreements; and

WHEREAS, the City decommissioned its Water Treatment Plant Facility in February 2017, and said Facility was an integral part of its water supply infrastructure that provided water service to approximately 75 customers along its transmission main ("Transmission Main Customers") and the southern portion of the City (the "218 Zone"); and

WHEREAS, the City has reconfigured its water system to serve the 218 Zone with water supply from the City of Everett Water Transmission Main No. 5; and

WHEREAS, the City now desires to utilize the District water supply full-time for resale to its Transmission Main Customers and as redundant supply, as needed, for the 218 Zone; and

WHEREAS, the City may desire in the future to have additional points of connection between its water system and the District water supply full-time for redundancy; and

WHEREAS, the City desires to purchase water wholesale from the District for said purpose and the District is willing to sell water wholesale to the City, for said purpose, under the terms of this Agreement; and

WHEREAS, the Parties agree that it is in the best public interest to do so; and

WHEREAS, the Parties mutually desire to replace the 2012 Agreement and Amendment in their entirety with this new Agreement.

NOW, THEREFORE, for the mutual benefits to be derived, the Parties agree as follows:

Section 1 - Definitions

As used in this Agreement, the following words and phrases shall have the meanings indicated below unless the context shall clearly indicate that another meaning is intended.

1.1 Average Daily Demand: shall mean the total annual amount of water received by the City from the District (in cubic feet), divided by the number of days the use occurred in that year.

1.2 Cubic Foot: shall mean a unit of measurement of water equal to 7.48 gallons.

1.3 Equivalent Residential Unit ("ERU"): shall mean the volume of water demand and use deemed and agreed by the District and the City to be characteristic of a single-family residential unit, and, notwithstanding any provision to the contrary in the District's Policies Manual, shall equal an average water consumption of 800 cubic feet per month. A single-family residential unit shall include, for example, but not be limited to, an apartment unit, a condominium unit, a single-family house, and/or each discrete living unit of a multiplex residential structure. ERUs applicable to non-residential water users shall be as established in Appendix B of the District's Policies Manual.

1.4 General Facilities Charge ("GFC"): shall be that charge normally levied per ERU for a customer's hook-up to the City's water system, representing a proportionate share of the cost of providing the additional source, storage, and transmission components necessary to provide service to the new customers. Due to the unknown nature of the City's future service to its current Transmission Main Customers, the GFC charge shall in the case of this Agreement be waived in lieu of a capacity leasing agreement whereas the City agrees to pay for access to capacity being made available by the District on a per one hundred cubic feet (CCF) basis.

1.5 Master Meter: shall mean the water volume measuring device and appurtenances, including a City owned, operated, and maintained pressure reducing valve and double check backflow prevention assembly, at the point of connection with the City's water system. Master Meter sites constitute the line of demarcation and the

location of each point of delivery between the District's water system and the City's water system. There is one existing Master Meter located in the vicinity of the City's 18" asbestos cement transmission main on Robe Menzel Road some 675 feet northwest of its intersection with 29th Place NE, as shown on Exhibit A, and referred to as the "Primary Master Meter." Additional Master Meters may be installed in the future at such mutually acceptable locations if: 1) the District agrees that it is reasonably necessary to enhance the City's water system; and 2) the Primary Master Meter remains in service. The Master Meter(s) shall be owned and maintained by the District, provided, however, that all costs associated with the installation of a new Master Meter and appurtenances shall be borne solely by the City or its agent.

As a condition of water service under this Agreement, the Primary Master Meter shall not be removed or abandoned except as deemed necessary by the District for maintenance, repair and/or replacement. All other points of delivery of water through Master Meters shall be ancillary to the Primary Master Meter. All costs associated with the removal and abandonment of any Master Meter shall be borne solely by the City.

1.6 May: shall mean permissive.

1.7 Peak Day Demand: shall mean the amount of water purchased by the City from the District (in cubic feet) on the day of each year on which the City receives the greatest amount of water from the District.

1.8 Peaking Factor: shall mean Peak Day Demand divided by Average Daily Demand.

1.9 Policies Manual: shall mean the current version of the District's *Policies and Procedures Manual for the Administration of Water Services*, as may be amended by the District from time to time.

