

City of Blaine
Request for Council Action
Meeting Date: 10/22/18

Subject: Interlocal Agreement between the City of Blaine and Birch Bay Water and Sewer District

Department: Public Works

Prepared By: _____
(Digital Signature)

Agenda Location: Consent Agenda Council Action Unfinished Business

Attachments:

1. Draft Interlocal Agreement
-

Background/Summary:

Birch Bay Water and Sewer District is under an agreement with the city for the provision of water at wholesale rates. One of the advantages of having this type of relationship is the efficiency of scale in planning, conservation and managing the water system. This agreement provides the mechanism for the sharing of these resources to provide the most cost-effective delivery of potable water, water conservation, hydrogeologic analysis and water rights for the utility. The previous 3-year agreement became effective in March, 2011, but expired on March 1, 2017 after being extended for 3 years. This new agreement has five year duration with a provision to extend it an additional five years.

Budget Implications: Current Budget New Budget Request Non-Budgetary

While there is a cost to the programs this agreement references, the agreement itself provides an efficient mechanism to save cost on already budgeted programs by providing a mechanism to share those costs with our largest wholesale customer.

Recommendation:

Authorize the City Manager to sign the Interlocal Agreement with Birch Bay Water and Sewer District.

Reviewed By:

City Manager _____ Finance Director _____ City Clerk _____
(Digital Signature) (Digital Signature) (Digital Signature)

RETURN TO:
BIRCH BAY WATER & SEWER DISTRICT
7096 Point Whitehorn Road
Blaine, WA 98230

DOCUMENT TITLE:
INTERLOCAL AGREEMENT BETWEEN THE CITY OF BLAINE AND
BIRCH BAY WATER AND SEWER DISTRICT

REFERENCE NUMBER OF RELATED DOCUMENT:
N/A

GRANTORS:
THE CITY OF BLAINE
BIRCH BAY WATER & SEWER DISTRICT

GRANTEE:
THE CITY OF BLAINE
BIRCH BAY WATER & SEWER DISTRICT

ABBREVIATED LEGAL DESCRIPTION:
N/A

ASSESSOR'S TAX PARCEL NUMBER(S):
N/A

**INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF BLAINE AND BIRCH BAY WATER AND SEWER DISTRICT**

This Interlocal Agreement (“Agreement”) is entered into this _____ day of _____, 2018, by and between the City of Blaine (hereinafter the “City”) and the Birch Bay Water & Sewer District (hereinafter the “District”), in consideration of the mutual promises and covenants contained herein. The District and the City are jointly referred to herein as (the “Parties”) and individually as (“Party”).

WHEREAS, RCW 39.34 permits governmental entities to enter into interlocal agreements to accomplish mutually beneficial purposes in the public’s interest; and

WHEREAS, the City and the District are governmental entities operating public water and public sewer systems providing potable water and wastewater services within their respective service areas; and

WHEREAS, it is in the public interest for the Parties as public entities to work in a cooperative manner; and

WHEREAS, On August 13, 1998, the Parties jointly adopted Resolution No. 1212-98 stating policies embracing a collaborative approach to management of the Parties' water conservation programs; and

WHEREAS, said policies provided for sharing of water conservation program costs when appropriate and mutually agreed; and

WHEREAS, the City on April 2, 2002 entered into a 30 year Wholesale Water Supply Agreement with the District for long term supply of water: and

WHEREAS, on February 14, 2006 and on July 25, 2006, the Parties entered into agreements providing for joint funding and direction of a professional hydrogeologic consultant with the goal to enhance development of the City's water right(s) and delivery capacity to Birch Bay Water and Sewer District, and to promote the development of additional water right applications, permits and certificates; and

WHEREAS, the Parties have a common interest in continued sharing of resources, when appropriate and mutually agreed, for the cost-effective delivery of potable water, water conservation, and hydrogeologic analysis and services; and

WHEREAS, the Parties have a common interest in sharing of resources, when appropriate and mutually agreed, for the cost-effective delivery of wastewater collection and treatment and reclaimed water produced as a result of treatment; and

WHEREAS, the current Interlocal Agreement between the Parties which became effective on March 2, 2011, had a three (3) year duration and was extended for additional three (3) years in 2014.

