

INTERGOVERNMENTAL WHOLESALE WATER SUPPLY AGREEMENT

THIS WHOLESALE WATER SUPPLY AGREEMENT ("Agreement") is entered into by the CITY OF SHELTON, a Washington municipal corporation ("City") and the PORT OF SHELTON, a Washington municipal corporation ("Port"), each a "Party" and collectively the "Parties."

RECITALS

- A. The Port owns and operates the Johns Prairie Industrial Park located in Sections 4, 5, 8, and 9 in T20N, R3W. See map, Exhibit A.
- B. The City owns and operates a municipal water supply system and is authorized to enter into contracts with other municipal corporations for the supply of water under chapters 35.92 and 39.34 RCW.
- C. The City owns sufficient water rights and authorization to supply water to the Port's Industrial Park.
- D. A pipeline has been constructed from the City water well sources to the Port's Industrial Park, which pipeline includes a section constructed and owned by the Port ("City Distribution System").
- E. The Port owns and operates two wells at the Industrial Park and has claims for water rights from these wells and has a distribution system within the Industrial Park to provide water to customers ("Port Distribution System").
- F. Based on its desire to resolve issues with the Washington Department of Ecology regarding the Port's use of water and the Port's intention to further promote business development, the Port desires to purchase wholesale water from the City.

NOW THEREFORE in consideration of the foregoing recitals, incorporated herein, and mutual covenants and promises contained herein, the Parties hereby agree as follows:

1. Agreement to Sell Water

The City agrees to sell to the Port and the Port agrees to purchase from the City an amount of potable water for the Port, as follows:

- A. During the term of the Agreement, the City shall supply up to 75 acre feet per year and a peak maximum daily demand of 130,000 gallons per day ("Contract Water Supply"). If through meter readings the Port is found to be drawing from the City's water system more than these maximum amounts, the City may charge the Port its current retail irrigation rate for any use above these maximum amounts. If the Port exceeds the maximum daily demand, and following 72 hour notice by the City to the Port to correct the use, the Port continues to use more than the maximum daily demand, the City shall have the option to immediately terminate this Agreement, and disconnect the water service notwithstanding Section 10 of this Agreement. If the Port

exceeds the maximum use per year, the City shall have the option to immediately terminate this Agreement, and disconnect the water service notwithstanding Section 10 of this Agreement. If the Port desires an increased quantity of water, it shall make a written request to the City. The City, in its sole discretion, shall determine whether it has the capacity to supply the increased quantity, and if so, on what terms. The City may require this Agreement to be re-negotiated in response to a request for increased capacity.

Following any fire event that requires the use of Contract Water Supply for suppression, the City and Port, with assistance from emergency responders, shall account for the volume of water used to suppress the fire, and shall adjust records of daily and yearly water use accordingly, for the purpose of accounting for maximum water usage in this section.

B. . The Port will at its sole expense construct the connection from the City's water line on Capital Hill (formerly Production) Rd to the existing water tank south of this connection point. The connection to the tank will be by way of an air gap standpipe. The Port may construct, at its sole expense, up to two additional or alternate delivery points in accordance with Section 1.E.

C. All water provided by the City to the Port will be metered through a Port installed master meter. The City shall determine and inform the Port of the type of meter and method of installation that shall be used. After installation, ownership of the meter shall transfer to the City. The City will maintain and read the meter for billing purposes under this agreement. The Parties shall have access to the meter for reading purposes and the Port shall have access to the City's meter maintenance records. If determined necessary during the term of this agreement, the City may purchase and install a replacement meter at its expense. If additional or alternate delivery points are installed under Section 1.B, the Port will purchase and install a master meter at each location that meets a specification provided by the City in accordance with Section 1.E.

D. The Port shall at its own expense maintain all equipment and appurtenances, including but not limited to water mains, water services and any pump stations necessary to provide water purchased from the master meter to the Port's customers in the Port Distribution System. The City shall at its own expense maintain all equipment and appurtenances, including but not limited to water mains, water services and any pump stations necessary to provide water to the Port to the master meter.

