

Olympic Gravity Water System  
Legal Considerations White Paper

Final Draft: October 16, 2021

Preface

The City of Port Townsend and the Port Townsend Paper Mill have a partnership history of supplying water to the Quimper Peninsula, City of Port Townsend, and Paper Mill dating back to 1928. The City of Port Townsend (City) and Port Townsend Paper Corporation (PTPC) are in the process of developing a new partnership agreement that will address water supply looking forward to the next 100 years.

Like the development of the Olympic Gravity Water System (OGWS) in the late 1920's, the development of an agreement between the City and PTPC (PTPC) is a significant undertaking with the stakes being high for both parties. As such, the negotiation of a mutually beneficial agreement warrants thoughtful collaboration based on the best data possible.

As a way to ensure good factual data is available for the negotiation, seven technical white papers break down information into manageable segments. In the following specific topic area categories, the City and PTPC have worked together to develop these white papers for potential items to consider during the negotiation of the agreement.

1. Assets: Understanding each entity's assets and capacities that support investment.
2. Stakeholders: The public, private property owners, and many agencies are stakeholders.
3. Planning and Environmental Considerations: Future water supply needs, climate change and water supply availability are important factors to plan for into the future.
4. Operations: Operational requirements, efficiencies and goals, cost, and reliability as well as determining the line between capital and ordinary wear-and-tear is a major part of any public private partnership agreement.
5. Capital Investments: Capital needs are extensive and need to be informed by a value engineering study for system reliability.
6. Funding and Resources: In order to address operational and capital needs, a plan is necessary to fund system needs ensuring that sustainability is achieved.
7. Legal Considerations: Legal considerations impact the form of the agreement depending on negotiation outcomes. Surety and performance are two key legal discussion points.

The intent of developing these white papers is to provide a resource to inform negotiation and as background for the public and decision makers. All of the white papers will be assembled into a comprehensive technical report in support of the development of a comprehensive recommendation for the Port Townsend City Council and the PTPC Board of Directors.

The following white paper addresses water right considerations and references a publication by the Municipal Research Services Center (MRSC) which provides a comprehensive overview of contract and agreement considerations as it relates to Washington State laws.

## Introduction

The Mill and the City have enjoyed a public private partnership since 1928. The public private partnership established in 1928 and updated several times was formalized as a lease agreement in which the Mill made payments to the City for capital and agreed to operate the system on behalf of both parties.

As the City and the Mill look forward to structuring a new agreement, several options are available in terms of the form of the partnership. Embedded in choosing the appropriate form are a number of legal considerations that may drive the type of public private partnership along with the other technical considerations included in the series of white papers.

## Background

The original lease between the City of Port Townsend and the National Paper Products Company was for a term of 30 years starting in 1928 for a total sum of \$460,000. This lease was succeeded in 1944 by a transfer to the Crown Zellerbach Corporation. It included a \$15,000 per year rental for a period of 10 years beginning in 1958 with the requirement that the City would immediately undertake replacement of deteriorating sections of the pipeline when the lease took effect. In 1956 the lease was renewed for a period of 30 years with a total payment of \$3,267,042.17, which was used to pay for the waterline replacement and improvements. The 1956 lease was modified in 1983, extended it to March 15, 2020, and assigned it to the Port Townsend Paper Corporation with substantially no change to the 1956 terms except for increasing the City share of the water from 4 to 5 million gallons per day.

## Water Rights

Municipal water law governs public water systems, like utilities, to ensure they supply safe and reliable drinking water to the public in a way that is consistent with broader water law. While most water rights are governed by the “use it or lose it” principle, municipal water rights are not. Under municipal water law, municipal water suppliers can retain water rights they are not currently using. This gives municipal suppliers certainty about maintaining their water rights while allowing them flexibility to plan for future growth. With this flexibility, however, comes the requirement to conserve water.

## Legal Principles for Agreements

The Municipal Research Services Center provides a comprehensive review of principles for Agreements with private entities in Washington State. This agreement will not constitute a business partnership, but rather a cooperative approach to operating a system. Washington State has key constitutional prohibitions including gifting of public funds and lending of credit that must be considered. The reader is referred to the following link, page 26.

[City and County Options for Creative Financing: PFDs, PDAs and 501\(c\)\(3\)s \(mrsc.org\)](#)