


To: Mayor Samuelson and Members of the City Council

Date of Report: September 28, 2010

Staff Contact: Challis Stringer, Director of Public Works 

Meeting Date: October 4, 2010

Agenda Item: Sandy Point Owners Association Water Service Agreement

Attachments: Agreement between City of Langley Water System and Sandy Point Owners Association
Exhibit A – Associations Water Service Area

This staff report introduces for City Council review and action the renewal of the contract agreement between the City of Langley and the Sandy Point Owners Association (SPOA) for water service. The proposed action is to authorize the Mayor to sign the Agreement.

Background

The City has been serving water to the community of SPOA for many decades. This community has 56 homes that receive water from the City's water system. The City and SPOA's current water service agreement expires on November 1st, 2010. The proposed agreement has been reviewed by the SPOA Board Members and the City's Utility Committee. The agreement contains new language concerning the flushing of the water system and the maintenance of the hydrants owned by SPOA. Both parties have agreed to the additions to the proposed agreement as follows:

WHEREAS, the ASSOCIATION'S water main is an 8" main on which are located five (5) standard fire hydrants, four within the area described on Exhibit A attached hereto and one located outside that area within the Wateredge Drive right-of-way; and

WHEREAS, since those five hydrants are the only hydrants on the CITY'S water system which are metered to a private customer, the CITY and the ASSOCIATION agree that the ASSOCIATION would be inequitably treated if it had to pay for fire-fight water which passes through those five hydrants; and

WHEREAS, the CITY and the ASSOCIATION agree that both would benefit in terms of safety and reliability were the CITY to perform the same hydrant maintenance and flushing of the five (5) standard hydrants on the ASSOCIATION water main as it does for all other CITY hydrants.

9. Fire Hydrants and fire fighting water costs. The CITY, at its expense, shall perform an annual inspection and flushing of the five (5) standard fire hydrants attached to the ASSOCIATION'S water main unless more frequently needed as determined by the City's Director of Public Works to improve water quality. The ASSOCIATION shall not be charged for any water which flows through the five (5) hydrants on the ASSOCIATION'S water main, whether that water is used in the annual flushing or for fire suppression.

No other changes or additions have been made from the current agreement to the proposed agreement.

Recommended Motion

Move to authorize the Mayor to sign the Agreement between the City of Langley and the Sandy Point Owners Association for water service for five years commencing on November 1, 2010.

AGREEMENT

THIS AGREEMENT, made and entered into this _____ of _____, 2010, by and between the CITY OF LANGLEY, a non-charter code city, organized and existing under the laws of the State of Washington (hereinafter referred to as the "CITY"), and SANDY POINT OWNERS ASSOCIATION, a Washington nonprofit corporation (hereinafter referred to as the "ASSOCIATION").

WITNESSETH:

WHEREAS, the CITY owns and operates a water supply system (hereinafter referred to as the "City water system"), which includes, without limitation, water source and supply facilities, transmission pipelines, storage facilities, pumping plants, distribution mains and appurtenances, and other attendant facilities;

WHEREAS, the ASSOCIATION is a Washington nonprofit corporation whose members own real property within that portion of unincorporated Island County, Washington, which is more particularly described on EXHIBIT A, attached hereto and incorporated herein by reference;

WHEREAS, the CITY has for many decades provided domestic water service to members of the ASSOCIATION through a water main owned by the ASSOCIATION (hereinafter referred to as the "ASSOCIATION'S water main"), which is connected to the City water system at the corner of Wateredge Drive and Wilkenson Road, and a water meter has been installed at said point of connection; and

WHEREAS, the parties desire to renew their current Agreement providing for domestic water service from the City water system to property owned by members of the ASSOCIATION and situated within the area more particularly described on Exhibit A attached hereto, subject to certain terms and conditions; and

WHEREAS, the ASSOCIATION'S water main is an 8" main on which are located five (5) standard fire hydrants, four within the area described on Exhibit A attached hereto and one located outside that area within the Wateredge Drive right-of-way; and

WHEREAS, since those five hydrants are the only hydrants on the CITY'S water system which are metered to a private customer, the CITY and the ASSOCIATION agree that the ASSOCIATION would be inequitably treated if it had to pay for fire-fight water which passes through those five hydrants; and

WHEREAS, the CITY and the ASSOCIATION agree that both would benefit in terms of safety and reliability were the CITY to perform the same hydrant maintenance and flushing of the five (5) standard hydrants on the ASSOCIATION water main as it does for all other CITY hydrants.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, and mutual benefits, the receipt and adequacy of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Provision of Water from the City Water System to the ASSOCIATION. Subject to the terms and conditions of this Agreement, the CITY hereby grants the ASSOCIATION the non-exclusive right to take water from the City water system to provide domestic water service to members of the ASSOCIATION to serve their respective properties situated within the area more particularly described on EXHIBIT A attached hereto. PROVIDED, HOWEVER, that no water provided pursuant to this Agreement shall be used for industrial or commercial purposes.

