

RESOLUTION NO. 653

A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF BIRCH BAY WATER & SEWER DISTRICT, WHATCOM COUNTY,  
WASHINGTON, FOR PRELIMINARY ACCEPTANCE OF THE BENEFIT AREA OF  
SYLVIA STREET SUBJECT TO FINAL REVIEW FOLLOWING PUBLIC HEARING

WHEREAS, the Birch Bay Water and Sewer District ("District") and Birch Bay Properties, Inc., a Washington corporation ("Developer"), entered into a Developer Extension Agreement, in accordance with which the Developer completed installation of water and sewer extension facilities to a development known as "Bayview Terrace"; and

WHEREAS, portions of the sewer and water extension facilities installed by Developer appear to benefit real property other than Bayview Terrace; and

WHEREAS, Developer is generally entitled to reimbursement from benefited real property owners seeking connection to such water and sewer extension facilities, for the cost of such facilities in excess of Developer's fair pro rata share therefor; and

WHEREAS, the District and Developer may enter into a Reimbursement Agreement ("Agreement", attached hereto at Exhibit 1); and

WHEREAS, it is contemplated the Agreement may set forth the reimbursement amount to which Developer is entitled to upon connection to the water and sewer extension facilities by the benefited property depicted in Exhibit C of the Agreement ("Benefited Property"); and

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

NOW, THEREFORE, be it resolved by the Board of Commissioners ("Board") of Birch Bay Water and Sewer District, Whatcom County, Washington as follows:

Section 1: The property shown on Exhibit C of Exhibit 1 is hereby preliminarily determined to be benefited by the Bayview Terrace development. It is further preliminarily determined that the owners of the Benefited Property, upon connection to the District water and sewer extension facilities, should be required to pay the following charges:

<u>Tax Parcel No.</u>	<u>Water Facility</u>	<u>Sewer Facility</u>
405136 539055	\$11,342.49	\$12,019.38
405136 560044	\$11,342.49	\$12,019.38

The District shall schedule a public hearing to determine whether the Benefited Property has been properly identified as benefited from the Bayview Terrace development, the appropriate charge for reimbursement, and whether there are any other properties so benefited. Subject to further consideration and a final decision following a public hearing, the District General Manager may be authorized by the Board to enter into an Agreement on behalf of the District with Developer substantially as set forth in Exhibit 1.

Section 2: In the event the District decides to enter said Agreement with Developer, it is anticipated that the District would collect the above-listed charges from the owners of the Benefited Property and that such charges will be the sole source of funds from which reimbursement to the Developer can and will be made by the District, only as and when the same are collected.

Section 3: In the event the District decides to enter into the Agreement with Developer, the District's right to collect reimbursement charges and the Developer's right to receive reimbursement shall terminate upon expiration of the Agreement, which shall be seven (7) years after the date of final acceptance of title to the extension facilities by the District.

Section 4: BE IT FURTHER RESOLVED that any resolutions or parts of resolutions in conflict herewith are hereby repealed insofar as they conflict with the provisions of this resolution.

Section 5: If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Resolution. The Board of Commissioners hereby declare that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, and if, for any reason, this Resolution should be declared invalid or unconstitutional, then the original Resolution or Resolutions shall be in full force and effect.

Section 6: This Resolution shall be effective immediately.

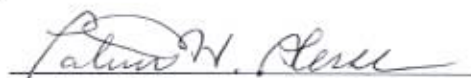
ADOPTED by the Board of Commissioners of Birch Bay Water & Sewer District, Whatcom County, Washington, at a regular meeting held the 25 day of August, 2005.

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

THIS IS TO CERTIFY that the above is a true and correct copy of Resolution No. 653 of Birch Bay Water & Sewer District, Whatcom County, Washington, adopted at the regular meeting of the Board of Commissioners on August 25, 2005.

  
SECRETARY



**After Recording Please Return To:**

Attn:  
Birch Bay Water and Sewer District  
7096 Point Whitehorn Road  
Birch Bay, Washington 98230-9675  
(360) 371-7100

**Document Title(s):** Reimbursement Agreement

**Reference Number(s) of Documents Assigned or Released:** N/A

☐ Additional on page \_\_\_\_\_ of document.

