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DOCUMENT TITLE:
INTERLOCAL AGREEMENT FOR NORTH WHATCOM COUNTY LOCAL GOVERNMENT WATER RESOURCES
GROUP

REFERENCE NUMBER OF RELATED DOCUMENT:
N/A

GRANTORS:
BIRCH BAY WATER & SEWER DISTRICT
CITY OF BLAINE
CITY OF LYNDEN
CITY OF FERNDALE
CITY OF EVERSON
CITY OF NOOKSACK
CITY OF SUMAS
BERTRAND WATERSHED IMPROVEMENT DISTRICT
DRAYTON WATERSHED IMPROVEMENT DISTRICT
NORTH LYNDEN WATERSHED IMPROVEMENT DISTRICT
SOUTH LYNDEN WATERSHED IMPROVEMENT DISTRICT
SUMAS WATERSHED IMPROVEMENT DISTRICT
WHATCOM COUNTY PUBLIC UTILITY DISTRICT NO. 1

GRANTEE:
BIRCH BAY WATER & SEWER DISTRICT
CITY OF BLAINE
CITY OF LYNDEN
CITY OF FERNDALE
CITY OF EVERSON
CITY OF NOOKSACK
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BERTRAND WATERSHED IMPROVEMENT DISTRICT
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SOUTH LYNDEN WATERSHED IMPROVEMENT DISTRICT
SUMAS WATERSHED IMPROVEMENT DISTRICT
WHATCOM COUNTY PUBLIC UTILITY DISTRICT NO. 1

ABBREVIATED LEGAL DESCRIPTION:
N/A

ASSESSOR'S TAX PARCEL NUMBER(S):
N/A

**INTERLOCAL AGREEMENT FOR
NORTH WHATCOM COUNTY LOCAL GOVERNMENT WATER RESOURCES
GROUP**

This Interlocal Agreement (“Agreement”) is entered into this _____ day of _____, 202_, by and between the Birch Bay Water & Sewer District (hereinafter the “District”), the City of Blaine (hereinafter “Blaine”), the City of Lynden (hereinafter “Lynden”), the City of Ferndale (hereinafter “Ferndale”), the City of Everson (hereinafter “Everson”), the City of Nooksack (hereinafter “Nooksack”), the City of Sumas (hereinafter “Sumas”) jointly referred to herein as the “Cities”, the Drayton Watershed Improvement District (hereinafter the “Drayton WID”), the Bertrand Watershed Improvement District (hereinafter the “Bertrand WID”), the North Lynden Watershed Improvement District (hereinafter the “North Lynden WID”), the South Lynden Watershed Improvement District (hereinafter the “South Lynden WID”), the Sumas Watershed Improvement District (hereinafter the “Sumas WID”), jointly referred to herein as the “WIDs”, and Whatcom County Public Utility District No. 1 (hereinafter the “PUD”) in consideration of the mutual promises and covenants contained herein. The District, the Cities, the WIDs, and the PUD are jointly referred to herein as the “Parties” and individually as “Party.”

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

WHEREAS, the Cities and the District are governmental entities operating public water and public sewer systems providing potable water and wastewater services within their respective service areas; and

WHEREAS, the PUD is a governmental entity supplying water to industrial and agricultural customers in its service area; and

WHEREAS, the WIDs are irrigation districts organized under Ch. 87.03 RCW to monitor and improve water supply for irrigation and domestic purposes in its service area; and

WHEREAS, the service areas and boundaries of all Parties are in the Watershed Resource Inventory Area for the Nooksack River (“WRIA 1”), for the most part located north of the Nooksack River in Whatcom County; and

WHEREAS, WRIA 1 faces a number of water supply issues, including maintaining water quality, use of water beyond existing water rights, uncertainty about tribal water rights, impacts from climate change, maintaining adequate instream flows and habitat, and protecting threatened and endangered fish species in WRIA 1; and

WHEREAS, that portion of WRIA 1 which is the principal subject of this Agreement is generally bordered by the Nooksack River on the south, Strait of Georgia on the west, Canadian border on the north, and the foothills east of Sumas on the east (“North County”); and

WHEREAS, under the Growth Management Act, protecting water resources, including water quality and the availability of water, are required objectives and components of a county comprehensive plan; and

WHEREAS, the Growth Management Act also requires counties to identify and protect agricultural resource lands, provide for existing population and forecasted population growth, and economic development, all of which require adequate water resources; and

WHEREAS, the Parties agree that water resources planning must be further developed and integrated with land use planning in Whatcom County’s Comprehensive Plan; and