2. Geographical Area Served. All water taken from the City water system pursuant to this Agreement shall be used to serve only real property situated within the area more particularly described on EXHIBIT A attached hereto.

3. Payment for Water Service. During the term of this Agreement, the ASSOCIATION shall pay the CITY for water according to the adopted rates and formula established by the CITY pursuant to Section 13.01.460 Langley Municipal Code for metered water service outside the City limits. PROVIDED, THAT the “minimum billing fee” component shall be calculated by multiplying the number of dwelling units served within the real property situated within the area more particularly described on EXHIBIT A attached hereto by the per dwelling unit fee established within the City’s Fee Schedule. As used in this Agreement, the term “dwelling unit” shall mean one or more rooms designed or used by an individual or family for residential purposes, including, without limitation, a house, apartment, condominium unit, or duplex unit, having water use facilities equivalent in extent to a normal dwelling.

4. Adjustment of Rates. Payment to the CITY by the ASSOCIATION under this Agreement shall be automatically adjusted by any and each of the following events:

(a) Any change in the total number of dwelling units served by water taken from the City water system pursuant to this Agreement; and

(b) Any change (by City ordinance) of the rate for metered water service outside the City limits as contained within the City’s Fee Schedule.

5. Number of Dwelling Units Served by the City Water System Pursuant to this Agreement. The ASSOCIATION hereby represents that 56 dwelling units will be served by the City water system pursuant to

this Agreement on its effective date. The ASSOCIATION agrees to immediately notify the CITY of any and all future connections made by or through the ASSOCIATION'S water main.

6. Term and Cancellation. This Agreement shall be for a term of five (5) years, commencing on the first day of the month following the date first written above. PROVIDED, HOWEVER, that this Agreement may be terminated by either party on two years' written notice given as herein provided, it being expressly understood and agreed that both parties shall have the absolute right to terminate this Agreement and all rights hereunder at any time upon the giving of such notice.

7. Improvements, Repair, and Maintenance of the ASSOCIATION'S Water Main. The CITY shall not be required to improve, alter, replace, or repair the ASSOCIATION'S water main, or any service pipeline or other attendant facility connected thereto. The ASSOCIATION, at the ASSOCIATION'S expense, shall be solely responsible for the maintenance, repair, and replacement of the ASSOCIATION'S water main and any service pipeline or other attendant facility connected thereto. The ASSOCIATION shall at all times maintain the ASSOCIATION'S water main and attendant facilities in safe and good operating condition and repair.

8. Water Meter. The CITY, at its expense, shall maintain in good operating condition the water meter which services the ASSOCIATION'S water main. If a new meter is required, the cost thereof shall be paid by the CITY. PROVIDED, HOWEVER, THAT if the meter is lost, damaged or broken by carelessness or negligence of the ASSOCIATION or its members, employees, contractors or agents, the meter shall be replaced by or under the direction of the CITY and the cost thereof charged against the ASSOCIATION.

9. Fire Hydrants and fire fighting water costs. The CITY, at its expense, shall perform an annual inspection and flushing of the five (5) standard fire hydrants attached to the ASSOCIATION'S water main unless more frequently needed as determined by the City's Director of Public Works to improve water quality. The ASSOCIATION shall not be charged for any water which flows through the five (5) hydrants on the ASSOCIATION'S water main, whether that water is used in the annual flushing or for fire suppression.

10. Default. Time shall be of the essence in performance of the terms and conditions of this Agreement. In the event the ASSOCIATION shall fail to make any payment provided for herein, promptly and at the time and in the manner stated, or in case it shall fail to keep and perform any of the other covenants and agreements herein contained, and such default shall continue for thirty (30) days after written notice thereof to the ASSOCIATION, the CITY may, at its option and without prejudice to any other remedy

which it might otherwise have for such default, thereupon terminate this Agreement on further written notice.

