

BIRCH BAY WATER AND SEWER DISTRICT
WHATCOM COUNTY, WASHINGTON

RESOLUTION NO. 459

A RESOLUTION OF BIRCH BAY WATER AND SEWER
DISTRICT, WHATCOM COUNTY, WASHINGTON,
IRREVOCABLY PROVIDING FOR THE PAYMENT OF THE
PRINCIPAL OF AND INTEREST ON CERTAIN
OUTSTANDING REVENUE BONDS OF THE DISTRICT.

PASSED ON SEPTEMBER 8, 1988

Prepared by:

PRESTON, THORGRIMSON, ELLIS & HOLMAN
5400 Columbia Seafirst Center
701 Fifth Avenue
Seattle, Washington 98104-7011

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RESOLUTION NO. 459

A RESOLUTION OF BIRCH BAY WATER AND SEWER DISTRICT, WHATCOM COUNTY, WASHINGTON, IRREVOCABLY PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON CERTAIN OUTSTANDING REVENUE BONDS OF THE DISTRICT.

WHEREAS, the Board of Commissioners of Birch Bay Water and Sewer District, Whatcom County, Washington, (the "District") has authorized the issuance of the following revenue bonds (the "Outstanding Bonds") pursuant to the following resolution:

<u>Resolution No.</u>	<u>Date of Issue</u>	<u>Amount Outstanding</u>
252	12/1/77	\$3,055,000

WHEREAS, pursuant to Section 8 of Resolution No. 252, the District may set aside in a special account, irrevocably pledged to the payment of certain Outstanding Bonds, cash and/or "Government Obligations" as such obligations are defined in Chapter 39.53 RCW, sufficient in amount to provide funds to pay when due the interest on part or all of the Outstanding Bonds and to redeem and retire such bonds at or prior to maturity in accordance with their terms; and that in such event no further payments need be made into the bond fund securing the payment of the principal of and interest on the bonds so provided for; and

WHEREAS, it is desirable for the District to so provide for the payment of the Outstanding Bonds numbered 838 through 1146, inclusive (herein called the "Defeased Bonds");

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Birch Bay Water and Sewer District, Whatcom County, Washington, as follows:

Section 1. Definitions. As used in this resolution the following terms shall have the following meanings:

"Board of Commissioners" means the general legislative authority of the District as the same shall be duly and regularly constituted from time to time.

"Defeasance Fund" means the special fund of the District designated "1988 Revenue Bond Defeasance Fund," created by Section 3 of the resolution.

"Defeased Bonds" means the Outstanding Bonds numbered 838 through 1146, inclusive.

"District" means Birch Bay Water and Sewer District, Whatcom County, Washington, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Washington.

"Government Obligations" means the investments now or hereafter acquired by the District to effect the defeasance of the Defeased Bonds.

"Outstanding Bonds" means the Sewer Revenue and Refunding Bonds, 1977, of the District issued under date of December 1, 1977, and presently outstanding in the aggregate principal amount of \$3,055,000.

Section 2. Provision for Defeasance. The District shall provide for the payment of the principal of and interest on all of the Defeased Bonds as set forth in Exhibit A attached hereto and incorporated herein by reference.

Section 3. Defeasance Fund. There is hereby created a special fund of the District to be known as the "1988 Revenue

Bond Defeasance Fund" (hereinafter referred to as the "Defeasance Fund"). The Defeasance Fund shall be used solely for the purpose of paying the principal of and interest on the Defeased Bonds.

For the purpose of irrevocably providing for the payment of the principal of and interest on the Defeased Bonds, the District shall deposit into the Defeasance Fund the cash and Government Obligations listed on Exhibit B attached hereto and incorporated herein by reference.

The moneys necessary to acquire such Government Obligations and to provide such cash shall be withdrawn from the 252 Bond Fund created by Resolution No. 252.

