



City Council Agenda Bill

20322

Bill Number

Subject: Request to authorize the Mayor to execute a wholesale contract with the Lake Whatcom Water and Sewer District (LWWSD)

Summary Statement: In 1974, the City entered into an interlocal agreement with the Lake Whatcom Water and Sewer District (LWWSD) to provide treatment of wastewater. City and District staff have worked closely to develop a new wholesale sewer services agreement that provides equity in costs between City and District customers, provides predictability in rates, provides for a fair share of capital improvements and ensures long-term stability. Also included are measures to protect Lake Whatcom water quality. It is recommended, in accordance with BMC 15.36.020A, that the Council, by motion, authorize the Mayor to execute the attached wholesale sewer services interlocal agreement after the effective date of revisions to BMC 15.36.020B and C as approved on 2/10/14.

Previous Council Action: Council briefing on 2/10/14, BMC code revision on 2/10/14, Council briefing on 9/30/13

Fiscal Impact: The agreement provides for revenues necessary to fund the LWWSD share of regular maintenance, operations and capital improvements. Under this agreement, the District will pay the City approximately \$630k annually for regular O&M and approximately \$2.5 million for improvements at the WWTP.

Funding Source: Sewer Fund

Attachments: Interlocal Agreement with the LWWSD

| Meeting Activity | Meeting Date | Staff Recommendation | Presented By | Time |
|---|--------------|----------------------|--------------------------|-------|
| Committee Briefing Council Vote Requested | 24-Feb-2014 | Vote to Approve | Ted Carlson, PW Director | 5 min |

Council Committee:
Public Works / Public Safety
Terry Bornemann, Chair
Michael Lilliquist; Jack Weiss

Agenda Bill Contact:
Eric Johnston, PW Assistant Director, x7710
Bob Bandarra, PW Superintendent, x7810

| Reviewed By | Initials | Date |
|--------------------------|-----------|---------|
| Ted Carlson, PW Director | <i>TC</i> | 2/11/14 |

Committee Actions:

| Reviewed By | Initials | Date |
|-------------|------------|---------|
| Legal | <i>MTS</i> | 2/14/14 |
| Mayor | <i>KL</i> | 2-18-14 |

Council Action:

INTERLOCAL AGREEMENT FOR SEWAGE SERVICES
between
The CITY OF BELLINGHAM
and
The LAKE WHATCOM WATER & SEWER DISTRICT

THIS INTERLOCAL AGREEMENT FOR SEWAGE SERVICES ("Agreement") is entered into by and between the City of Bellingham, a Washington municipal corporation (the "City"), and the Lake Whatcom Water & Sewer District, formerly Whatcom County Water District No. 10, a Washington municipal corporation and special purpose district (the "District"). Hereinafter, the City and the District may be referred to collectively as the "Parties."

RECITALS

WHEREAS, the District provides sewage collection and conveyance services to customers located outside of the City's corporate limits; and

WHEREAS, the District does not treat or dispose of the sewage collected from its customers; and

WHEREAS, the City owns and operates a sewage treatment facility known as the Post Point Wastewater Treatment Plant ("Post Point Treatment Plant"); and

WHEREAS, the City's conveyance infrastructure and Post Point Treatment Plant have excess capacity above that which is needed to serve customers located within the City's corporate limits; and

WHEREAS, RCW 39.34 allows governmental entities to enter into Interlocal Agreements to perform services for one another on the basis of mutual advantage; and

WHEREAS, Bellingham Municipal Code ("BMC") 15.36 authorizes the City to provide sewer services outside its corporate limits subject to certain conditions; and

WHEREAS, the City and the District have previously entered into contracts dated February 13, 1974, October 10, 1974 and August 1, 1977, pursuant to which the City has accepted, conveyed, treated and disposed of the District's sewage and the District has paid a portion of the City's sewer system costs, including treatment, maintenance and improvements; and

WHEREAS, the Parties desire to adopt a more efficient and predictable method of determining the District's proportionate share of City sewer costs and believe this Agreement accomplishes that purpose; and

WHEREAS, the Parties intend for this Agreement to replace and supersede all previous agreements related to sewage services.

NOW, THEREFORE, in consideration of the mutual benefits and consideration to be obtained by each party, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

TERMS AND CONDITIONS

1. **PURPOSE.** The purpose of this Agreement is to establish the terms and conditions upon which the City will accept, convey, treat and dispose of the District's sewage for a fee.

2. **ADMINISTRATION.** No new or separate legal or administrative entity is created to administer the provisions of this Agreement.

3. **CONVEYANCE**

3.1. The City shall accept the District's domestic sewage into the City's Whatcom Creek Trunk Sewer system and convey it to the Post Point Treatment Plant. The term "domestic sewage" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with the groundwater infiltration or surface waters that may be present.

3.2. The City will collect the District's domestic sewage at the following points of acceptance:

- Whatcom Falls Park (from Lake Louise Road Interceptor);
- Electric Avenue at Flynn Street (from Cable Street and Euclid force mains);
- Euclid Avenue (from Euclid gravity main);
- Flynn Street (from the Mill Wheel Park main); and
- Northshore Road Meter (from Northshore Interceptor).

The above points of acceptance may be modified by the City upon written consent of the District, which consent shall not be unreasonably withheld or delayed.

3.3. Conveyance shall be in accordance with the terms and conditions of the City's National Pollution Discharge Elimination permit ("NPDES Permit") as presently constituted or hereafter revised and all applicable laws and regulations.

