

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

THIS AGREEMENT is made and entered into this 4th 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 Granite Falls (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 on April 1, 1996, and subsequently entered into a new Wholesale Water Agreement on October 8, 2009; and

WHEREAS, the Parties understand that several changes have occurred since the Agreement was entered in 2009, including but not limited to the City's desire to continue to allow the District to serve Direct Service Customers within its Retail Water Service Area; and

WHEREAS, the Parties agree that such changes warrant and necessitate substantial modifications to the 2009 Agreement; and

WHEREAS, high quality, dependable water supply is important to serve the City's water service customers and to accomplish the goals of the long-term comprehensive plans of the City, the District, and Snohomish County; 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 terminate the 2009 Agreement in its entirety and replace it 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 Cubic Foot: shall mean a unit of measurement of water equal to 7.48 gallons.

1.2 Direct Service Customer: shall mean those City water customers located within the City's Retail Water Service Area who are billed for water service by the City and who are served via a water connection to a District main because the City does not currently have a distribution system capable of providing service and/or where the City has determined it is more economical to supply its retail water customer from the District's water transmission system. The District shall own, operate, locate, inspect, and maintain, at its sole cost and expense, all Direct Service Customer facilities from the main to the water meter.

1.3 Distribution System Charge: The Distribution System Charge ("DSC") is assessed to compensate for costs the District and its existing customers have paid to install the system's existing local distribution network, or for the costs of installing new distribution lines required to support the addition of the new customers. The DSC applies to each new District retail customer connecting to a District-owned water main when allowed per mutual agreement within the City's Future Water Service Area but outside of the Retail Water Service Area when such customer has not contributed to the cost of the water main either through an LUD assessment, other charge imposed by District policy, or through purchase of an individual parcel specifically for which the water main extension was originally installed. The DSC charge shall be applied per the District's Policies Manual.

1.4 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.

1.5 Retail Water Service Area: shall mean that respective territory within which a particular water utility provides exclusive or predominant retail water service for residential, commercial, or industrial water consumers. The City's Retail Water Service Area includes the City's existing retail customers which are predominately within the Granite Falls City Limits. For the purposes of this Agreement, the City's Retail Water Service Area shall not exceed the City's Future Water Service Area as shown in Exhibit 1, attached hereto, without mutual consent of the Parties.

1.6 Future Water Service Area: shall mean that respective territory within which a particular water utility provides exclusive or predominant future retail water service for residential, commercial, or industrial water consumers. The City of Granite Falls' Future Water Service Area shall remain fixed and not exceed the limits of the Future Water Service Area boundary as shown on Exhibit 1, attached hereto, without the mutual written consent of the Parties.

1.7 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. The GFC charge shall be applied as established in Appendix B of the District's Policies Manual.

1.8 Granite Falls City Limits: shall mean that area within the established limits of the City of Granite Falls at the time of the execution of this Agreement and any real property that is annexed to the City during the term of this Agreement.

1.9 Master Meter: shall mean the water volume measuring device and appurtenances in the District's water main at its points of connection with the City's water system. There are three existing Master Meters as shown in Exhibit 1, attached hereto. The Master Meters are located at the intersection of Stanley Street and Alder Avenue, the intersection of Jordan Road and Saratoga Street, and at the west entrance to Granite Falls High School on Burn Road. The Master Meters constitute the location of each of the points of delivery between the District's water system and the City's water system. Additional Master Meters may be installed in the future at such mutually agreed upon locations if the District determines that it is reasonably necessary to enhance the City's water system hydraulics. The Master Meters 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.

1.10 May: shall mean permissive.

1.11 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.

1.12 Service Meter: shall mean the water volume measuring device and appurtenances connecting an individual retail water service customer directly to either the City's or the District's water main.

1.13 Shall: shall mean mandatory.

Section 2 - Delivery and Use of Water

The District shall deliver water to the City for resale to customers and the City shall pay the District for delivery of water.