Section 4. Defeasance Plan. The District hereby finds and determines that the cash and Government Obligations deposited in the Defeasance Fund are non-callable, are direct obligations of the United States of America, are "Government Obligations" as defined in Chapter 39.53 RCW and such cash and Government Obligations will be sufficient to provide money to pay the principal of and interest on all of the Defeased Bonds as the same shall become due, on and prior to January 1, 1996, and to call and redeem the then outstanding Defeased Bonds on such date.

The District hereby irrevocably calls for redemption on January 1, 1996, the Defeased Bonds maturing after such date in accordance with the provisions of Resolution No. 252.

Said defeasance and call for redemption of the Defeased Bonds shall be irrevocable after the establishment and funding of the Defeasance Fund and delivery of the Government Obligations to

the Defeasance Agent, except as provided in Section 7 hereof relating to the substitution of securities.

Section 5. Defeasance Agent. The Defeasance Agent is hereby authorized and directed to provide for the giving of notice of the redemption of the Defeased Bonds in accordance with the applicable provisions of said Resolution No. 252. The Treasurer of the District ("Treasurer") is authorized and requested to provide whatever assistance is necessary to accomplish such redemption and the giving of notice therefor. The costs of publication of such notice shall be an expense of the District.

The Defeasance Agent is hereby authorized and directed to pay to the Treasurer, or, at the direction of the Treasurer, to the fiscal agency or agencies of the State of Washington, sums sufficient to pay, when due, the payments specified in Section 4 of this resolution. All such sums shall be paid from the monies and Government Obligations deposited with said Defeasance Agent pursuant to this resolution, and the income therefrom and proceeds thereof. All such sums so paid shall be credited to the Defeasance Fund. All monies and securities deposited with the Defeasance Agent and any income therefrom shall be held, invested and applied in accordance with the provisions of this resolution and with the laws of the State of Washington for the benefit of the District and holders of the Defeased Bonds.

The District will take such actions as are found necessary to see that all necessary and proper fees, compensation and expenses of the Defeasance Agent for the Defeased Bonds shall be paid when due. The proper officers and agents of the District

are directed to obtain from the Defeasance Agent an agreement setting forth the duties, obligations and responsibilities of the Defeasance Agent in connection with the redemption and retirement of the Defeased Bonds as provided herein and stating that such provisions for the payment of the fees, compensation and expenses of such Defeasance Agent are satisfactory to it.

In accordance with Section 8 of Resolution No. 252 of the District, no further payments shall be made into the 252 Bond Fund and reserve account therein securing the Defeased Bonds under Resolution No. 252 on account of the Defeased Bonds. Such bonds and the appurtenant coupons shall cease to be entitled to any lien, benefit or security of Resolution No. 252, except the right to receive payment from the Defeasance Fund, and such bonds and coupons shall no longer be deemed to be outstanding.

Section 6. Agreement With Defeasance Agent. In order to carry out the provisions of the preceding sections, the President and Secretary of the Board of Commissioners of the District are authorized and directed to enter into an agreement with Seattle-First National Bank (the "Defeasance Agent") providing for the irrevocable deposit of the Government Obligations and cash listed on Exhibit B and setting forth the duties, obligations and responsibilities of the Defeasance Agent in connection with the payment of the Defeased Bonds as provided herein. The Defeasance Agent Agreement shall be substantially in the form attached hereto as Exhibit C.