1.10 Shall: shall mean mandatory.

1.11 Snohomish Water Service Area: shall mean that area identified in the December 2010 edition of the North Snohomish County Coordinated Water System Plan as the City's water service area, plus any real property which is added to the City's water service area through subsequent amendments to the Coordinated Water System Plan.

1.12 Year: shall mean a 365-day time period and represent the time from the date of the official execution of the Wholesale Water Agreement or from a future annual anniversary of this date, to a date 365 days later.

Section 2 - Delivery and Use of Water

The District shall deliver water to the City for resale to its Transmission Main Customers and as redundant supply for the 218 Zone, and the City shall pay the District for the delivery of water.

Section 3 - Point of Delivery

The water shall be delivered and measured through the Master Meter(s). The line of demarcation and "Point of Delivery" between the District's water system and the City's transmission main shall be the Master Meter(s).

Section 4 - Quantity, Pressure and Reliability

4.1 The District shall attempt at all times to provide water to the City at a hydraulic grade line elevation between 790 feet and 811 feet above mean sea level at the Primary Master Meter connection. Additional future hydraulic grade line elevations shall be determined upon the location of any future Master Meter(s), if deemed necessary by the District. The District's system will have sufficient storage and hydraulic capacity to supply water to meet the City's intended use as agreed to and described herein, subject to forces or conditions beyond the reasonable control of the District.

4.2 It shall be the responsibility of the City to install and maintain such control valves and appurtenances as may be needed to regulate the pressure to conform to the needs of the City's water system and customers. Such valves and appurtenances shall be solely owned by the City. The District shall not be responsible for any loss or damage related to failure of the City to install and maintain all control valves required for system and customer protection.

4.3 The District's system will be designed, maintained and operated by the District in a manner consistent with municipal water system standards and applicable rules and regulations in order to provide reliability of service to the City. However, it is understood and agreed that the District can make no guarantee as to pressure, quantity, or continuity of service because of the possibility of accidents or unforeseen failures to the District's or City of Everett's water systems. The District shall not be liable for losses or damage from a deficiency or failure to supply water due to accidents, acts of God, and any other forces or conditions beyond the reasonable control of the District. In the event of an emergency or other necessity that may disrupt service to the City, the District shall immediately notify the City through verbal or telephone contact and shall restore service and make water available as soon as it can reasonably do so.

4.4 In the event of scheduled maintenance, alterations, extensions, or connections, the District shall provide written notice to the City, and schedule such work to minimize the potential disruption of service to the City.

Section 5 – Water Quality

The water supplied by the District to the City under this Agreement shall meet all state and federal drinking water standards at the Point(s) of Delivery. The City, to the extent allowed by law, shall be responsible for maintaining water quality beyond the Point(s) of Delivery and assurance of compatibility of delivered water with that supplied by the City; and the City shall hold the District harmless from and against any claims, losses, or damages arising from or relating to the introduction into its system of water or other substances beyond the Point(s) of Delivery.

Section 6 – Wholesale Water Rate and Billing

6.1 Wholesale Rate. Rates for water delivery service under this Agreement shall be established by the District's Board of Commissioners. (For ease of reference, this current rate is set forth in District Resolution No. 5983 as \$2.85/CCF.) The City has selected the 100% Variable Rate.

6.2 Wholesale Rate Adjustments. The wholesale water rate per CCF may be adjusted by the District's Board of Commissioners from time to time. It is anticipated that the wholesale rate will be reviewed and adjusted at least every four (4) years or as necessary based on changes including, but not limited to, the District's overall operating expenses, the facilities required to serve the Master Meter(s) and the number of Master Meters, the number of customers served from the Master Meter(s), total capacity required by the City, cost of purchased water from the City of Everett, utility taxes, and cost of power. Future adjustments to the wholesale water rate shall be set forth in the District's Policies Manual.

6.3 Although it is not the District's intent to adjust the wholesale water rate more than one (1) time per year and notwithstanding anything else to the contrary herein, should the purchase cost of water to the District increase or decrease at any time during the term of this Agreement, such change in cost per 100 CCF of water shall be reflected by a corresponding equal increase or decrease in the wholesale water rate, effective upon the date such change becomes applicable to the District. The District shall provide notice to the City of the increase or decrease in the wholesale water rate as set forth in this Section.