WHEREAS, Whatcom County (hereinafter the “County”), is currently mandated to update its Comprehensive Plan in 2025, following completion of a buildable lands analysis required to be completed by June 2022; and

WHEREAS, the Parties intend to together participate in the County comprehensive planning process by informing the County about North County water resource issues and ensuring the updated County Comprehensive Plan reflects the best available information and water resource policies for the North County area; and

WHEREAS, among the Parties objectives will be to obtain County inclusion of the latest Salmon Recovery Plan and Watershed Management Plan in the County updated Comprehensive Plan in 2025, including any updates thereto; and

WHEREAS, the Parties may also seek revisions to the County Comprehensive Plan, and ultimately County development regulations, to emphasize knowledge and solution–based decision making as necessary to achieve meaningful water resources protection and water availability; and

WHEREAS, in its 2021 legislative session under SB 5092, the Washington state legislature appropriated funding for work necessary to commence an adjudication in state court of groundwater and surface water rights in WRIA 1; and

WHEREAS, the court proceedings for the foregoing adjudication are expected to be initiated in 2023; and

WHEREAS, the adjudication will result in a legal determination of tribal water rights for the Lummi Nation and Nooksack Tribe (“Tribes”), along with the water rights of municipalities, farmers, associations, and private landowners; and

WHEREAS, the Tribes will be represented in the adjudication by the United States, which has a trust responsibility to ensure tribal water rights are secured and maintained; and

WHEREAS, the United States, through the Interior Secretary’s Indian Water Rights Office, states its mission in these matters includes negotiating “settlements of Indian water rights claims” and that it “works in concert with tribes and all water stakeholders to deliver long promised

water resources to tribes, certainty to all their non-Indian neighbors, and a solid foundation for future economic development for entire communities dependent on common water resources;” and

WHEREAS, the Parties desire to work cooperatively in negotiating for the above stated positive solutions with the United States, Tribes, and others on North County water resource issues before, during, and after adjudication; and

WHEREAS, the Parties may work together to achieve funding from potential Federal and State sources directed to achieve additional water resource development serving the North County through various projects, including without limitation, reclaimed water, deep water aquifer, water banking, managed aquifer recovery (“MAR”), and surface to ground water transfers; and

WHEREAS, the Parties may also work together on future system efficiencies including by facilitating interties, improving reliability of water associations, and improving water quality; and

WHEREAS, the Parties share concerns about recent area flooding and flood damage in Whatcom County and realize that flood control efforts must also be further developed and integrated with land use planning in Whatcom County’s upcoming Comprehensive Plan; and

WHEREAS, as further development and integration of Whatcom County’s flood control efforts will have implications on land use and water supply, the Parties may coordinate with efforts to address flood-related issues; and

WHEREAS, under this Agreement the Parties also may investigate development of a regional water utility to further the purposes identified herein and to conserve, develop, and manage water resources in the North County area; and

WHEREAS, this Agreement is intended to provide the Parties with a framework to together develop a strategy and work to meet the needs of current and future instream and out-of-stream water requirements in the North County region; and

WHEREAS, it is in the public interest for the Parties to work in a cooperative manner to execute the purposes of this Agreement; and

WHEREAS, the foregoing recitals are a material part of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereby agree as follows:

ARTICLE 1. AGREEMENT

The Parties shall work cooperatively together to achieve the purposes and objectives of this Agreement.

1.1 *Purposes and Scope.* This Agreement serves two general water resource related purposes for the North County of concern to all Parties.

1.1.1 *Incorporation of Water Resource Issues in County Comprehensive Plan and Development Regulations.* The Parties anticipate that in updating its comprehensive plan Whatcom County will ultimately develop regulations on water resource issues pertaining to the North County. This work will include, without limitation, facilitating inclusion of an updated Salmon Recovery Plan and updated Watershed Management Plan in the 2025 County Comprehensive Plan and updates thereto, promoting knowledge and solution-based decision making as necessary to achieve water resources protection and availability, and connecting land use planning and development regulations to water availability and demand in the North County. As a primary purpose of this Agreement, the Parties intend to assist the County with development of the best available information related to water resources, water resource and habitat protection, and the resource demands from agriculture, municipalities, associations, and other purveyors in the North County.