Section 3 – Master Meters and Point of Delivery

3.1 All water supply delivered by the District to the City shall be delivered and measured through the Master Meters. The line of demarcation and “Point of Delivery” between the District's water system and the City's transmission main shall be the Master Meters. The City shall be responsible for constructing all connections between the City's water system and each Point of Delivery to its water system.

3.2 Access to the Master Meters and appurtenances, including any flow or pressure trends from the District's SCADA system, shall be made available to the City at all reasonable times. The Master Meters shall be checked by the District for accuracy periodically after installation or up to once per year as requested by the City, as part of normal maintenance. Master Meter test data shall be available to the City at all reasonable times, upon request.

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 716 feet and 726 feet above mean sea level at the Master Meter connections. The District's water system has sufficient storage and hydraulic capacity to supply water to meet the City's average and typical peak demands, including fire flows up to 3,000 gallons per minute (gpm) total through the combined Master Meters for a two (2) hour duration, subject to forces or conditions beyond the reasonable control of the District.

4.2 Exceptional peak demands, as may be associated with industrial users with large peaking factors or fire flow requirements exceeding 3,000 gpm, may require modification, at the applicant's sole expense, to the District's water system.

4.3 It shall be the responsibility of the City to install and maintain such control valves and appurtenances in its water system as may be needed to regulate the pressure to conform to the needs of the City's water system and customers. 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.

4.4 The District's water 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.

4.5 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. The City is responsible for notifying its customers of any disruptions in service.

Section 5 – Water Quality

5.1 The water supplied by the District to the City under this Agreement shall meet all state and federal drinking water standards at the Points of Delivery. The City, to the extent allowed by law, shall be responsible for maintaining water quality beyond the Points 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 Points of Delivery.

5.2 The District shall be responsible for all initial and subsequent cross connection inspections on the Direct Service Customer connections. If a backflow prevention assembly is deemed necessary for the adequate protection of the District's

water system, the City will be notified and shall be responsible for notifying its customer of the requirement. District staff will send out annual notification to the City for testing of any backflow prevention assemblies associated with a Direct Service Customer. The City shall be responsible for notifying its customer of the testing requirement and forwarding all test results to the District. Failure to install the appropriate backflow prevention assembly or complete the necessary annual testing shall result in the termination of service. The District shall identify the timetable for termination. If the City does not terminate the service within that timeframe, the District may terminate the service at the City's expense. The City shall immediately notify the District if it is aware of a change of use of any existing or proposed Direct Service Customer connection that may lead to a potentially higher risk category and require either the installation of a new or different backflow prevention assembly.

Section 6 – Wholesale Water Rate and Billing

6.1 Wholesale Water Rate: The wholesale water rate to be paid by the City to the District shall be per 100 cubic feet ("CCF") of water, delivered to the City at the Master Meters. The District's water rates are set forth in the Table B-9 of the District's Policies Manual.

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 and as provided herein. The District will provide notice to the City of any proposed adjustments to the wholesale water rate as set forth in this Section.

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.

The District agrees that the City's wholesale water rate shall not be higher than the commodity charge component of the District's retail water rate for its residential customers.

6.3 Billing Period: The Master Meters 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.

6.4 Direct Service Customers: The District will read all Direct Service Customer meters and bill the City monthly at the established District retail rate as set forth in Appendix B of the District's Policies Manual and as may be adjusted by the Board of Commissioners from time to time. The retail rates paid by Direct Service Customers shall be based on customer class and include both the fixed component (as shown in the rate tables as either a monthly or daily customer charge) and the commodity rate. The City shall be responsible for payment of the total amount due, regardless of its ability to collect payment from its retail customers. If the District notices a higher than normal meter reading, the City will be notified, however, no credit for leak adjustments will be allowed for the Direct Service Customers. The City shall be responsible for billing the Direct Service Customers at its retail rate, and shall be responsible for customer inquiries and complaints, and notification of water quality events or issues.

