



City Council Agenda Bill

20240

Bill Number

Subject: Interlocal agreement with Whatcom County for use of Bellingham's Vactor Waste Transfer Facility

Summary Statement: This interlocal agreement is for the continued use of the Vactor Waste Transfer Facility by Whatcom County Public Works. Currently, the City's Vactor Waste Transfer Facility is the only facility in Whatcom County that is an approved solid waste transfer facility for this type of solid waste. Each user pays for the transfer costs as well as a proportionate share of all operating and maintenance costs for the facility.

Previous Council Action: 2012 interlocal #2012-0067

Fiscal Impact: No impact, as the user pays disposal and overhead costs.

Funding Source:

Attachments: Interlocal Agreement

Meeting Activity	Meeting Date	Staff Recommendation	Presented By	Time
Consent Agenda	09-Dec-2013	Vote to Approve	Ted Carlson, PW Director	

Council Committee:

Agenda Bill Contact:

Mike Olinger, PW Superintendent Maintenance
778-7725

Committee Actions:

Reviewed By	Initials	Date
Ted Carlson, PW Director	TAC	11/26/13
Legal	MJS	11/26/13
Mayor	KL	12.3.13

Council Action:

**INTERLOCAL AGREEMENT
CITY OF BELLINGHAM – WHATCOM COUNTY
VACTOR WASTE FACILITY USE**

Pursuant to the Washington State Interlocal Cooperative Act, RCW Chapter 39.34, and to other provisions of law, this Interlocal Agreement is entered into by and between THE CITY OF BELLINGHAM (City), a municipal corporation of the State of Washington, and WHATCOM COUNTY (The County), a municipal corporation of the State of Washington located in Whatcom County, Washington, for the purpose of utilization of certain operational services, to the mutual advantage of each jurisdiction.

WHEREAS, the County desires to utilize the City's vactor waste facility located at 2140 Division Street, Bellingham, WA for the purposes of disposing or recycling of its street sweeping and vactor waste,

WHEREAS, the City has available capacity at this time to store and process The County's street sweeping and vactor waste,

WHEREAS, the County is being required by the Department of Ecology (DOE) and Whatcom County Department of Health (DOH) to dispose of this waste in a manner deemed appropriate by those agencies,

WHEREAS, RCW 39.34 permits governmental entities to enter into Interlocal Agreements to accomplish mutually beneficial purposes in the public interest;

NOW, THEREFORE, THE CITY OF BELLINGHAM AND WHATCOM COUNTY AGREE AS FOLLOWS:

1. **PURPOSE:** The purpose of the Interlocal Agreement is to authorize and to define the terms under which the City will provide certain services to The County as further delineated herein.
2. **TERM:** The term of this Interlocal Agreement shall commence upon full execution of this document by all parties and the filing of this Interlocal Agreement as set forth in RCW 39.34.040. This Interlocal Agreement shall terminate on the 31st Day of December, 2014, unless terminated or renewed as elsewhere provided in the Interlocal Agreement.
3. **SCOPE OF SERVICES:** The scope of services is as provided in Exhibit A of this Interlocal Agreement, which is attached and incorporated herein, as may be amended from time to time.
4. **PAYMENT:** Payment to the City for services will be on a per ton basis and as outlined in Exhibit A, which is attached and incorporated herein, as may be amended from time to time.

Upon receipt of an invoice from the City, The County shall remit the above amount on a monthly basis to the City of Bellingham Public Works, Financial Services Division, 2221 Pacific Street, Bellingham, WA 98229 for the duration of the Term of this Interlocal Agreement.

The County shall be responsible for payment of any taxes due to the Washington State Department of Revenue on any payments made under this Interlocal Agreement.

The City shall submit invoices to The County on a monthly basis for services performed the prior month. The invoice shall reference this Interlocal Agreement.

The City shall keep clearly detailed records covering all services authorized under this Interlocal Agreement.

5. RELATIONSHIP TO THE PARTIES: The parties agree that they are each independent entities operating pursuant to the terms and conditions of this Interlocal Agreement. No agent, employee, servant or representative of any party shall be deemed to be an employee, agent, servant or representative of any other party for any purpose. Each party will be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the term of this Interlocal Agreement.

6. MUTUAL INDEMNITY: To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents, and volunteers, harmless from and against any and all claims, damages, losses, and expenses, including but not limited to court costs, attorneys' fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death, and for any damage to or destruction of any property, including the loss of use resulting therefrom, which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents, or volunteers.

A party shall not be required to indemnify, defend, or hold the other Party harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease, or death, or for any damage to or destruction of any property, including the loss of use therefrom, is caused by the sole act or omission of the other Party.

In the event of any concurrent act or omission of the parties, negligent or otherwise, each party shall bear its own defense costs and shall pay its proportionate share of any damages awarded based upon comparative liability.

The parties agree all indemnity obligations shall survive the completion, expiration, or termination of this Agreement.

7. EXTENT OF AGREEMENT: This Interlocal Agreement contains all of the terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Interlocal Agreement.