1.1.2 *Adjudication of Water Rights and Resource Development.* The second primary purpose of this Agreement is to work together in negotiating for positive water resource solutions with the United States, Tribes, municipalities, farmers, associations, private landowners, and other stakeholders. The Parties agree that a positive water resource solution should be part of any settlement, where existing water rights of current water users are recognized and kept whole. Together, the Parties intend to be actively engaged with any federal negotiating team assembled on behalf of the Tribes in an adjudication of water rights in WRIA 1. The Parties intend to seek funding from Federal and State sources for projects designed to achieve water resource development in the North County, including without limitation, reclaimed water, deep water aquifer, water banking, MAR, and surface to ground water transfers. The Parties further intend to work together to obtain changes in state water law which will facilitate improved water resource management, protection of the resource, and water availability. The overriding objective of the Parties is to promote water resource solutions that will protect and enhance fish and wildlife habitat, honor Tribal rights, and preserve existing and future withdrawals as needed for agriculture, commerce and industry, and existing and future human populations, in the North County.

1.2 *General Tasks and Objectives.* The Parties intend to work cooperatively to identify, review, and share water right information. Each Party will be individually responsible for review of its own water rights and its own water users' water rights. It is intended that a master list will be compiled of current water users' water rights in the North County area. The information compiled by the Parties will be used to inform and assist the County as it considers future land use for its updated Comprehensive Plan. This information will also be used in the anticipated negotiations with the United States for assistance in achieving water right certainty for non-Indian neighbors and to provide a solid foundation for future economic development. The Parties will also identify future water resource projects and potential funding sources which may assist in achieving any water right settlement per the adjudication in WRIA 1. Finally, the Parties shall be free to work together on any task reasonably related to the purposes of this Agreement. This may include coordination with other local efforts related to area flooding, flood damages, and potential flood control measures.

ARTICLE 2. ADMINISTRATION

This Agreement shall be administered by General Managers for the District and the PUD (“Administrators”), or their respective designees. It is not anticipated that real or personal property will be acquired as a joint undertaking pursuant to this Agreement. See Section 2.4 below.

The Parties shall meet on a regular basis, not less frequently than once per month, unless otherwise agreed. The meetings shall be used to establish priorities, agree upon objectives, and authorize specific tasks. From time to time during the term of this Agreement one or more Parties may provide qualified staff and/or outside consultant services to assist with matters related to the purposes of this Agreement as set forth in Article 1. Subject to Section 5.13, such provision of staff, outside consultant services, or any other services or materials shall be in accordance with the provisions herein.

2.1 *Services and Materials Defined by Task Order.* Any Party may undertake a task in accordance with the purposes of this Agreement on its own volition, without participation of any other Party, in which case said Party shall bear the full cost of such task and no task order shall be required. As the need arises for a Party to request staffing, consulting or other assistance for the achievement of a common objective consistent with the purposes of this Agreement, two or more Parties (“Tasked Parties”) may agree to jointly pursue such objective by execution of a task order for services and/or materials, subject to the approval of such general scope of work and the budget for said scope of work by each Tasked Parties respective Commission and Council. The services and/or materials to be provided will be delineated in a sequentially numbered task order to be attached hereto as Exhibit A. Such task order(s) will identify the scope of work, staff and/or consultants assigned, estimates of time, agreed hourly rates, estimated costs of materials and any and all other costs. The task order shall identify the task’s estimated total cost to complete which shall serve as the maximum budget for completing the identified task. Parties which are not Tasked Parties for a given task are not financially responsible to contribute to performance of any task, unless otherwise agreed.

2.2 *Agreement for Task Order and Funding.* Each task order shall require the written agreement of an authorized representative for each Tasked Party or their designees, shall be identified as a task order entered pursuant to this Agreement, and shall incorporate and be subject to all terms of this Agreement. Funding for each task order, each Tasked Parties share of such funding or expense, and any limitations thereon, shall also be specified and agreed upon in each separate task order. It is anticipated that most task order costs will be split equally between the Tasked Parties. This Agreement does allow alternative cost sharing arrangements on a particular task order to be agreed upon. The maximum budget for a task order shall not be exceeded without the mutual written agreement of the Tasked Parties by execution of an amended task order and shall be within the specific budgeted amount approved for the project(s) by the elected authorized body of the Tasked Parties. In the event one Tasked Party unilaterally directs an outside consultant to expand the scope of work or increase the cost beyond what is authorized by a task order entered in accordance with this Agreement, said Tasked Party providing such direction to the consultant shall be solely responsible for that portion of the cost in excess of the maximum budget agreed upon.

2.3 *Minimum Process Requirements.* The acquisition of any outside services or materials pursuant to this Agreement, shall comply with the minimum requirements applicable to the Tasked Parties under federal and state law, and local ordinances and policies, including without limitation requirements for requests for qualifications, requests for proposals, and for bidding.

