

POULSBO DISTRIBUTION SCHEDULE

ORDINANCE NO. _____
RESOLUTION NO. _____
RESOLUTION OF INTENTION NO. _____
SUBJECT Interlocal Agreement w/ PUD #1 for Water Sales

CONFORM AS TO DATES & SIGNATURES:

- () Filed with the City Clerk _____
- () Passed by the City Council 6-14-95
- () Signature of Mayor
- () Signature of City Clerk
- () Publication _____
- () Effective Date 6-16-95

DISTRIBUTE CONFORMED COPIES AS FOLLOWS:

- () Kitsap County Herald - Publish Summary
- () Ordinance or Resolution Book
- () Association of Washington Cities (RCW 35A.39.010)
- () Book Publishing File
- () ~~Central Services Department~~ Purchasing
- () City Attorney
- () Civil Service Commission and/or Sec/Chief Examiner
- () Clerk's Department -Original
- () City Council
- () Finance Department
- () Engineering/Building -Info
- () Fire Department
- () Mayor
- () Municipal Court
- () Municipal Research (Info Partnership Agrmt)
- () Nanci Lien for Claims Auditing File
- () Planning Department
- () Police Department
- () Public Works Department - Original for PUD + Copy for PW
- () AWC - RMSA re Paragraph 17.
- () Bookshelf Contracts File
- () File 1016.27

CERTIFIED COPIES:

- () _____
- () _____
- () _____

City Clerk ^{Kj} Date 6/16/95

INTER-GOVERNMENTAL AGREEMENT

BETWEEN

THE CITY OF POULSBO

AND

PUBLIC UTILITY DISTRICT NO. 1 OF KITSAP COUNTY

FOR WATER SALES

THIS AGREEMENT is made and entered into this 16th day of June, 1995, by and between the City of Poulsbo, a municipal corporation, hereinafter referred to as "City" and Public Utility District No. 1 of Kitsap County, hereinafter referred to as "PUD".

WHEREAS, pursuant to Chapter 54.04 RCW, the purpose of the PUD is to conserve the water resources of the county for the benefit of the people thereof, and to supply public utility service, including water for all uses; and

WHEREAS, pursuant to Chapter 54.16 RCW, the PUD may make survey, plans, investigations or studies for domestic and industrial water supply, and for matters and purposes reasonably incidental thereto, within and without the District (county), and compile comprehensive maps and plans showing the territory that can be most economically served by the various resources and utilities, the natural order in which they should be developed, and how they may be joined and coordinated to make a complete and systematic whole; and

WHEREAS, the PUD may construct, purchase, condemn and purchase, acquire, add to, maintain, conduct, and operate water systems, within or without its limits, for the purpose of furnishing the District, and the inhabitants thereof, and any other persons including public and private corporations within or without its limits, with an ample supply of water for all purposes, public and private, with full and exclusive authority to sell and regulate and control the use, distribution, and price thereof; and

WHEREAS, pursuant to the GMA requirements, the County has designated that the PUD will serve as the technical lead agency for the County in proposing, planning, coordinating and providing regional water resource management and supply service; and

WHEREAS, the City and the PUD desire to enter into an agreement whereby the PUD will sell to City, water on a wholesale basis; and

WHEREAS, the City and the PUD have water facilities which are intertied; and

WHEREAS, the PUD desires to assist the City by selling them water on a wholesale basis through the intertie.

NOW, THEREFORE, THE CITY AND THE PUD AGREE AS FOLLOWS:

1. **SCOPE:** Subject to the terms and conditions of this Agreement, City and PUD agree to the continuation and maintenance of a water system intertie or interties for the purpose of supplying water commodity to City on a continuous basis. This agreement does not include capacity, fire protection or other services and their associated costs.
2. **TERM:** The term of this agreement shall run from the date of this agreement for five years and shall automatically be extended for additional five year terms unless written notice of termination is provided by either party at least sixty days prior to each five year termination date. Upon renewal all terms and conditions shall remain the same except that the parties may renegotiate the price upon providing of written notice within the first year of each five year renewal term. Should the parties be unable to agree upon renegotiation of the price, the issue shall be referred to arbitration as is set forth in this agreement. Termination can occur earlier by mutual agreement.
3. **GMA COMPLIANCE:** City agrees that its comprehensive plan (capital facilities component) shall identify those areas to be served with water purchased from the PUD pursuant to this agreement. The plan shall also identify which portions of the City's long term water supply plan shall be accomplished by purchasing water from the PUD.
4. **WATER PLANNING:** Prior to December 1st of each year, City shall file an annual water use plan with PUD. After receipt of the City's plan, PUD shall file an anticipated annual water delivery plan with City. This plan will identify projected maintenance requirements including necessary shutdowns of the pipe line and identify any operating constraints in the coming year.
5. **INTERTIE FACILITIES:** All water delivered pursuant to this agreement shall be metered and measured by the PUD using meters installed at the locations where their respective mains are intertied. Each party to the agreement shall have in place isolation valves and related facilities on their respective water mains at the point where those mains are interconnected.
6. **BASE SUPPLY:** PUD will provide to City a maximum of 500 acre feet of water per year and maximum peaking at 500 gallons per minute; provided, however, that said supply shall be limited by conditions and circumstances beyond the control of the PUD which may impact the available water supply. These include but are not limited to equipment failure, transmission line failure, temporary emergency demand by another customer, earthquake and

other natural disasters and acts of God, damage by others and/or total or partial system failure beyond the reasonable control of PUD, or aquifer failure. In these types of circumstances, the PUD shall be entitled to interrupt its supply to City and City agrees that in such event, it shall be the City's responsibility to obtain alternate sources of supply. All parties further recognize that drought conditions of great severity may require restrictions on the delivery of water. If such restrictions are necessary, PUD will reduce the quantity of water available to City on the same basis as it restricts water to its other retail and wholesale customers. PUD shall be responsible to restore typical supply quantities upon termination of the drought conditions.

7. **CAPITAL COSTS:** City agrees to pay to PUD \$0 as its capital contribution to the PUD for the construction by the PUD of the necessary facilities to supply water to City.

8. **WHOLESALE WATER CHARGE:** During the first year of this agreement PUD will charge City thirty-five cents (\$0.35) per hundred cubic feet of water. This rate shall be adjusted on an annual basis based upon the percentage increase in the base retail rate charged by the PUD to its customers. Billing will be made bi-monthly. The City agrees to a minimum annual quantity of zero gallons.

9. **TAXES OR IN LIEU OF TAXES:** In addition to the above stated costs, City agrees to reimburse PUD in an amount equal to PUD's share of any taxes or in lieu of taxes that are imposed on the PUD by any governmental entity as a result of implementing this agreement.

10. **PAYMENT AND SUPPLY WARRANTIES:** City hereby covenants and agrees that it shall pay its full cost of the water as identified herein. City hereby obligates and binds itself to pay its water costs out of the gross revenues of its water system and shall establish, maintain and collect charges and fees for water service in connection which will, at all times, be sufficient to pay its water costs herein. PUD hereby warrants that it possesses sufficient water rights to be able to distribute the water pursuant to this agreement and otherwise covenants and agrees that it shall provide the full quantity of water identified in this agreement at the time of its execution. In the event PUD is unable to provide such water, City shall have the option to terminate this agreement in which case it shall bear no further obligation for annual costs.

11. **WATER QUALITY:** The quality of water to be supplied pursuant to this agreement shall meet all applicable government standards for domestic water supply. If in the future, the water quality does not meet applicable governmental regulations for the transfer of water to City pursuant to this agreement PUD shall take immediate and reasonable steps as may be feasible to correct the deficiencies.

12. **RESALE:** Once delivered to the point of connection with the meter or meters installed pursuant to this agreement, the water shall become the sole property of City and accordingly, City may use the water for any purpose it deems appropriate including selling such water on a retail or wholesale basis. PUD agrees to cooperate with City in procuring any necessary modifications of its water rights to enable City the opportunity to sell the water acquired herein to any customer or third party purveyor. City shall bear the cost of any such modification to the permit.

13. **ADDITIONAL SERVICES:** This agreement may be amended to allow the PUD to provide additional services upon agreement by the City and the PUD for costs of additional services provided.