WHEREAS, the extension of the current Interlocal Agreement expired March 1, 2017; and

WHEREAS, the Parties believe it will be most efficient to adopt an interlocal agreement establishing common procedures for cost-sharing and efficient management of potable water services, including water conservation and hydrogeologic efforts, and wastewater services, including collection, treatment, and reclamation; and

WHEREAS, the foregoing recitals are a material part of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City and the District agree as follows:

ARTICLE 1. PURPOSE AND SCOPE

The purpose of this Agreement is to establish a cooperative framework within which the City and the District can jointly carry out water and wastewater utility work. The cooperative efforts enabled by this Agreement are intended to reduce the cost of planning and implementing such activities. The Parties intend that existing written agreements between the Parties in place as of the date of this Agreement shall continue in effect until they expire or are terminated and that task orders entered between the Parties for jointly funded water and wastewater related activities shall be accomplished under the umbrella of and in accordance with this Agreement. In the event there is a conflict between this Agreement and any existing written agreement between the Parties, the existing written agreement shall take precedence. Nothing herein shall require that future agreements between the parties for provision of water supply or wastewater services shall be executed under the umbrella of or in conformance with this Agreement.

ARTICLE 2. ADMINISTRATION

This Agreement shall be jointly administered by the City Manager and by the District General Manager (“Administrators”), or their respective designees.

ARTICLE 3. MANAGEMENT AND COMMITMENTS

From time to time during the term of this Agreement either Party may provide qualified staff and/or outside consultant services to assist with matters related to the purpose of this Agreement as set forth in Article 1. Subject to Section 6.15, such provision of staff, outside consultant services, or any other services or materials shall be in accordance with the provisions herein.

3.1 *Services and Materials Defined by Task Order.* As the need arises for either Party to request staffing, consulting or other assistance for the achievement of a common objective consistent with the purpose of this Agreement, the Parties may agree to pursue such objective by execution of a task order for services and/or materials, subject to the approval of such general scope of work and the budget for said scope of work by each parties respective Commission and Council. The services and/or materials to be provided will be delineated in sequentially numbered task orders. Such task order(s) will identify the scope of work, staff and/or consultants assigned, estimates of time, agreed hourly rates, estimated costs of materials and any and all other costs. Each task order shall establish a maximum budget for completing the identified task.

3.2 *Agreement for Task Order and Funding.* Each task order shall require the written agreement of the Administrators for each Party or their designees, shall be identified as a task order entered pursuant to this Agreement, and shall incorporate and be subject to all terms of this Agreement. Funding for each task order, each Parties share of such funding or expense, and any

limitations thereon, shall be also be specified and agreed upon in each separate task order. The maximum budget for a task order shall not be exceeded without the mutual written agreement of the Parties by execution of an amended task order and shall be within the specific budgeted amount approved for the project(s) by both the City Council for the City of Blaine and the Commission of the Birch Bay Water and Sewer District. In the event one Party unilaterally directs an outside consultant to expand the scope of work or increase the cost beyond what is authorized by a task order entered in accordance with this Agreement, said Party providing such direction to the consultant shall be solely responsible for that portion of the cost in excess of the maximum budget agreed upon.

3.3 *Minimum Process Requirements.* The acquisition of any outside services or materials pursuant to this Agreement, shall comply with the minimum requirements applicable to either or both Parties under federal and state law, and local ordinances and policies, including without limitation requirements for requests for qualifications, requests for proposals, and for bidding.

3.4 *Ownership of Property Acquired.* For any personal or real property (“Property”) acquired pursuant to a task order, the task order shall specify the Party which will own and be responsible for the Property. Neither Party shall obtain, accept or acquire any real or personal property for joint ownership by both Parties without executing a prior amendment to this Agreement in conformance with RCW 39.34.030(4) specifying the manner of acquiring, holding and disposing of real and/or personal property used in the joint undertaking. The Parties expressly acknowledge that acceptance or acquisition of any real or personal property for joint ownership by the Parties may also require separate amendment of the Wholesale Water Supply Agreement, in accordance with the terms therein.

3.5 *Invoice Transmittal.* Following receipt by one Party of an invoice for outside services, materials and/or following provision of staff services, said Party shall transmit a copy of the invoice for such services and/or materials to the other Party for payment in accordance with the applicable task order. The Parties shall make a good faith effort to review invoices without delay and to indicate any disapproval of same in writing within one week of their receipt to the other Party. The Parties shall attempt to resolve payment disputes as quickly as possible.

