TEMPORARY WHOLESALE WATER SUPPLY AGREEMENT

This TEMPORARY WHOLESALE WATER SUPPLY AGREEMENT ("Temporary Agreement") is made and entered into by and between the City of Sequim, Washington, a municipal corporation hereinafter called the "CITY," and the Public Utility District No. 1 of Clallam County, a municipal corporation hereinafter called the "DISTRICT." The CITY and DISTRICT are sometimes referred to individually in the Temporary Agreement as "Party"; the CITY and DISTRICT are sometimes referred together in the Temporary Agreement as "Parties."

WITNESSETH:

WHEREAS, the CITY and the DISTRICT realize certain mutual benefits from cooperative efforts in the operation and maintenance of their respective water systems and desire to cooperate in planning for the future supply of their customers; and

WHEREAS, the Intergovernmental Water Service Area Agreement signed by both Parties on June 21, 1995 allows for either Party to provide wholesale water to the other Party after completion of an agreement;

WHEREAS, the CITY lacks water system facilities to serve a 16-lot subdivision (identified on the map attached hereto as Exhibit A) that is developing in the CITY's retail water service area, and the DISTRICT, through its Evergreen water system, is able to supply wholesale water to the CITY in order to serve this subdivision area;

NOW, THEREFORE, IT IS AGREED between the Parties hereto as follows:

<u>Section 1 – Sale, Purchase, Delivery, and Use of Wholesale Water</u>

a) DISTRICT agrees to sell and make available to the CITY, and the CITY agrees to purchase and take delivery of, wholesale water supply at the Delivery Point location provided herein.
b) The wholesale water supplied by the DISTRICT will be used by the CITY as a source of water for resale to CITY retail customers in accordance with applicable law.
c) Because a wholesale water meter does not yet exist at this location, residential water meters at the CITY's customers will be used to calculate wholesale water deliveries. However, the eventual goal for this and future agreements is to utilize master metering, whenever possible.
d) "Delivery Point" for wholesale water supply under this Temporary Agreement shall be immediately downstream of the DISTRICT's water main connection for Clara Crest Lane and immediately downstream of the DISTRICT's valved connection at the North East corner of Emerald Highlands water main on Miller Road. The approximate location of the Delivery Point is shown on Exhibit A.
e) Upon the CITY's acceptance of wholesale water at the Delivery Point, the CITY takes sole and exclusive possession, control, responsibility for the water.

Section 2 – Water Rate and Billing

a) The water rate to be paid by the CITY to the DISTRICT shall be per 100 cubic feet ("CCF") of water, delivered to each of the CITY'S residential water meters and then calculated into a combined residential water meter sheet. The CITY will prepare the Sheet and will submit it to the DISTRICT monthly for invoicing to the CITY.
b) The water rate to be paid by the CITY to the DISTRICT shall be 85% of the current Level 1 Residential water usage charge for the Evergreen Water System.
c) The period of billing for wholesale water supplied under this Temporary Agreement shall be monthly, beginning with the first month that the CITY accepted wholesale water delivery. The residential water meters will be read by the CITY and results recorded in accordance with the CITY'S applicable reading cycle. Payment to the DISTRICT by the CITY shall become due and payable within thirty (30) days from after the date of the DISTRICT's billing invoice.
d) The DISTRICT shall have the right to re-check any water meter readings that seem to not be recording accurately.

Section 3 – Water Quality

a) The water supplied by the DISTRICT to the CITY under this Temporary Agreement shall comply, at the Delivery Point, with Washington State Department of Health Drinking Water Regulations. After the CITY takes possession and ownership of the wholesale water at the Delivery Point, then the CITY is solely responsible for water quality. The CITY shall be responsible for maintaining compliance with drinking water quality standards and requirements after accepting delivery of wholesale water. The CITY shall hold the DISTRICT harmless from and against any claims, losses, or damages arising from or relating to water quality or the introduction into its system of water or other substances beyond the Delivery Point.
b) The DISTRICT or CITY will immediately notify the DISTRICT or CITY of water quality emergencies and both will coordinate public notice.
c) The CITY will administer a cross-connection program in accordance with Washington State Department of Health guidelines.