14. **DISCLAIMER OF WARRANTIES IN LIMITATION OF LIABILITY: PUD HEREBY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES FOR THE WATER TO BE SOLD PURSUANT TO THIS AGREEMENT. CITY AGREES THAT IT SHALL LIMIT ITS DAMAGES TO THE COSTS PAID FOR THE WATER SOLD AND SPECIFICALLY AGREES TO WAIVE ANY CLAIMS IT MIGHT HAVE FOR INCIDENTAL AND CONSEQUENTIAL DAMAGES FOR ANY BREACH TO THIS AGREEMENT.**

15. **INDEMNIFICATION:** City agrees to indemnify and hold harmless the PUD from any claims by third persons that may arise as a result of the PUD supplying water to City pursuant to this agreement except for those claims which arise as a result of the sole negligence of the PUD.

16. **TREATMENT DISCLOSURE:** City agrees that PUD has made full disclosure of the fact that its water to be supplied at present is chlorinated and is not fluoridated. Should City desire the water to be fluoridated, City shall undertake the responsibility to do so once water has been supplied to City.

17. **INSURANCE:** City agrees that it will insure for any claims by third persons that may arise from its customers with regard to claims regarding the quantity and quality of the water purchased from City. The PUD specifically disclaims any liability for any damages which may arise from the City's inability to provide fire flow in the event of a fire.

18. **ARBITRATION:** In the event of a dispute, the matter shall be subject to arbitration under the rule of the American Arbitration Association. Each party shall appoint one qualified arbitrator within thirty days of the written request for arbitration. The two arbitrators so appointed shall appoint a third arbitrator within an additional 30 days. The three arbitrators shall conduct a hearing within 90 days of the appointment of the third arbitrator and shall produce a decision within 120 days of the appointment of the third arbitrator. The results of any arbitration shall be final and conclusive and may be revised or vacated only as presently allowed by RCW Chapter 7.04. Prehearing discovery shall be

limited to document production and depositions only and the burden of proof shall be with the party requesting arbitration. The cost of arbitration shall be shared equally by the parties thereto and each party shall pay its own costs and attorney's fees unless the arbitration panel rules that the matter was brought frivolously in which case the party frivolously bringing the matter to arbitration shall pay all costs of arbitration and the attorney's fees and costs of the other party.

19. **RECORDS:** Permanent books and records shall be kept by PUD of respective volumes delivered and used and all expenses and costs incurred and paid for water supply. The records required by this paragraph shall be available for examination at any reasonable time by any party. Such records, or copies thereof, shall be maintained for at least five years and in complete compliance with State of Washington law.

20. **NOTICE:** Whenever in this agreement notice is required to be given, the same shall be given by Registered Mail addressed to the respective parties at the following addresses:

Public Utility District No. 1 of Kitsap County
P. O. Box 1989
Poulsbo, Washington 98370

City of Poulsbo
19050 Jensen Way N.E.
P. O. Box 98
Poulsbo, Washington 98370

unless a different address shall be hereafter designated in writing by any of the parties. The date of giving such notice shall be deemed to be the date of mailing thereof. Billings for and payments of water costs may be made by regular mail.

21. **EXECUTION OF DOCUMENTS:** This agreement shall be executed in two counterparts, either of which shall be regarded for all purposes as one original. The parties agree that they will execute any and all deeds, instruments, documents and resolutions or ordinances necessary to give effect to the terms of this agreement.

22. **WAIVER:** No waiver by either party or any term or condition of this agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this agreement.

23. **INTEGRATION:** This agreement merges and supersedes all prior negotiations, representations and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire contract between the parties.

24. **TIME OF THE ESSENCE:** It is hereby agreed by the parties that time is of the essence in all matters relating to the performance of each and every term of this agreement.

Dated: 6-16-95

City of Poulsbo

Richard Mitchum
Authorized Signature

Mayor
Title

Dated: June 13, 1995

Public Utility District No. 1 of Kitsap County

Lee F. Caldwell
Authorized Signature

President
Title

Noted 4/19/2018

- Public Works said the City & KPUD still need to have this agreement in place... (has 5-year extensions w/no end date)