11. Indemnity Agreement. The ASSOCIATION shall save and hold the CITY harmless from, and shall indemnify the CITY against, any and all claims, demands, actions, or liabilities caused by or occurring by reason of any act or omission of the ASSOCIATION, its agents or employees, arising out of or in connection with the performance or subject matter of this Agreement.

The ASSOCIATION shall be required to indemnify the CITY in those cases where damages have been caused by the concurrent negligence of the CITY and the ASSOCIATION, its agents or employees. In those cases, the liability of the ASSOCIATION for indemnification shall be limited to that portion of the damages caused by the negligence of the ASSOCIATION, its agents or employees.

In all other cases (except those cases where the damages were caused by the sole negligence of the CITY), the ASSOCIATION shall be required to totally indemnify the CITY whether or not the ASSOCIATION was solely responsible for the damages.

The ASSOCIATION has no duty to indemnify the City where damages were caused by the sole negligence of the CITY.

12. Shortage of Water. In the event of a shortage of water, the CITY shall make available to the ASSOCIATION only that surplus of water over and above the needs of customers within the CITY limits. The CITY reserves the right in case of a shortage of water from any cause for the Mayor to make an order forbidding or suspending the use of water for sprinkling or irrigation, or to change the hours during which the same may be done, by giving notice through the CITY'S official newspaper, and if any person supplied with water through the ASSOCIATION'S water main violates such order, the ASSOCIATION shall be subject to a penalty as set forth in the CITY'S Fee Schedule, and water service to the ASSOCIATION shall be shut off and not turned on again until such penalty has been paid.

13. Compliance with City Regulations. The ASSOCIATION hereby agrees to comply with all rules and regulations regarding water service which have been established, or may be established from time to time, by the CITY.

14. Non-Liability of CITY. The CITY reserves the right to shut off water at any time without notice for repairs, extensions, or any other reason. In case the supply of water is interrupted or fails for any reason, the CITY shall not be responsible or held liable for damages for such interruption or failure, and shall not be responsible for any damage caused by the breaking, bursting, leaking or collapsing of any

boilers, pipes, fixtures, water heating appliances, or other thing, or by the stoppage or interruption of the water supply, or any damage of any kind resulting directly or indirectly from the shutting off or interruption of water. Such interruptions or failures for any reasonable period of time shall not be held to constitute a breach of this Agreement on the part of the CITY, or in any way relieve the ASSOCIATION from performing its obligations hereunder.

15. Waiver of Breach. The failure of either party to insist upon a strict performance of any of the terms, covenants, and conditions hereof shall not be deemed a waiver of any subsequent breach or default in any of the terms, conditions, and covenants herein contained.

16. Attorney's Fees. The parties agree that in the event a civil action is instituted by either party to enforce any of the terms and conditions of this Agreement, or to obtain damages or other redress for any breach hereof, the prevailing party shall be entitled to recover from the other party, in addition to its other remedies, its reasonable attorney's fees in such suit or action and upon any appeal therefrom.

17. Notices. In every case where, under any of the provisions of this Agreement or in the opinion of either the CITY or the ASSOCIATION or otherwise, it shall or may become necessary or desirable to make, give, or serve any declaration, demand, or notice of any kind or character or for any purpose whatsoever, the same shall be in writing, and it shall be sufficient to either (1) deliver the same or a copy thereof in person to the Mayor or Clerk/Treasurer of the CITY, if given by the ASSOCIATION, or to the President or Secretary of the ASSOCIATION personally, if given by the CITY; or (2) mail the same or a copy thereof by registered or certified mail, postage prepaid, addressed to the other party at such address as may have theretofore been designated in writing by such party, by notice served in the manner herein provided, and until some other address shall have been so designated, the address of the CITY for the purpose of mailing such notices shall be as follows:

Debbie L. Mahler, Clerk-Treasurer
City of Langley
P.O. Box 366
Langley, WA 98260

and the address of the ASSOCIATION shall be as follows:

Sandy Point Owners Association
C/o Edwards & Associates
5492 Harbor Avenue
P.O. Box 340
Freeland, WA 98249

18. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the transactions hereinabove set forth, and this Agreement may not be amended, modified, released, or discharged, in whole or in part, except by an instrument in writing signed by both of the parties hereto.

19. Binding Effect. This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties hereto.

20. Effective Date. The effective date of this Agreement shall be the first day of the month following the date first written above.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate.

