

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: May 10, 2021

AGENDA ITEM:	
Joint Operating Agreement Water Supply Contract	
PREPARED BY:	DIRECTOR APPROVAL:
Karen Latimer, Utility Manager	<i>kc</i>
DEPARTMENT:	
Public Works	
ATTACHMENTS:	
1. Joint Operating Agreement Water Supply Contract	
BUDGET CODE:	AMOUNT:
N/A	N/A
SUMMARY:	

On October 15, 1991, the City of Everett and the Joint Operating Agreement Participants (JOA Participants), consisting of the City of Marysville, Snohomish County PUD No. 1, and the Tulalip Tribes, entered into a water supply contract (Contract) with an expiration date of July 1, 2020. On June 8, 2020, City Council authorized a one-year extension of the Contract while City of Everett and the JOA Participants negotiated a replacement contract. The term of the newly completed contract will be from the date of its mutual acceptance by all parties until December 31, 2050. The JOA Participants will have a right to renew the contract for an extended term of similar duration and quantity of water up to a peak of 20 million gallons per day.

RECOMMENDED ACTION: Staff recommends that Council authorize the Mayor to sign and execute the Joint Operating Agreement Water Supply Contract.
RECOMMENDED MOTION: I move to authorize the Mayor to sign and execute the Joint Operating Agreement Water Supply Contract.

**EVERETT AND JOA PARTICIPANTS
WATER SUPPLY CONTRACT**

THIS CONTRACT is made and entered into by and between the City of Everett, a municipal corporation of the State of Washington, hereinafter referred to as "Everett," and the City of Marysville ("Marysville"), and Public Utility District No. 1 of Snohomish County ("PUD"), municipal corporations of the State of Washington, and the Tulalip Tribes of Washington (Tribes), a federally recognized Indian Tribe, the latter three entities hereinafter referred to as "Participants"

WHEREAS, Everett owns and operates a water supply system located in Snohomish County, Washington. This system has regional supply capability for domestic, commercial, and industrial water consumption; and

WHEREAS, pursuant to RCW 35.92 and RCW 39.94, Everett is authorized to enter into contracts with other municipalities and recognized tribes to supply water. Pursuant to WAC 246-290-100, Everett has prepared a Water System Plan identifying certain areas of north Snohomish County as being within its long-range wholesale water supply service area; and

WHEREAS, the Participants own and operate water supply systems in north Snohomish County, Washington, and distribute water on a retail basis to domestic, commercial, and industrial customers within their respective service areas; and

WHEREAS, the Participants in 1991 entered into a Joint Operating Agreement ("JOA") for the purpose of the construction and operation of a 30-inch pipeline by Marysville from the Everett transmission line to the Sunnyside vicinity (the "Phase I JOA Pipeline"), allocating pipeline capacity among the Participants, and cooperating in a regional solution to meet future water supply needs; and

WHEREAS, the Participants together with Washington State, Snohomish County, Everett and other public water purveyors have jointly prepared a Coordinated Water System Plan ("CWSP") for north Snohomish County and have prepared individual Comprehensive Water System Plans; and

WHEREAS, the execution of this Contract and the participation of the Tribes in the processes contemplated by the Contract do not constitute nor imply any abrogation, diminishment or waiver of the Tribes existing or reserved rights or sovereign powers, whether arising under treaty, statute or common law; and

WHEREAS, Everett and Tribes executed a separate wholesale water delivery contract in 2016 and nothing in this Contract is intended to alter the terms of that contract or the water delivered thereunder, and

WHEREAS, Everett and the Participants entered into a water supply contract in October

of 1991 which terminated July 1, 2020, and has been extended to July 1, 2021. That contract states that the Participants shall have the right to renew the contract for an extended term of similar duration and for a quantity of water consistent with the demands projected by the CWSP.

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

1. **Delivery of Water.** Everett hereby agrees to deliver and sell to the Participants, and the Participants hereby agree to purchase from Everett, a maximum of twenty million gallons of water per day (20 MGD). The Participants will pay Everett for the delivery and treatment of such water, to be used as one of Participants' sources of supply, in accordance with Everett's usual and accustomed rates and conditions for customers similarly situated and as provided in Section 5 hereof.