Section 7. Substitution of Obligations in Escrow. The District reserves the right to substitute other Government

Obligations for the Government Obligations listed on Exhibit B in the event it determines to do so, upon compliance with the following conditions:

A. such substitution is accomplished pursuant to resolution of the Commissioners of the District;

B. the Government Obligations to be substituted shall be direct obligations of the United States of America;

C. the substituted Government Obligations shall bear such interest and mature at such times and in such amounts as to fully replace the Government Obligations withdrawn and such substituted Government Obligations together with remaining Government Obligations and cash are sufficient thereafter for the payment of the principal of and interest on the Defeased Bonds as the same shall become due, in accordance with the defeasance plan set forth in this Resolution;

D. an opinion of nationally recognized bond counsel is obtained stating that such substitution does not affect the tax-exempt status of the Defeased Bonds, or any other obligations of the District; and

E. such additional conditions as are provided by the Defeasance Agent Agreement are met.

Section 8. Disposition of Surplus Monies. Cash balances in the Defeasance Fund shall be invested in the manner set forth in the Defeasance Agent Agreement. Investment income resulting from the investment of such cash balances and any surplus resulting from any substitution of Government Obligations pursuant to Section 5 of this resolution or otherwise on hand in the

Defeasance Fund shall be transferred to the Maintenance Fund of the District.

Section 9. General Authorization. The President and Secretary of the Board of Commissioners are hereby authorized and directed to take such other actions and execute such other documents as may be required to effect the defeasance of the Defeased Bonds as provided herein.

Section 10. Effective Date. This resolution shall take effect upon its adoption.

PASSED AND APPROVED by the Commissioners of Birch Bay Water and Sewer District, Whatcom County, Washington, at a regular meeting thereof this 8th day of September, 1988.

BIRCH BAY WATER AND SEWER DISTRICT
WHATCOM COUNTY, WASHINGTON

By Francis A. Lischer
President and Commissioner

Peter Lewis
Commissioner

Carl F. Reinhardt
Commissioner

ATTEST:

Thomas B. Bury
Secretary and Commissioner

ATCOM COUNTY WATER DISTRICT NO. 8 (BIRCH SA)
SEWER REVENUE REFUNDING AND CONSTRUCTION BONDS, 1977

EXHIBIT A

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DEBT SERVICE SCHEDULE

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DATE	PRINCIPAL	COUPON	INTEREST	PERIOD TOTAL	FISCAL TOTAL
1/ 1/89			47,025.00	47,025.00	47,025.00
7/ 1/89			47,025.00	47,025.00	
1/ 1/90			47,025.00	47,025.00	94,050.00
7/ 1/90			47,025.00	47,025.00	
1/ 1/91			47,025.00	47,025.00	94,050.00
7/ 1/91			47,025.00	47,025.00	
1/ 1/92		6.000000	47,025.00	47,025.00	94,050.00
7/ 1/92			47,025.00	47,025.00	
1/ 1/93	225,000.00	6.000000	47,025.00	272,025.00	319,050.00
7/ 1/93			40,275.00	40,275.00	
1/ 1/94	320,000.00	6.000000	40,275.00	360,275.00	400,550.00
7/ 1/94			30,675.00	30,675.00	
1/ 1/95	325,000.00	6.100000	30,675.00	355,675.00	386,350.00
7/ 1/95			20,762.50	20,762.50	
1/ 1/96	325,000.00	6.100000	20,762.50	345,762.50	366,525.00
7/ 1/96			10,850.00	10,850.00	
1/ 1/97	300,000.00	6.200000	10,850.00	310,850.00	321,700.00
7/ 1/97			1,550.00	1,550.00	
1/ 1/98	50,000.00	6.200000	1,550.00	51,550.00	53,100.00
	1,545,000.00		631,450.00	2,176,450.00	
ACCRUED	1,545,000.00		631,450.00	2,176,450.00	
	=====		=====	=====	

DATED 7/ 1/88 WITH DELIVERY OF 7/ 1/88

BOND YEARS 10,347.500

AVERAGE COUPON 6.192

AVERAGE LIFE 6.697

N I C % 6.102440 % USING 100.0000000

SEATTLE-NORTHWEST SECURITIES CORP.

