

CITY OF BLAINE
REQUEST FOR COUNCIL ACTION
MEETING DATE: November 13, 2007

SUBJECT: Interlocal Agreement with P.U.D. No. 1 for Water Revenue-Related Services

SUBMITTING DEPT: Finance Department

PREPARED BY: _____
(Digital Signature)

AGENDA LOCATION: ☐ Comments/Communications; ☐ Consent; ☐ Committee Reports
☐ Unfinished Business; ☒ Council Action Items; ☐ Public Hearing; ☐ Standing Committees

ATTACHMENTS: Interlocal Agreement

ANALYSIS / SUMMARY: The attached agreement with Public Utility District No. 1 of Whatcom County provides for cost-sharing of personnel resources needed by the City in its annual review of wholesale water agreements with Birch Bay Water and Sewer District and the Bell-Bay Jackson Water Association. This agreement has been reviewed and approved by the Board of PUD No. 1. With Council approval of the agreement, the City will have access to the expertise of Barbara Shosten, Finance Manager for PUD No.1 and former FCS Group employee, intimately familiar with the City's wholesale water rate model and the annual true-up process.

RECOMMENDATION: ☒ Waive 2nd Reading: Staff recommends that Council authorize the City Manager to execute the Interlocal Agreement between PUD No. 1 and the City for Water Revenue Related Services as presented.

FISCAL ANALYSIS: The work to be performed includes review of the 2006 true-up model for both contracts and 2008 rate predictions. The analysis is to be completed by December 31, 2007 at a cost of \$3,350.00, which will be shared by the two wholesale customers.

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
PUBLIC UTILITY DISTRICT NO.1 OF WHATCOM COUNTY
AND THE
CITY OF BLAINE**

WATER REVENUE RELATED SERVICES

THIS INTERLOCAL AGREEMENT (the "Agreement") is made this 24 day of October 2007, between Public Utility District No. 1 of Whatcom County, a Washington municipal corporation (hereinafter the "District"), and the City of Blaine, a Washington municipal corporation (hereinafter the "City"). The District and the City are jointly referred to herein as (the "Parties") and individually as ("Party").

WHEREAS, the Parties have a common interest in sharing personnel resources, when feasible, for the cost-effective delivery of water related services; and

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

WHEREAS, the District and the City desire to enter into this Agreement under the terms and conditions of Chapter 39.34 RCW (entitled the Interlocal Cooperation Act);

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

1.0 PURPOSE.

The purpose of this Agreement is to establish procedures whereby the Parties can combine, share, and use their respective skills and assets, thereby reducing the financial and administrative costs associated with water revenue related services. The cooperative efforts enabled by this Agreement are intended to reduce the cost of water revenue related services over what would otherwise be achieved if the Parties acted independently.

2.0 GENERAL SCOPE OF SERVICES.

From time to time during the term of this Agreement, either Party may provide qualified staff to the other for assistance with matters related to water revenue services. Such assistance may include, but not be limited to, the following:

Rates & Contracts: Water rate analysis, reconciliation of projected budget expenses with actual budget year expenditures, determination of future water rates.

2.1 Task Orders. As the need arises for either Party to request staffing assistance from the other, the scope of such services to be provided with specific tasks assigned will be delineated in a sequentially numbered task order to be attached hereto as Exhibit A.

Such tasks order(s) will identify the staff assigned, and estimates of the time, the agreed hourly rate, and the extended estimated total cost to complete.

- 2.2 *Outside Contracting for Services.* The PUD shall not contract with any third party to provide for the services of the type described in Section 2.0 of this Agreement without the written consent of the City first being obtained. In the event that the PUD seeks to contract with an outside party to provide any of the services herein, then the parties hereto shall separately agree as to the purposes, objectives, and responsibilities of the contracting party, which party shall be responsible for contract preparation, award, and supervision. Any bidding required for the acquisition of any outside services shall comply with the bidding requirements applicable to both entities.

3.0 COMPENSATION FOR SERVICES.

Unless otherwise agreed to by the Parties, services provided by staff of either Party pursuant to this Agreement shall be compensated based on cost of service labor rates to be appended to this agreement as a schedule and attached as Exhibit B. Such schedule may be modified from time to time by mutual agreement of both Parties.

- 3.1 *Invoices.* The Party providing services will submit regular invoices to the other party identifying the specific task order(s) under which work was completed, each staff person involved, and hours or ½ hour fractions thereof charged by each against the task order(s). Specific procedures for invoicing will be determined by agreement of the Parties.