6.4 The District reserves the right to alter the methodology of calculating the rate. The District shall provide the City at least 60 days' notice prior to implementing any proposed change to the City's wholesale water rate.

6.5 Billing Period. The Master Meter(s) shall be read by the District and the results recorded at the end of each monthly billing cycle. Billing to the City will be issued on a monthly basis. Payment to the District shall be due within thirty (30) days of

issuance of the billing invoice. A payment shall be deemed delinquent if more than ten (10) days past due. Delinquent wholesale water charge amounts shall accrue interest on the unpaid balance, from the date of delinquency until paid, at the rate of one percent (1%) per month, or twelve percent (12%) per year.

Section 7 – Administrators

Each Party to this agreement shall designate an individual (an “Administrator”), who may be designated by title or position, to oversee and administer such Party’s participation in this Agreement. The Parties’ initial Administrators shall be the following individuals:

District’s Initial Administrator:

*Brant E. Wood, P.E.
AGM Water Utility
Snohomish County PUD No. 1
PO Box 1107 ms/l
Everett, WA 98206-1107*

City’s Initial Administrator:

*Steve Schuller / City Administrator
& Utility General Manager
City of Snohomish
PO Box 1589
Snohomish, WA 98291*

Each Party may change its Administrator at any time by delivering written notice of such Party’s new Administrator to the other Party.

Section 8 - Term

This Agreement shall be effective from the date of execution by authorized representatives of both Parties hereto. This Agreement shall continue in effect through December 31, 2040, unless earlier terminated by written mutual agreement of the Parties or upon three (3)-years written notice by either Party; PROVIDED, that the term of the Agreement may be extended or renewed for up to five (5) additional years by written notice from the City to the District.

Section 9 - Use of City's Existing Water Sources

It is understood that the City decommissioned its Water Treatment Plant Facility in February 2017, and on December 13, 2019, placed its water rights in Trust with the Washington State Department of Ecology. The City shall continue to serve its customers within its retail water service area by water from its City of Everett water source and desires to utilize the District water supply full-time for resale to its Transmission Main Customers and as redundant supply, as needed, for the 218 Zone.

Section 10 - Future Capacity Changes

Should the City’s water supply require additional capacity in the future, all costs associated with additional capacity and meter upsizing shall be borne solely by the City. Any upgrades to the Master Meter(s) shall be per the District’s most current version of its “Water Resources Standards and Specifications for Design and Construction.” In addition, any desired increase in capacity by the City will be subject to review and adjustment of the wholesale water rate as described in Section 6 above.

Section 11 - Master Meter

11.1 Access to each Master Meter and appurtenances shall be made available to the City at all reasonable times. The District shall check each Master Meter for accuracy on a frequency recommended by the meter manufacturer, as part of normal maintenance, and each Master Meter test data shall be available to the City at all reasonable times, upon request. The City may, in its sole discretion, with not less than five (5) days written notice to the District, conduct its own independent testing of each Master Meter for accuracy and shall provide the results to the District. All testing shall be performed by a District pre-approved independent third party that is a licensed and bonded contractor and/or consultant specializing in meter testing. If the independent test results reflect a material difference in the accuracy of the Master Meter(s) the District and City agree to meet in good faith in an effort to reach a fair and equitable adjustment to the amount billed to the City.

11.2 The City shall be responsible for the operation and ongoing maintenance of the pressure reducing valve and backflow prevention assembly installed downstream of each Master Meter as necessary to protect their transmission line and customers. The City shall at their sole cost have the backflow assembly tested by a Washington State Certified Backflow Assembly Tester on an annual basis and the results forwarded to the District no later than December 31st of each calendar year.

Section 12 - Notices

All written notices required to be given by any Party to the other Party under this Agreement shall be in writing and shall be delivered either in person, by United States mail, or by electronic mail (email) to the applicable Administrator or the Administrator’s designee. Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, and addressed to the Administrator, or their designee, at the addresses set forth in Section 7 of this Agreement. Notice

delivered by email shall be deemed given as of the date and time received by the recipient.

