

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

**Elizabeth Kosa
Director**



STORMWATER
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MEMORANDUM

TO: The Honorable Satpal Singh Sidhu, County Executive for
The Whatcom County Flood Control Zone District and
The Honorable Members of the Whatcom County Council

THROUGH: Elizabeth Kosa, Public Works Director

FROM: Kraig Olason, Stormwater Program Manager *ko*

DATE: January 12, 2026

RE: Lora Lane Drainage and Tide Gate Modifications Project; SWBB23-06
**Interlocal Agreement w/ Birch Bay Water & Sewer District for
Inclusion of Water Line Relocation into Culvert
Replacement Construction Contract**

Attached for your review and DocuSign signature is one (1) PDF original of an Interlocal Agreement between the Birch Bay Water & Sewer District (District) and Whatcom County.

Requested Action

Public Works respectfully requests that the County Executive, acting as the Flood Control Zone District Board of Supervisors, enter into an Interlocal Agreement with the District and Whatcom County to provide preliminary design, final design, cost estimate, bid documents, engineering support services for the District's waterline relocation.

Background and Purpose

The District currently has two (2) asbestos concrete water mains running the culvert replacement project's limits. The water line's material type is vulnerable to breakage when construction occurs around the pipe. As part of the project, the water line is required to be reconstructed with a durable ductile iron water main. As part of their current utility franchise, the District is required to move and pay for this work. This interlocal establishes the project coordination, engineering, construction coordination, and payment between the County and the District for this work. It has been determined that the inclusion of this work into the culvert replacement construction contract is mutually beneficial to both parties.

Funding Amount and Source

This project is listed as No. 10 on the 2026-2031 Water Resources Improvement Plan and will be funded by BBWARM (Cost Center 19141905, Work Order #19799). As noted above, all work outlined in the attached Interlocal Agreement will be paid for by the District.

Please contact Cody Swan at extension 6265 if you have any questions or concerns regarding the terms of this agreement.

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
202602004

Originating Department:	Public Works
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Stormwater - 907610
Contract or Grant Administrator:	Kraig Olason, Stormwater Program Manager
Contractor's / Agency Name:	Birch Bay Water and Sewer District

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes No

Yes No If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

Does contract require Council Approval? Yes No If No, include WCC: _____

Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? Yes No If yes, grantor agency contract number(s): _____ ALN: _____

Is this contract grant funded? Yes No If yes, Whatcom County grant contract number(s): _____

Is this contract the result of a RFP or Bid process? Yes No If yes, RFP and Bid number(s): _____ Contract Cost Center: _____

Is this agreement excluded from E-Verify? No Yes If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

Professional services agreement for certified/licensed professional. Goods and services provided due to an emergency

Contract work is for less than \$100,000. Contract for Commercial off the shelf items (COTS).

Contract work is for less than 120 days. Work related subcontract less than \$25,000.

Interlocal Agreement (between Governments). Public Works - Local Agency/Federally Funded FHWA.

<p>Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>N/A</u></p> <p>This Amendment Amount: \$ _____</p> <p>Total Amended Amount: \$ <u>N/A</u></p> <p>Summary of Scope:</p>	<p>Council approval required for; all property leases, all Interlocal agreements, contracts or bid awards exceeding \$75,000, and grants exceeding \$40,000 and and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when:</p> <ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
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Interlocal Agreement between Whatcom County and Birch Bay Water & Sewer District to coordinate the relocation of a segment of water line and the construction road culvert.

Term of Contract: <u>N/A</u>	Expiration Date: When Terms of Agreement are met
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Contract Routing:	Date:
1. Prepared by: <u>Cody Swan</u>	<u>2026-01-12</u>
2. Attorney signoff: <u>Christopher Quinn</u>	<u>1/13/2026</u>
3. AS Finance reviewed: <u>Andrew Tan</u>	<u>1/13/2026</u>
4. IT reviewed (if IT related): <u>Initial</u>	Date: _____
5. Contractor signed: <u>JL</u>	Date: <u>2/6/2026</u>
6. Executive contract review: _____	Date: _____
7. Council approved, if necessary: <u>AB2026-058</u>	Date: <u>01/27/2026</u>
8. Executive signed: _____	Date: _____
9. Original to Council: _____	Date: _____

INTERLOCAL AGREEMENT UNDER CHAPTER 39.34 RCW FOR THE INCLUSION OF THE BIRCH BAY WATER AND SEWER DISTRICT'S UTILITY RELOCATION CONSTRUCTION INTO THE CONSTRUCTION CONTRACT OF THE LORA LANE DRAINAGE AND TIDE GATE MODIFICATIONS PROJECT; PROJECT NO: SWBB23-06

This Interlocal Agreement ("Agreement") is made and entered into by and between the Birch Bay Water & Sewer District, a Washington municipal government agency (hereinafter referred to as the "District"), and Whatcom County, a municipal corporation (hereinafter referred to as the "County"). District and County may be referred to herein individually as "Party" or collectively as "Parties."