E. All new connections and connection systems, and alterations to connections and connection systems, including alterations to the connection system between the master meter and the Port's Reservoir Standpipe, shall be designed by a professional engineer in conformance with the City's Design and Construction Standards and shall be submitted for review and approval by the City Engineer prior to construction.

F. The City may temporarily interrupt or reduce delivery of water to the Port in event of a loss of supply emergency at the City's well sources, or if the City determines that a system emergency or the need for maintenance or repair require a supply interruption. Except for in emergencies, the City shall provide the Port reasonable written notice of interruption or reduction, the reason therefore, and the likely duration thereof at least eight (8) weeks prior to the anticipated event to allow adequate time for the Port and the City to schedule the curtailment. In

the event of any emergency, the City will notify the Port of the need for immediate supply interruption as soon as reasonably possible. For the purposes of this agreement, a loss of supply emergency is defined as any unforeseen supply disruption that will take longer than two (2) hours to resolve. The City shall make a good faith effort to perform routine maintenance when system usage is the lowest.

G. The quality of water supplied to the Port pursuant to this Agreement shall meet or exceed all applicable federal and state rules and regulations governing water quality for Group A water systems. The City shall treat the water supplied to the Port to meet or exceed current and future standards required by state adopted limits.

H. The Port shall use water purchased under this Agreement solely for subsequent retail sale to customers within the Port Distribution System retail service area as approved by the Washington State Department of Health.

H. The parties will exercise due diligence to make the connection as soon as practical with the desired date of full connection by March 1, 2013.

I. The City's water system will be operated and maintained by the City in a manner consistent with water system standards and legal requirements in order to provide reliability of service to the Port.

2. Rate Components

A. The Port shall pay monthly wholesale water supply service rates to the City as per SMC 15.28.065 which are currently as follows:

Meter (8 inch)	\$173.53 per month
Year 2011 Rate	\$0.0177 per cubic foot
Year 2012 Rate	\$0.0192 per cubic foot
Year 2013 Rate	\$0.0210 per cubic foot

B. For a period of three years following the conclusion of each calendar year, the Port shall have the right to audit the City's cost records associated with this Agreement. The Port may conduct any such audits using Port staff or consultant services. The City shall maintain appropriate accounting records and make them available for inspection by the Port's auditors. During this same period of time, the City shall have the right to audit the Port's records associated with this Agreement using city staff or consultant services. The City shall also have the right to inspect the Port's water distribution system to ensure compliance with this agreement.

C. Beginning in 2014 and each calendar year throughout the term of the Agreement, the City has the right to annually increase the fixed and volume charges in Section 2.A at the same rate as the published Seattle Area, Consumer Price Index All Urban (CPI-U).

D. The City shall bill the Port the fixed monthly charge and the calculated volume charges each month, and the Port shall remit to the City the billed amount within thirty (30) days of the date of the billing. The City shall provide the Port with the actual source meter readings which indicate the exact amount of usage (in cubic feet) for the month being billed.

E. Rate adjustments developed in accordance with Section 2C or Section 3 shall become effective on the effective date of an ordinance adopted by the Shelton City Commission amending the rates in Shelton Municipal Code Chapter 15.28.

3. Review of Rate Components

As an alternative to Section 2(C) the City may adjust the rates by updating its cost of service study. The study shall rely upon for any adjustments to the wholesale rate the allocation and calculation "utility base" analysis for wholesale agreements as either provided in the January 6, 2010 FCS Group Memorandum to the City of Shelton or other methodologies recognized as common to the industry or necessary to cover the City's cost to provide the water service to the Port. The City plans to complete the next service study in 2013 or later. The new rates and costs will be effective the calendar year following the completion of the cost of service study. For each calendar year subsequent to such an amendment, Section 2.D continues to be applicable.

4. General Conditions

A. No separate legal entity is created by this Agreement.

B. No joint organization whatsoever is created.

C. No common budget is to be established.

D. No personal or real property is to be jointly acquired or held except as provided in Section 2, Paragraph E, above.

E. This Agreement shall be recorded with the Mason County Auditor's Office prior to being effective.

F. Each party shall be responsible for its own finances and for its own personal and real property.

G. All lawsuits whatsoever in regards to this agreement shall be brought in Mason County Superior Court. The governing law shall be the laws of Washington State.

