



CITY OF  
BAINBRIDGE ISLAND

## Special City Council Meeting Agenda Bill

**MEETING DATE:** July 24, 2018

**ESTIMATED TIME:** 5 Minutes

**AGENDA ITEM:** Interlocal Agreement with Kitsap Public Utility District Relating to Rockaway Beach Water System - Public Works

**STRATEGIC PRIORITY:** Reliable Infrastructure and Connected Mobility

**PRIORITY BASED BUDGETING PROGRAM:**

**AGENDA CATEGORY:** Interlocal Agreement

**PROPOSED BY:** Public Works

**RECOMMENDED MOTION:**

Approve with Consent Agenda.

**SUMMARY:**

Approval of Interlocal Agreement with Kitsap Public Utility District relating to Rockaway Beach Water System.

**FISCAL IMPACT:**

|                                    |  |
|------------------------------------|--|
| <b>Amount:</b>                     |  |
| <b>Ongoing Cost:</b>               |  |
| <b>One-Time Cost:</b>              |  |
| <b>Included in Current Budget?</b> |  |

**BACKGROUND:** The City operates a water system serving the Rockaway Beach area that is supplied by the Taylor Avenue Well. The Taylor Avenue Well has limited production capacity to meet peak water demands. Therefore, the City desires to secure a water system intertie with the Kitsap Public Utility District (KPUD) No. 1 to purchase domestic water in the event of an emergency.

All water delivered pursuant to this Agreement shall be metered and measured by the KPUD using a metering station, to be constructed by the City, on Halls Hill Road. KPUD will be responsible for measuring flows at the points of delivery and shall bill the City based on services rendered. The parties agree that the wholesale rate established for water supplies to the City shall initially be set at KPUD's Tier 1 commodity charge, which is \$1.20 per 100 cu ft.

The term of this Agreement shall run from the effective date for a period of twenty years.

**ATTACHMENTS:**

[ILA with KPUD for Emergency Water System Intertie](#)

**FISCAL DETAILS:**

**Fund Name(s):**

**Coding:**

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE CITY OF BAINBRIDGE ISLAND  
AND  
PUBLIC UTILITY DISTRICT NO. 1 OF KITSAP COUNTY  
FOR AN EMERGENCY WATER SYSTEM INTERTIE**

**THIS INTERLOCAL AGREEMENT** (“Agreement”) is made and entered into by and between Public Utility District No. 1 of Kitsap County (“KPUD”), a municipal corporation organized and existing under the laws of the State of Washington, and the City of Bainbridge Island (“City”), a municipal corporation organized and existing under the laws of the State of Washington. This Agreement is entered into pursuant to and in conformity with Chapter 39.34 RCW (Interlocal Cooperation Act).

**WHEREAS**, KPUD has developed a regional supply of water and has the authority to sell and distribute the same to other municipal corporations within or without its limits; and

**WHEREAS**, the City operates a water system that serves the Rockaway Beach area of Bainbridge Island and is supplied by the City’s Taylor Avenue well; and

**WHEREAS**, the U.S. Environmental Protection Agency (EPA) operates a well on City property that serves the EPA Wykoff site located near the Taylor Avenue well; and

**WHEREAS**, the Taylor Avenue well has limited production capacity to meet the peak water demands of the City’s service area; and

**WHEREAS**, KPUD operates a water system for the former Island Utility Company area of the island and is supplied by the KPUD Island Utility well; and

**WHEREAS**, the City and KPUD water distribution systems are in close proximity on Halls Hill Road; and

**WHEREAS**, the City has a desire to secure an emergency water system intertie with KPUD in order to purchase domestic water supplies from KPUD to meet the needs of the City’s customers; and

**NOW, THEREFORE**, in consideration of the mutual commitments set forth in this Agreement, KPUD and the City (the “Parties”) agree as follows:

1. **SCOPE**: Subject to the terms and conditions of this Agreement, the Parties agree to the construction and maintenance of a water system intertie for the purpose of supplying water to the City on an as-needed basis to allow the City to meet the needs of the community. The City may use the water supplied under this Agreement for any public purpose, but KPUD makes no representations or warranties to the City that the water furnished will be sufficient to meet the capacity, fire protection, or other service needs of the City and their associated costs, said matters being within the sole judgment and responsibility of the City.