4. **TREATMENT AND DISPOSAL**

4.1. The City shall treat and dispose of the District's domestic sewage at the Post Point Treatment Plant.

4.2. Treatment shall be in accordance with the terms and conditions of the City's NPDES Permit as presently constituted, or hereafter revised, and all applicable laws and regulations.

5. RESERVED CAPACITY & FLOW MEASUREMENT

5.1. Reserved Capacity. The City shall accept and provide conveyance and treatment services to the District for maximum peak instantaneous flows of up to 2,400 gallons per minute ("gpm") ("Reserved Capacity"). The District shall ensure that all comprehensive planning and issuance of new connections shall be within this maximum flow limitation.

5.2. Strength. No specific strength measurement or limit shall be applied to the District's sewage, provided that any damage, corrosion, or odor generation to the City's collection, conveyance or treatment systems reasonably attributed to flow from the District may be repaired by the City at the District's sole expense. The District shall take prompt action to eliminate the cause of such damage, corrosion or odor generation at the sole expense of the District in a manner reasonably acceptable to the City.

5.3. Emergency Flows. It is to the mutual benefit of the City, District, and greater public to prevent domestic sewage from overflowing within the Lake Whatcom watershed. Therefore, the City shall receive unforeseen additional flows (in excess of 2,400 gpm) in the event of emergencies, including but not necessarily limited to extreme weather (such as an exceptional rain or snow event), natural disasters, or third party-caused incidents. To minimize the overall impact of an emergency, the District will notify and coordinate with the City immediately when the District becomes aware of an emergency situation. To assist the City in avoiding combined sewer overflows, the District agrees when possible to restrict flows to the City from the District through the use and activation of the District's wet weather vault or other operational controls.

5.4. Flow Metering for Billing Purposes. The District shall install, maintain and replace at its sole expense flow measuring devices and recording instruments on its conveyance system upstream of each point of discharge into the City's conveyance system except for certain, mutually agreed upon gravity connection(s) (e.g., Euclid Ave). The District agrees to provide reasonable access to these devices for the City's employees to read and record measurements necessary for billing purposes. The Parties agree to work cooperatively to design and install any required replacements or upgrades of the flow metering devices and recording instruments; provided all such costs shall be borne by the District. In the event the District does not maintain this equipment in good operating condition, the City may perform or cause to have performed the necessary work and charge the District therefore with addition of appropriate overhead charges. The District agrees to allow the City to install, operate and maintain, at the City's own expense, all necessary equipment to allow for the flow meters located on the District's system to be remotely monitored and read by the City. Nothing in this section shall preclude the City from installing its own meters, on the City of Bellingham System, at its own expense.

6. RATES AND CHARGES FOR SERVICES. The District shall pay its proportionate share of the City's sewer system costs, including operation and maintenance

(O&M) and capital improvements. The District's proportionate share of the City's sewer system costs shall consist of Volumetric Charges (defined below) and Capital Contribution Charges (defined below):

6.1 Volumetric Charges.

6.1.1. Volumetric Rate Established. The District will be charged on a volumetric basis for all flows as measured by flow meters installed at or near each point of discharge into the City's conveyance system. The volumetric rate shall be \$0.002073 per gallon or \$0.0155 per cubic foot ("cf") ("Volumetric Rate"). Where flows from single family residential connections are not measured (e.g. Euclid Avenue) the District will be separately charged fifty percent ("50%") of the rate charged to an equivalent City of Bellingham customer for each District connection downstream of a flow measuring device. See Appendix A for a general description of how the Parties determined the Volumetric Rate.

6.1.2. Intent. The Volumetric Rate established above is intended to reimburse the City for the District's proportionate share of O&M expenses and capital improvement costs for the City's conveyance infrastructure. The Volumetric Rate is also intended to reimburse the City for the District's proportionate share of O&M expenses for the Post Point Treatment Plant. The District's responsibility for Major Improvements (defined below) to the Post Point Treatment Plant is addressed separately in Section 6.2 of this Agreement.

6.1.3. CPI Adjustment. The Volumetric Rate will automatically adjust annually on each anniversary of the Commencement Date of this Agreement commensurate with any increase over the same period in the Consumer Price Index, All Urban Consumers (CPI-U), Seattle-Tacoma-Bremerton Index ("CPI"). For purposes of this calculation, the Parties shall use the CPI period ending immediately prior to each anniversary for which data is available. In no event shall the Volumetric Rate decrease.

6.1.4. Surcharge for Excessive Inflow and Infiltration ("I&I"). When the District's annual gross flows on average exceed 915 cubic feet per month per the number of equivalent residential units ("ERUs") located within the District, a retroactive surcharge equal to 50% of the regular Volumetric Rate shall apply and shall be added to the base charge for the excess flow ("Surcharge"). The District shall provide written notice to the City of the number of ERUs located within the District on or before January 15 of each year. Surcharges shall be calculated and invoiced by the City to the District by March 1 of each year with payment due within thirty (30) days. The following examples illustrate when and how the Surcharge applies:

- **Example 1 - No Surcharge Applies:**

ERUs: 4,238

Annual gross flow: 308,000,000 gallons.

Convert to cubic feet: $308,000,000 \text{ gal} \div 7.48 = 41,176,470.59 \text{ cf}$.

Calculate average monthly flow: $41,176,470.59 \text{ cf} \div 12 = 3,431,372.50 \text{ cf}$.