H. The Contract Administrator for the City shall be the City Engineer of the City. The Contract Administrator for the Port shall be its Executive Director.

I. All notices with regard to this Agreement shall be sent in addition to any other legal requirement to:

City of Shelton:

Department of Public Works
Attn: City Engineer
525 W. Cota
Shelton, WA 98584

Port of Shelton:

Executive Director
Port of Shelton
21 W. Sanderson Way
Shelton, WA 98584

J. The Port shall not assign or convey its interests or obligations under this Agreement without the written consent of the City.

5. Term

This Agreement takes effect on the date that both Parties have duly executed the Agreement and continues indefinitely, subject to the City's right to require a new contract in the event the Port requests an increased quantity of water.

6. Regulatory Approvals

The Parties acknowledge that the following regulatory approvals and property rights may be necessary for water deliveries to the Port.

A. The City must obtain the approval of the Department of Health regarding the City's water system. The Parties acknowledge that this Agreement for water supply to the Port may increase the water system planning requirements applicable to the City. The City will keep the Port informed of status, will advise the Port when this approval has been obtained, and will provide a copy of this approval to the Port promptly after it has been obtained.

B. If unanticipated permits, regulatory approvals, or property or access rights (collectively, with the approvals described in Section 2.A, "Regulatory Approvals") are necessary, the Parties will meet and confer in good faith to allocate costs and responsibility for the same.

7. Indemnification by the City

To the fullest extent permitted by law, the City hereby releases and agrees to indemnify, defend and hold harmless each of the Port Indemnified Parties (defined below) from and against any claim, liability, loss, expense (including but not limited to attorneys' fees and expenses), damage, demand, lawsuit, cause of action, order, strict liability claim, penalty, fine, administrative law action and/or cost of every kind and character (collectively, "Claim/Liability"), arising out of or in any way incident to the design, construction, or operation of the City Distribution System if due to the negligence, gross negligence, or intentional act or omission by the City, including in each case (but not limited to) any Claim/Liability on account of defective work, breach of contract, personal injuries, death, damage to property, damage to the

environment, or infringement of any patent, trademark, copyright or other property right, regardless of whether such harm is to the City, its employees or officers, the Port Indemnified Parties, or any other person or entity. "Port Indemnified Parties" means, individually and collectively, the Port, its elected officials, officers, employees, and agents. Notwithstanding any provision in this Agreement to the contrary, the City's duties under this Section 7 shall survive the termination, revocation, or expiration of this Agreement.

8. Indemnification by Port

To the fullest extent permitted by law, the Port hereby releases and agrees to indemnify, defend and hold harmless each of the City Indemnified Parties (defined below) from and against any Claim/Liability arising out of or in any way incident to the use by the Port of the water supplied by the City hereunder and to design, construction or operation of the Port Distribution System; including in each case (but not limited to) any Claim/Liability on account of defective work, negligence, breach of contract, personal injuries, death, damage to property, damage to the environment, or infringement of any patent, trademark, copyright or other property right, regardless of whether such harm is to the Port, its members or officers, the City Indemnified Parties, or any other person or entity. "City Indemnified Parties" means, individually and collectively, the City, its elected officials, officers, employees, and agents. Notwithstanding anything in this Agreement to the contrary, the Port's duties under this Section 8 shall survive the termination, revocation, or expiration of this Agreement.

10. Default

If any water service fee, or any part thereof, is not paid when due, or if the Port shall violate, breach or fail to keep or perform any covenant, agreement, term or condition of this Agreement, it shall be lawful for the City, its agents, or attorneys, to give the Port proper written notice of what it has failed to do, and if such default or violation shall continue or shall not be remedied within 30 days after notice in writing thereof has been give by the City to the Port specifying the matter claimed to be in default, the City, at its option, may terminate this Agreement by notice to the Port and/or pursue any and all legal remedies. Provided in the event the Port contests the alleged violation, breach or failure to keep and perform the covenant, agreement, term or condition of the Agreement claimed by the City, and invokes the Dispute Resolution set forth below in Section 11, and the mediation or litigation results in a determination that the Port is in default, the Port shall have an opportunity to cure the default prior to termination of this Agreement, provided said default is cured within a reasonable period of time following the completion of the mediation or litigation.