**Grantor(s): (Print Last name, First name, and Initials)**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

☐ Additional on page \_\_\_\_\_ of document.

**Grantee(s):** Birch Bay Water and Sewer District

**Legal Description (abbreviated: i.e. lot, block, plat of section, township, range):** A portion of the SE 1/4 of Section 36, Township 40N, Range 1W, W.M., Whatcom County, WA.

☐ Additional legal description is on page one of document.

**Assessor's Property Tax Parcel / Account Number:** 4051365390550000,  
405135390450000, 4051365390370000, 4051365600440000,  
4051365590700000, 4051365590630000, 4051365570560000

☐ Additional Parcel Numbers for additional legals are on page \_\_\_\_ of document.

**REIMBURSEMENT AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between BIRCH BAY WATER AND SEWER DISTRICT, a municipal corporation ("District") and Birch Bay properties, Inc., a Washington corporation, hereinafter referred to as "Developer/Owner", respectively.

**RECITALS:**

A. The District is a duly organized water and sewer district under the laws of the State of Washington, and is empowered to furnish both water and sewer service, among other things, to property owners within and without the District in the manner provided by law; and

B. Developer/Owner heretofore entered into a Developer Extension Agreement ("Agreement") with District for the construction and installation of water and sewer system extensions to provide service to the area described on Exhibit "A" ("Developed Area") attached hereto; and Developer/Owner completed installation of water and sewer system extensions in accordance with the terms of the Agreement, portions of which are a benefit to real property within the District other than the Developed Area, which consists of water and sewer lines of a size and location described on Exhibits "B1" and "B2", respectively attached hereto and designated "Water/Sewer Extension Facilities"; and Developer/Owner is entitled to reimbursement from developers and real property owners seeking connection to such facilities for the cost of such facilities in excess of Developer's/Owner's fair pro rata share therefor, which costs have been determined as set forth below; and

C. The District will collect charges from the owners of property within the District, benefiting from the installation of the aforesaid Water/Sewer Extension Facilities; and such charges are the sole source of funds for the District from which reimbursement to the Developer/Owner can and will be made, as and when the same are collected; and

D. The District is permitted to enter into a Reimbursement Agreement with Developer/Owner under the provisions of RCW 35.91 *et seq.* and 57.08.005; and the parties desire to enter into a written agreement with reference to the foregoing matter; Now, Therefore,

**IN CONSIDERATION OF THE FOLLOWING** terms and conditions, the District and the Developer/Owner agree as follows:



1. **Completion of Facilities.** The installation of the Water/Sewer Extension Facilities described on Exhibits "B1" and "B2" in the developed area have been completed by Developer/Owner under an extension agreement with the District; and title thereto will be transferred to the District, and such Facilities will be a part of the District water and sewer system.

2. **Records/Costs.** Developer/Owner has obtained and submitted to the District accurate records which have been provided to the District of the actual cost of installing such facilities in accordance with the Agreement; and the District Engineer has reviewed and approved the costs of such Facilities as reasonable costs and District accepts such costs as costs which are subject to reimbursement; and District agrees to reimburse Developer/Owner in the manner and on the terms and conditions set forth in this agreement, in an amount not to exceed \$22,684.98 for water facilities and \$24,038.76 for sewer facilities, less administrative costs incurred by the District in collecting reimbursement charges. Developer/Owner agrees to reimburse the District for all administrative costs incurred by the District in collecting reimbursement charges. This reimbursement of collection related administrative costs and charges due from Developer/Owner to the District shall be deducted from the amount reimbursed to the Developer/Owner as provided in Paragraph 3.B.2. herein.

3. **Method of Reimbursement**

A. **Benefited Properties** The properties benefiting from the installation of the Extension Facilities as determined in the sole discretion of the District, and which did not contribute to the original cost thereof are as described on Exhibit "C" attached hereto.