Direct Service Customers may be transferred to City water mains at any time during the term of this Agreement at no cost to the District, and upon such transfer shall become City customers. All new Direct Service Customers shall be subject to the applicable connection fees as defined in the District's Policies Manual, except for the District's Distribution System Charge ("DSC"). Connection to a District water main inside the City's Retail Water Service Area is not intended to be permanent and over time those services will be transferred to a permanent City water main; therefore, the District will waive the DSC for any new Direct Service Customer connected to an existing District water main within the City's Retail Water Service Area, after the date of execution of this Agreement.

6.5 Review of Wholesale Water Rate Changes: The District shall provide to the City documentation to support any proposed change in the wholesale water rate. The City shall have the opportunity to comment on any proposed change. The District shall provide the City 60 days' notice prior to implementing any proposed change to the wholesale water rates.

6.6 Other Charges: All applicable customer service fees associated with a Direct Service Customer (e.g. shut-off, turn-on, and miscellaneous connection fees, etc.) shall be billed to the City as set forth in Appendix B of the District's Policies Manual.

Section 7 – General Facilities Charge and Distribution System Charge

7.1 The District's GFC and DSC for residential and non-residential connections to the City's water system shall be consistent with the District's Policies Manual. Payment of the applicable DSC shall only apply to District Retail Customers who are connected to a District water main (upon mutual agreement of the City and the District) within the City's Future Water Service Area but outside of the City's Retail Water Service Area. The District shall provide the City at least 30 days' notice prior to implementing any proposed change in the GFC or DSC.

7.2 As the City adds new water service customers after the effective date of this Agreement, the City shall pay to the District the District's applicable GFC for each new water service customer connection to the City's water system. On or before the 10th day of each month following the Effective Date of this Agreement, the City shall report to the District the number of new water service customers and their ERU classification as defined in the District's Policies Manual – Appendix B for the preceding month. The City shall submit payment of the appropriate new customer GFC amount to the District on or before the 10th day of each month along with the report.

7.3 The City shall pay to the District any applicable GFC, Service Connection Charge (SCC), and miscellaneous connection fees as set forth in Appendix B of the District's Policies Manual prior to the District installing a new Direct Service Connection. The number of ERUs applicable to each new Direct Service Connection shall be determined as indicated in Appendix B of the District's Policies Manual.

Section 8 – Service Area Boundaries and Transfer of Customers

8.1 Except as specifically provided otherwise herein, the City shall retain its responsibility as the retail water purveyor within the City's Retail Water Service Area, including those locations where the City does not currently have a distribution system capable of providing service and/or has determined that it is more convenient and economical for the City to supply its retail water customers directly from the District's water transmission system (Direct Service Customers).

8.2 The District and the City agree to work together to limit the addition of new Direct Service Customers. Any decision to allow a new Direct Service Customer shall be consistent with all applicable District and City policies and be allowed only if the City recommends such a direct service connection and the District agrees it is unreasonable to provide service from a City water main.

8.3 Where the District provides water service to the City's retail customers (Direct Service Customers), the District shall, in its sole discretion and at its option, perform and/or inspect all work associated with the excavation, tapping, backfilling, and restoration of the District's pipelines, and all such work shall be performed in accordance with District standards. The City shall pay the District all applicable fees for the installation as set forth in Appendix B of the District's Policy Manual.

8.4 Direct Service Customers within the City's Future Retail Water Service Area, as shown on Exhibit 1, shall be transferred to the City when a City water main is available to serve those customers, and the District's service line and appurtenances shall be abandoned in accordance with District standards. The transfer of service connection to the City's water distribution lines shall be performed by the City under the District's general supervision. All costs associated with transfer of service and abandonment of District service, including but not limited to any applicable inspection costs, shall be borne by the City. Such transfers are not subject to additional District GFC or DSC charges. However, in the event that customers being transferred to the City have financed their GFC and other applicable costs by the formation of a District LUD, then those payments by the customer shall continue to be paid to the District until the obligation is satisfied.