2. **Point of Delivery.** Everett shall deliver water to the Participants at the connection point located at 87th Ave SE and 20th St SE. This connection point is referred to in this Contract as the "Everett connection point." Since this tap is owned by Marysville, Everett will coordinate any operational issues with Marysville as well as the PUD. Other future connection points to serve multiple Participants shall be subject to mutual agreement. The actual point of delivery at the connection point shall be the upstream flange of the valve downstream of the master meter and check valve.

3. **Quantity of Water.** Marysville constructed the Phase I JOA Pipeline from the Everett connection point as Phase 1 of the preliminary CWSP and JOA. Everett and Participants agree that each have, and will continue to make, significant capital investments in water supply facilities which are interdependent, and that coordinated planning will be required throughout the term of this Contract to maximize public benefits and minimize costs. In the design of future Participants' water supply projects, Everett shall not be responsible for storage beyond Everett's existing storage at Chaplain Reservoir. Everett agrees to use best efforts, subject to meeting the requirements of all Everett customers and subject to Section 10 and Section 11 below, to provide a regular and uninterrupted supply of water at the Everett connection point. Everett will exercise best efforts to operate so as to supply water at a hydraulic head of not less than 440' mean sea level at the Everett connection point throughout the term of this Contract as long as parties are in compliance with the Operating Plan (**Exhibit B**).

It is understood that the Participants may reach peak demands of 20 million gallons per day (MGD) through the Phase I JOA Pipeline before the expiration of this Contract and that additional facilities, including a second pipeline connection to Everett and a regional reservoir, may be required to meet long range demands. A second pipeline connection will require a separate water contract between Everett, Marysville and as many of the other Participants who choose to participate in this second pipeline connection.

Estimated average daily demands and peak day demands of the Participants are shown in the Participants' individual Comprehensive Water System Plans. Everett's facilities have, or will have in the future, the capacity to supply the Participants' water quantity demands at the Everett connection point of a peak of 20 MGD. The PUD and Tribes have other points of

withdrawal from Everett's water system that are not subject to this Contract.

The Participants have developed an Operating Plan (Exhibit B) to accommodate the operational needs of the parties. This plan is for operating purposes only. If conditions change, it may be modified by mutual agreement of the Public Works Directors of Everett and Marysville and the PUD AGM-Water Utility or their designees.

If peak flow ratios (i.e. peak flow/average flow) become an issue that adversely affects Everett's ability to deliver water under the conditions of this Contract, it will convene a committee of itself and the Participants. This committee will be charged with modifying the Operating Plan (Exhibit B) in such a manner to reduce the adverse effects of peaking. If this effort is unsuccessful, Everett reserves the right to implement, and the Participants shall pay, a demand charge as may be established by Everett ordinance.

The quantity of water delivered shall be measured by the master meter referred to in Section 2 above. Nothing herein, however, shall be construed as obligating the Participants to take or purchase any minimum quantity of water from Everett at any time except as Everett's rates require minimum payment related to each connection.

4. **Quality of Water.** Everett agrees that all water delivered to the Participants at the Everett connection point shall be of the same standard and quality as that normally delivered by Everett to master meter customers east of the Snohomish River. Everett shall be responsible for meeting state and federal standards for safe, high-quality drinking water at the point of delivery. All water supplied by Everett for use or sale by the Participants shall be upon the express condition that after it has passed the point of delivery the water becomes the property and responsibility of the Participants, and Everett shall not be liable for any damages or loss resulting from degradation of water quality which may occur beyond such point. Further, Everett shall not be responsible for changes in water quality or operating problems which may result from mixing of different sources of water in the Participants' systems. Participants shall provide means to assure that water will not backflow into the Everett system. Everett shall not be responsible for acts of sabotage that might degrade the quality of water delivered to the Participants.