B. **Charges.**

1. **Amount** Prior to allowing a benefited property to connect to the Extension Facilities, the District shall collect the fair pro rata share of the cost of installing such facilities as a charge from the owners of benefited properties. The benefited properties to which this provision shall apply are set forth on Exhibit "C". The amount of such reimbursement charges to be collected

prior to each connection is also set forth on Exhibit "C". Such charges may include, but are not limited to, pro rata share of District legal, engineering, administrative, set-up, handling and actual costs of the facility. Such reimbursement charges shall be in addition to all other District charges in effect at the time of seeking connection to such extension facilities, including without limitation, general facilities fees. Upon application by affected property owners, the District may further segregate reimbursement charges attributed to property benefited by the Extension Facilities. All costs of such segregation shall be borne by the party requesting such segregation.

2. **Payment** District shall deduct from all reimbursement charges it collects an amount equal to \_\_\_\_\_ per cent (\_\_\_\_%) of each collected amount to cover its administrative collection costs, and the remaining balance shall be paid over to Developer/Owner within sixty (60) days after receipt thereof.

C. **Payment Procedure** The District shall forward reimbursement funds referenced herein to Developer/Owner at Developer's/Owner's address provided herein or to Developer's/Owner's agent as authorized by Developer/Owner to the District in writing. As a condition of receiving such reimbursement funds, Developer/Owner or Developer's/Owner's agent shall execute a receipt to the District for such reimbursement amounts so paid upon a receipt form provided by the District. Such form shall include the legal description and name of the owner of the connecting property making payment of such amount to the District.

In the event of dispute as to the rightful party to receive such funds, District may pay the same to the Developer/Owner referenced herein or interplead such funds to the court; in either event, District shall thereupon be relieved of any further obligation or of any liability hereunder as to such reimbursement funds so paid. The Developer/Owner shall indemnify the District for any costs, including attorney fees, incurred by the District in such interpleader action.

4. **District Authority; Effective Date; and Contract Duration** The District is authorized to enter into this agreement by virtue of the provisions of



RCW 35.91 et seq. and RCW 57.08.005; and this Agreement shall remain in full force and effect for a period of seven (7) years, beginning from the date of final acceptance of title to the extension facilities by the District's Commissioners. All of Developer's/Owner's rights to reimbursement shall terminate upon expiration of said seven (7) year term, regardless of the status of reimbursement at that time.

5. **Recording** This contract shall be recorded in the office of the Whatcom County Auditor, Whatcom County, Washington, immediately upon execution by the District and the Developer/Owner.

6. **Agreement Implementation** The District will use its best efforts to collect and distribute the funds pursuant to the process set forth in this Agreement. However, the District, its officials, employees or agents shall not be held liable or responsible for failure to implement any of the provisions of this Agreement unless such failure was willful or intentional.

7. **General** This Agreement constitutes the entire agreement between the parties. All exhibits referred to herein are by this reference made a part of this Agreement as though set forth in full. This Agreement is binding upon the heirs, executors, administrators, successors and assigns, of each of the parties hereto.

8. **Assignment** The Developer/Owner shall not assign the whole or any part of this Agreement without the prior written consent of the District, and in the event of such assignment shall notify the District of the Name and address of the assignee.

BIRCH BAY WATER & SEWER DISTRICT

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF WASHINGTON     )  
                                      ) ss.  
COUNTY OF WHATCOM     )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of BIRCH BAY WATER & SEWER DISTRICT to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_ Signature \_\_\_\_\_

\_\_\_\_\_  
Title  
My appointment expires \_\_\_\_\_

DEVELOPER/OWNER:

By \_\_\_\_\_  
Name, Title, Birch Bay Properties, Inc.

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

STATE OF WASHINGTON     )  
                                      ) ss  
COUNTY OF WHATCOM     )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Birch Bay Properties, Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_ Title \_\_\_\_\_  
My appointment expires \_\_\_\_\_