2.4 *Ownership of Property Acquired.* While not anticipated, in the event any personal or real property (“Property”) is acquired pursuant to a task order, the task order shall specify the Tasked Party which will own and be responsible for the Property. No Tasked Party shall obtain, accept or acquire any real or personal property for joint ownership by the Tasked Parties without executing a prior amendment to this Agreement in conformance with RCW 39.34.030(4) specifying the manner of acquiring, holding and disposing of real and/or personal property used in the joint undertaking.

2.5 *Invoice Transmittal.* Following receipt by a Tasked Party or Tasked Parties of an invoice for outside services, materials and/or following provision of staff services, said Tasked Party or Parties shall transmit a copy of the invoice for such services and/or materials to the other Tasked Parties for payment in accordance with the applicable task order. The Tasked Parties shall make a good faith effort to review invoices without delay and to indicate any disapproval of same in writing within one week of their receipt. The Tasked Parties shall attempt to resolve payment disputes as quickly as possible.

2.6 *Failure to Pay.* In the event that a Tasked Party does not pay its share of an invoice within thirty (30) days from the date of receipt, the Tasked Party requesting payment (“notifying Tasked Party”) may provide the non-paying Tasked Party a notice of intent to suspend and/or direct the suspension of all or any portion of the work authorized. If no payment or authorization of payment is forthcoming from the non-paying Tasked Party within five (5) days of its receipt of a notice of intent to suspend work, the notifying Tasked Party may in its sole discretion suspend and/or direct the suspension of all or any portion of the work authorized by this Agreement. The notifying Tasked Party shall under no circumstances be required to pay the non-paying Tasked Party’s share, but may do so in its sole discretion without prejudice to any future determination that the non-paying Tasked Party is liable for reimbursement of such payment under this Agreement.

ARTICLE 3. DURATION

This Agreement shall be effective upon execution by all Parties and upon recording with the Whatcom County Auditor and shall continue in full effect until December 31, 2036, unless earlier terminated per Article 4 below. Thereafter, this Agreement may be renewed by mutual written consent of the Parties.

ARTICLE 4. TERMINATION

Any one Party may withdraw from Agreement with ninety (90) days’ advance written notice to all other Parties. The withdrawal of one party shall not affect the validity of this Agreement as to the other Parties.

ARTICLE 5. ADMINISTRATIVE; OTHER PROVISIONS

5.1 *Dispute Resolution.* Any dispute arising out of the terms and conditions of this Agreement shall first be subject to the following mediation process. If a dispute shall arise, a meeting shall be held promptly between the Parties to attempt in good faith to negotiate a resolution to the dispute. For purposes of this Section, “promptly” shall mean within fourteen (14) days of a Party requesting a meeting to resolve a dispute. If within ten (10) days after such meeting the Parties have not succeeded in resolving the dispute, then the dispute shall be mediated. Any Party may provide written notice to the other that the dispute shall be submitted to mediation and a mediator shall be selected. In the event that within seven (7) days of receipt of said written notice the Parties are unable to agree on a mediator, any Party may request appointment of a mediator by the Whatcom County Superior Court. All Parties shall cooperate to assure that mediation occurs in a timely manner and both parties shall supply all materials provided to the mediator to the other party at least two (2) days before mediation. Engaging in mediation shall not affect any claim, right, remedy, or defense of any Party. Should mediation prove unsuccessful, all claims, rights, remedies and defenses of each Party shall be preserved.

5.2 *Parties are Separate Entities.* The Parties are each separate and 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.

5.3 *Release.* To the extent permitted by law, each Party hereby releases every other Party, and their successors and assigns, 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 that Party’s and its employees’ performance under this Agreement.

5.4 *Indemnification.* Each Party shall indemnify, defend and hold all other Parties and their officers, agents and employees harmless from all suits, claims or liabilities of any nature, including attorney fees, costs and expenses, for or on account of injuries or damages sustained by any person or property resulting from the negligent acts or omissions of and to the extent harm is caused by that Party or its agents or employees in connection with the that Party’s performance under this Agreement.

5.5 *Notices.* All notices and other communications required or permitted to be given by this Agreement must be in writing and must be given and will be deemed received if and when either hand delivered, faxed or mailed to:

DISTRICT
General Manager
Birch Bay Water & Sewer District
7096 Point Whitehorn Road
Birch Bay, WA 98230

CITY OF BLAINE
Director of Public Works
City of Blaine
1200 Yew Street
Blaine, WA 98230

CITY OF LYNDEN
Director of Public Works
City of Lynden
300 4th Street
Lynden, WA 98264

CITY OF EVERSON

CITY OF SUMAS

BERTRAND WID

NORTH LYNDEN WID

**WHATCOM COUNTY PUBLIC
UTILITY DISTRICT NO. 1**

CITY OF FERNDALE

CITY OF NOOKSACK

SUMAS WID

DRAYTON WID

SOUTH LYNDEN WID

or to such other address as the Parties hereto may from time to time designate in writing and deliver in a like manner. Facsimile transmission of any signed original document and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

5.6 *Recording.* This Agreement shall be recorded. The Parties shall equally share the costs of recording.

