

CITY OF BLAINE
REQUEST FOR COUNCIL ACTION
MEETING DATE: July 24, 2006

SUBJECT: City of Blaine: Birch Bay Water & Sewer District Hydrogeological Services Interlocal Agreement – First Amendment

SUBMITTING DEPT: Public Works

PREPARED BY:

(Digital Signature)

AGENDA LOCATION: Comments / Communications ☐, Consent ☐, Public Meeting/Hearing ☐
Unfinished Business ☐, Council Action Item ☒, Committee Reports ☐

ATTACHMENTS: 1. *First Amended Interlocal Agreement* (draft)

ANALYSIS / SUMMARY: On February 13, 2006, the City Council approved an Interlocal Agreement between the City and Birch Bay Water & Sewer District to enlist the services of a hydrogeologic consultant to optimize the effective and efficient use and development of the City's water rights claims, applications, permits, and certificates in connection with ongoing updates to each entity's respective *Comprehensive Water System Plan*. The District established, and is administering directly, the Professional Services Agreement with the hydrogeologic consultant, Associated Earth Sciences, Inc. Under the terms of that Interlocal Agreement, the City and the District share consultant expenses on a 50:50 basis.

Since executing the Interlocal Agreement, both City and District staffs desire to expand its somewhat limited original scope as described above to enable additional hydrogeologically related well work, such as identifying prospective new well sites, designing the wells, and supervising/monitoring well drilling operations, which would all occur under separate Letters of Agreement (please see Article 4.2 of the attached Draft Amended Interlocal Agreement). To accommodate this mutual desire, Associated Earth Sciences, Inc. is currently preparing a specific Professional Services Agreement Amendment to address various additional hydrogeological service items for the District's and City's review and approval.

Associated Earth Sciences, Inc. hopes to deliver to the District their proposed Professional Services Agreement Amendment around July 25, 2006. Given this document delivery schedule (which will occur after Council's July 24, 2006 Meeting), and to expedite the first Letter of Agreement, which will identify prospective well sites, staff is requesting that Council authorize a budget/not-to-exceed funding level of \$30,000 for these future hydrogeological services.

RECOMMENDATION: Waive 2nd Reading: ☒ Staff recommends that:

- (1) The City Council authorizes the City Manager to execute the First Amended Interlocal Agreement with Birch Bay Water & Sewer District as attached, and
 - (2) The City Council authorizes a not-to-exceed funding level of \$30,000 to cover subsequent Letters of Agreement for additional hydrogeological services.
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FISCAL ANALYSIS: There is sufficient budgeted funds to cover this expenditure in the Water Capital Improvement Project Fund 329.

REVIEWED BY:

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

COUNCIL ACTION: Approved ☐, Denied ☐, Tabled / Deferred ☐,

Assigned to: _____

COUNCIL ACTION: _____

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

This amended Interlocal Agreement (“Amended Agreement”) is entered into this ____ day of _____, 2006, by and between the City of Blaine (“Blaine”) and the Birch Bay Water & Sewer District (“District”) in consideration of the mutual promises and covenants contained herein and supersedes the interlocal agreement entered into by these same Parties dated February 14, 2006.

ARTICLE 1. RECITALS

1.1 Blaine and the District (“the Parties”) are public water systems providing water supply in their respective jurisdictions; and

1.2 On April 2, 2002, the Parties signed a water supply contract (“The Contract”) pursuant to which the Parties would benefit from the use and development of Blaine’s water right claims, applications, permits and certificates; and

1.3 The Parties believe that effective and efficient use and development of said claims, applications, permits and certificates requires the assistance of professional hydrogeologic consultants; and

1.4 Blaine and the District are currently updating their comprehensive water system plans, and development and implementation of those comprehensive plans require hydrogeologic studies of certain groundwater supply issues; and

1.5 The Parties are willing to jointly fund and direct such hydrogeologic studies; and

1.6 The District has already entered into a contract with a hydrogeologic consultant, Associated Earth Sciences, Inc. (“AES”) qualified to perform such studies; and

1.7 The Parties believe the most expeditious means of obtaining the necessary studies at reasonable cost would be to utilize the District’s existing contract with AES; and

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

1.9 Blaine and the District entered into an interlocal agreement dated February 14, 2006 to facilitate performance of mutually beneficial hydrogeological work as specified in the task order incorporated as Attachment 1 to that agreement; and

1.10 Blaine and the District desire to make certain amendments to said interlocal agreement to best accomplish the intent of the parties; and

1.11 The foregoing recitals are a material part of this Amended Agreement.

ARTICLE 2. PURPOSE

The purpose of this Amended Agreement is to further provide and enhance the current cooperative framework within which Blaine and the District can jointly secure, fund and direct hydrogeological services and studies in connection with updating and implementing their comprehensive plans.

ARTICLE 3. ADMINISTRATION

This Amended Agreement shall be jointly administered by the Blaine Director of Public Works and by the District General Manager, or their respective designees.

