



# City Council Agenda Bill

# 20084

Bill Number

**Subject:** Memorandum of Agreement ("MOA") with the City of Lynden Regarding Use of Water Diversion/Intake Facility

**Summary Statement:** In order to create options for future water system development, the City is planning to file an application to add additional points of diversion to its Nooksack River water right. To facilitate approval of the application, the City must demonstrate that it will have access to the diversion site. The proposed MOA demonstrates the City's ability to gain such access.

**Previous Council Action:** None

**Fiscal Impact:** None for executing the MOA. Change Application fee and public notification costs are approximately \$6,400.

**Funding Source:** Water Fund

**Attachments:** Memorandum of Agreement

Meeting Activity	Meeting Date	Staff Recommendation	Presented By	Time
Committee Briefing Council Vote Requested	12-Aug-2013	Authorize Contract	Ted Carlson, PW Director	5 min

**Council Committee:**  
Public Works / Public Safety  
Stan Snapp, Chair  
Terry Bornemann; Gene Knutson

**Agenda Bill Contact:**  
Clare Foglesong 778-7965

Reviewed By	Initials	Date
Ted Carlson, PW Director	TAC	8/6/13
Legal Mayor	G.L. KL	8/6/13 8.6.13

**Committee Actions:**

**Council Action:**



**DEPARTMENT OF PUBLIC WORKS**  
210 Lottie Street, Bellingham, WA 98225  
Telephone (360) 778-7900 FAX (360) 778-7901

**DATE:** August 5, 2013

**TO:** Honorable Mayor Linville  
Bellingham City Council

**THROUGH:** Ted Carlson, Director

**FROM:** Jon Hutchings, Assistant Public Works Director

**SUBJECT:** Memorandum of Agreement (MOA) with City of Lynden and Public Utilities  
District No. 1 of Whatcom County

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**Council actions requested.** Public Works requests approval for the Mayor to execute two MOAs for the purpose of advancing access to potential diversion sites on the Nooksack River. The Agreements support an application to the Department of Ecology to add two points of diversion to the City's Middle Fork Nooksack water right.

**Background.** The City continues to work toward its long-term goals of assuring clean and affordable drinking water to the City's growing population, securing food production on the region's most productive agricultural soils, and restoring productivity of Nooksack River for harvestable excess of salmon. Water availability is a principal consideration in achieving these goals. Establishing additional diversion locations in the Nooksack system will benefit the City and the region now and 20 to 50 years in the future.

**Benefits to the City.** Public Works presently operates its water supply as a linear system that begins at a single diversion high on Middle Fork and transmits water for storage in the Lake Whatcom Reservoir. The present operating arrangement will remain preferred and Public Works wishes to establish redundancy in the delivery system and prepare to satisfy future changes in demand. Adding diversion options at downstream locations accomplishes this goal, while protecting the City's interests in water and offering the potential for solutions to regional water supply issues.

Memorandum of Agreement  
between  
the City of Bellingham and the City of Lynden

This Memorandum of Agreement is entered this \_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Bellingham (“Bellingham”) and the City of Lynden (“Lynden”), both municipal corporations organized under the laws of the state of Washington, in consideration of the mutual promises and covenants contained herein.

ARTICLE 1. RECITALS

- 1.1 Bellingham and Lynden continue to cooperate in pursuit of collaborative solutions to Whatcom County regional water issues.
- 1.2 Lynden owns and controls the property described in Exhibit A (“Water Intake Property”) on which is located an operating water diversion/intake facility on the south bank of the Nooksack River adjacent to and upstream from the Hannegan Road Bridge.
- 1.3 Bellingham will require one or more additional alternate points of withdrawal to provide necessary system redundancy and to meet future municipal water system demands.
- 1.4 Bellingham and Lynden are taking steps to address their future water system demands as required by state law, including under the Growth Management Act.

ARTICLE 2. PURPOSE

The purpose of this Memorandum of Agreement (“Agreement”) is to outline the mutual understandings and framework under which Bellingham and Lynden will work together to achieve common objectives requiring use of Lynden’s water diversion/intake facility on the Water Intake Property. This is not an enforceable contract, but rather conceptual in nature.

ARTICLE 3. TERMS

- 3.1 Lynden will provide Bellingham with expeditious review and permission to access, use, and improve its Water Intake Property and water diversion/intake facility located thereon so long as such access, use, and improvement does not adversely affect Lynden’s use thereof, all pursuant to terms set forth in a separate agreement (the “Future Agreement”).

3.2 For the use of Lynden's water diversion/intake facility, Bellingham will provide Lynden with compensation solely in the form of an annual quantity of untreated water (Qa) for a negotiated period of time under terms set forth in the Future Agreement.

3.3 Pursuant to the Future Agreement, Bellingham and Lynden will agree: (a) to each pay the full costs of improvements, regulatory requirements, and maintenance as necessary for operation of water withdrawal that exclusively benefits their own jurisdictions; and (b) together equitably share the cost of any such improvements, regulatory requirements, and maintenance that provide joint benefits.

**CITY OF BELLINGHAM**

**CITY OF LYNDEN**

\_\_\_\_\_  
Kelli Linville, Mayor

\_\_\_\_\_  
Scott Korthuis, Mayor

**Approved as to form:**

**Approved as to form:**

\_\_\_\_\_  
Attorney for City of Bellingham

\_\_\_\_\_  
Attorney for City of Lynden

**Department Approval:**

**Attested:**

\_\_\_\_\_  
Public Works Director

\_\_\_\_\_  
City Administrator

**Attested:**

\_\_\_\_\_  
Finance Director

**Attachment "A"**  
**Property Description**

**Owner:** City of Lynden

**Geographic Coordinates:** 48° 56' 11.796" -122° 26' 29.4"

**Parcel ID:** 400321 049056 0000

**Legal Description:**

A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER (SE¼), SOUTHEAST QUARTER (SE ¼) OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST (SE) CORNER OF SAID SECTION 20; THENCE NORTH (N) 4°-01'-11" EAST (E) ALONG THE EAST (E) LINE OF SECTION 20 A DISTANCE OF 577 FEET; THENCE NORTH (N) 85°-58'-49" WEST (W) 5 FEET TO THE LEFT BANK OF THE NOOKSACK RIVER AND THE TRUE POINT OF BEGINNING; THENCE SOUTH (S) 4°-01'-11" WEST (W) 92 FEET; THENCE NORTH (N) 85°-58'-49" WEST (W) - 50 FEET; THENCE NORTH (N) 15°-58'-49" WEST (W) 55 FEET MORE OR LESS TO THE BANK OF THE NOOKSACK RIVER; THENCE NORTHEASTERLY (NEly) ALONG THE BANK OF THE NOOKSACK RIVER TO THE TRUE POINT OF BEGINNING.



**Physical Address:**

8158 HANNEGAN ROAD (EAST SIDE) JUST SOUTH OF NOOKSACK RIVER BRIDGE, LYNDEN, WA