Calculate average monthly flow per ERU: $3,431,372.50 \text{ cf} \div 4,238 = 809.68 \text{ cf}$.

Conclusion: The average monthly flow per ERU does not exceed 915 cf and, therefore, no Surcharge applies.

- **Example 2 - Surcharge Applies:**

ERUs: 4,238

Annual gross flow: 350,000,000 gallons.

Convert to cubic feet: $350,000,000 \text{ gal} \div 7.48 = 46,791,443.85 \text{ cf}$.

Calculate average monthly flow: $46,791,443.85 \text{ cf} \div 12 = 3,899,286.99 \text{ cf}$.

Calculate average monthly flow per ERU: $3,899,286.99 \text{ cf} \div 4,238 = 920.08 \text{ cf}$.

Conclusion: The average monthly flow per ERU exceeds 915 cf and, therefore, the Surcharge applies to the excess flow.

Surcharge Calculation:

Maximum average monthly flow: $915 \text{ cf} \times 4,238 \text{ ER} = 3,877,870$

Maximum Annual Flow: $3,877,870 \text{ cf} \times 12 = 46,534,440 \text{ cf}$

Convert to gallons: $46,534,440 \text{ cf} \times 7.48 = 348,077,611.20$

Excess flow: $350,000,000 - 348,077,611.20 = 1,922,388.80 \text{ gal}$.

Surcharge Rate: $\$0.002073 \times 50\% = \$0.0010365 \text{ per gallon}$.

Surcharge: $1,922,388.80 \text{ gal} \times \$0.0010365 = \$1,992.55$.

6.2. Capital Contribution Charges for Major Improvements to the Post Point Treatment Plant.

6.2.1. Capital Contribution Rate Established. The District shall reimburse the City for the District's proportionate share of the costs of Major Improvements (defined below) to the Post Point Treatment Facility in an amount equal to 4.8% of Eligible Project Costs ("defined below") ("Capital Contribution Rate"). The Capital Contribution Rate of 4.8% was calculated by dividing the District's Reserve Capacity of 2,400 gpm instantaneous flow by the Post Point Treatment Plant's 2012 hydraulic capacity of 50,000 gpm instantaneous flow.

6.2.2. Major Improvements. The term "Major Improvements" means only those individual projects that meet both of the following criteria: (a) the project is for the purpose of maintaining, repairing, replacing, improving or expanding the Post Point Treatment Plant or any component thereof; and (b) the actual cost of the project is greater than or equal to Five Million Dollars (\$5,000,000). All project-related costs shall be considered in determining whether a project qualifies as a Major Improvement, including but not limited to exempt and/or ineligible costs for which the District will not be required to pay a proportionate share. The Capital Contribution Rate shall apply to all Eligible Project Costs (defined below) incurred on a Major Improvement and shall not be limited to only Eligible Project Costs in excess of Five Million Dollars (\$5,000,000).

6.2.3. Eligible Project Costs. The term "Eligible Project Costs" means all costs incurred by the City on a Major Improvement to the Post Point Treatment Plant, net of grants or other project-specific revenue, including, but not limited to, the following: cost of construction; engineering fees; staff time spent directly on engineering or project management; legal fees; land acquisition costs; and City financing costs, including consulting fees and accrued interest (through the date of District payment, if applicable - see Section 7).

6.2.4. Applicability. The Capital Contribution Charge shall apply to all Major Improvements completed after the Commencement Date of this Agreement, regardless of whether the Major Improvement was commenced before or after the Commencement Date of this Agreement. Without limiting the generality of the foregoing statement, the Capital Contribution Charge specifically applies to the Post Point Project which is in progress at the time of execution of this Agreement.

6.2.5. Exemption. The District shall not be responsible for any Major Improvement or portion of a Major Improvement undertaken for the purpose of expanding the permitted capacity (volumetric or strength) of the Post Point Treatment Plant, unless the expansion project is undertaken in whole or in part to increase the District's Reserved Capacity. For any Major Improvement that involves both exempt and non-exempt costs, the District's responsibility to pay its proportionate share shall apply solely and in proportion to non-exempt project costs.

6.3. Catastrophic Failure. The District shall pay its proportionate share of the cost of any interim services or projects undertaken for the purpose of repairing or replacing City sewage infrastructure or services that are damaged or disrupted by natural disasters or industrial accidents, including, but not limited to, fires, earthquakes, tsunamis, sea level rises, floods, train accidents, or wind events. If such loss or damage is to the City's conveyance infrastructure, the District shall pay its proportionate share of the cost as determined by the Parties in good faith and said amount shall be in addition to the Volumetric Charge. If such loss or damage is to the Post Point Treatment Plant, the District's proportionate share shall be equal to the Capital Contribution Rate and the District shall pay its proportionate share (subject to the exemption in 6.2.5 above) regardless of the cost of the project or service (i.e., the District's obligation shall not be limited to only those projects or services that would otherwise qualify as Major Improvements).

7. PAYMENT TERMS

7.1. Volumetric Charges. Volumetric Charges for service will be invoiced monthly with payment due within thirty (30) calendar days of the invoice date. Payment shall be made to the City of Bellingham, 210 Lottie Street, Bellingham, WA 98225, or at a different place as designated by the City in writing. Missed or late payments shall accrue interest at the rate of twelve percent (12%) per annum.