Section 13 – Indemnity

13.1 Nothing herein shall be interpreted to create indemnity or cross indemnity agreements between the Parties. In the event of claim, loss or liability alleged to have arisen out of the ownership or operation of the District's water supply system or the City's water supply system, the Parties agree that their liability shall be borne in accordance with and as determined under applicable Washington State and federal laws.

13.2 Notwithstanding any other provision of this Agreement, neither the City nor the District shall be liable under or pursuant to this Agreement for any indirect, incidental, special, exemplary or consequential damages, including but not limited to damages for lost profits or benefits, even if such party has been advised of the possibility or existence of such damages.

Section 14 – Uncontrollable Forces or State or Federal Law Changes

Neither of the Parties hereto shall be considered to be in default in respect to any obligations hereunder if prevented from fulfilling such obligations by reason of uncontrollable forces or conditions, or material changes in Washington State or federal law. Parties rendered unable to fulfill any obligation hereunder by reason of an uncontrollable force or condition, or material change in state or federal law shall exercise due diligence to deal with such uncontrollable force or condition with all reasonable dispatch and to take actions consistent with the purpose of this Agreement.

Section 15 – Severability

If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

Section 16 – Assignment

Neither this Agreement nor any right or privilege herein shall be assigned by any Party without the written consent of the other Party.

Section 17 - Resolution of Disputes

The Parties may elect to submit any disputes to binding arbitration or other alternative dispute resolution measures agreeable to both Parties. Each Party agrees to bear its own costs, and any common costs of arbitration or alternative dispute resolution measure shall be borne by the Parties. Disputes between the Parties not submitted by mutual agreement to such an alternative process shall be resolved by application to the Superior Court of the State of Washington, with venue in Snohomish County. This Agreement shall be enforced and interpreted in accordance with the laws of the United States and the State of Washington. The prevailing Party in any dispute which proceeds to judgment in superior court shall be entitled to reasonable attorney fees and costs.

Section 18 - Exhibits

Exhibit "A" referred to in this Agreement, is attached hereto and incorporated herein as though fully set forth at each reference.

Section 19 - Miscellaneous

19.1 Headings. The headings used herein are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

19.2 No Third-Party Beneficiaries. Except as expressly set forth in this Agreement, none of the provisions of this Agreement shall inure to the benefit of or be enforceable by any third party.

19.3 Waivers. Except as otherwise provided herein or as agreed to by the Parties, no provision of this Agreement may be waived except as documented or confirmed in writing. Any waiver at any time by a party of its right with respect to a default under this Agreement, or with respect to any other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter. Either Party may waive any notice or agree to accept a shorter notice than specified in this Agreement. Such waiver of notice or acceptance of shorter notice by a Party at any time regarding a notice shall not be considered a waiver with respect to any subsequent notice required under this Agreement.

19.4 Invalid Provision. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

19.5 Amendment. No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

19.6 Assignment and Subcontracts. Neither Party may assign this Agreement or assign or subcontract all or any part of such Party's rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Without in any way limited the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

19.7 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19.8 Signature Authority. Each of the undersigned signatories represents and warrants that he or she has all necessary and proper authorization to execute and deliver this Agreement on behalf of the Party of which he or she is signing.

19.9 Rule of Construction. No provision of the Agreement shall be construed in favor or against either of the Parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which such provision or any other provision or provisions of this Agreement is or are inconsistent with any prior draft thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this 20 day of November, 2020.

