

Interlocal Agreement

Whatcom County Flood Control Zone District and Birch Bay Water and Sewer District for the Birch Bay Watershed Aquatic and Resources Management District Program Implementation

This Interlocal Agreement (“Agreement”) is entered into by and between the Whatcom County Flood Control Zone District and the Birch Bay Water and Sewer District (“BBWSD”), referred to herein collectively as the “Parties,” pursuant to Chapter 39.34 RCW.

WHEREAS, the BBWSD and the Whatcom County Flood Control Zone District (“FCZD”) through its Sub-Flood Zone, the Birch Bay Watershed and Aquatic Resources Management District (“BBWARM”), desire to work cooperatively to implement programs that are mutually beneficial; and

WHEREAS, the Parties share common goals and compatible programs that seek to protect Birch Bay’s water quality by minimizing impacts of development and limiting negative environmental and economic effects of stormwater; and

WHEREAS, stormwater enters the BBWSD sanitary sewer system in the form of infiltration and inflow (I & I) and is conveyed and treated by BBWSD at a substantial cost to BBWSD rate payers; and

WHEREAS, BBWSD operates under terms of NPDES Permit WA-002955-6 that prohibits discharge to the wastewater treatment plant of stormwater and other direct inflow sources and requires that the BBWSD endeavor to remove excess infiltration and inflow from its system; and

WHEREAS, the BBWSD is committed to removing excess infiltration and inflow from its system; and

WHEREAS, efficiencies gained through improved stormwater conveyance and water quality treatment systems will save community sewer rate payers in both sanitary sewer operation costs as well as capital costs required for increased conveyance and treatment plant capacity; and

WHEREAS, current costs of treating stormwater incurred by BBWSD exceeds their assessed BBWARM fees; and

WHEREAS, the majority of the rate payers in the BBWARM District are also rate payers of the BBWSD; and

WHEREAS, collaboration on public education programs, information sharing, joint project planning and coordination of infrastructure development is in the best interest of the rate payers and the community,
NOW THEREFORE, the Parties agree as follows:

- I. *Purpose:* The purpose of this Agreement is to set the terms whereby the Parties will work together on mutually beneficial projects and programs in lieu of charging each other rates or fees for each Party’s respective services.
- II. *Administration:* No new or separate legal or administrative entity is created to administer the provisions of this agreement.
- III. *Whatcom County Flood Control Zone District Responsibilities:* The FCZD through the BBWARM Sub-Flood Zone District will implement a comprehensive stormwater program within the

BBWARM District Boundaries area. Implementation of said program will include regular communication and interaction with the BBWSD. Specific activities of the FCZD shall include:

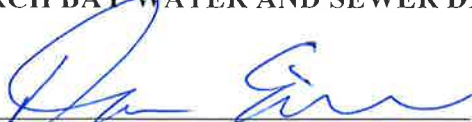
- a. Regular meetings with BBWSD – annually or more often as needed
- b. Joint planning with BBWSD for major infrastructure projects
- c. Information sharing with BBWSD
- d. Collaborative program development with BBWSD, such as:
 - i. Public education
 - ii. Inflow and infiltration program
 - iii. Major and minor infrastructure projects
 - iv. Other activities of mutual benefit

- IV. *Birch Bay Water and Sewer District Responsibilities:* BBWSD hereby agrees to work collaboratively with BBWARM where deemed mutually beneficial to both Parties, including items “III a-d” above and handling infiltration and inflow entering the sanitary sewer system.
- V. *Payment:* Any payments under this Agreement shall be in the form of reimbursement for costs incurred for programs or special projects. Each request for payment herein must be agreed upon in writing by the Parties prior to performance of said services and prior to incurring said costs and is to be submitted in the usual form of a claim for services rendered or costs incurred supported by detailed documentation of the services actually performed or costs incurred so as to comply with auditing requirements. Each reimbursement payment shall be made upon approved claims and in accordance with customary procedures. Reimbursement payments due pursuant to this paragraph shall survive termination of this Agreement.
- VI. *Fees:* Neither Party will impose fees for utility service provided; except as provided herein. The FCZD and BBWARM will not charge the BBWSD for fees associated with impervious surfaces attributed to the BBWSD, and the BBWSD will not charge BBWARM for any costs associated with BBWSD’s treatment of stormwater entering the sanitary sewer system. Notwithstanding the foregoing, the fee exemption set forth herein shall not apply to connection or service charges due to BBWSD in the event FCZD or BBWARM require water or sewer utility service for an office or other facility.
- VII. *Term:* This Agreement shall be in effect retroactive to January 1, 2019 and shall expire on December 31, 2024. This Agreement may be renewed for additional five (5) year terms by mutual written agreement of both Parties hereto.
- VIII. *Termination:* This Agreement may be terminated by any Party effective January 1st of any year in which this Agreement is in effect by giving written notice to the other Party on or before September 30th of the immediately preceding year.
- IX. *Responsible Persons:* The persons responsible for administration of this Agreement shall be the Whatcom County Public Works Director and the BBWSD General Manager, or their designees.

- X. *Treatment of Assets and Property:* No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used or disposed of pursuant to this Agreement.
- XI. *Indemnification:* Each Party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law, and further agree to save, indemnify, defend and hold the other Party harmless from any such liability. It is further provided that no liability shall attach to the Parties by reason of entering into this Agreement except as expressly provided herein.
- XII. *Modifications:* This Agreement may be changed, modified, amended, or waived only by written agreement executed by the Parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.
- XIII. *Applicable Law:* 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 of the State of Washington both as to interpretation and performance, and the venue of any action arising herefrom shall be in the Superior Court of the State of Washington in and for Whatcom County.
- XIV. *Severability:* In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this agreement are declared severable.
- XV. *Entire Agreement:* This Agreement contains all the terms and conditions agreed upon by the Parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.
- XVI. *Recordation:* Upon execution of this Agreement, Whatcom County FCZD shall record a copy of it with the office of the Whatcom County Auditor pursuant to the requirements of RCW 39.34 and provide a copy of same to BBWSD.

IN WITNESS WHEREOF, the parties have signed this Agreement this 9th of October, 2019.

BIRCH BAY WATER AND SEWER DISTRICT



By: Dan Eisses, General Manager

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

By: Jack Louws, Whatcom County Executive

see attach whatcom County
signature page

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this 23rd day of September, 2019, before me personally appeared Dan Eisses, to me known to be the General Manager of the Birch Bay Water and Sewer District, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.



Sandra L McMillan
NOTARY PUBLIC in and for the State of Washington, residing at
7096 Point Whitehorn, Birch Bay WA
My commission expires 11/5/21.

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this ___ day of _____, 2019, before me personally appeared Jack Louws, to me known to be the Board of Supervisors Chair of Whatcom County Flood Control Zone District, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at

My commission expires _____.

*see attached Whatcom County
signature page*

WHATCOM COUNTY:

Recommended for Approval:

Jon Hutchings 9/25/19
Jon Hutchings, Public Works Director Date

Approved as to form:

Christopher Quinn 9/26/19
Christopher Quinn Date
Senior Deputy Prosecuting Attorney-Civil Division

Approved:

Accepted for Whatcom County:

By: *Jack Louws*
Jack Louws, Whatcom County Executive for the Flood Control Zone District

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this 9th day of October, 2019, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.



Suzanne M. Mildner
NOTARY PUBLIC in and for the State of Washington, residing at
Bellevue. My commission expires *12-31-22*.