Section 9 – Conversion of Existing District or City Customers

If an existing City retail water service customer outside the City's Retail Water Service Area is converted from service via a City water line to a service connection from a District water line, the City shall pay for the actual costs of the service connection conversion performed by the District, and such customer shall upon completion of the conversion, become a permanent retail water service customer of the District. No additional GFC will be levied; however, the District's DSC shall apply as set forth in the District's Policies Manual.

Section 10 – Construction Standards and Permit Fees for Granite Falls Project within City Rights-of-Way

Within the City's rights-of-way, construction and surface restoration of the Project and subsequent connections and repairs shall be accomplished in accordance with the City's Public Works standards or applicable portions of the Snohomish County Road Standards. The City agrees to charge, and the District agrees to pay, the City's normal and accustomed permit fees for utility construction and repair within City rights-of-way.

Section 11 – Fire Hydrants

The District's water system currently includes fire hydrants within the City's Future Water Service Area. Future hydrants on District water mains within the City's UGA, if allowed, will be in accordance with District standards and at the applicant's sole cost. Spacing and placement of those hydrants shall be as required by the City's Public Works standards and policies. Any new development within the City's Future Water Service Area shall be required to extend a City main to provide service consistent with the City's policies. The District reserves the right to impose additional charges for fire hydrants if required by law.

Section 12 - 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 Meters 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 13 - Use of City's Existing Water Sources

The City owns water wells that have been physically disconnected from the City's water distribution system. The City intends to retain its existing wells and water rights for non-potable use. If in the future the City chooses to reactivate its wells with the intention of supplementing the District supplied water source or providing an emergency backup water supply, the City agrees that prior to such action it shall install DOH-approved backflow prevention measures between the District's Master Meter connections and the City's distribution system at its own cost and expense.

Section 14 - Term

This Agreement shall be effective from the date of execution by authorized representatives of both Parties hereto and shall continue in effect through December 31, 2040, unless terminated by mutual agreement or upon five (5)-years written notice by either Party.

Section 15 – 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/LS
Everett, WA 98206-1107*

City’s Initial Administrator:

*Brent Kirk
City Manager
City of Granite Falls
PO Box 1440
Granite Falls, WA 98252*

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

Section 16 - 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 15 of this Agreement. Notice delivered by email shall be deemed given as of the date and time received by the recipient.

Section 17 – Indemnity

17.1 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.

17.2 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 18 – Uncontrollable Forces or State or Federal Law Changes

Neither of the Parties hereto shall be considered 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 19 – 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 20 – 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 21 - 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 binding arbitration or such an alternative process shall be resolved by application to the Superior Court of the State of Washington, with venue in Snohomish County. This contract 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 22 – Exhibits

Exhibits referred to throughout this Agreement are attached hereto and incorporated herein as though fully set forth at each reference.

Section 23 – Miscellaneous

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

23.2 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.

23.3 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.

23.4 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.

23.5 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.

23.6 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.

23.7 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.

23.8 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.

23.9 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.

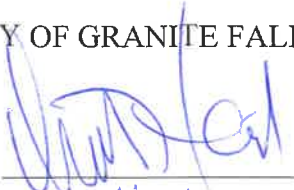
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this 4th day of November, 2020.

PUBLIC UTILITY DISTRICT NO. 1
OF SNOHOMISH COUNTY

By: 

John Haarlow
General Manager/CEO

CITY OF GRANITE FALLS

By: 

Matthew Hartman, Mayor

APPROVED AS TO FORM

By: 

Shawn J. Aronow
Assistant General Counsel

ATTEST

By: 

Darla Reese, City Clerk

EXHIBIT 1 City of Granite Falls Direct Service Boundary

Legend

- Granite Falls Water Main
- PUD Water Main
- (M) MASTERMETER
- ▤ Granite Falls Current Retail Water Service Area
- ▨ Granite falls Future Water Service Area
- ▧ Direct Service Customer
- ▩ PUD Retail Water Service



Granite Falls HS
Master Meter.

(M) Saratoga
Master Meter

(M) Alder
Master Meter