RUNDATE: 09-07-1988 @ 07:23:06 FILENAME: WD8 KEY: 77C

WATCOM COUNTY WATER DISTRICT NO. 8 (BIRCH BA)
 PARTIAL DEFEASANCE OF SEWER REVENUE REFUNDING
 CONSTRUCTION BONDS, 1977 - AS OF 9/15/88

EXHIBIT B

COST OF CANDIDATES FOR ESCROW PORTFOLIO

DELIVERY DATE: 9/15/88

TYPE	MATURITY D A T E	COUPON	PAR AMOUNT	PRICE	COST	ACCRUED INTEREST	TOTAL COST
TNOTE	11/15/92	10.500000	85,000	106.750000	90,737.50	2,983.08	93,720.58
TNOTE	11/15/93	8.625000	285,000	100.875000	287,493.75	8,216.02	295,709.77
TNOTE	11/15/94	10.125000	295,000	106.750000	314,912.50	9,983.31	324,895.81
TNOTE	11/15/95	9.500000	650,000	103.500000	672,750.00	20,639.27	693,389.27
SUBTOTAL			1,315,000		1,365,893.75	41,821.68	1,407,715.43
BEGINNING CASH			4,018.63				
COST OF SECURITIES			1,407,715.43				
TOTAL COST OF ESCROW			1,411,734.06				

SEATTLE-NORTHWEST SECURITIES CORP.

RUNDATE: 09-07-1988 @ 09:23:10 FILENAME: KEY:

EXHIBIT C
A G R E E M E N T

THIS AGREEMENT, made and entered into as of the 1st day of September, 1988, by and between Birch Bay Water and Sewer District, Whatcom County, Washington (the "District"), and Seattle-First National Bank, Seattle, Washington (the "Defeasance Agent");

W I T N E S S E T H:

Section 1. Recitals. The District has issued and sold the following revenue bonds:

<u>Date of Issue</u>	<u>Authorizing Resolution</u>	<u>Herein Called</u>
December 1, 1977	252	Outstanding Bonds

The District by Resolution No. 459, adopted by the Board of Directors of the District on September 8, 1988 (herein called the "Resolution"), has determined to defease the Outstanding Bonds numbered 838 through 1146 (herein called the "Defeased Bonds"). Reference should be made to the Resolution for a detailed description of the defeasance plan.

Section 2. Provisions for Defeasing the Defeased Bonds.
The District has pledged in the Resolution and hereby agrees to deposit certain moneys with the Defeasance Agent and agrees to promptly purchase and irrevocably deposit with the Defeasance Agent pledged in trust for the security and benefit of the holders and owners of the Defeased Bonds sufficient obligations or evidence thereof ("Government Obligations") as described in

Appendix A attached hereto, and any money, if necessary, to provide for the payment of:

(a) Principal and interest which will become due and payable on and before January 1, 1996, on the Defeased Bonds.

(b) The redemption price payable for the principal of the then outstanding Defeased Bonds on January 1, 1996.

Such Government Obligations shall be paid for out of monies now on hand in the 252 Bond Fund of the District.

The District agrees that it will cause to be delivered to the Defeasance Agent statements setting forth the maturity schedules of the Defeased Bonds by number, amount, date of maturity and interest rates, the amount of interest to be paid on each semiannual interest payment date, and the amount of the principal to be paid on the date that the Defeased Bonds are to be redeemed.

The District by the Resolution has irrevocably called the outstanding Defeased Bonds for redemption and prepayment on January 1, 1996. Said provisions for defeasance, payment, redemption and prepayment of the Defeased Bonds shall be irrevocable upon the final establishment of the Defeasance Fund and delivery of the Government Obligations to the Defeasance Agent. The Defeasance Agent, in concert with the Treasurer of the District (the "Treasurer"), shall provide for publication and mailing of the proper notices of such redemption and prepayment in accordance with the provisions of Resolution No. 252 of the District and the Resolution. The cost of such publications shall be paid by the District.