Section 4 – Quantity, Pressure and Reliability

a) The DISTRICT shall use commercially reasonable efforts to provide wholesale water to the CITY's water system at the Delivery Point.
b) At least once every 5 years, the CITY will have a leak detection survey accomplished on the water mains that will convey delivered wholesale water to CITY customer. Any leaks found will be repaired by the CITY as soon as possible and a summary report provided to the DISTRICT.

c) A reasonable residential fire flow will be provided to the CITY's water system at the Delivery Point to the extent that it is available from the DISTRICT; however, the CITY is responsible for meeting or complying with fire flow requirements.
d) It shall be the sole obligation of the CITY to operate and maintain its water system. For example and without limitation, the CITY will install and maintain pressure reducing and pressure relief valves and appurtenances as may be needed to regulate the pressure to protect and to conform to the needs of the CITY's water distribution system and its water service customers. Failure to install and maintain proper pressure control valves may result in damage to the CITY's water system or customer water systems. The DISTRICT shall not be responsible for any loss or damage related to the CITY's water system or its operation and maintenance, including for example failure of the CITY to install and maintain all pressure control valves required for system and customer protection. The CITY shall defend and indemnify the DISTRICT from and against any and all claims arising from or related to the CITY's water system or to installation, operation, or maintenance of any facilities or equipment, including any and all necessary pressure reducing and pressure relief valves.
e) The DISTRICT's system will be designed, maintained and operated by the DISTRICT in a manner consistent with reasonable municipal water system standards laws and regulations applicable to the DISTRICT, prudent utility practices, and applicable rules and regulations. 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 and failures to the DISTRICT's water system. Therefore, the DISTRICT shall not be held liable for losses or damage from a deficiency or failure to supply water due to accidents, acts of God, and any conditions beyond the reasonable control of the DISTRICT. In the event of an emergency or other necessity that may disrupt wholesale water deliveries to the CITY, the DISTRICT shall notify the CITY through verbal or telephone contact, and shall restore service and make water available as soon as it can reasonably do so.
f) In the event of scheduled maintenance, alterations, extensions or connections, the DISTRICT shall provide notification to the CITY, and schedule such work to minimize the potential impacts of disruption of service to the CITY's customers.
g) In the event of a drought or other water shortage that requires the DISTRICT to implement water rationing or water shortage management plan for the DISTRICT's retail customers, the DISTRICT may proportionately require the reduction of wholesale water deliveries under this Temporary Agreement.
h) In the event of a DISTRICT water quality issue requiring notice to all users, the DISTRICT shall notify the CITY of such water quality issue and the CITY shall notify its customers and CITY users of DISTRICT wholesale water.

Section 5 – Future Capital Projects

a) The Parties acknowledge that: the DISTRICT's water storage facilities (reservoir) may require enlargement or improvement in future years in order to continue to supply wholesale water; the CITY will be collecting all connection and capital facilities charges

for CITY customers provided water under this agreement; and the Department of Health has regulatory authority over the reservoir requirements.

b) In the event that Department of Health determines, in a water system plan approval or other decision, that the DISTRICT's Evergreen (R-3) reservoir is inadequate in size due in part to wholesale supply for CITY customers under this Temporary Agreement, then the CITY will choose one of the following options:
   i. Agree to pay a proportionate share of the cost of the new (or additional) reservoir capacity; or
   ii. Provide notice to terminate this Temporary Agreement and directly provide water to CITY customers in the subdivision.

c) Following an inadequate reservoir determination by the Department of Health, the CITY and the DISTRICT will work cooperatively and make timely effort to estimate the capital costs of the necessary reservoir improvements, but in any event the CITY will provide formal notice to the DISTRCT of its choice in paragraph (b) above within 120 days of the Department of Health determination.

Section 6 – Resolution of Disputes

Any dispute that arises out of an interpretation, performance, enforcement, or any other aspect of this Temporary Agreement, shall first be addressed by a management-level meeting of the Parties to discuss the dispute and to engage in good faith negotiations. If management-level discussions do not resolve the dispute, the dispute shall be resolved by submitting the same to mediation with an agreed mediator or one selected by the Clallam County Superior Court if the Parties cannot agree. The Parties shall split evenly the costs of the mediator and each Party shall bear its own costs in mediation. If the mediation fails to resolve the dispute after a good faith effort, then either Party may commence legal action in court.