8. MODIFICATION: No changes or modifications of this Interlocal Agreement shall be valid or binding upon either party to this Interlocal Agreement unless such changes or modifications are in writing and executed by authorized representatives of both parties.

9. **RESPONSIBLE PERSONS:** The persons responsible for administration of this Interlocal Agreement on behalf of each party shall be the Bellingham Director of Public Works, and the Whatcom County Director of Public Works. All correspondence, letters or other notices shall be directed to the foregoing parties at the following addresses/phone numbers, or to their established agency designee:

Superintendent of Maintenance
City of Bellingham Public Works
2221 Pacific Street
Bellingham, WA 98229
(360) 778-7700

Maintenance & Operations Superintendent
Whatcom County Public Works
901 West Smith Road
Bellingham, WA 98226-9610
(360) 676-6759

10. **TERMINATION:** This Interlocal Agreement may be terminated by either party upon the giving of ninety (90) days' written notice to the other, at which time any remaining financial obligations for services rendered prior to termination shall be paid in full.

11. **CONSEQUENTIAL DAMAGES:** In no event and under no circumstances shall the City be liable to The County for any interest, loss of anticipated revenue, increased expense of operations, loss by reason of shutdown or non-operation, or for any consequential, indirect or special damages.

12. **DIRECTION AND CONTROL:** The parties hereto do not intend to create any separate or legal administrative entity by this Interlocal Agreement but, rather, intend for this mutual Interlocal Agreement to govern for the purposes contained herein.

13. **PROPERTY AND EQUIPMENT:** The ownership of all property and equipment utilized in association with this Interlocal Agreement shall remain with the original owner unless specifically and mutually agreed to by both parties.

14. **STATUS OF AGREEMENT:** This Interlocal Agreement is in addition to, and is not intended to replace, substitute, modify or otherwise amend any other agreement between the City and The County. This Interlocal Agreement is only limited to the purposes stated herein. Any other agreements continue in effect according to the specific terms of those agreements.

15. **COMPLIANCE WITH LAW:** All parties to this Interlocal Agreement shall comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms and conditions of this Interlocal Agreement.

16. **FURTHER COOPERATION:** The parties shall fully and completely cooperate with one another in good faith at all times, so that the terms and spirit of this Interlocal Agreement may be fully implemented. All parties have had the ability to negotiate the terms of this Interlocal Agreement on an equal basis. This Interlocal Agreement shall be reasonably interpreted and not weighed in favor of or against any party.

17. **SURVIVABILITY:** All covenants, promises, and performances which are not fully performed as of the date of termination shall survive termination as binding obligations.

18. WAIVER: No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Interlocal Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Interlocal Agreement, and each and every covenant, agreement, term, and condition of this Interlocal Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

19. SEVERABILITY: If any provision of this Interlocal Agreement is held to be invalid, illegal or unenforceable for any reason, that holding shall not affect or impair, in any manner, the validity, legality or enforcement of the remainder of this Interlocal Agreement.

CITY OF BELLINGHAM

WHATCOM COUNTY

Dated this ____ day of _____ 2013

Dated this ____ day of _____ 2013

Kelli Linville, Mayor

Jack Louws, County Executive

Attest:

Finance Director

Department Approval:

Department Approval:

Director of Public Works

Director of Public Works

Approved as to form:

Approved as to form:

Office of the City Attorney

Civil Deputy Prosecuting Attorney

STATE OF WASHINGTON }
COUNTY OF WHATCOM } ss

I CERTIFY that I know or have satisfactory evidence that **KELLI LINVILLE** is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the **MAYOR** of the **CITY OF BELLINGHAM** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED

SIGNATURE OF NOTARY PUBLIC

NAME PRINTED

Notary Public
TITLE

MY APPOINTMENT EXPIRES

STATE OF WASHINGTON }
COUNTY OF WHATCOM } ss

I CERTIFY that I know or have satisfactory evidence that **JACK LOUWS** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **EXECUTIVE** of **WHATCOM COUNTY** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED

SIGNATURE OF NOTARY PUBLIC

NAME PRINTED

Notary Public
TITLE

MY APPOINTMENT EXPIRES

EXHIBIT A

Vactor Waste Facility Use

In consideration for the use of the City of Bellingham's ("City") Vactor Waste Facility ("Facility"), Whatcom County (hereinafter the "User"), located at 901 West Smith Road, Bellingham, WA 98226, covenants and agrees to comply with the following terms and conditions:

"Users":

Contact Person: _____

Phone Number: _____

Email Address: _____

Section 1 – Purpose

The purpose of this Interlocal Agreement is to allow public sector use of the Facility. As further described herein, User's ability to use the Facility requires full compliance with this Interlocal Agreement's terms and conditions, including but not limited to:

- Dumping only "ACCEPTABLE WASTE" (Section 2 – ACCEPTABLE WASTE)
- Dumping in an appropriate manner (Section 3 – DUMPING OPERATION)
- Obtaining Training (Section 4 – REQUIRED TRAINING)
- Complying with Safety Rules and Regulations (Section 5 – SAFETY)
- Payment (Section 6 – COST OF SERVICE)
- Such other terms and conditions as contained herein

Section 2 – Acceptable Waste

2.1 User shall be solely responsible to ensure that only Acceptable Waste is deposited at the facility. For purposes of this Interlocal Agreement "Acceptable Waste" is defined herein as:

- Street sweepings are wastes collected by utilizing a street sweeper to collect grit, dirt, vegetative waste and litter from roadway surfaces.
- Vactor wastes includes, grit, dirt and vegetative waste collected by an eductor truck during the cleaning of storm water catch basins.