5. **Rates and Charges.** Rates and charges to be paid by Participants, including a demand charge as described in Section 3 above, shall be established by ordinance of Everett from time to time. (As of the date of this Contract, Everett rate ordinance is Ordinance 3793-27.) The charges for water service shall include a base rate, a minimum charge for each connection, and a filtration charge. The base rate for water and the minimum charge for each connection and the filtration charge shall be established by ordinance of Everett and shall be based on cost of service principles; provided that it is agreed that rates may include usual and accustomed charges imposed on the Everett utility by the Everett's general fund. The rate structure may include a minimum charge for each point of connection without regard to consumption plus a commodity charge. The Participants agree to read each of the master meters on a monthly basis and provide Everett with the readings by the 7th day of each month. Everett agrees that the Participants shall

be served with notice of any future rate modifications that will impact the Participants at least thirty (30) days prior to consideration of such modifications by the Everett City Council.

6. **Payments by Participants.** On a monthly basis, Everett shall bill Marysville for water delivered through the Phase I JOA pipeline master meter less the amount that the PUD withdraws from its Soper Hill tap off of the Phase I JOA pipeline. Everett shall bill the PUD for their water withdrawal from this tap. These bills shall be payable within thirty (30) days after receipt of the invoice. Delinquent bills shall accrue interest at the rate of twelve percent (12%) per annum for any delinquency greater than sixty (60) days.

7. **Resale or Distribution of Water by the Participants** After water has passed the point of delivery and has entered Marysville's Phase I JOA pipeline, the water becomes the property of the Participants according to the point of delivery and/or their respective capacity right as established in the JOA and the use and distribution of the water shall be under the exclusive authority of the Participants, subject only to the following express limitations.

a. Everett Ordinance No. 1347-87 (EMC 14.15.460) requires that new connections outside the City of Everett greater than 12 inches are subject to Everett Water System Plan modification. Participants agree not to allow any customer connection to Participants' water systems which is using water purchased from Everett under this Contract if such connection is greater than 12 inches in diameter or supplies more than one million gallons per day, unless Participants first obtain approval from Everett for such connection. Everett's approval shall not be unreasonably withheld and shall be based on the water supply impacts to the Everett water system caused by such connection.

b. The Participants will distribute water received from Everett in a manner consistent with the Everett Water System Plan, the CWSP, and the individual Participants' Water Systems Plans, as approved by the Washington State Department of Health, if appropriate.

c. The Participants shall not serve water received from Everett, pursuant to the terms of this Contract, in areas outside the service area shown in Exhibit A attached hereto. Exhibit A shall be changed if future Everett Comprehensive Water Plans change the Everett Service Area.

8. **Term of Contract** The term of this Contract shall be from the date of its mutual acceptance by all parties until December 31, 2050. The Participants shall have a right to renew this Contract for an extended term of similar duration and quantity of water for a peak of 20 MGD.

9. **Construction, Operation and Maintenance of Capital Improvements.** The Participants at no cost to Everett shall construct all capital improvements to their water systems and shall own all capital improvements downstream from the point(s) of delivery and shall assume exclusive responsibility for the operation, maintenance, and repair of the same. All construction, operation, and maintenance and repairs shall be in strict compliance with standards

approved by the Washington State Department of Health as appropriate. The Participants shall annually provide to Everett a water system report to include number of customers, peak use and other information useful in optimizing joint operations.

10. **Continuity of Service.**

a. To the extent feasible, Everett shall continuously maintain service to the Participants as set forth in this Contract. In the event of a general emergency or water shortage, Everett and the Participants will share in implementing the necessary water conservation measures. Recognizing that both Everett and the Participants have critical customers, Everett will consult with the Participants regarding water allocations. General restrictions placed upon deliveries to the Participants shall be made according to Everett 's most recent Emergency and/or Drought Response Plan. In the event of localized emergency problems, temporary service interruptions may result.

b. It is recognized by the parties that emergency conservation measures may have to be implemented by the Parties on a regional basis in order to meet an emergency condition. The Participants shall assist and support such emergency conservation measures.

c. Everett shall provide oral notice to the Participants, and may temporarily interrupt or reduce deliveries of water to the Participants, if Everett determines that such interruption or reduction is necessary or reasonable in case of system emergencies. Except in cases of emergency, and in order that Participants' operations will not be unreasonably interfered with, Everett shall give the Participants five (5) days' notice of any other interruptions or reduction in services, the reason therefor, and the probable duration thereof, including any interruptions or reduction in services that will be caused by installation of equipment, repairs, replacements, investigations, inspections, or other maintenance performed by Everett on its water system or those parts of the system supplying the Participants.