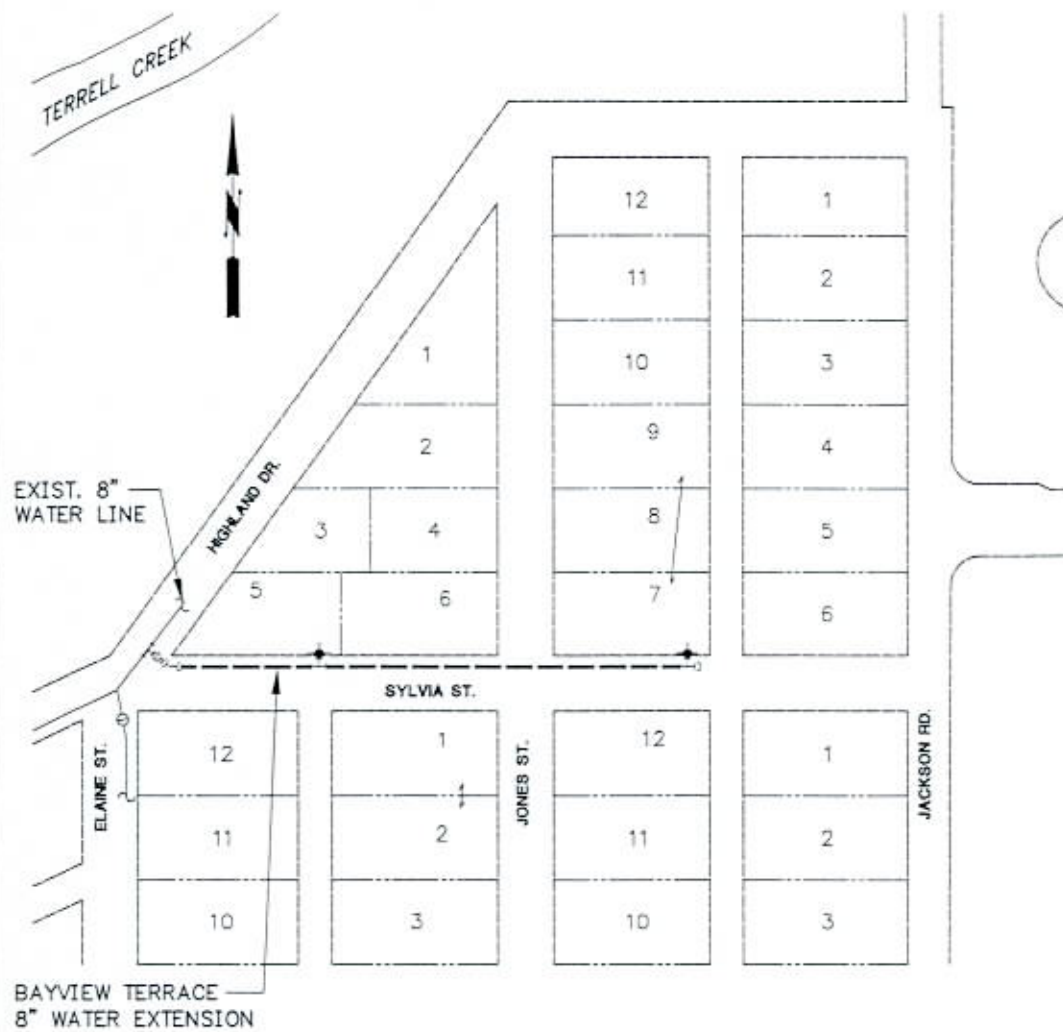
**EXHIBIT 'C'**  
**BENEFITTED PROPERTIES IN**  
**SECTION 36, TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M.,**  
**WHATCOM COUNTY, WASHINGTON**



PROPERTIES		WATER	SEWER
AREA	(A)	\$11,342.49	\$12,019.38
AREA	(B)	\$11,342.49	\$12,019.38



**EXHIBIT 'B1'**  
**WATER EXTENSION FACILITIES IN**  
**SECTION 36, TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M.,**  
**WHATCOM COUNTY, WASHINGTON**



160 80 0 160  
 SCALE IN FEET



**EXHIBIT 'B2'**  
**SEWER EXTENSION FACILITIES IN**  
**SECTION 36, TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M.,**  
**WHATCOM COUNTY, WASHINGTON**



EXHIBIT "A"  
 DEVELOPED AREA IN  
 SECTION 36, TOWNSHIP 40 NORTH, RANGE 1 WEST, W.M.,  
 WHATCOM COUNTY, WASHINGTON