WHEREAS, this Agreement is entered into pursuant to Chapter 39.34 RCW; and

WHEREAS, flooding has been a recurring problem at Birch Bay Leisure Park; and

WHEREAS, a failing 48-inch corrugated metal culvert and the tide gate's inability to discharge upland surface water during high tides have further contributed to these chronic flooding issues; and

WHEREAS, the District's wastewater treatment facilities have been overwhelmed with stormwater during these flooding events, placing undue stress on the system; and

WHEREAS, hydraulic analysis recommends replacing the culvert and improving the tide gate to address these flooding challenges and significantly reduce flood risk by improving drainage capacity; and

WHEREAS, the Birch Bay Watershed and Aquatic Resources Management District (BBWARM) has a joint project with Birch Bay Leisure Park to replace the current drainage system; and

WHEREAS, the County retained Tetra Tech, Inc, an engineering consultant (hereinafter referred to as the "Consultant"), to design the drainage improvements at the intersection of Birch Bay Drive and Lora Lane; and

WHEREAS, the County has allocated BBWARM funds the drainage improvements planned for construction in summer of 2026; and

WHEREAS, the District owns and operates a sewer main, an asbestos concrete water main, and a ductile iron water main on Birch Bay Drive and Lora Lane that are subject to a utility franchise agreement between the District and the County, making the District responsible to relocate and/or modify the mains as required under the terms of the utility franchise agreement; and

WHEREAS, the District wishes to replace the asbestos concrete water main on Birch Bay Drive with a fourteen (14) inch ductile iron water main; and

WHEREAS, the District wishes to replace the eight (8) inch ductile iron water main on Lora Lane in kind to be located outside the boundaries of the project; and

WHEREAS, the District wishes to protect the existing eighteen (18) inch sewer main with all known and reasonably available engineering controls; and

WHEREAS, the District wishes to utilize the Consultant that the County has contracted to design the drainage improvements for the design of the District's water main relocation; and

WHEREAS, the District wishes to utilize the County's contractor that will be selected through the County's purchasing policies to construct the waterline replacement; and

WHEREAS, both the District and County agree that it will be mutually beneficial for both Parties to incorporate the District's water main relocation work into the drainage improvements construction contract; and

WHEREAS, the above recitals are a material part of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

SECTION 1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to define the obligations and responsibilities of the County and the District in implementing the incorporation of the District's utility relocation construction into the Lora Lane Drainage and Tide Gate Modifications Project No. SWBB23-06 construction contract.

SECTION 2. PARTY RESPONSIBILITIES

A. BIRCH BAY WATER & SEWER DISTRICT

1. Provide comments on the plans, specifications, and estimate at the 90% and 100% design milestones.
2. Assist the County with development of bid specifications for the utility relocation construction portion of the project.
3. Provide all preliminary design and construction approvals associated with the utility relocation construction, including but not limited to: construction materials approvals, construction sequencing approvals, water main testing, etc.
4. Provide specialized inspection of water main installation during construction as required by the District. Coordinate with Whatcom County Public Works staff as necessary.
5. Provide payment to the County for all costs associated with the relocation of the District's water main and the protection of the District's sewer main, including engineering and/or construction items, every quarter as invoiced by the County, provided such payments are limited by the District's total financial obligation cap set forth in this Section below.
6. Provide necessary District approvals for this agreement and provide general administrative activities as detailed above to fulfill the District's contractual obligations.
7. Pre-Execution Authorization and Payment Commitment.
Prior to full execution of this Agreement, the District will provide written authorization to the County permitting the County to direct its Consultant to proceed with limited preliminary engineering and design services related to the District's utility relocation work. Any such authorization shall:

- a. Be in writing and signed by an authorized representative of the District;
 - b. Identify the scope of authorized preliminary services; and
 - c. Specify a maximum reimbursable amount for such services.
8. Reimbursement Obligation and Limitation.
- a) Upon execution of this Agreement, the District agrees to reimburse the County for costs incurred pursuant to the District's written pre-execution authorization, up to the maximum reimbursable amount specified therein. The District shall have no obligation to reimburse the County for costs incurred beyond the expressly authorized scope or amount, nor for any costs incurred in the absence of such written authorization. The District shall be financially responsible for all costs associated with the bid items identified as "Ductile Iron Pipe for Water Main 8-Inch Diameter" and "Ductile Iron Pipe for Water Main 14-Inch Diameter." The bid item numbers and descriptions may be modified during the final design phase; however, the removal, disposal, and replacement of the District's existing 8-inch and 14-inch water mains shall remain the sole financial responsibility of the District. Any modification to the District's financial responsibility following bid award shall require a written amendment executed by both Parties. The bid amount shall include all labor, materials, and plus applicable taxes.