PUBLIC UTILITY DISTRICT NO. 1
OF SNOHOMISH COUNTY

By: 
John Haarlow
General Manager/CEO


APPROVED AS TO FORM

By: 
Shawn J. Aronow
Assistant General Counsel

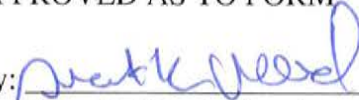
CITY OF SNOHOMISH

By: John T. Kartak
John T. Kartak, Mayor

ATTEST

By: 
Pat Adams, City Clerk
Brandi Whitson Deputy City Clerk

APPROVED AS TO FORM

By: 
Grant K. Weed, City Attorney

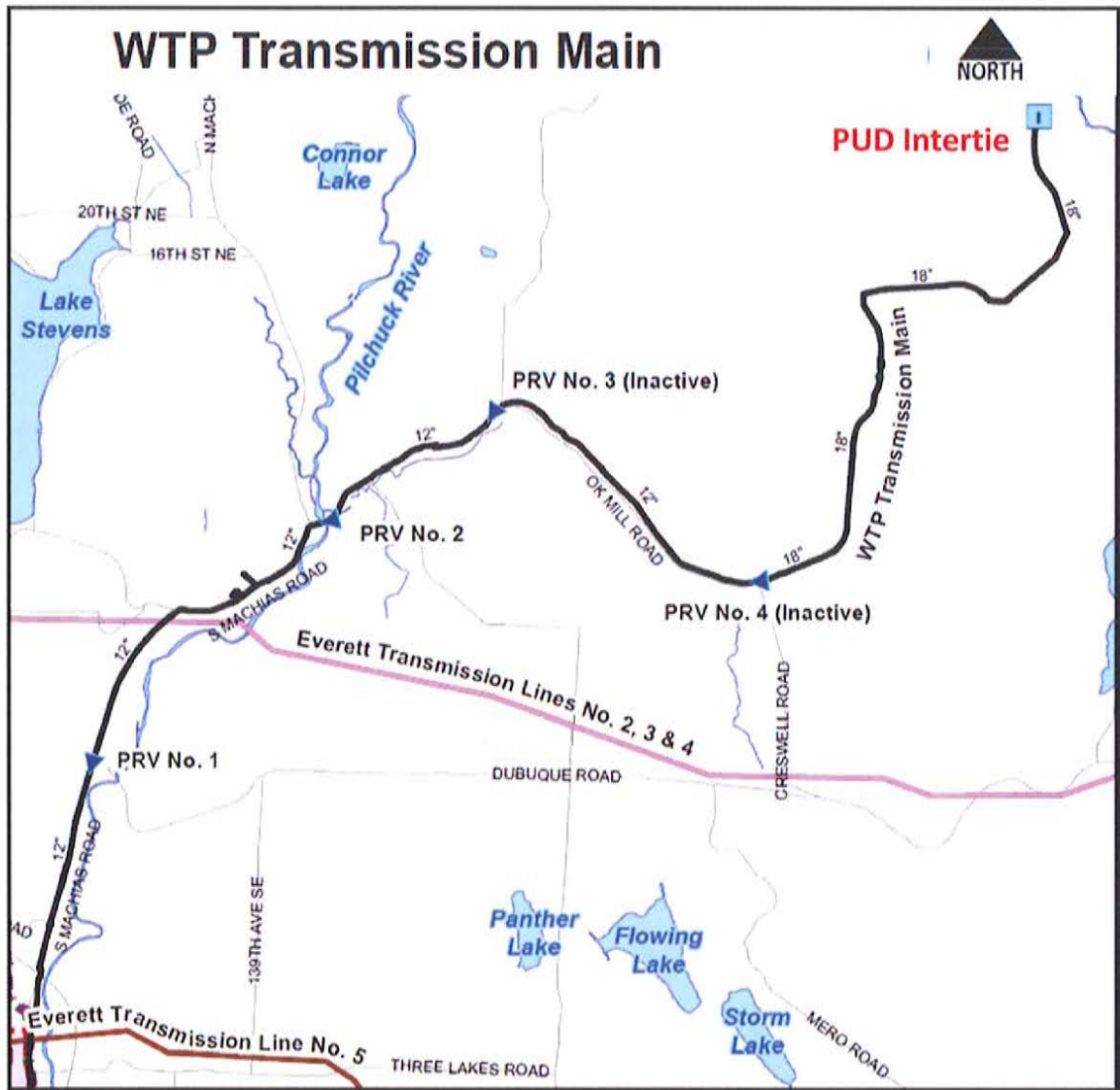
ATTACHMENT A

City of Snohomish

Water Transmission Main

from PUD Intertie to the City of Snohomish

(Approximately 14.7 miles)



City of Snohomish