2. **TERM:** The term of this agreement shall run from the effective date of this Agreement for a period of twenty (20) years and shall automatically be extended for an additional ten (10) year term unless written notice of termination is provided by either party in accordance with paragraph 17 of this Agreement. Upon renewal, all terms and conditions of this Agreement shall remain the same unless KPUD and the City execute a written amendment to this Agreement.
3. **INTERTIE FACILILTIES:** All water delivered pursuant to this Agreement shall be metered and measured by KPUD using a metering station to be installed by the City on Halls Hill Road where the intertie will be constructed by the City. As part of the construction, the City shall provide isolation valves and related facilities on the respective water mains at the point of connection. All proposed construction plans will be approved by both of the Parties and the Washington State Department of Health (“WSDOH”) prior to construction. All intertie construction costs will be the responsibility of the City.
4. **FACILITIES OWNERSHIP AND OPERATION RESPONSIBILITIES:** With the execution of this Agreement, KPUD and the City acknowledge that ownership of those facilities lying within KPUD's service area and upstream of the isolation valve shall remain the property of KPUD and those facilities lying within the City's service area and downstream of the KPUD isolation valve shall be the property of City. Neither party assumes the responsibility for operating, maintaining, or replacing the other's facilities except as set forth in this Agreement. For the benefit of KPUD, the City shall notify KPUD in advance of any significant system improvements.
5. **REGULATORY COMPLIANCE:** The Parties agree to comply with the provisions of all federal, state, and local rules and regulations governing water systems. The Parties further agree to ensure that the customers of the respective systems comply with all applicable federal, state, and local rules and regulations regarding water system construction. In the case of discrepancies between rules or regulations, the most restrictive shall apply.
6. **SUPPLY:** KPUD shall sell to the City, and the City shall purchase from KPUD, such potable water supply as is determined to be required in the event of an emergency. For the purposes of this Agreement, an emergency is defined as the loss of the ability of the City's Taylor Avenue well to meet the water demands of the City's service area. The quantity of water provided through the intertie will not exceed the Washington State Department of Ecology (“DOE”) water right for the City's Taylor Avenue well, which is 80 gpm on a continuous basis. Provision of water on a non-emergency, short-term basis (e.g., to accomplish maintenance) is permitted under this agreement by written notice and written approval by the Parties.

Supply may be limited by conditions and circumstances beyond the control of KPUD, which may impact the available water supply. These include, but are not limited to equipment failure, transmission line failure, earthquakes and other natural disasters and acts of God, total or partial system failure beyond the reasonable control of KPUD, aquifer failure, and restrictions placed upon KPUD for any reason by the county, state, or federal government. In these types of circumstances, KPUD shall be entitled to interrupt its supply to the City, and the City agrees that in such event, it shall be the City's responsibility to obtain alternative sources of supply.

The Parties further recognize that drought conditions of great severity may require restrictions on the delivery of water. If such restrictions are necessary, KPUD will reduce the quantity of water available to the City on the same basis as it restricts water to its other retail and wholesale customers.

7. **TREATMENT DISCLOSURE:** The City agrees that KPUD has made full disclosure of the fact that its water to be supplied at present is not fluoridated. Should the City desire the water to be fluoridated, the City shall undertake the responsibility to do so once water has been supplied to the City.
8. **SERVICE CHARGES:** The Parties agree that the wholesale rate established for water supplies to the City shall initially be set at KPUD's Tier 1 commodity charge, which is \$1.20 per 100 cu ft.
  - a. **Adjustments to Rates.** The above rate will be adjusted upwards or downwards based on the rate set by KPUD for its existing customers.
  - b. **Extraordinary Expenditures.** If KPUD must incur extraordinary costs to respond to regulatory requirements, an emergency, or to meet immediate health and safety concerns regarding supply and transmission, KPUD may impose an emergency surcharge on wholesale water sales to the City, provided that the surcharge is not greater than that imposed on all KPUD wholesale customers. Following the emergency period, KPUD will provide a full accounting of the revenues and expenses related to the event and make any necessary adjustment to reconcile the City's share of costs to reflect final project costs.
9. **PAYMENT AND SUPPLY WARRANTIES:** The City hereby covenants and agrees that it shall pay its full cost of the water as identified herein. The City hereby obligates and binds itself to pay water costs out of the gross revenues of its water system and shall establish, maintain, and collect charges and fees for water service in connection which will, at all times, be sufficient to pay its water costs herein..
10. **METERING, BILLING, AND PAYMENT:** KPUD will be responsible for measuring flows at the points of delivery identified. KPUD shall operate and maintain the required metering equipment.