Section 3. Disbursements by Defeasance Agent. The Defeasance Agent shall present for payment on the due dates thereof any Government Obligations so deposited with it and shall apply the proceeds derived therefrom and the interest paid thereon in accordance with the provisions of the Resolution and this agreement. Monies shall be transferred, in a timely manner, by the Defeasance Agent to the Treasurer or, at the direction of the Treasurer, to the fiscal agency or agencies of the State of Washington, in amounts sufficient for the payments specified in subparagraphs (a) and (b) of Section 2 of this agreement.

Section 4. Custody and Safekeeping of Obligations. For as long as any of the Defeased Bonds are outstanding, on or before the twentieth day of each February and August, commencing with February 20, 1989, the Defeasance Agent shall render a statement as of the last day of the preceding month to the Treasurer, which statement shall set forth the cash and Government Obligations held by the Defeasance Agent, any of such Government Obligations which have matured and the amounts received by the Defeasance Agent by reason of such maturity, the interest earned on any of such Government Obligations, a list of any investments or reinvestments made by the Defeasance Agent in other obligations and the interest and/or principal derived therefrom, the amounts of cash delivered to the Treasurer and the dates of the use thereof for the payment of the principal of and interest on the Defeased Bonds as the same shall become due and payable, and any other transactions of the Defeasance Agent pertaining to its duties and obligations as set forth herein. In the event the maturing

principal of and interest on the Government Obligations shall be at any time insufficient to make a payment described in subparagraphs (a) and (b) of Section 2 of this agreement, the Defeasance Agent shall give the District and the Treasurer prompt notice of such insufficiency.

All Government Obligations, monies and investment income deposited with or received by the Defeasance Agent pursuant to this agreement shall be held in trust for the specific purposes set forth herein and may not be used for any other purpose.

The District may, according to the terms of the Resolution, substitute other securities for the Government Obligations provided that such substituted securities must be direct non-callable obligations of the United States. The Defeasance Agent agrees to such substitutions if the conditions relative thereto contained in the Resolution are met; provided, however, that prior to effecting any such substitution, the District shall have obtained and delivered to the Escrow Agent:

(a) A verification addressed to the District and to the Defeasance Agent by a firm of certified public accountants or underwriters that the Government Obligations, the obligations to be substituted for Government Obligations (Substitute Obligations) and other moneys to be held by the Defeasance Agent after the proposed substitution for purposes of making the payments described in Section 2 will be adequate to make all remaining payments described in said Section 2 and that such Substitute Obligations are non-callable; and

(b) An opinion addressed to the District and the Defeasance Agent from nationally recognized bond counsel that such substitution of obligations will not cause the interest on the Defeased Bonds to become subject to federal income taxes and will not cause any other bond of the District to become an "arbitrage bond" as defined in Section 148 of the federal Internal Revenue Code of 1986 and the applicable regulations promulgated thereunder (as the same may be amended).

Section 5. Reinvestment of Proceeds of Government Obligations. The proceeds (principal and interest) and reinvestment proceeds of any Government Obligations and/or Substitute Obligations received by the Defeasance Agent in accordance with this Agreement that are not needed within five (5) business days of the receipt thereof to make a payment described in Section 2 shall be reinvested by the Defeasance Agent (on such date of receipt) for the benefit of the District and the holders of the Defeased Bonds, provided, that

(a) Such proceeds and reinvestment proceeds shall be reinvested only in United States Treasury Certificates, Notes and Bonds--State and Local Government Series ("SLGS"), or other direct non-callable obligations of the United States; and

(b) The obligations in which such proceeds are reinvested shall mature not later than the date the principal thereof and interest thereon are needed to make one or more payments described in Section 2 or the next interest payment date on the Defeased Bonds; and

(c) to the extent obligations meeting the requirements of (a) and (b) above are not available, such proceeds shall be held uninvested in the escrow account.