4.0 TERM.

This Agreement shall commence as of the date of this Agreement and shall continue until December 31, 2007 unless either Party terminates this agreement by providing written notice to the other Party, not less than 30 days prior to the date such party desires the termination of the Agreement to become effective. Any party may require that the terms and conditions of this Agreement be re-negotiated by providing written notice to the other Party, not less than 30 days prior to the date such party desires the modification to the Agreement to become effective. A notice of re-negotiation shall not be a notice of termination; however, nothing prevents a party from delivering both a notice of re-negotiation and a notice of termination.

If the Agreement is terminated, in accordance with the provisions of this section 5, then the Parties agree to negotiate in good faith to unwind the obligations entered into under this Agreement. If the Parties cannot agree to a resolution of the obligations entered into within ninety days of the termination date of this Agreement, then the Parties agree to submit to binding arbitration, as set forth in Section 9.8 below.

5.0 DECISIONS.

All decisions under this Agreement shall be by consensus of the Parties, subject to the financial, technical, and legal limitations of both Parties. In the event that the Parties are unable to agree upon a means of undertaking any proposed action pursuant to this Agreement, then either Party shall have the unilateral right to reject such means, without contributing additional time or other resources to the further negotiation thereof.

6.0 CONTACT PERSONS.

The following persons, referred to as Contact Person(s), are responsible for the administration of this Agreement for each Party and have the authority to execute Task Orders on behalf of their Party under this Agreement:

For District: General Manager or his designee
For City: City Manager or his designee

or such other persons as may be specified from time to time in writing by either Party.

7.0 RELATIONSHIPS OF THE PARTIES, RELEASE AND INDEMNIFICATION.

The Parties agree that they are each 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. To the extent permitted by law, each Party remains solely and entirely responsible for the acts of its respective staff performing services for the other Party under this Agreement.

- 7.1 *Release by the City.* To the extent permitted by law, the City hereby releases the District, its successors and assigns, Directors, 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 and its employees' performance under this Agreement.
- 7.2 *Release by the District.* To the extent permitted by law, the District hereby releases the City, its successors and assigns, Directors, 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 and its employees' performance under this Agreement.
- 7.3 *Indemnification.* Each Party, as an indemnitor, agrees to protect, defend, hold harmless, and indemnify each other Party from and against all third party claims, suits, and actions arising from the intentional or negligent acts or omissions of such indemnitor, its agents, or employees in the performance of this Agreement.

8.0 EXTENT OF AGREEMENT AND MODIFICATIONS.

This Agreement, together with the Exhibits and Addenda as may be added upon approval of both Parties, contains all of the terms and conditions agreed upon by the Parties. The Parties agree that there are no understandings, oral or otherwise, modifying or adding to this Agreement. No amendments, changes, or modification of this Agreement shall be valid or binding upon either Party unless such amendment, change, or modification be in writing and executed by both Parties.

9.0 MISCELLANEOUS PROVISIONS.

- 9.1 *No waiver.* The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.
- 9.2 *Applicable Law.* This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Washington, except to the extent such laws may be preempted by the laws of the United States of America.
- 9.3 *Governing Law and Venue:* The Parties agree that any dispute shall be governed by the laws of the State of Washington, and any proceeding in law or in equity shall be brought in Whatcom County, State of Washington, or such other place as both Parties may agree to in writing.
- 9.4 *Standards.* The Parties and the Parties' employees and agents will adhere to applicable professional and ethical standards and will perform all work in a manner consistent with generally accepted skill and care and prudent utility practice for the type of work undertaken.
- 9.5 *Neutral Authorship:* Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of the Parties. No presumption or other rules of construction, which would interpret the provisions of this Agreement in favor of or against the party preparing the same, shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement
- 9.6 *Entire Agreement.* This Agreement sets forth the entire Agreement and supersedes any and all prior Agreements of the Parties with respect to the subject matters hereof.
- 9.7 *Arbitration:* The Parties mutually covenant to work cooperatively to timely resolve any dispute that may arise between the Parties concerning this Agreement. However, if the Parties cannot mutually settle a dispute, the dispute or claim shall be submitted to binding arbitration. The Parties agree that the arbitration shall be governed by the rules and procedures outlined in RCW 7.04 *et seq.* and the Whatcom County Mandatory Arbitration Rules, and that the Parties will jointly stipulate to an arbitrator. In the event that the Parties are unable to agree to an arbitrator, the Parties agree that the Presiding Judge of Whatcom County Superior Court may appoint the arbitrator. The prevailing Party as determined by the arbitrator shall be entitled to reasonable attorneys' fees and costs.
- 9.8 *Notices:* All notices, demands, requests, consents, and approvals which may, or are required to be given to any party or any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage paid to:


Public Utility District No.1 of Whatcom Co: PUD No. 1
1705 Trigg Road
Ferndale, WA 98248

City of Blaine: Public Works Department
1200 Yew Avenue
Blaine, WA 98230

9.9 *Drafting:* Each party has fully participated in the drafting of this Agreement. Therefore, the Agreement shall be construed according to its fair meaning without regard to which party drafted a particular provision. The parties jointly retained the services of the law firm of Chmelik Sitkin & Davis P.S. to draft this Agreement for them without providing any legal advice or representation to either party, and with each party having waived any conflict of interests regard to said law firm drafting this Agreement on behalf of the parties. Each party has been provided the opportunity to seek and obtain independent legal advice regarding this Agreement and the transaction prior to its execution.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives all as of the day and year first above written.

PUBLIC UTILITY DISTRICT NO.1 OF WHATCOM COUNTY

_____
Stephan Jilk
General Manager

10-24-07

Date

ATTEST:

CITY OF BLAINE:

Gary R. Tomsic
City Manager

Date

PUBLIC WORKS APPROVAL:

Stephen R. Banham
Director

Date

ATTEST:

Sheri Sanchez
City Clerk

TASK ORDER NO. 2007 - 01

**City of Blaine (City)
and**

Public Utility District No.1 of Whatcom County (District)

**Reconciliation of 2006 Wholesale Rates and Projection of the 2008 Wholesale Rates with
Birch Bay Water and Sewer District**

A. Scope of Services and Specific Tasks:

2006 True Up

- 1) ***Project Initiation and Review*** – This task is to collect and review the work that has been done since the last reconciliation. (2 hours)
- 2) ***Review and Reconciliation of the “True Up” Model*** – This task is to review the 2006 actual costs and usage entered into the true up models for both Birch Bay Water and Sewer District and the Bell Bay Jackson Water Association, reconcile the results to the 2006 models used to generate the prior year charges, and resolve any questions or issues that arise. (12 hours)
- 3) ***Documentation of “True Up” Findings*** – This task is to prepare a document summarizing the findings from the true up review for Birch Bay Water and Sewer District. A one-page memorandum stipulating the amount of the true up credit or charge for the Bell Bay Jackson Water Association will be prepared. (3 hours)
- 4) ***Review of “True Up” Findings with City Staff*** – This task is to meet via telephone with City staff to review the true up findings and discuss corrections and potential revisions. (1 hours)
- 5) ***Final “True Up” Documentation*** – This task is to finalize the “true up” documentation by incorporating the City’s input. (2 hours)

2008 Rate Predictions

- 1) ***Review 2008 Wholesale Rate Models*** - This task is to review the 2008 rate models updated by City staff, link the models together, and reconcile the results. (8 hours)
- 2) ***Documentation of Rate Review Findings*** – Since the 2008 rate model will be delivered to Birch Bay Water and Sewer District, their 2008 rates will not be documented in a separate memorandum. The 2008 rates for the Bell Bay Jackson Water Association will be added to the 2006 true up memorandum listed above. (1 hour)
- 3) ***Review of Rate Review Findings with City Staff*** – This task is to meet via telephone with the City staff to review the rate review findings and discuss corrections and potential revisions. (1 hours)

B. Staff Assigned & Hourly Rate (per Exhibit B):

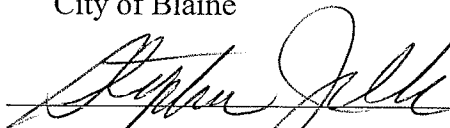
Barbara Shosten, Director of Finance
Annette Smith, Accounting Manager

C. Budget:

Tasks	Shosten \$95.00	Total Dollars
	Hours	
2006 True Ups	20	\$ 1,900
2008 Rates	<u>10</u>	<u>\$ 950</u>
TOTAL LABOR BUDGET	30	\$ 2,850
Legal Costs for Interlocal Agreement		\$ 500
TOTAL BUDGET	30	\$ 3,350

D. Approval to Proceed (signed by both Parties):

Gary R. Tomsic, City Manager
City of Blaine



Steve Jilk, General Manager
Public Utility District No.1 of Whatcom County

Date

10-24-07

Date

EXHIBIT B

LABOR RATE SCHEDULE

The District sets its charge out rate annually in September based on the budget.

Position Title	Hourly Rate
Director of Finance	\$95.00
Accountant	\$70.00

F:\CLIENTS R-Z\Whatcom County PUD #1\WATER\Blaine Interlocal for Water Revenue\Interlocal_PUD - City of Blaine_Water Resources_v3_10-23-07.doc