CITY OF LANGLEY

SANDY POINT OWNERS ASSOCIATION

By: _____
Paul Samuelson, Mayor

By: _____
Geoff Briggs, President

ATTEST:

ATTEST:

By: _____
Debbie L. Mahler, Clerk-Treasurer

By: _____
Gary Kocher, Secretary

EXHIBIT A

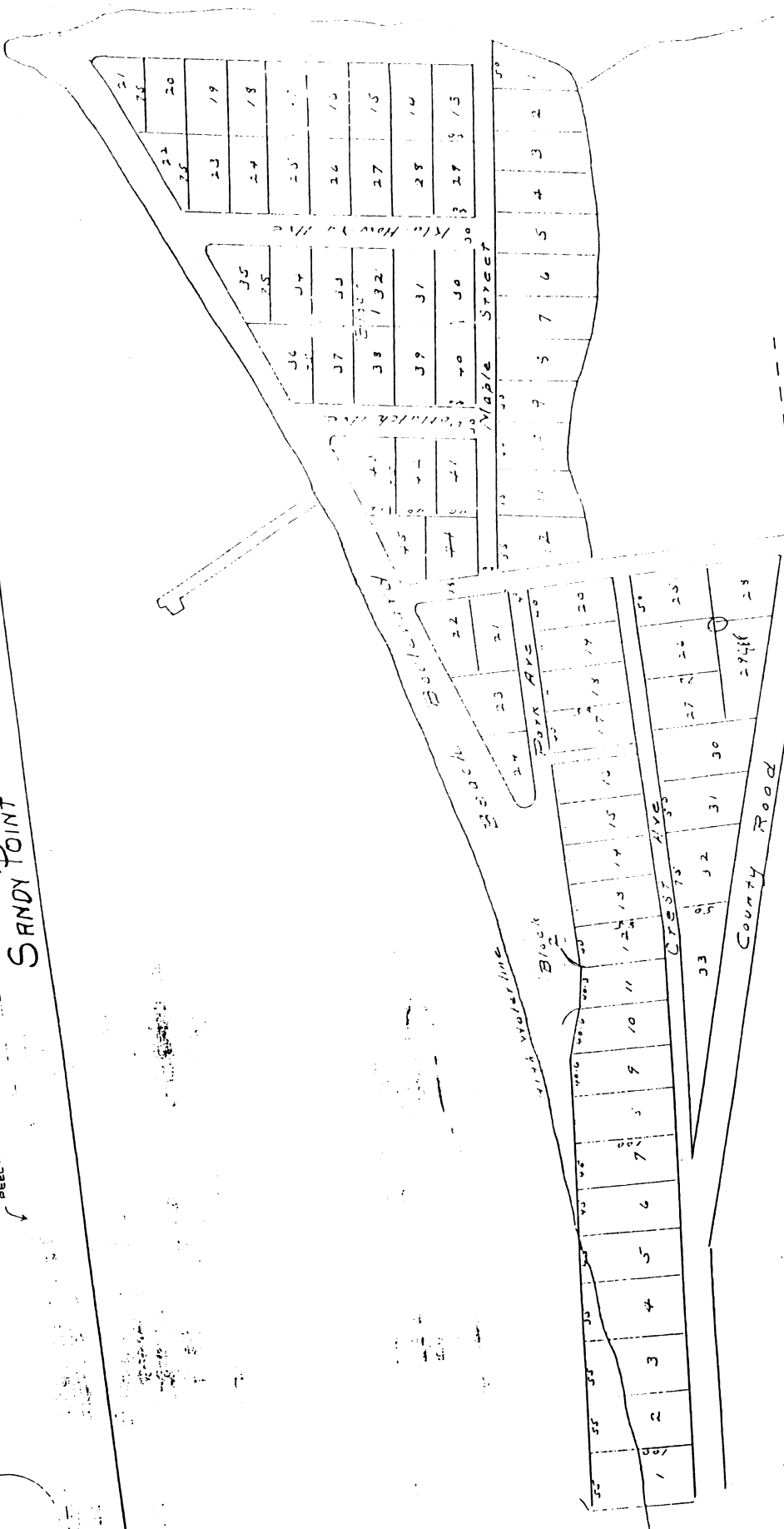
Plat of Sandy Point Recreation Company, First Addition, as per plat recorded in Volume 3 of Plats, page 5, records of Island County, Washington.

PRINT ON THIS SIDE

SHEET 2 OF 2

SANDY POINT

PEEL PROTECTIVE STRIP TO EXPOSE ADHESIVE. POSITION &



UNRECORDED GRANT

LT
 25-1
 + 25-2
 ABOUT 20 AC.

PLAT OF SANDY POINT

127°
 147°
 117°