3.6 *Failure to Pay.* In the event that either Party does not pay its share of an invoice within thirty (30) days from the date of receipt, the other Party may provide the non-paying Party a notice of intent to suspend and/or direct the suspension of all or any portion of the work authorized by this Agreement. If no payment or authorization of payment is forthcoming from the non-paying Party within five (5) days of its receipt of a notice of intent to suspend work, the notifying Party may in its sole discretion suspend and/or direct the suspension of all or any portion of the work authorized by this Agreement. The notifying Party shall under no circumstances be required to pay the non-paying Party’s share, but may do so in its sole discretion without prejudice to any future determination that the non-paying Party is liable for reimbursement of such payment under this Agreement.

ARTICLE 4. DURATION

This Agreement shall be effective upon recording with the Whatcom County Auditor and shall remain in effect for five (5) years from the date of said recording, unless otherwise earlier terminated pursuant to Article 5. The Parties may extend the term of this Agreement for five (5) additional years by mutual written agreement.

ARTICLE 5. TERMINATION

5.1 *Required Notice.* This Agreement may be terminated by either Party at any time, with or without cause, by providing thirty (30) days prior written notice thereof to the non-terminating party.

5.2 *Costs and Fees.* Upon termination, each Party shall be responsible for its share of the fees and costs incurred up to the date of termination in accordance with the terms herein.

5.3 *Disputes.* In the event the Parties cannot agree to resolution of any dispute relating to termination within sixty (60) days before or after of the termination date of this Agreement, then the dispute shall be processed in accordance with Section 6.2 herein before any litigation is initiated.

ARTICLE 6. ADMINISTRATIVE; OTHER PROVISIONS

6.1 *No modification of Existing Wholesale Water Supply Agreement.* This Agreement shall not alter, change, modify, replace, supersede or have any affect whatsoever on the Parties existing Wholesale Water Supply Agreement or on any right, obligation or provision in the Wholesale Water Supply Agreement. The Parties further agree that no act or omission of either Party in connection with this Agreement shall modify or relieve Blaine or the District of their respective obligations under the Wholesale Water Supply Agreement nor shall any such act or omission modify or enlarge any rights of either Party under the Wholesale Water Supply Agreement, unless such modification is expressly agreed to by the Parties.

6.2 *Dispute Resolution.* Any dispute arising out of the terms and conditions of this Agreement shall first be subject to the following mediation process. If a dispute shall arise, a meeting shall be held promptly between the Parties to attempt in good faith to negotiate a resolution to the dispute. For purposes of this section 6.2 “promptly” shall mean within fourteen (14) calendar days of a Party requesting a meeting to resolve a dispute. If within ten (10) days after such meeting the Parties have not succeeded in resolving the dispute, then the dispute shall be mediated. Either Party may provide written notice to the other that the dispute shall be submitted to mediation and a mediator shall be selected. In the event that within seven (7) days of receipt of said written notice the Parties are unable to agree on a mediator, either party may request appointment of a mediator by the Whatcom County Superior Court. Both Parties shall cooperate to assure that mediation occurs in a timely manner and both parties shall supply all materials provided to the mediator to the other party at least two (2) days before mediation. Engaging in mediation shall not affect any claim, right, remedy, or defense of either party.

Should mediation prove unsuccessful, all claims, rights, remedies and defenses of each party shall be preserved.

6.3 *Parties Are Separate Entities.* The Parties are each separate and independent public entities operating pursuant to the terms and conditions of this Agreement. No agent, employee, or representative of a Party to this Agreement shall be deemed to be an agent, employee, or representative of any other Party for any purpose.

6.4 *City Release of District.* To the extent permitted by law, the City hereby releases the District, its successors and assigns, commissioners, officers, employees, agents, and representatives from any and all claims, losses, injuries, harm, liabilities, damages, costs, charges and expenses including all reasonable and necessary attorney's fees incurred in connection with the District's and its employees' performance under this Agreement.

6.5 *District Release of City.* To the extent permitted by law, the District hereby releases the City, its successors and assigns, council members, officers, employees, agents, and representatives from any and all claims, losses, injuries, harm, liabilities, damages, costs, charges and expenses including all reasonable and necessary attorney's fees incurred in connection with the City's and its employees' performance under this Agreement.