5.7 *Nonwaiver of Breach.* Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

5.8 *Severability.* If any term or provision of this Agreement or the application thereof to any person, entity or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons, entities or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

5.9 *"Days" Means Calendar Days.* Unless otherwise specified, all deadlines in this Agreement expressed by a certain number of days shall mean "calendar" days.

5.10 *Governing Law.* The laws of the State of Washington shall govern any disputes arising under this Agreement.

5.11 *Venue.* Subject to Section 5.1, disputes shall be adjudicated in the Superior Court for Whatcom County, Washington, unless otherwise agreed.

5.12 *Section Headings.* Section headings or captions are for reference only and shall not affect the construction or interpretation of this Agreement.

5.13 *Applicability.* This Agreement shall not supersede any existing agreements, interlocal agreements and amendments to interlocal agreements in effect between two or more of the Parties as of the date of this Agreement. Subject to the purpose and scope of this Agreement set forth in Article 1, this Agreement shall apply to all joint undertakings of the Parties which are not already governed by an existing agreement.

5.14 *Entire Agreement – Modifications Must be in Writing.* This Agreement constitutes the entire agreement between the Parties as to the matters contained herein. This Agreement may be modified in writing only, upon mutual agreement of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

Signature Blocks Begin on Next Page

CITY OF EVERSON

By: _____

Its: _____

Attested:

Departmental Approval:

By: _____

City Clerk

By: _____

Director of Public Works

STATE OF WASHINGTON)

) ss.

COUNTY OF WHATCOM)

On this _____ day of _____, 2022, before me personally appeared _____, to me known to be the _____ of the CITY OF EVERSON, and acknowledged that he signed the same as his free and voluntary act and deed, and stated upon oath that he is authorized to execute the foregoing instrument of the CITY OF EVERSON for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first written above.

NOTARY PUBLIC in and for the
State of Washington.
My commission expires: _____

CITY OF SUMAS

By: _____

Its: _____

Attested:

Departmental Approval:

City Clerk

Director of Public Works

STATE OF WASHINGTON)

) ss.

COUNTY OF WHATCOM)

On this _____ day of _____, 2022, before me personally appeared _____, to me known to be the _____ of the CITY OF SUMAS, and acknowledged that he signed the same as his free and voluntary act and deed, and stated upon oath that he is authorized to execute the foregoing instrument of the CITY OF SUMAS for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first written above.

NOTARY PUBLIC in and for the
State of Washington.
My commission expires: _____

**BERTRAND WATERSHED
IMPROVEMENT DISTRICT**

By: _____

Its: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this _____ day of _____, 2022, before me personally appeared
_____, to me known to be the _____
of BERTRAND WATERSHED IMPROVEMENT DISTRICT, and acknowledged that he/she
signed the same as his/her free and voluntary act and deed, and stated upon oath that he/she is
authorized to execute the foregoing instrument of the said BERTRAND WATERSHED
IMPROVEMENT DISTRICT for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and
year first above written.

NOTARY PUBLIC in and for the
State of Washington.
My commission expires: _____

**SOUTH LYNDEN WATERSHED
IMPROVEMENT DISTRICT**

By: _____

Its: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this ____ day of _____, 2022, before me personally appeared _____, to me known to be the _____ of SOUTH LYNDEN WATERSHED IMPROVEMENT DISTRICT, and acknowledged that he/she signed the same as his/her free and voluntary act and deed, and stated upon oath that he/she is authorized to execute the foregoing instrument of the said SOUTH LYNDEN WATERSHED IMPROVEMENT DISTRICT for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington.
My commission expires: _____

SUMAS WATERSHED IMPROVEMENT DISTRICT

By: _____

Its: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF WHATCOM)

On this _____ day of _____, 2022, before me personally appeared _____, to me known to be the _____ of SUMAS WATERSHED IMPROVEMENT DISTRICT, and acknowledged that he/she signed the same as his/her free and voluntary act and deed, and stated upon oath that he/she is authorized to execute the foregoing instrument of the said SUMAS WATERSHED IMPROVEMENT DISTRICT for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington.
My commission expires: _____