7.2. Capital Contribution Charges for Major Improvements to the Post Point Treatment Plant.

7.2.1. Notice.

7.2.1.1. The City shall make a good faith effort to notify the District in writing at least one (1) year (365 days) in advance of incurring substantial costs for any Major Improvement to the Post Point Treatment Plant for which the District will be required to share in the costs. The notification shall include, to the extent practicable, an estimate of Eligible Costs and the estimated dates of project commencement and completion.

7.2.1.2. The City shall provide follow-up, written notice to the District at least one (1) year (365 days) prior to issuing an invoice to the District for its share of any Major Improvements to the Post Point Treatment Plant ("Invoice Notice").

7.2.1.3. Within six (6) months of receiving an Invoice Notice, the District shall notify the City in writing of its preferred method of payment in accordance with Section 7.2.3 below.

7.2.2. Invoice. The City shall invoice the District for its proportionate share of any Major Improvement following final completion (e.g. a certificate of completion, final contract voucher, final payment or similar) of the project. Individual projects shall be separately invoiced. Payment shall be made within ninety (90) days of the date of the invoice or in accordance with any approved Payment Plan (defined below). Payment shall be made to the City of Bellingham, 210 Lottie Street, Bellingham, WA 98225, or at a different place as designated by the City in writing.

7.2.3. Payment Methods: Lump Sum; Payment Plan.

7.2.3.1. When District's total proportionate share of any Major Improvement is less than \$200,000, the District shall pay the entire amount to the City in a single cash payment within 90 days of the date of the invoice.

7.2.3.2. When the District's total proportionate share of any Major Improvement is equal to or greater than \$200,000, the District may elect to either: (a) pay the entire amount in a single cash payment due within 90 days of the date of the Invoice; or (b) request that the City consider a Payment Plan. Unless otherwise agreed, any Payment Plan shall comply with the following requirements:

- a. The term of the Payment Plan shall not exceed twenty (20) years.
- b. Payments of principal and interest shall be made monthly based on an amortization schedule.

- c. The District shall pay interest on the outstanding balance owed. Interest shall accrue as of the invoice date and no sooner. The annual interest percentage rate ("AIPR") shall be the City's applicable financing costs plus one percent (1%).
- d. There shall be no penalty for pre-payment or early payment, in full or in part, of any amounts owed under the Payment Plan.
- e. The terms and conditions of any Payment Plan shall be set forth in an inter-local agreement executed by the Parties following approval by the Bellingham City Council and the District's Board of Commissioners.
- f. Nothing in this Agreement shall be construed to authorize extension of credit contrary to the laws of the State of Washington.

If the Parties are unable to agree to the terms of a Payment Plan, the District shall pay the applicable Invoice in full in one lump sum within one hundred eighty (180) calendar days of the later of: (a) the date of the Invoice; or (b) the date of the City's written decision denying the District's request for a Payment Plan. Each party retains complete and unfettered discretion to decline to enter into a Payment Plan, in which case payment shall be made in a single lump sum as provided herein.

8. TERM OF AGREEMENT. The term of this Agreement shall be twenty (20) years commencing January 1, 2014 ("Commencement Date") and expiring December 31, 2034 ("Expiration Date"), regardless of the date of execution of this Agreement. Sewer services provided prior to the Commencement Date are subject to the terms and conditions of the prior agreement(s). It is the intent of the Parties to negotiate towards a new agreement for sewage services prior to the expiration of this Agreement. Good faith negotiations shall commence at least one year (365 days) in advance of the Expiration Date.

9. RATE MODIFICATION. All rates, including the District's Volumetric Rate, Capital Contribution Rate and AIPR shall remain constant throughout the Term of this Agreement, subject only to CPI adjustment to the extent provided herein, until modified in writing signed by the Parties. Either party may request a rate adjustment on each five-year anniversary of the Commencement Date of this Agreement. Any such request shall be delivered in writing at least 120 days prior to the next five-year anniversary date and shall include: (i) the proposed rate change(s); and (ii) the rationale therefore. The Parties shall confer in good faith regarding the proposed rate change(s). If the Parties reach agreement, the new rates shall be incorporated into this Agreement by written modification executed by the Parties. If neither party requests a rate modification, or if the parties fail to reach agreement on or before the next five-year anniversary date, then the rates shall remain unaffected, subject only to CPI adjustment to the extent provided

herein. If, in any two consecutive years, the percentage increase in the City's actual O&M expenses exceeds the percentage increase in the CPI by ten percentage points or more, the City may request a rate adjustment, in which case the Parties shall confer in good faith concerning the requested adjustment.

10. SERVICE CONNECTIONS. The Lake Whatcom Reservoir is a primary source of drinking water for both residents of the City and customers of the District. As partners in protecting water quality, the City and District seek to implement measures consistent with both the 1992 Joint Resolution adopting goals for water quality protection and the 2011-2014 Lake Whatcom Reservoir Management Program prepared by the Interjurisdictional Coordinating Team, of which the City and District are both members. Both of these documents acknowledge the need to control and limit development potential and to provide sewer connections in lieu of on-site septic systems as necessary measures to protect the Lake Whatcom Reservoir. In furtherance of these goals, the following measures related to the provision or extension of sewer service shall apply:

10.1. General. The District shall comply with all relevant state and local laws, regulations and approvals pertaining to the provision of sewer services, including, but not limited to, RCW 36.70A.110(4) and the District's comprehensive sewer plan as approved, or as conditionally approved, by the Washington State Department of Ecology pursuant to RCW 90.48.110.