Section 6. Surplus Monies. If at any time during the term of the escrow created pursuant to this irrevocable Defeasance Agreement, there should be Government Obligations, Substitute Obligations, and/or monies held by the Defeasance Agent in excess of that required to make all of the payments described in Section 2, when due, considering the interest to be earned on such Government Obligations or Substitute Obligations, and the District requests that such surplus obligations or the proceeds thereof or such surplus monies be returned by the Defeasance Agent to the District, the Defeasance Agent shall do so forthwith; provided, however, that prior to requesting any such transfer, the District shall have furnished to the Defeasance Agent:

(a) A supplemental verification addressed to the District and the Defeasance Agent by a firm of certified public accountants or underwriters that the Government Obligations, Substitute Obligations and other monies to be retained by the Defeasance Agent for the purpose of making the payments described in Section 2 will be adequate to make all such payments; and

(b) An opinion addressed to the Defeasance Agent and the District from nationally recognized bond counsel that such transfer will not cause the interest on the Defeased Bonds to become subject to federal income taxation, and will not cause any other bond of the District to become an "arbitrage" bond, as

defined in Section 148 of the federal Internal Revenue Code of 1986 and the applicable regulations promulgated thereunder (as the same may be amended).

Section 7. Duties and Obligations of the Defeasance Agent.

The duties and obligations of the Defeasance Agent shall be as prescribed by the provisions of this agreement and the Resolution and the Defeasance Agent shall not be liable except for the performance of its duties and obligations as so specifically set forth and to act in good faith in the performance thereof, and no implied duties or obligations shall be incurred by the Defeasance Agent other than those specified herein.

None of the provisions contained in this Agreement shall require the Defeasance Agent to use or advance its own funds or otherwise incur personal or financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder.

The Defeasance Agent may consult with counsel of its choice, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or not taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

Section 8. Compensation of Defeasance Agent. The arrangements heretofore made for the payment to the Defeasance Agent of the sum of \$3,200 for services rendered by it pursuant to the provisions of this agreement are satisfactory to it and such payment is inclusive of all fees, compensation and expenses of the Defeasance Agent. Such arrangement for compensation and

expenses is intended as compensation for the ordinary services as contemplated by this Agreement, and in the event that the Defeasance Agent renders any service hereunder not provided for in this Agreement, or the Defeasance Agent is made a party to or intervenes in any litigation pertaining to this Agreement or institutes interpleader proceedings relative hereto, the Defeasance Agent shall be reasonably compensated by the District for such extraordinary services and reimbursed for all fees, costs, liability and expenses (including reasonable attorneys' fees) occasioned thereby.

Section 9. Notification. In the event that this agreement is amended or revoked, or if any provision hereof is adjudged to be severed from this agreement, notification thereof shall be sent to:

Moody's Investors Service
Attn: Public Finance Rating Desk/
Refunding Bonds
99 Church Street
New York, NY 10007

BIRCH BAY WATER AND SEWER DISTRICT
WHATCOM COUNTY, WASHINGTON

By *Thomas H. Fischer*
President, Board of Commissioners

ATTEST:

Dorinda Kume
Secretary, Board of Directors

SEATTLE-FIRST NATIONAL BANK

By _____

(Title)


C E R T I F I C A T E

I, _____, do hereby certify that I am the duly elected, qualified and acting Secretary of Birch Bay Water and Sewer District, Whatcom County, Washington, and the custodian of its records; that the attached and foregoing is a full, true and correct copy of Resolution No. 459, entitled,

A RESOLUTION OF BIRCH BAY WATER AND SEWER DISTRICT, WHATCOM COUNTY, WASHINGTON, IRREVOCABLY PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON CERTAIN OUTSTANDING REVENUE BONDS OF THE DISTRICT.

and that said resolution was adopted by the affirmative vote of the Commissioners of said District at a regular meeting of September 8, 1988, at which a quorum of the Commission was present and for which due and proper notice was given; that said resolution has not been altered or amended, and the same is in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the District this 8th day of September, 1988.



Secretary of Birch Bay Water and
Sewer District, Whatcom County,
Washington

(Official Seal)