KPUD shall submit billings for water provided to the City based on the charges specified in paragraph 8 of this Agreement.

The City shall pay KPUD for services rendered on or before the 25th day of the succeeding month for the preceding month's water use. Interest at the rate of one-percent (1%) per month will be charged on any invoice not paid within the specified time limit. A minimum of one month's interest will be charged for all late payments.

11. **ADDITIONAL SERVICES:** If requested, each party may, at its discretion, provide additional services to the other party on a time-and-materials basis. Other services may include, but are not limited to the operation, maintenance, or repair of facilities owned and operated by the other, surveys, comprehensive planning, and utility billing. Any such additional services shall be specified in a written agreement approved by the Parties.
12. **NOTICES:** All notices to be given by either of the Parties to the other party shall be in writing and may either be delivered personally or may be mailed, postage prepaid, as either certified or regular mail addressed as specified below, unless a different address has been designated in writing by either of the Parties. The date of giving such notice shall be deemed to be the date of mailing thereof. Billings for and payments of water costs may be made by regular mail.

KPUD: Public Utility District No. 1 of Kitsap County  
Attn: Bob Hunter  
PO Box 1989  
Poulsbo, WA 98370

City of Bainbridge Island  
Attn: Finance Department  
280 Madison Avenue N.  
Bainbridge Island, WA 98110

13. **TAXES:** In addition to the above stated costs, the City agrees to reimburse KPUD in an amount equal to KPUD's share of any taxes that are imposed on KPUD by any governmental entity as a result of implementing this Agreement.

14. **DISCLAIMER OF WARRANTIES IN LIMITATION OF LIABILITY:** CITY AGREES THAT IT SHALL LIMIT ITS DAMAGES TO THE COSTS PAID FOR THE WATER SOLD AND SPECIFICALLY AGREES TO WAIVE ANY CLAIMS IT MIGHT HAVE FOR INCIDENTAL AND CONSEQUENTIAL DAMAGES FOR ANY BREACH TO THIS AGREEMENT. KPUD OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED BY CONDITIONS AND CIRCUMSTANCES BEYOND THE CONTROL OF KPUD, WHICH MAY IMPACT THE AVAILABLE WATER SUPPLY.

These include but are not limited to equipment failure, transmission line failure, temporary emergency demand by another customer, earthquakes and other natural disasters and acts of God, damage by others, system failure beyond the reasonable control of KPUD, aquifer failure, and restrictions placed upon KPUD for any reason by the county, state, or federal government. In these types of circumstances, it shall be City's responsibility to obtain alternate sources of supply. The Parties further recognize that drought conditions of great severity may require restrictions on the delivery of water. If such restrictions are necessary, KPUD will reduce the quantity of water available to the City on the same basis as it restricts water to its other retail and wholesale customers. KPUD shall be responsible to restore typical supply quantities upon termination of the drought conditions.

15. **INSURANCE:** The City agrees that it will insure for any claims by third persons that may arise from its customers about claims regarding the quantity and quality of the water purchased from the City. The City agrees to indemnify and hold harmless KPUD from any and all claims by third parties arising out of this agreement, including but not limited to any liability for any damages which may arise from KPUD's inability to provide fire flow in the event of a fire.