10.2. Inside Designated Urban Growth Areas or Limited Areas of More Intense Rural Development. Subject to Section 10.1 above, the District may approve any connection to, or extension of, its sewer system within a designated Urban Growth Area ("UGA") or Limited Area of More Intensive Rural Development ("LAMIRD").

10.3. Outside Designated UGA or LAMIRD:

10.3.1. The District shall not approve or make any sewer connections outside a designated UGA or LAMIRD to lots or parcels of land created after May 1, 2005 by subdivision, including, but not limited to, long subdivision, short subdivision, exempt land division, or binding site plan, except as described in section 10.3.3 below. Lots or parcels shall be deemed to have been created on the date that the instrument creating the lot or parcel was recorded with the Whatcom County Auditor. For parcels or lots modified by boundary or lot line adjustments, which do not result in additional lots of record, the date used shall be the date on which the underlying lot or parcel was created, not the recording date of the boundary or lot line adjustments.

10.3.2. The District shall provide a written notice of intent to provide connection to any lot or parcel located outside a UGA or LAMIRD to the City of Bellingham Public Works Department for purposes of an administrative review to verify conformance with subsection 10.3.1 above at least 15 calendar days prior to approving said connection. Said notice shall be in

writing and shall include the parcel address, the tax parcel number, the date the lot or parcel was created and sufficient documentation to verify the date the lot was created. The City shall respond in writing within 15 days of receipt of the District's notice to confirm or deny that the proposed connection complies with subsection 10.3.1 above. Failure by the City to respond within the allotted time shall be considered concurrence with the District's determination of compliance with this section.

10.3.3. The Bellingham City Council may approve connections to lots or parcels created after May 1, 2005 in those limited circumstances where the Bellingham City Council determines, upon written application by the District, that said connections are necessary to protect basic public health and safety, and the environment and that said services are financially supportable at rural densities and do not permit urban development.

11. INDEMNIFICATION.

11.1. The District shall release, defend, indemnify and hold harmless the City from all damages, demands, claims, suits, or causes of action arising out of the actions or inactions of the District or its officials, employees, agents or contractors.

11.2. The City shall release, defend, indemnify and hold harmless the District from all damages, demands, claims, suits, or causes of action arising out of the actions or inactions of the City or its officials, employees, agents and contractors.

12. SPECIFIC PERFORMANCE. The District shall promptly disconnect any lot or parcel that connects or becomes connected to the District's sewer system after the date of this Agreement if said connection is made in violation of the terms of this Agreement. The parties acknowledge and agree that damages are an inadequate remedy for any failure by the District to comply with the requirements of this section. Therefore, in addition to any other remedies that may be available to the City at law or in equity, the City is entitled to enforce the requirements of this section by specific performance. The remedy provided in this section is not exclusive of any other rights or remedies that may be available, whether provided by law, equity, statute, or otherwise.

13. ASSIGNMENT. Neither party shall assign or delegate any or all interests in this Agreement without first obtaining the prior written consent of the other party.

14. SUCCESSORS OR ASSIGNS. All of the terms, conditions, covenants and agreements of this Agreement shall extend to and be binding upon each party and their successors and permitted assigns.

15. RESPONSIBLE PERSONS. The persons responsible for the administration of this Agreement shall be the City of Bellingham Public Works Director and the Lake Whatcom Water and Sewer District General Manager or their designees.

16. NOTICE. Any notice required to be given under the terms of this Agreement shall be directed to the party at the address set forth herein below:

City: City of Bellingham
210 Lottie Street
Bellingham, WA 98225

Attn: Public Works Director
With copy to: Mayor
With copy to: City Attorney

District: Lake Whatcom Water & Sewer District
1220 Lakeway Drive
Bellingham, WA 98229

Attn: General Manager
With copy to: District Legal Counsel

Any notice given pursuant to this Agreement shall be delivered personally, sent by overnight courier or mailed by registered or certified mail to the addresses above or to such other address as a party shall from time to time advise in writing. If mailed, a notice shall be deemed received three (3) business days after the postmark affixed on the envelope by the United States Post Office.

17. APPLICABLE LAW AND VENUE. This Agreement shall be governed by, and construed in accordance with the laws of the State of Washington without recourse to any principle of conflicts of laws. Any action in law or equity, or judicial proceeding for the enforcement of this Agreement or any of the provisions contained therein, shall be instituted and maintained only in Whatcom County Superior Court, Bellingham, Washington.


18. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the parties hereto and supersedes all other prior written or oral understandings with regard to the City's provision of sewage services to the District. This Agreement may only be amended, supplemented, modified, or cancelled by a duly executed document in writing pursuant to this Agreement.

19. SEVERABILITY. Should any part of this Agreement be rendered or declared invalid by a court of competent jurisdiction of the State of Washington, such invalidation of such part or portion of this Agreement shall not invalidate the remaining portions thereof, and they shall remain in full force and effect.

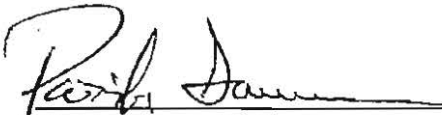
20. HEADINGS. The headings in this Agreement are for convenience only and do not in any way limit or affect the terms and provisions hereof.

21. **RECORDING.** The City shall record this Agreement with the Whatcom County Auditor in accordance with the Washington Interlocal Cooperation Act, Title 39.34 RCW.