11. **Force Majeure and Changes in Law.** None of the parties hereto shall be considered to be in default in respect to any obligations hereunder if prevented from fulfilling such obligations due to conditions beyond their reasonable control or due to changes in state or federal law. If a party is unable to perform in whole or in part because of such condition or change in the law, the party shall diligently and promptly take reasonable steps to allow it to perform.

12. **Miscellaneous**

a. **Assignment; Successors Bound.** Neither this Contract nor any right or privilege herein shall be assigned by any party without the written consent of the other parties. This Contract shall apply to and be binding upon the lawful successors of all parties.

b. **Notices.** Unless otherwise provided herein, all notices complying with this Contract shall be sent by registered mail as follows:

To Everett:
Public Works Director
Everett Municipal Building
2930 Wetmore Avenue
Everett, WA 98201

To the PUD:
AGM-Water Utility
PUD No. 1 of Snohomish County
PO Box 1107
Everett, WA 98206

To Marysville:
Utility Manager
City of Marysville Public Works
80 Columbia Avenue
Marysville, WA 98270

To the Tribes:
Public Works Director
Tulalip Tribes of Washington
6406 Marine Drive
Tulalip, WA 98271

c. **Legal Relations.** Notwithstanding any other provision of this Contract, no party to this Contract will liable to any other party for indirect, incidental, special, exemplary or consequential damages, including but not limited to damages for lost revenues or benefits, even if such party has been advised of the possibility or existence of such damages.

d. **No Joint Venture.** This Contract describes the entire relationship of the Participants with Everett with regard to the subject matter herein concerned. Except as maybe explicitly provided otherwise herein, the parties are independent agencies and shall not be deemed to be partners, joint ventures, principals, or agents of each other for any purpose whatsoever. Each party shall have and maintain sole and complete control over all of its employees, agents, and operations.

e. **Dispute Resolution.** Any dispute under or in connection with this Contract may, upon the mutual agreement of the parties, be submitted for resolution by mediation.

f. **Entire Agreement.** This Contract, together with any exhibits, sets forth the entire agreement of the parties with regard to the subject matter hereto.

g. **No Third Party Beneficiaries.** None of the provisions of this Agreement

shall inure to the benefit of or be enforceable by any third party.

h. **Waivers.** Any waiver at any time by a party of its right with respect to a default under this Contract, 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. Any party may waive any notice or agree to accept a shorter notice than specified in this Contract. 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 Contract.

i. **Amendment.** Except for changes to the Operating Plan, no change, amendment or modification of any provision of this Contract shall be valid unless set forth in a written amendment to this Contract signed by all parties with the same formality as this contract.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their proper officer and will become effective on the date of the latest signature on the day of _____, 2021.

CITY OF EVERETT
WASHINGTON

By: _____
Cassie Franklin, Mayor

Date: _____

ATTEST:

City Clerk
Date: _____

APPROVED AS TO FORM:

City Attorney
Date: _____

CITY OF MARYSVILLE
WASHINGTON

By: _____
Jon Nehring, Mayor

Date: _____

ATTEST:

City Clerk
Date: _____

APPROVED AS TO FORM:

City Attorney
Date: _____

TULALIP TRIBES OF WASHINGTON

By: _____
Teri Gobin, Chair of Tribal Board
of Directors

Date: _____

PUBLIC UTILITY DISTRICT NO. 1 OF
SNOHOMISH COUNTY

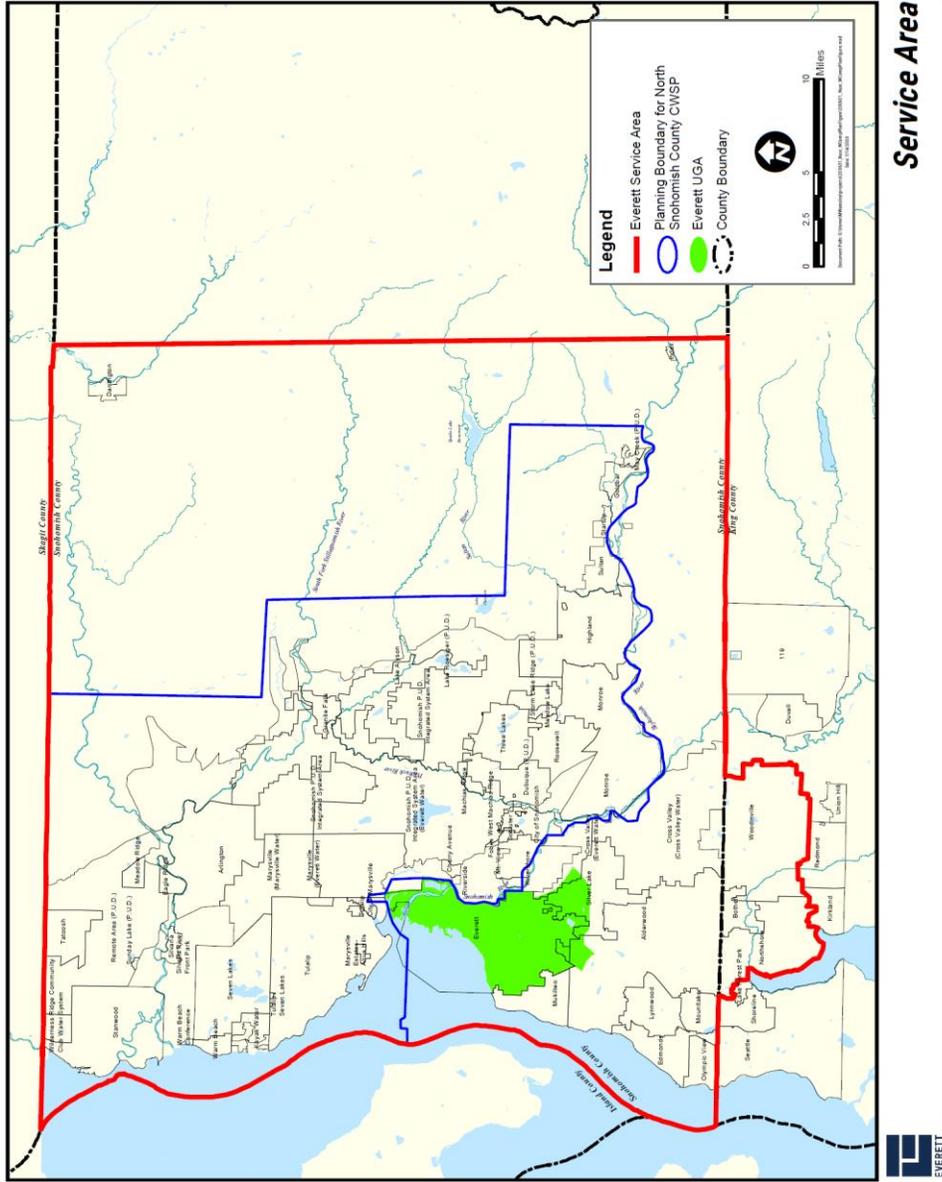
By: _____
John Haarlow, CEO/General
Manager

Date: _____

APPROVED AS TO FORM:

Assistant General Counsel
Date: _____

EXHIBIT A



Service Area

EXHIBIT B

JOA OPERATING PLAN

1. PURPOSE

This Plan establishes the terms and conditions under which Everett and the Participants shall operate their facilities, how flow changes at the point of delivery and Transmission Line operations shall be coordinated, and the conditions under which Everett meters the flow from Everett's Transmission Line at Marysville's point of delivery.

2. RESPONSIBILITIES OF THE CITY OF MARYSVILLE AND THE PUD

A. Marysville shall maintain and repair all its Facilities starting at the point of delivery from Everett's Water Transmission Line No. 3 downstream of Everett's valve and meter.

B. Marysville and the PUD shall provide Everett's operations contact advance oral or written notice of any proposed flow change that will result in a flow change (increase or decrease) as follows:

1) For flow changes less than 2 million gallons per day (MGD), no notification is necessary.

2) For flow changes equal to or greater than 2 MGD, at least one (1) hour notice, if not previously scheduled.