Section 7 – Term

a) This Temporary Agreement shall be effective from the date of execution by authorized representatives of both Parties and shall continue in effect until the comprehensive Wholesale Water Agreement is agreed on by both parties or until it is terminated by mutual agreement of the Parties.

b) In the event the Parties cannot mutually agree to a termination date, then this Temporary Agreement will terminate two years after one Party gives notice of termination to the other Party.

Section 8 – Uncontrollable Forces

No Party shall be considered to be in breach of this Agreement on account of any failure to perform if such failure is the result of uncontrollable forces or events that are beyond the reasonable control of the Party.

Section 9 – Entire Agreement and Interpretation.

The Parties intend for this Temporary Agreement to be construed together with the Intergovernmental Water Service Area Agreement (dated June 21, 1995). These agreements constitute the entire agreement between the Parties pertaining to the subject matter contained herein and supersede all prior and contemporaneous agreements, representations, and understandings. The Parties participated in the drafting of this Temporary Agreement. In interpreting this Temporary Agreement, no inference shall be drawn against either Party as the drafter.

Section 10 – No Waiver

No waiver of any provision of this Temporary Agreement shall be effective unless made in writing and signed by the Parties.

Section 11 – No Third Party Beneficiaries

Nothing in this Temporary Agreement is intended to confer any rights, benefits, or obligations upon any person other than the Parties. No such third-party shall have any right to enforce any of the provisions of this Temporary Agreement.

Section 12 – Assignment

Neither this Temporary Agreement nor any of the rights, interests or obligations created hereunder may be assigned, sold, or otherwise transferred in whole or in part by either Party without the prior written consent of the other Party.

Section 13 – Non-applicability to Water Service Area

This Temporary Agreement does not change or affect any water service area as defined by the Intergovernmental Water Service Area Agreement (dated June 21, 1995) as to either Party.

Section 14 – Modification of Agreement

This Temporary Agreement may be supplemented, amended, or modified only by the mutual agreement of the Parties. No supplement, amendment, or modification of this Temporary Agreement shall be binding unless it is in writing, duly approved, and signed by both parties.

Section 15 – No Special Damages

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.

Section 16 – Counterparts

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.

Section 17 – Notice

Any and all notices, demands, waivers, consents and other communications shall be given by certified mail to the official mailing address of each Party, as follows:

Public Utility District No. 1 of Clallam County P.O. Box 1090 Port Angeles, WA 98362	City of Sequim 152 West Cedar Street Sequim, WA 98382

A Party may change the address to which notices shall be sent by giving notice of such change as provided above.