EXECUTED this 12 day of February, 2014 for LAKE WHATCOM WATER & SEWER DISTRICT.



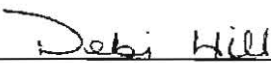
District Board President



District General Manager

ATTEST:

APPROVED AS TO FORM:



Finance Manager



District Legal Counsel

EXECUTED this _____ day of _____, 2014 for the CITY OF BELLINGHAM.

Mayor

Director of Public Works

ATTEST:

APPROVED AS TO FORM:

Finance Director

Office of the City Attorney

APPENDIX A

RATE DETERMINATION METHODS AND HISTORY

I. INTRODUCTION

This Appendix A describes the methodologies discussed by the City of Bellingham (the "City") and the Lake Whatcom Water and Sewer District (the "District") in negotiating a Volumetric Rate and a Capital Contribution Rate for the Interlocal Agreement for Sewage Services ("Agreement"). All capitalized terms included herein shall have the meanings ascribed to them in the Agreement, unless a different definition is specifically provided. The Parties acknowledge that the Volumetric Rate included in the Agreement is a negotiated rate and that changes in accounting practices, assumptions and varying interpretation of definitions affect a precise calculation. Nothing herein shall preclude the City and the District from using a different, mutually agreed upon, methodology for establishing any future rates in accordance with the Agreement. This Appendix A is provided for background purposes only and does not alter or modify any term of the Agreement.

II. BACKGROUND

The previous 1974 sewage agreement between the City and the District required a rigorous, apportionment calculation based on the reserved capacity requested by the District and the estimated capacity of each component of the City's conveyance and treatment system. The cost of each individual component of the system benefiting the District was determined and a percentage share assigned to the District. The City's general administrative costs were apportioned based on the capacity used by the District as a percentage of the entire City system. As changes occurred in the system, the previous agreement required adjustments to the apportionment. This detailed approach was not consistent with how rates were established for other City of Bellingham customers, required a high level of analysis and was subject to variations resulting from changes in the physical assets, variations in accounting practices and changes in City policies. Furthermore, owing to the complicated methodology, it was not clear to the District, City or the State Auditor that billings were correctly or adequately reflecting all current facilities.

In developing a new rate structure for the current Agreement, the City and District sought to identify a more efficient and predictable methodology that could be repeated without the need for a high-level financial analysis or a detailed understanding of each physical component of City's sewer system. Greater predictability in future rates and the ability to simplify billing practices was a key principle in developing a negotiated rate.

III. DISCUSSION

The various methodologies that were considered and discussed by the Parties in negotiating a new rate structure are described below.

A. Cost of Service Methodology

As a basis for beginning negotiation of rates, the City analyzed the history of revenue received from the District, completed the rigorous analysis in the previous contract based on 2012 actuals, and reviewed the revenue requirements of the utility contained in the 2012 Water & Wastewater rate study conducted by FCSG. The City then developed a new rate methodology designed to reimburse the City for its costs of serving the District. The City divided its total costs between the following two components: (a) operation and maintenance (O&M); and (b) major improvements to the Post Point Treatment Plant. The City then developed a rate methodology for each component.

1. O&M

The City assumes its cost of service for the District, which is comprised predominantly of residential customers, is similar to the City's cost of service for its own single-family residential sewer customers (also known as "Class 1 Customers").

The City bills its Class 1 Customers on a flat-rate basis. In 2013, the Class 1 Customer rate was \$33.97 per month. The Class 1 Customer rate reflects the City's costs of service for Class 1 customers, which can be subdivided into capital, debt, O&M, and other costs. Based on a financial analysis conducted by FCSG in 2012 ("FCSG Study"), the City determined that the O&M portion of the Class 1 Customer rate is approximately 38% of the overall Class 1 Customer rate. The City used this data to isolate the O&M component of the 2013 Class 1 Customer rate as follows: $\$33.97 \times 0.38 = \12.91 ("O&M Flat Rate").

Next, the City converted the O&M Flat Rate into a volumetric rate. It did so by dividing the O&M Flat Rate by the amount of effluent attributed to each Class 1 customer on a monthly basis (5,984 gallons; 800 cubic feet). This calculation produces a volumetric O&M rate of \$0.002157 per gallon ($\$12.91 \div 5,984$ gallons).

2. Major Improvements to Post Point

The City developed a separate Capital Contribution Rate to capture the District's share of Major Improvements to the Post Point Treatment Plant. As described in the Agreement, the Capital Contribution Rate is set at 4.8% of Eligible Project Costs. This rate was calculated by dividing the District's Reserve Capacity of 2,400 gpm instantaneous flow by the Post Point Treatment Plant's current hydraulic capacity of 50,000 gpm instantaneous flow.

B. Apportionment Method

In previous years, the Parties utilized the Apportionment Method defined in the prior contract to determine the District's annual payment obligation to the City. This section of Appendix A provides excerpts from the FCSG Study that collectively describe the 2012 apportionment.

The apportionment described below was based on the District's reserved capacity under the prior contract of 3,200 gallons per minute ("gpm") peak instantaneous flow. Any future calculations shall be based on the then current contract peak capacity, which was 2,400 gpm at the time of execution of the Agreement. It is anticipated, but not required, that future volumetric rate calculations will be based on an average of the previous five years of expenses and annual flows.