11. Dispute Resolution

This Agreement is made with reference to and shall be construed in accordance with the laws of the State of Washington. All questions relative to execution, validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Washington. In the event of a dispute arising out of or related to this Agreement, or the breach or alleged breach hereof, which dispute cannot be resolved through negotiations between the Parties, the Parties agree that the dispute shall initially be submitted to mediation. The Parties shall mutually agree on a mediator. In the event they are unable to do so, a mediator shall be chosen by the Mason

County Superior Court Presiding Judge. Either Party may make the initial submission. Each Party shall pay its own costs (including, if applicable, its attorney and expert witness costs) and one-half of the charge levied by the mediator. If any dispute is not resolved through mediation, the resort shall then be to litigation, and jurisdiction and venue shall be in the Superior Court of Mason County, State of Washington. Jurisdiction and venue as set forth shall be exclusive. In the event the dispute(s) results in legal action being taken, declaratory or otherwise, for any dispute arising out of relating this Agreement, the prevailing Party shall be entitled to recovery of all costs, including the actual attorneys fees, which costs shall be determined and taxed by the trial or appellate courts, as applicable, as part of the costs of such action.

12. Legal Relations

A. It is understood the City does not own or have any responsibilities whatsoever to maintain the Port's water system (*i.e.*, facilities downstream from the meters), including the Improvements and the Port Distribution System.

B. In the event the City is required to comply with any local, state or federal rule or regulation governing its operation of the City Distribution System and said rule or regulation requires the compliance of wholesale water customers of the City, the Port hereby agrees to comply.

C. Each Party will make all reasonable and good faith efforts to complete improvements, secure Regulatory Approvals, and accomplish tasks provided for in this Agreement in a timely manner.

D. Notwithstanding any other provision of this Agreement, neither Party shall be liable under or pursuant to this Agreement for indirect, incidental, special, exemplary, punitive, or consequential damages, including but not limited to damages for lost profits, revenues or benefits.

E. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, and understandings. This Agreement and its provisions may be amended, supplemented, changed, waived, discharged, modified or terminated only by a writing signed by each of the Parties.

F. This Agreement may not be assigned by either Party without the written consent of the other Party.

G. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereunder is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereunder are consummated as originally contemplated to the greatest extent possible.

H. The rights and remedies available under this Agreement or otherwise available shall be cumulative of all other rights and remedies and may be exercised successively.

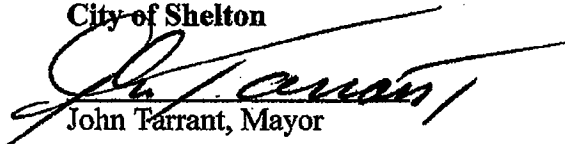
I. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

J. No waiver of any provision of this Agreement shall be effective unless made in writing and signed by the Parties. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any preceding or succeeding breach and no failure by either Party to exercise any right or privilege hereunder shall be deemed a waiver of such Party's rights or privileges hereunder or shall be deemed a waiver of such Party's rights to exercise the same at any subsequent time or times hereunder.

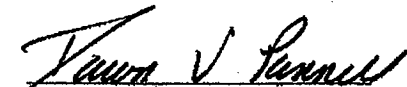
K. Except to the extent expressly stated otherwise herein, nothing in this Agreement are intended to confer upon any person other than the Parties hereto and their respective successors and permitted assigns any rights, benefits, or obligations hereunder.

IN WITNESS WHEREOF, the authorized representatives of the Parties have duly executed this Agreement this 24th day of October, 2011.