16. **ARBITRATION:** In the event of a dispute, the matter shall be subject to arbitration under the mandatory arbitration rules of the Kitsap Superior Court except there shall be no right to a de novo appeal. Each party shall appoint one qualified arbitrator within thirty (30) days of the written request for arbitration. The two arbitrators so appointed shall appoint a third arbitrator within an additional thirty (30) days. The three arbitrators shall conduct a hearing within 90 days of the appointment of the third arbitrator and shall produce a decision within 120 days of the appointment of the third arbitrator. The results of any arbitration shall be final and conclusive and may be revised or vacated only as presently allowed by Chapter 7.04 RCW. Prehearing discovery shall be limited to document production and depositions only and the burden of proof shall be with the party requesting arbitration. The cost of arbitration shall be shared equally by the Parties and each party shall pay its own costs and attorney's fees unless the arbitration panel rules that the matter was brought frivolously, in which case the party frivolously

bringing the matter to arbitration shall pay all costs of arbitration and the attorney's fees and costs of the other party.

17. **TERMINATION:** Either party may terminate this Agreement upon three (3) months written notice to the other party. If notice of termination is given by either party, the Parties will continue to perform their respective obligations under this Agreement until the effective date of termination. If both of the Parties consent, the Agreement may be terminated within a mutually agreed upon time, rather than after three (3) months written notice has been given.
18. **EXECUTION OF DOCUMENTS:** This agreement shall be executed in two counterparts, either of which shall be regarded for all purposes as one original. The Parties agree that they will execute any and all deeds, instruments, documents, resolutions, or ordinances necessary to give effect to the terms of this agreement.
19. **INTEGRATION:** This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties relating to the subject matter hereof and constitutes the entire contract between the Parties.
20. **TIME OF THE ESSENCE:** It is hereby agreed by the Parties that time is of the essence in -all matters relating to the performance of each and every term of this agreement.
21. **FILING WITH COUNTY AUDITOR.** The City shall file and record a copy of this Agreement with the Kitsap County Auditor's Office immediately following the mutual execution of this Agreement.
22. **INTERLOCAL AGREEMENT.** This is an interlocal agreement entered into pursuant to the authorization of Chapter 39.34 RCW. Accordingly, the following provisions are set forth in accordance with the provisions of RCW 39.34.030:
  - a. No separate legal or administrative entity is created by this Agreement.
  - b. The cooperative undertakings of the Parties shall be financed as provided herein. Each party shall separately establish and maintain a budget for its own functions.
  - c. No administrator or joint board shall be responsible for administering the undertakings.
  - d. No joint property shall be acquired, held, or disposed of. Any real or personal property used in the joint or cooperative undertaking shall be considered to be and remain the property of the party who purchased such real or personal property.
23. **GENERAL CONDITIONS:** The failure of either party to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option herein contained in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be in full force and effect.



The Parties expressly reserve the right to renegotiate the provisions of this Agreement from time to time as may be necessary and to amend this Agreement; provided that no alteration or modification of the provisions of this Agreement shall be valid and binding unless made in writing and signed by the authorized representatives of the Parties.

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be the Superior Court of Kitsap County, Washington.

This Agreement shall be binding upon the successors and assigns of each of the Parties. However, neither party will assign this Agreement without the written consent of the other. This written consent will not be unreasonably withheld.

It is understood that the relationship of the City to KPUD is independent. None of the employees or agents of the respective Parties shall be considered employees of the other.

Each party warrants and represents that it has authority to enter into this Agreement.

In the event that any provision herein is declared illegal or invalid, no other provisions of this Agreement shall be affected, and this Agreement shall then continue in full force and effect as though such illegal provisions had not been contained herein.

24. **Authorization.** The governing bodies of the Parties have authorized their respective designated officials to execute this Agreement on their behalf.

**IN WITNESS WHEREOF**, KPUD and the City have executed this Agreement as of the later of the signature dates included below.

CITY OF BAINBRIDGE ISLAND

\_\_\_\_\_  
Douglas Schulze, City Manager

Date: \_\_\_\_\_

PUBLIC UTILITY DISTRICT NO. 1 OF KITSAP COUNTY

  
\_\_\_\_\_  
Bob Hunter, General Manager

Date: June 26, 2018