

**MEMORANDUM OF UNDERSTANDING FOR  
CAPITAL IMPROVEMENT PROJECT COORDINATION WITHIN BIRCH BAY VILLAGE**

**between**

**WHATCOM COUNTY (“County”), a political subdivision of the State of  
Washington, and the Birch Bay Village Community Club (“BBVCC”)**

**WHEREAS**, the Birch Bay Village Community Club (BBVCC) is the largest development in the Birch Bay watershed with over 1,100 residential lots; and

**WHEREAS**, the BBVCC has been an active stakeholder participating in comprehensive planning for Birch Bay for nearly two decades; and

**WHEREAS**, Whatcom County Council adopted the Birch Bay Community Plan as a sub-area plan of the Whatcom County Comprehensive Plan in 2004, in which Birch Bay Village was identified as a frequently-flooded area with stormwater and drainage issues; and

**WHEREAS**, County Council Resolution 2006-070 adopted the Birch Bay Comprehensive Stormwater Plan, which identifies stormwater issues, recommendations for programmatic solutions, capital improvement projects (CIPs), timelines and funding; and

**WHEREAS**, “Drainage Issues near Roger’s Slough at Birch Bay Drive (BV-01)” was listed as a priority capital improvement project in the 2006 Birch Bay Comprehensive Stormwater Plan due to excess runoff causing overflowing ditches and flooding of roadways and back yards; and

**WHEREAS**, the Birch Bay Watershed and Aquatic Resources Management (BBWARM) district was established in March 2007 for the purpose of implementing recommendations made in the Comprehensive Stormwater Plan; and

**WHEREAS**, the BBWARM subzone assessment was implemented in April 2009 and the funds collected are designated for stormwater CIPs in the BBWARM district in addition to other stormwater programmatic program needs; and

**WHEREAS**, in order to implement a CIP program in the Birch Bay watershed, BBWARM hired a consultant to reevaluate all recommended CIPs from the Comprehensive Stormwater Plan and develop a revised ranking system to prioritize these projects. The “Birch Bay Drive Tide Gate / Capacity Issue” (BV-01) was listed as a top 10 priority capital project in the 2009 Birch Bay Watershed Project Screening and Criteria Memorandum; and

**WHEREAS**, a Roger’s Slough Preliminary Concept Designs Technical Memorandum was completed in 2011, including hydrologic and hydraulic analysis, habitat assessment and evaluation of three conceptual design alternatives; and

**WHEREAS**, in December 2011, BBWARM hosted a public meeting to review the conceptual design alternatives, but BBVCC declined to participate in any of the proposed improvements at that time. As an alternative, the County agreed to provide log and sediment removal from the mouth of Roger’s Slough annually, or as needed, to reduce blockages and backwatering; and

**WHEREAS**, the Rogers Slough Lower Tributary Drainage Basin was identified as having eight drainage-related problems in the 2016 Birch Point, Terrell Creek Urban Area and Point Whitehorn Subwatershed Master Plan; and

**WHEREAS**, in November 2021 intense storm events resulted in unprecedented flooding of approximately 64 BBVCC homes, roads, golf courses, lakes and community spaces due to stormwater flows from within and outside the BBVCC boundary; and

**WHEREAS**, in response to the 2021 flooding, BBWARM hired a consultant to conduct a Birch Point Subwatershed Drainage Study, which identified three capital improvement projects on Birch Bay Village property to mitigate flood impacts, with an estimated cost of over \$500,000; and

**WHEREAS**, the County and BBVCC (collectively referred to herein as the “Parties”) share a common interest in working cooperatively to address community drainage issues, reduce flooding and protect and enhance water quality of surface waters discharging to Birch Bay,

**NOW THEREFORE, WHATCOM COUNTY AND THE BBVCC AGREE AS FOLLOWS:**

- 1.) Purpose.** The purpose of this Agreement is to identify the Parties’ respective roles and obligations related to agreed-upon stormwater capital projects (“Projects”), which endeavor to improve stormwater conveyance, reduce flooding and erosion, and protect and improve Birch Bay water quality. Both the County and BBVCC intend to be legally bound to the responsibilities contained herein until such time as the Agreement ends or is otherwise terminated pursuant to the terms of this Agreement.
- 2.) Project Selection.** The County will review stormwater Project proposals from BBVCC and consider proposals based on the following criteria: 1. The Project furthers the goals of the BBWARM programs; 2. The Project provides a benefit to community members outside of BBVCC; 3. The Project is a result of collaborative planning; 4. The Project includes provisions for cost sharing and clearly identifies ownership and maintenance responsibilities for both parties.
- 3.) Project Design.** Depending on the nature of the Project, the County may manage the design and permitting of those Projects agreed upon by the parties and will incorporate BBVCC comments into those designs where appropriate. This will include a public involvement component with assistance from the BBVCC.
- 4.) Project Construction.** Depending on the nature and estimated cost of a project, the County may advertise for construction bids. Those Projects put out for bid by the County

will be awarded pursuant to the County's purchasing requirements. For small-scale community benefit projects that involve minor cost share, design and/or permit assistance, construction and project management may be done by BBVCC, where BBVCC would be responsible for all maintenance and repair of constructed facilities and infrastructure.