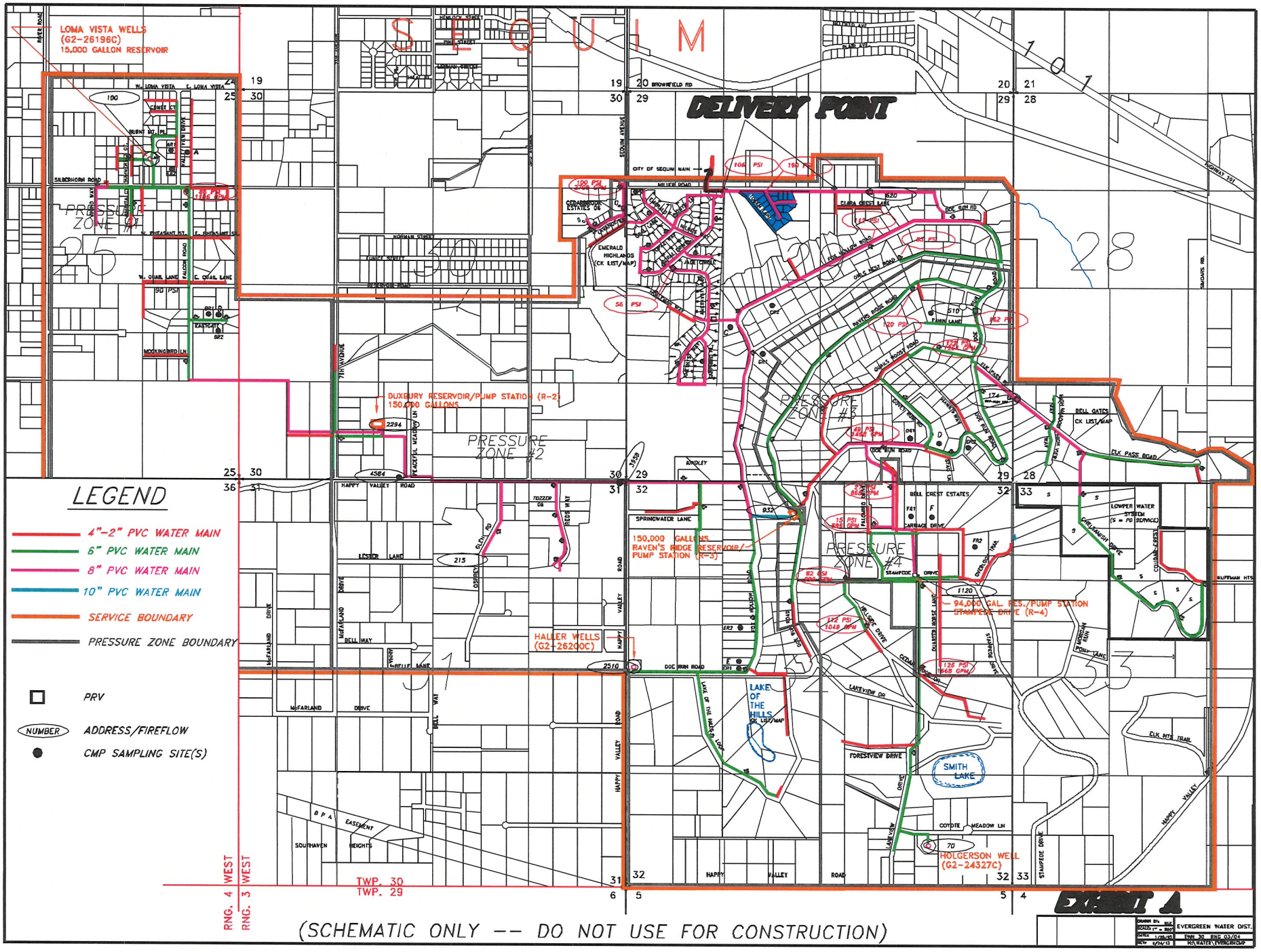
IN WITNESS WHEREOF, the Parties have caused this Temporary Agreement to be executed this 14 day of MAY, 2013

By: _____
Doug Nass, General Manager MAK
Date: 5-14-13

By: _____
Steven Burkett, City Manager
Date: 5-14-13

Approved as to form:

_____
Craig Ritchie, City Attorney


LOMA VISTA WELLS
(G2-26196C)
15,000 GALLON RESERVOIR
SEQUIM
DELIVERY POINT
CITY OF SEQUIM MAIN
DUXBURY RESERVOIR/PUMP STATION (R-2)
150,000 GALLONS
PRESSURE ZONE #2
PRESSURE ZONE #3
PRESSURE ZONE #4
150,000 GALLONS
RAVEN'S RIDGE RESERVOIR/
PUMP STATION (R-3)
HALLER WELLS
(G2-26200C)
94,000 GAL. RES./PUMP STATION
STAMPEDE DRIVE (R-4)
HOLGERSON WELL
(G2-24327C)
LAKE OF THE HILLS
SMITH LAKE
LOWER WATER SYSTEM
(S = PO SERVICE)
LEGEND
4"-2" PVC WATER MAIN
6" PVC WATER MAIN
8" PVC WATER MAIN
10" PVC WATER MAIN
SERVICE BOUNDARY
PRESSURE ZONE BOUNDARY
PRV
NUMBER ADDRESS/FIREFLOW
CMP SAMPLING SITE(S)
TWP. 30
TWP. 29
RNG. 4 WEST
RNG. 3 WEST
(SCHEMATIC ONLY -- DO NOT USE FOR CONSTRUCTION)
EXHIBIT A
EVERGREEN WATER DIST.