1. O&M Costs

a. Lift Stations

Total allocable cost comes from the Sewer Treatment Plant Computerized Maintenance Management System (STP CMMS). The District's pro-rata share is based on its allocated capacity as a percentage of firm capacity in the City's lift stations. ("Firm capacity" is the capacity of a given pump station with the largest pump out of service.) **Table 1** below sets forth the pumping capacity allocated to the District as of 2013, along with estimated firm capacity for all City pump stations for which data is available.*

Table 1: District Share of Pumping Capacity

| Lift Station | Firm Capacity | District Share of Capacity | |
|---------------------------------------|---------------|----------------------------|---------|
| | | Amount | Percent |
| 48 th Street (Lake Padden) | 657 gpm | - | 0% |
| Arbutus | 90 gpm | - | 0% |
| Bakerview Valley | 147 gpm | - | 0% |
| Briza Court | 705 gpm | - | 0% |
| C Street | 413 gpm | - | 0% |
| Fir | 143 gpm | - | 0% |
| Flynn | 500 gpm | 150 gpm | 30.00% |
| Hilton | 1,276 gpm | - | 0% |
| Horton | 749 gpm | - | 0% |
| James | 1,667 gpm | - | 0% |
| Martin | 338 gpm | - | 0% |
| Meadowbrook Court | 186 gpm | - | 0% |
| Mitchell Way | 162 gpm | - | 0% |
| North Shore | 1,500 gpm | 150 gpm | 10.00% |
| Oak Street | 50,000 gpm | 3,200 gpm ** | 6.40% |

| | | | |
|---|---------|---------|--------------|
| Old Edgemoor | 147 gpm | - | 0% |
| Pine | 233 gpm | - | 0% |
| Shorewood | 71 gpm | - | 0% |
| Silver Beach | 571 gpm | 150 gpm | 26.27% |
| West Bakerview | 251 gpm | - | 0% |
| West Maplewood | 565 gpm | - | 0% |
| Willow Road | 356 gpm | - | 0% |
| Average District Share of Capacity | | | 3.30% |

**Firm capacity estimates for Flynn and North Shore come from manufacturer test data. For Oak Street, pump station flow is constrained by the flow that can be received by the treatment plant, so this figure represents maximum flow to the treatment plant. The other estimates come from Table 5.4 of the City's 2009 Comprehensive Sewer Plan.*

[** District capacity for future calculations shall be 2,400 gpm, or the then-current contract capacity.]

In the table above, the District's allocated share of lift station capacity is calculated as a simple average of its capacity share in each of the 22 lift stations for which data is available. This percentage (3.30%) is multiplied by the total lift station O&M cost from the STP CMMS to compute the lift station O&M cost allocated to the District. In the event that lift stations are added, retired, or altered in their design capacity in future years, Average District Share of Capacity shall be updated accordingly.

b. Treatment

The total allocable cost is defined by the City's sewer treatment plant (Group 632) operating budget, net of lift station O&M costs identified by the STP CMMS. The District's pro-rata share of these costs is based on its contracted share of capacity at the Post Point Sewer Treatment Plant. As of February 2013, the District share was 3,200 gpm (or 4.61 mgd) divided by 72.00 mgd = **6.40%**. In the event that future capital projects or regulatory changes alter the treatment plant's rated capacity, the District's share of treatment capacity shall be updated accordingly.

c. Conveyance

Total system conveyance O&M cost is defined by the City's sewer utility (Group 634) operating expenses, excluding administrative costs (Activities 112 and 114, operating budget) and taxes. Total system conveyance O&M costs are first allocated between mains that are along the District's transmission route and mains that are not, based on pipe length in lineal feet. **Table 2**

summarizes the mains used by the District and shows the calculation of the District share of total conveyance costs in 2013:

Table 2: District Share of Conveyance Capacity

| Segment | Length | Total Capacity | District Share of Capacity | |
|---|------------------|----------------|----------------------------|---------------|
| | lineal feet | gpm | gpm | Percent |
| Academy to City Limits | 4,030 | 1,250 | 150 | 12.00% |
| Van Horne (Britton Road) to Academy | 1,930 | 1,670 | 150 | 8.98% |
| Park Place to Van Horne (Britton Road) | 516 | 1,109 | 150 | 13.53% |
| Van Horne (Britton Road) to Martin | 1,512 | 1,970 | 150 | 7.61% |
| Martin to Dakin | 2,396 | 2,259 | 150 | 6.64% |
| Dakin to Flynn | 2,612 | 2,696 | 150 | 5.56% |
| Silver Beach (Whatcom Creek) Trunk Sewer | 12,253 | 23,000 | 3,200* | 13.91% |
| Champion Street Box Culvert | 6,352 | 23,000 | 3,200* | 13.91% |
| Box Culvert to Oak Street Lift Station | 3,723 | 45,000** | 3,200* | 7.11% |
| Oak Street Force Main (36" – 1974) | 2,295 | 45,000** | 3,200* | 7.11% |
| Oak Street Force Main (42" – 2004) | 2,447 | 45,000** | 3,200* | 7.11% |
| Oak Street Force Main to WWTP | 10,634 | 45,000** | 3,200* | 7.11% |
| Total Length Along Transmission Route | 50,700 | | | |
| Weighted Average % of Capacity along Transmission Route | | | | 10.05% |
| Total City Sewer Mains | 1,727,453 | | | |
| Mains along LWWS D Transmission Route as % of Total City Mains | | | | 2.93% |
| District Share of Total Conveyance Costs | | | | .29% |

* District capacity for future calculations shall be 2,400 gpm, or the then-current contract capacity.