6.6 *City Indemnification of District.* The City shall indemnify, defend and hold the District, its officers, agents and employees harmless from all suits, claims or liabilities of any nature, including attorney fees, costs and expenses, for or on account of injuries or damages sustained by any person or property resulting from the negligent acts or omissions of and to the extent harm is caused by the City, its agents or employees in connection with the City's performance under this Agreement. If suit in respect to the above is filed and judgment is rendered or settlement made requiring payment of damages by the District, its officers, agents or employees, the City shall pay the same.

6.7 *District Indemnification of City.* The District shall indemnify, defend and hold the City, its officers, agents and employees harmless from all suits, claims or liabilities of any nature, including attorney fees, costs and expenses, for or on account of injuries or damages sustained by any person or property resulting from the negligent acts or omissions of and to the extent harm is caused by the District, its agents or employees in connection with the District's performance under this Amended Agreement. If suit in respect to the above is filed and judgment is rendered or settlement made requiring payment of damages by the City, its officers, agents or employees, the District shall pay the same.

6.8 *Notices.* All notices and other communications required or permitted to be given by this Agreement must be in writing and must be given and will be deemed received if and when either hand delivered, faxed or mailed to:

DISTRICT

General Manager
Birch Bay Water & Sewer District
7096 Point Whitehorn Road
Birch Bay, WA 98230

CITY

Director of Public Works
City of Blaine
1200 Yew Street
Blaine, WA 98230

or to such other address as the Parties hereto may from time to time designate in writing and deliver in a like manner. Facsimile transmission of any signed original document and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

6.9 *Nonwaiver of Breach.* Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

6.10 *Severability.* If any term or provision of this Agreement or the application thereof to any person, entity or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons, entities or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

6.11 *"Days" Means Calendar Days.* Unless otherwise specified, all deadlines in this Agreement expressed by a certain number of days shall mean "calendar" days.

6.12 *Governing Law.* The laws of the State of Washington shall govern any disputes arising under this Agreement.

6.13 *Venue.* Subject to section 6.2 herein, any disputes shall be adjudicated in the Superior Court for Whatcom County, Washington, unless otherwise agreed.

6.14 *Section Headings.* Section headings or captions are for reference only and shall not affect the construction or interpretation of this Agreement.

6.15 *Applicability.* This Agreement shall not supersede any existing agreements, interlocal agreements and amendments to interlocal agreements in effect between the Parties as of the date of this Agreement. Subject to the purpose and scope of this Agreement set forth in Article 1, this Agreement shall apply to all joint undertakings of the Parties which are not already governed by an existing agreement and to all future tasks within the scope of an existing interlocal agreement between the Parties which has overlapping purposes with this Agreement.

6.16 Entire Agreement – Modifications Must Be In Writing. This Agreement constitutes the entire agreement between the City and the District as to the matters contained herein. This Agreement may be modified in writing only, upon mutual agreement of the Parties.

Dated this _____ day of _____, 2018.

CITY OF BLAINE

Michael Jones, City Manager

Attested:

Sam Crawford, City Clerk

Departmental Approval:

Ravyn Whitewolf, Public Works Director

BIRCH BAY WATER & SEWER DISTRICT

Don Montfort, President

APPROVED as to form:

Attorney for Birch Bay Water & Sewer District

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this ___ day of _____, 2018, before me personally appeared Don Montfort, to me known to be the President of the Board of Commissioners of BIRCH BAY WATER & SEWER DISTRICT, and acknowledged that he signed the same as his free and voluntary act and deed, and stated upon oath that he is authorized to execute the foregoing instrument of the said BIRCH BAY WATER & SEWER DISTRICT for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Print Name: _____
NOTARY PUBLIC in and for the
State of Washington.
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this ___ day of _____, 2018, before me personally appeared Michael Jones, to me known to be the City Manager of the CITY OF BLAINE, and acknowledged that he signed the same as his free and voluntary act and deed, and stated upon oath that he is authorized to execute the foregoing instrument of the CITY OF BLAINE for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first written above.

Print Name: _____
NOTARY PUBLIC in and for the
State of Washington.
My commission expires: _____