B. WHATCOM COUNTY

1. Serve as the lead agency for the joint project described in this Agreement. As lead agency, the County shall be responsible for preparing specifications, advertising for bids, overseeing the competitive bidding process, and awarding the contract for construction of the project. The County shall consult with the District regarding technical specifications for replacement of the water main.
2. Comply with the public works bidding and contracting requirements applicable to counties, including but not limited to those set forth in Chapter 39.04 RCW. The County shall award the contract to the lowest responsible bidder submitting a responsive bid, and shall ensure that the bidding and contract award process satisfies all applicable legal requirements.
3. Obtain necessary rights-of-way, easements, permits, and approvals to facilitate the Drainage Improvements Project No. SWBB23-06.
4. Coordinate with the Consultant and the District to design the District's utility relocation and incorporate necessary components into the bid documents including construction contract document's Plans and Specifications.
5. Provide the Consultant with the District's design review comments and ensure that the Consultant incorporates the District's comments into the final design.
6. Establish and maintain a budget for the project. Communicate the project budget to the District, indicating the portion of the overall budget that is the District's responsibility. Provide written notice to the District if the County intends to exceed the established project budget for utility construction and relocation.
7. Pre-Execution Authorization.
Prior to full execution of this Agreement, the County may direct the Consultant to proceed with limited preliminary engineering and design services for the District's utility relocation

work only upon receipt of written authorization from the District, and subject to a maximum reimbursable amount of \$_12,000.00_____.

8. The County shall have no obligation to continue such work absent full execution of this Agreement, and the District shall have no obligation to reimburse costs incurred beyond the expressly authorized amount.
9. Require the construction contractor awarded the contract to name the District as an additional insured prior to the contractor commencing work on the project.
10. Coordinate with the District specialized inspection requirements during construction.
11. Invoice the District every quarter for the utility relocation engineering and/or construction costs incurred by the County for that period.
12. Provide necessary County Council and Executive approval for this agreement and provide general administrative activities as detailed above to fulfill the County's contractual obligations.

SECTION 3. PAYMENT

In accordance with the current franchise agreement, the District is responsible for the engineering and construction contract costs associated with the utility relocation work. The County will provide the District with a quarterly invoice that clearly itemizes those engineering and construction costs. The District will pay the County for itemized costs as invoiced periodically at the frequency noted above, or as agreed to by the Parties, within thirty (30) days of receipt of said invoice, using its own budgeted funds or other available funds.

SECTION 4. TERM OF AGREEMENT

The period of performance for this Agreement shall begin on the date of execution and shall cease upon completion of the drainage improvements contract and completion of all project closeout paperwork, including the final resolution of any potential construction claims associated with the District's utility relocation work.

SECTION 5. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each Party.

SECTION 6. DISPUTES

In the event that a dispute arises under this Agreement, a dispute board shall resolve the dispute in the manner set forth in this section. The Parties shall each appoint a member to the dispute resolution board. The members appointed by the Parties shall appoint a third member. The dispute board shall evaluate the facts, contract terms, and applicable statutes and rules and make a determination of the dispute. The determination of the dispute board shall be final and binding on the Parties hereto. In the performance of this Agreement, it is mutually understood and agreed upon by the Parties hereto that this Agreement shall be governed by the laws and regulations of the State of Washington and the federal government, both as to interpretation and performance.

SECTION 7. INDEMNIFICATION

Each Party agrees to protect, defend, appear, save harmless and indemnify the other Party from and against all claims, suits, and actions arising from the intentional or negligent acts or omissions of that Party, its agents or employees in the performance of this Agreement.

SECTION 8. ASSIGNMENT

The obligations to be performed by the Parties under this Agreement are not assignable or delegable by any Party in whole or in part, without the prior written consent of the other Party.

SECTION 9. WAIVER

A failure of any of the Parties to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the Party and attached to the original Agreement.

SECTION 10. TERMINATION

10.1 Termination Without Cause.

Either Party may terminate this Agreement without cause upon providing sixty (60) days' written notice to the other Party. Such notice shall be delivered by certified mail, return receipt requested, or by another mutually agreed written delivery method, to the other Party's last known address for purposes of notice under this Agreement.

10.2 Effect of Termination.

Termination of this Agreement shall not relieve either Party of responsibility for obligations incurred or performances rendered in accordance with this Agreement through the effective date of termination. The Parties acknowledge that this Agreement is separate from, and does not govern, the County's contractual relationships with its consultant(s) or construction contractor(s).