** For Oak Street, pump station flow is constrained by the flow that can be received by the treatment plant, so this figure should represent maximum flow to the treatment plant, or 50,000.

The District share of conveyance costs is $2.93\% \times 10.05\% = .29\%$ of total system conveyance O&M cost. As mains are added to the City sewer system, this percentage should be adjusted accordingly.

d. Administrative and General Expenses

The total allocable administrative cost basis is initially defined as the natural resources (Group 628) operating budget plus the administrative cost divisions excluded from the conveyance O&M cost basis (Group 634 operating budget, Activities 112 and 114), excluding taxes. The resulting administrative cost basis is divided by the total "direct operating cost" for pumping, treatment, and conveyance to derive an administrative mark-up percentage. This mark-up percentage is then applied to the District share of pumping, treatment, and conveyance O&M costs, in order to determine the District share of administrative costs.

For future rate calculations, the total allocable administrative cost basis can be the Sewer General Services expenses excluding taxes (basub 53510 - tax). This adjusted total will then be multiplied by the District's current contracted share of treatment capacity, which is 4.8% at the time this contract was originally signed.

2. Minor Capital Costs

a. Payment for District Minor Capital Cost Share as of December 31, 2012

The following principles were used to determine the District's future payment obligation for District minor capital cost share unpaid as of December 31, 2012.

- The Oak Street Pump Station and Force Main is a capital improvement recognized in previous agreements, and the District cost share is already on a 20-year payment schedule that includes both principal and interest. For this asset, the capital cost share not yet paid as of December 31, 2012 is \$522,280. The loan term, interest rate, and annual payments should continue as previously agreed.
- "Previously recognized transmission lines" refer to pipe segments that were recognized in previous agreements as serving the District, for which the District has been paying its capital cost share over the asset life. In order to determine future payments, these assets should be recognized at their net depreciated value as of December 31, 2012 and financed over a 20-year term at an interest rate of 5.2%.
- "Previously unrecognized assets" are assets resulting from capital expenditures relating to treatment and pumping facilities serving the District,

where the expenditures were incurred from 1994-2012 and where the District capital cost share was not previously defined. In order to determine future payments, previously unrecognized assets should be recognized at their net depreciated value as of December 31, 2012 and financed over a 20-year term at an interest rate of 5.2%.

b. Table 4

Table 4, below, sets forth the District's future payment obligation for its minor capital cost share as of December 31, 2012. These values were used for determining the capital portion of the volumetric rate. The values in this table establish a base for the District's share of minor capital projects through 2032.

c. Recalculating Payment for District Minor Capital Cost Share

In order to determine future payments, assets that serve the District should be recognized at their net depreciated value as of December 31, 2032 and financed over a 20-year term at an interest rate determined from a mutually agreed upon municipal bond index.

2. Table 4: District Payment Obligation for Capital Cost Share as of 12/31/2012

| Asset | District Capital Cost Share as of 12/31/2012 | Annual Payment Obligation | Term |
|--|---|----------------------------------|--------------|
| Oak Street PS and Force Main | \$522,289 | \$46,224 | Through 2026 |
| <i>Previously Recognized Transmission Lines:</i> | | | |
| Champion Street Box Culvert | 1,945 | 159 | Through 2032 |
| Van Horne-Academy | 1,109 | 90 | Through 2032 |
| Academy-City Limits | 458 | 37 | Through 2032 |
| <i>Previously Unrecognized Assets:</i> | | | |
| North Shore Lift Station | 8,198 | 669 | Through 2032 |
| Flynn Street Pump Station | 9,871 | 806 | Through 2032 |
| Post-1991 Post Point WWTP Improvements | 531,846 | 43,403 | Through 2032 |
| Total as of 12/31/2012 | \$1,075,716 | | |
| Total Annual Payments 2013-2026 | | \$91,388 | |

| | | | |
|--|--|-----------------|--|
| Total Annual Payments 2027-2032 | | \$45,164 | |
|--|--|-----------------|--|

Based on the Apportionment Methodology outlined above, the actual cost attributable to the District for 2012 is approximately \$635,000.

IV. NEGOTIATED RATE FOR NEW SEWAGE AGREEMENT

As noted above, the Apportionment Methodology results in a total payment obligation for 2012 of approximately \$635,000. The total 2012 flow from the District to the City was approximately 308,000,000 gallons. The Parties used this data to compute a volumetric rate for 2013 of \$0.002061 per gallon ($\$635,000 \div 308,000,000$). When compared to the volumetric rate determined by the City under the cost of service methodology described further above (\$0.002157 per gallon), the difference was found to be within the margin of error. Therefore, the Parties agreed upon a negotiated per gallon rate of \$0.002061, adjusted by the CPI-U increase for 2013 as reported on November 20, 2013 at 0.6%, resulting in the 2014 Volumetric Rate contained in the Agreement of \$0.002073 per gallon.

In addition, the Parties agreed upon a Capital Contribution Rate contained in the Agreement of 4.8% for Major Improvements to the Post Point Treatment Plant. The Capital Contribution Rate was separated from the Volumetric rate to allow the District the option of paying in a single lump sum payment or by regular payments over a period of time.

This Appendix A is provided for background purposes only. To the extent there are any inconsistencies between Appendix A and the Agreement, the Agreement shall control.