City of Shelton


John Farrant, Mayor


Mike Byrne, Commissioner


Dawn Pannell, Commissioner

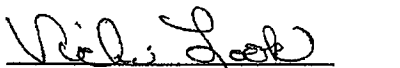
Port of Shelton


Jay Hupp, Commission Chairman

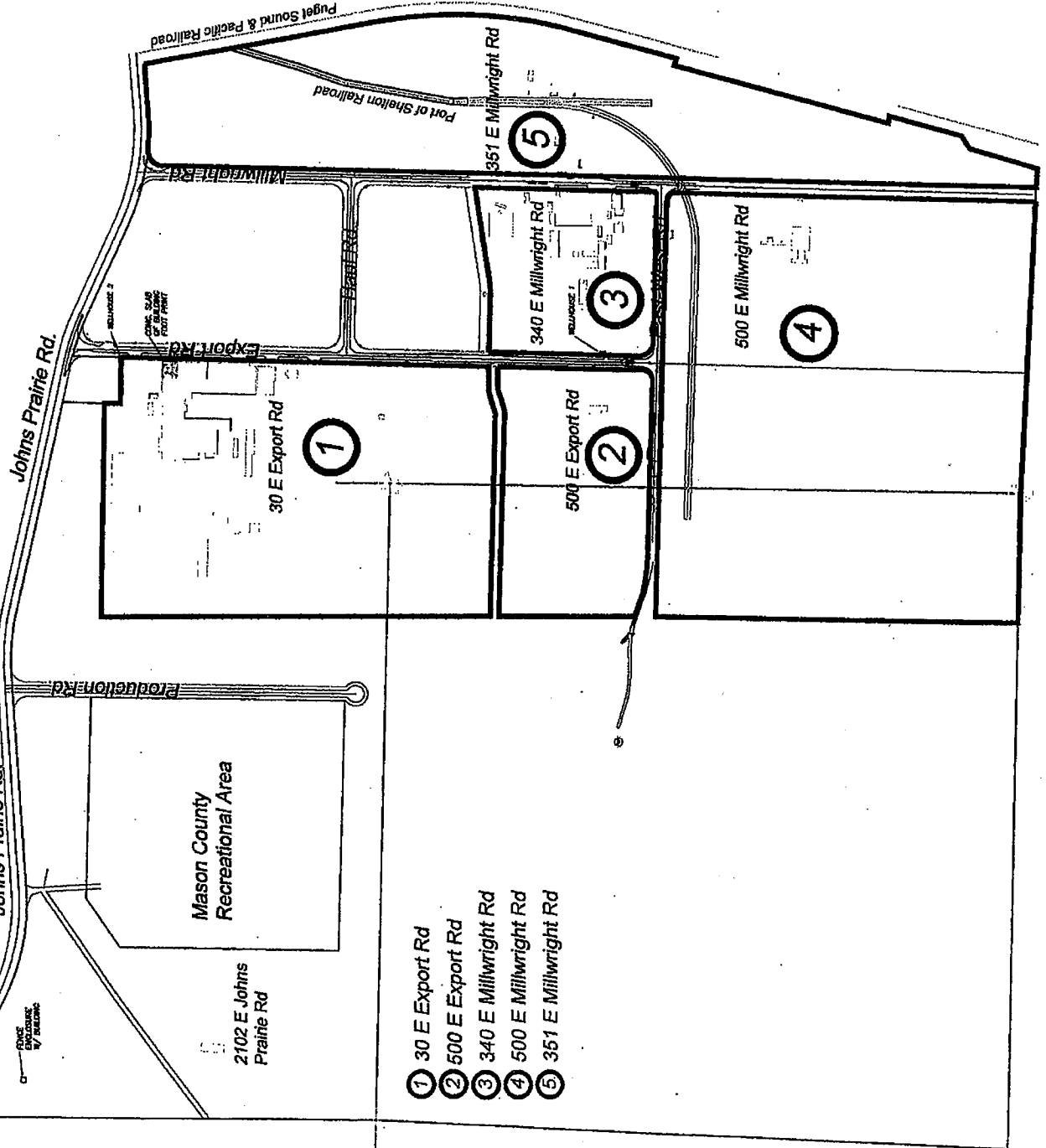

Jack Miles, Commissioner


Thomas M. Wallitner, Commissioner

Attest:


Vicki Look, Shelton City Clerk

Port of Shelton
Interlocal Agreement for the Provision of
Water to the Johns Prairie Industrial Park
"Exhibit 1" 10/20/2011



- ① 30 E Export Rd
- ② 500 E Export Rd
- ③ 340 E Millwright Rd
- ④ 500 E Millwright Rd
- ⑤ 351 E Millwright Rd