ARTICLE 4. MANAGEMENT AND COMMITMENTS

4.1 The District intends to expand its existing contract with AES to include additional task orders as agreed upon by the District and Blaine. Each such additional task order shall be established pursuant to a letter of agreement signed by the District General Manager and the Blaine City Manager, or their respective designees. For purposes of this Amended Agreement, all work authorized by such additional task orders shall also be considered “Hydrogeological Services.” Blaine and the District will jointly direct the performance of the Hydrogeological Services. The Parties shall work together effectively, efficiently and in good faith to coordinate direction and supervision of the performance of the Hydrogeological Services.

4.2 Funding for the Hydrogeological Services shall be shared equally by Blaine and the District, unless otherwise agreed by subsequent letter of agreement for a particular task order. Each party shall pay fifty percent (50%) of the total amount of invoices received for the Hydrogeological Services, unless otherwise so agreed.

4.3 On receipt of billings from AES, the District will promptly transmit a copy of same to Blaine for review. Upon receipt of approval for payment from Blaine, the District will pay the bill to AES in full and forward an invoice to Blaine for reimbursement for its agreed upon share. Except as provided in Section 4.4, the District will not pay or advance Blaine’s share of any invoice for Hydrogeological Services without prior written approval from Blaine. Blaine will make a good faith effort to review AES billings promptly and indicate approval or disapproval in writing within one week of receipt of the billing. Blaine will clearly indicate the basis for disapproving any AES billings and the District will attempt to resolve any disputes that may arise as quickly as possible.

4.4 In the event that Blaine does not pay its share of an invoice within thirty (30) days from the date of receipt, the District may provide Blaine and AES a notice of intent to suspend and/or direct the suspension of all work authorized by this Amended Agreement. If no payment or authorization of payment is forthcoming from Blaine within five (5) days of its receipt of a notice of intent to suspend work, the District may in its sole discretion suspend and/or direct the suspension of all work authorized by this Amended Agreement. The District shall under no circumstances be required to pay Blaine's share, but may do so in its sole discretion without prejudice to any future determination that Blaine is liable for reimbursement of such payment under this Amended Agreement.

ARTICLE 5. DURATION

This Amended Agreement shall be effective upon recording with the Whatcom County Auditor and shall remain in effect for one (1) year from the date of said recording, unless otherwise earlier terminated pursuant to Article 6. The Parties may extend the term of this Amended Agreement for one additional year by mutual written agreement.

ARTICLE 6. TERMINATION

6.1 This Amended Agreement may be terminated by either Party at any time by providing ten (10) days prior written notice thereof to the non-terminating party and to AES.

6.2 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.

ARTICLE 7. ADMINISTRATIVE; OTHER PROVISIONS

7.1 The Parties hereby expressly acknowledge the existence of their Agreement for Wholesale Water Supply dated April 2, 2002 ("Wholesale Water Supply Agreement"). Notwithstanding any other provision herein, this Amended Agreement shall not alter, change, modify, supersede or have any affect whatsoever on the 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 Amended Agreement shall modify or relieve Blaine or the District of their respective obligations under the Wholesale Water Supply Agreement nor shall any such any act or omission modify or enlarge any rights of either Party under the Wholesale Water Supply Agreement.

7.2 Any dispute arising out of the terms and conditions of this Amended 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 7.2 "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.

7.3 Blaine 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 Blaine, its agents or employees in connection with Blaine'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 District, its officers, agents or employees, Blaine shall pay the same.

7.4 The District shall indemnify, defend and hold Blaine, 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 Blaine, its officers, agents or employees, the District shall pay the same.

7.5 All notices and other communications required or permitted to be given by this Amended 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

BLAINE

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.

7.6 Failure of either party at any time to require performance of any provision of this Amended Agreement shall not limit such party's right to enforce such provision, nor shall any

waiver of any breach of any provision of this Amended Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

7.7 If any term or provision of this Amended Agreement or the application thereof to any person, entity or circumstance shall to any extent be invalid or unenforceable, the remainder of this Amended 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 Amended Agreement shall be valid and enforceable to the fullest extent permitted by law.

7.8 The laws of the State of Washington shall govern any disputes arising under this Amended Agreement.

7.9 Subject to section 7.2 herein, any disputes shall be adjudicated in the Superior Court for Whatcom County, Washington, unless otherwise agreed.

7.10 This Amended Agreement constitutes the entire agreement between Blaine and District as to the matters contained herein and shall supersede that interlocal agreement entered into between the Parties dated February 14, 2006 in its entirety. This Amended Agreement may be modified in writing only, upon mutual agreement of the Parties.

Dated this _____ day of _____, 2006.

CITY OF BLAINE

Gary Tomsic, City Manager

APPROVED as to form:

Attested:

Attorney for City of Blaine

Finance Director

Departmental Approval:

Department of Public Works

BIRCH BAY WATER & SEWER DISTRICT

Don Montfort, Secretary

APPROVED as to form:

Attorney for Birch Bay Water & Sewer District

[illegible]

On this ____ day of _____, 2006, before me personally appeared Don Montfort, to me known to be the Secretary, 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: _____

[illegible]

On this ____ day of _____, 2006, before me personally appeared Gary R. Tomsic, 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: _____