- 5.) **Right-of-Way and Permits.** BBVCC agrees to grant all necessary rights-of-way, easements, permits and approvals deemed necessary by the County for the Projects.
  - 6.) **Construction Administration.** Project-dependent, the County may serve as the lead agency in administering the design and construction contracts for all Projects. As the lead agency on a Project, the County will perform all construction-phase engineering, inspection and documentation for the Project, unless authorized under number three above.
  - 7.) **Individual Projects to be Included as Addendums to this Agreement.** Due to the need for specific information and details associated with each Project constructed under this agreement, each Project shall be individually defined and incorporated into this agreement as an addendum. Each addendum will include specific information regarding the size and location of the Project, and the specific agreement details regarding Project financing, permanent and temporary easement requirements, and design and construction considerations.
  - 8.) **Responsible Persons.** The person responsible for the administration of this Agreement on behalf of Whatcom County shall be the Director of Public Works. The person responsible for administration of this Agreement on behalf of the BBVCC shall be the BBVCC General Manager. Responsible parties identified herein shall be deemed authorized to execute and bind their respective party to execute those Addendums referred to in paragraph 6 herein unless otherwise precluded by local, state, or federal law.
- 9.) **Dispute Resolution**
- a. **Arbitration.** The Parties mutually covenant to work cooperatively to timely resolve any issues that may arise between the Parties concerning this agreement. However, any dispute or claim shall be submitted to mandatory, conclusive and binding arbitration under the rules and procedures of Whatcom County Mandatory Arbitration Rules (WCMAR). The parties shall jointly stipulate to an arbitrator, or one will be selected in accordance with WCMAR. The arbitrator's award shall not be limited by otherwise applicable MAR rules. The prevailing party shall be entitled to reasonable attorney's fees and costs. The arbitrator's decision may only be appealed pursuant to RCW 7.04.
  - b. **Governing Law and Venue.** The Parties agree that any dispute shall be governed by the law of the State of Washington and shall be heard in Whatcom County Superior Court.
10. **County and BBVCC as Additional Insureds.** The County shall require the construction contractor who is ultimately awarded a project contract to provide the County and the BBVCC with a certificate of insurance and endorsement specifically naming the County and the BBVCC as additional insureds prior to the contractor commencing work on the construction project. The contractor will be required to provide at least \$1,000,000.00 per

occurrence in commercial general liability coverage and shall also provide proof of automobile insurance coverage and workers' compensation coverage. Such insurance shall be primary and non-contributory to any coverage carried by the County and the BBVCC.

**11. Mutual Termination for Convenience.** The County or BBVCC may terminate this agreement, without cause, upon 30 days written notice to the non-terminating party subject to the following limitation: Termination for convenience may not occur until the completion of any pending or active Project identified by an executed addendum as provided for herein in paragraph 6.

**12. Administration.** The parties do not intend to create any new or separate legal or administrative entity by this agreement but, rather, intend for this mutual Agreement to govern the BBVCC financial commitment to support the project. The terms and conditions contained herein reflect the voluntary participation of the parties. This agreement shall be in effect until both parties mutually agree to dissolve the agreement.

**13. Relationship to Other Agreements.** The entire agreement between the parties hereto relative to the specified projects is contained in this Agreement. This Agreement is in addition to, and is not intended to replace or substitute for any other agreement between Whatcom County and the BBVCC. Those other agreements continue in effect according to the terms of those agreements.

DATED this 2 day of October, 2023.

  
\_\_\_\_\_  
BBVCC General Manager

**IN WITNESS WHEREOF**, the parties have executed this agreement in Bellingham, Washington, to exchange certain engineering and construction services on the day and year herein indicated.

DATED this 2 day of October, 2023,

  
\_\_\_\_\_  
BBVCC Board of Directors President

STATE OF WASHINGTON )

: ss

COUNTY OF WHATCOM )

On this day personally appeared before me ERNEST HUYCHINS, to me known to be the President of the Board of Directors of BBVCC, the BBVCC that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the BBVCC, for the uses and purposes therein mentioned, and on oath stated that s/he is authorized to execute the said instrument on behalf of said BBVCC.

WITNESS my hand and official seal this 2 day of October, 2023.



Linda L Hatton  
NOTARY PUBLIC in and for the State of

Washington: Residing at FERNDALE

My Commission Expires: 6/11/2026

Approved as to form: [Signature]  
Attorney for BBVCC

**IN WITNESS WHEREOF**, the parties have executed this agreement on the day and year herein indicated.

**FOR WHATCOM COUNTY**

\_\_\_\_\_  
Satpal Singh Sidhu, Whatcom County Executive

**APPROVED AS TO FORM:**

**DEPARTMENTAL APPROVAL:**

Chris Quinn - authorized 10/03/2023 \_\_\_\_\_

Christopher Quinn  
Senior Civil Deputy Prosecuting Attorney – Civil Division

Elizabeth Kosa, Public Works Director

STATE OF WASHINGTON )

COUNTY OF WHATCOM ) ss.  
)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me personally appeared Satpal Singh Sidhu, to me known to be the Whatcom County Executive, and who executed the above instrument and who acknowledged to be the act of signing and sealing thereof.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington: Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_