2.2 Any materials that are odorous or are from a chemical spill are specifically not considered Acceptable Waste products and shall not be deposited at the Facility. For the purposes of the Agreement, "odorous" is defined as: Odor that is beyond what is normal and expected for street sweepings and vactor wastes based on industry standards for like sweepings and waste.

- 2.3 In the event unacceptable waste or materials are dumped at the Facility, the responsible party shall pay all costs associated with the proper removal and deposition of the contaminated materials. Removal and disposing of unacceptable waste or materials shall be in accordance with the approved practices and regulations of the State of Washington, including but not limited to the Washington State Department of Ecology, and the Whatcom County Health Department.
- 2.4 The City reserves the right to find any waste or material unacceptable in its sole discretion given, however, that this discretion must be exercised in a reasonable manner. Disposing of unacceptable materials may result in the loss of the privilege to use the Facility.

Section 3 – Dumping Operation

- 3.1 The Facility has a limited capacity to accept Acceptable Waste products and User acknowledges that the City, State of Washington and Whatcom County, as the primary public users, have preference over all other users. In the event that the Facility capacity should become an issue all other users will be directed to cease usage of the site. The City shall have no obligation or duty to provide advance warning of this circumstance.
- 3.2 Prior to depositing Acceptable Waste at the Facility, User agrees to follow the following “dumping operation”:
 - 3.2.1 Eductor vehicles shall decant excess water prior to depositing Acceptable Waste at the Facility. Decanting shall occur either prior to arriving at the Facility, or by backing into the Facility and decanting into the settling trough;
 - 3.2.2 After excess water is removed, the truck shall be weighed to obtain the net weight of the material. A copy of the weight slip shall be placed in the drop box of every load dumped at the facility. Weight slips shall clearly identify: gross weight, tare weight, and billable weight. Weight slips will be checked against the gate entry log. If there is no slip, the customer will be charged for a full load based upon the capacity of the vehicle. Users are not to use the site other than to dump. Gate access shall be monitored for billing purposes. If a user accesses the facility and there is no weight slip present for that access the user shall be billed for a full load of the vehicle assigned to that access card; AND
 - 3.2.3 After weighing the remaining portion of the load, it shall be dumped, as far back in the facility as is practical to limit the amount of material that may spew out into the parking lot.
- 3.3 In addition to any other remedies that may be available to the City, the City may terminate this Interlocal Agreement and bar User from any future use of the Facility for failure to follow the procedures outlined in Section 3.2.

Section 4 – Required Training

In order to ensure the proper and safe use of the Facility, training is required prior to use of the Facility. Training consists of a walkthrough of the Facility with a representative of the City to explain how the Facility operates and what is expected from those who use the Facility. The City shall issue a letter of fulfillment (“Letter”) that documents that the User has completed the training requirement. User shall not be allowed to use the Facility until completing this training and receiving the Letter. Further, User shall not allow any of its employees or agents to use the Facility without receiving the training and Letter required hereunder.

Section 5 – Safety

All personal injury, including first aid incidents, or damage to vehicles or buildings must be reported immediately to the Safety Specialist at Bellingham Public Works (778-7700). Users shall follow all Washington State safety policies and regulations while inside the Facility. It is encouraged that a ground guide be used whenever operating a vehicle inside the Facility. The City shall not be responsible in any manner for User’s use of the Facility, except to the extent of the City’s sole negligence.

Section 6 – Cost for Service

The cost of depositing one ton of wet Acceptable Wastes is \$54.36 for 2014. These amounts are subject to change at the end of each calendar year. If a price change is announced, this Agreement may be terminated or modified in the manner provided. The User will be billed monthly by invoice and User agrees to pay the bill in full within 30 calendar days of the date of the bill.

In addition to any other remedies that may be available, User’s failure to pay the bill after 60 calendar days shall automatically suspend this Interlocal Agreement and cause User to forfeit the privilege to use the Facility until resolved.

Section 7 – Term

Unless otherwise terminated sooner as otherwise provided herein, this Interlocal Agreement shall remain valid until December 31, 2014. One year (annual) extensions are allowed with mutual written agreement by both parties as to term of extension and any adjustments in Cost of Service. The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year.

Section 8 – Waiver

The City’s failure to insist upon the User’s strict performance of any covenant, duty, agreement, or condition of this Interlocal Agreement or the City’s failure to exercise any right or remedy for breach thereof shall not constitute a waiver of any such breach or any other covenant, agreement, term or condition.