10.3 Allocation of Costs Attributable to District Utility Relocation Work.

In the event this Agreement is terminated for any reason after execution, the District shall remain responsible for reimbursing the County for costs incurred through the effective date of termination that are directly attributable to, and reasonably allocable to, the District's utility relocation work. Such reimbursable costs may include, but are not limited to:

- a. Engineering, design, and necessary inspection services performed for or on behalf of the District;
- b. Construction costs, including labor, materials, equipment, and subcontractor costs allocable to the District's utility relocation work;
- c. Reasonable contractor demobilization or termination costs to the extent allocable to the District's utility relocation work; and
- d. Claims, change orders, or settlement amounts reasonably and necessarily arising from or related to the District's utility relocation work, provided the County has taken reasonable steps to mitigate such costs.

10.4 Documentation, Invoicing, and Review.

Following termination, the County shall provide the District with an itemized invoice and reasonable supporting documentation for costs described in this Section, including evidence of the County's efforts to mitigate such costs. The Parties shall cooperate in good faith to review such costs to confirm that they are

attributable to the District's utility relocation work. The District shall remit payment for undisputed amounts within thirty (30) days of receipt of the invoice. Any disputed amounts shall be addressed pursuant to Section 6 (Disputes).

10.5 Disposition of Property.

Upon termination, property acquired pursuant to this Agreement shall be disposed of in accordance with the purpose for which the property was acquired and applicable law, unless otherwise agreed to in writing by the Parties.

10.6 Survival.

The obligations of the Parties under this Section 10 shall survive termination or expiration of this Agreement.

SECTION 11. AUDIT AND RECORDS

During the term of this Agreement and for a period of not less than three (3) years from the date of project completion, both Parties shall maintain all records and accounts pertaining to the engineering and construction of the utility relocation work. Such records shall be made available, during normal business hours and as often as necessary, for inspection and audit by the other Party, State of Washington, and/or Federal Government. Copies of any records, accounts, documents or other data pertaining to the utility relocation work shall be furnished upon request, with the requesting party responsible for the cost of any copies provided. If any litigation, claim or audit is commenced, the records and accounts along with supporting documentation shall be retained until any litigation, claim or audit finding has been resolved, even if such litigation, claim or audit continues past the three-year retention period.

SECTION 12. SEVERABILITY

If any provision of this Agreement, or any provision of a document incorporated by reference, is held invalid, such invalidity shall not affect the other provisions of this Agreement. The remaining provisions shall continue in full force and effect, provided that such remainder conforms to the requirements of applicable law and remain consistent with the fundamental purpose of this Agreement. To this end, the provisions of this Agreement are declared to be severable.

SECTION 13. INTEGRATION OF AGREEMENT

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understanding, whether oral or written, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

SECTION 14. CONTRACT MANAGEMENT

No new separate legal or administrative entity is created to administer the provisions of this Agreement. No agent, employee, servant, or representative of either Party shall be deemed to be an employee, agent, servant, or representative of the other party for any purpose. Each Party will be solely responsible for its acts and for the acts of its agents, employees, and servants during the term of this Agreement. The Contract Administrator for each Party shall be responsible for and shall be the contact person for all communications regarding the performance of this Agreement.

The Contract Administrator for the County is:

Cody Swan, Project Engineer

Whatcom County Public Works
322 N. Commercial Street, Suite 301
Bellingham, WA 98225
(360) 778-6210
cswan@co.whatcom.wa.us

The Contract Administrator for the District is:

Mike Kim, Operations Manager
Birch Bay Water & Sewer District
7096 Point Whitehorn Road
Blaine, WA 98230
(360) 371-7100
MikeKim@bbwsd.com

SECTION 15. COUNTERPARTS

This Agreement may be executed in multiple counterparts and each shall be deemed an original, but all of which together constitute a single instrument.

SECTION 16. EFFECTIVE DATE

This Agreement shall be in full force and effects upon full execution by the Parties and filing with the Whatcom County Auditor or posting on each Party's website, whichever method of filing is chosen.

IN WITNESS WHEREOF, the parties have executed this Agreement.

BIRCH BAY WATER & SEWER DISTRICT

By: *Jodi McMillan*
Title: *General Manager*
Date: *1/9/26*

Approved as to form:

By: *Robert Carmichael*
Name/Title: District Legal Counsel

WHATCOM COUNTY

By: *Satpal Sidhu*
Title: County Executive
Date: 2/7/2026

Approved as to form:

Approved by Chris Quinn via email 01.13.2026
Christopher Quinn
Chief Civil Deputy Prosecuting Attorney