3. RESPONSIBILITIES OF THE CITY OF EVERETT

A. Everett shall notify Marysville's and the PUD's Operations Contact, as listed in Section 6 of this Plan, at least 24-hours prior to any significant operational changes, construction or shutdown of key Everett facilities that could impact operations of Marysville and the PUD except for an emergency shutdown. Significant operational changes shall include but not be limited to:

1) Closure of valves on Everett's Transmission Line No. 3

2) Removal from service of either of Everett's clearwells located at Everett's Water Filtration Plant.

B. Everett shall immediately notify Marysville's and the PUD's Operations Contact whenever it experiences or initiates an operational change outside the normal operating parameters of Everett's supply system or Everett's Water Transmission Line No. 3.

C. Everett shall own, maintain, and operate a meter including arranging and paying for calibration and or maintenance by the manufacturer or other acceptable service provider.

D. Everett shall respond to Marysville's and the PUD's flow change notifications by managing flows on Everett's Water Transmission Line No. 3 in a manner that is consistent with the "Everett and JOA Participants Water Supply Contract".

4. SHUTDOWNS

A. For any planned shutdowns that impact Marysville and the PUD, Everett shall:

1) Communicate with Marysville's and the PUD's Operations Contact listed in Section 6 about plans that may impact Everett's Water Transmission Line No.3 at least four months in advance to allow for coordination of planned shutdowns.

2) Provide written and verbal notice to Marysville's and the PUD's Operations Contact listed in Section 6 at least 30 calendar days prior to the shutdown.

3) Strive to avoid planned shutdowns on Fridays through Sundays, and during the period from May 15 to September 15.

B. Everett shall immediately inform Marysville's and the PUD's Operations Contact if an emergency shutdown of Everett's Water Transmission Line No. 3 is necessary.

C. Data Sharing

A. As Everett, Marysville and the PUD mutually agree, each party shall provide the other party their system's digital communications, if requested, as described below:

Status of flow, storage, pumping and power supply.

5. EMERGENCIES

A. Everett shall immediately notify Marysville's and the PUD's Operations Contact listed in section 6 whenever it experiences or initiates an operational change outside the normal operating parameters of Everett's supply system or Everett's Water Transmission Line No. 3. Everett shall inform Marysville's and the PUD's operational contact if it believes that an emergency shutdown is necessary, including any closure of the isolation valve on Everett's Water Transmission Line No. 3.

B. Marysville and the PUD shall be responsible for modifying or shutting down its operations during a shutdown emergency as defined in Section 5.A. above.

C. Whenever Marysville or the PUD believes an emergency shutdown of its operations is necessary, their operational contact shall immediately inform Everett's Operations Contact of the pending emergency shutdown.

D. Marysville and the PUD shall be responsible for contacting Everett's Operations Contact and coordinating the re-start of its operations following any emergency shutdown.

E. Marysville or the PUD shall be responsible for any damage to Everett's Water Transmission Line No. 3 caused by their negligent operation of facilities by Marysville or the PUD. Everett shall be responsible for any damage to the Marysville or the PUD Facilities caused by the negligent operation of Everett's water supply system.

6. OPERATIONS CONTACTS

The following persons shall serve as the points of contact for notification of all changes that impact the operation of Marysville and the PUD facilities or the flow in Everett's Water Transmission Line No. 3 under normal and emergency conditions, and oversight of this Plan:

EVERETT'S OPERATIONS CONTACT:

Senior Operator (for emergency conditions)
Everett Water Filtration Plant 425-257-8200
After Hours: 425-257-8821 or 425-568-6650
For Operations Plan Oversight:
Operations Superintendent
425-257-8967 (office) or 425-210-0103 (mobile)

MARYSVILLE'S OPERATIONS CONTACT:

Water Operations Supervisor
360-363-8163 (office) or 425-754-2597 (mobile)
After hours: Standby, 360-913-2560
For Operations Plan Oversight:
Utility Manager
360-363-8161 (office) or 425-583-9030 (mobile)

PUD'S OPERATIONS CONTACT:

Water Superintendent
425-397-3005 (office) or 425-359-0403 (mobile)
After hours only: 425-879-6735
Main water number: 425-397-3000