

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

JON HUTCHINGS
Director



NATURAL RESOURCES

322 N. Commercial Street, Suite 110
Bellingham, WA 98225
Telephone: (360) 778-6230
FAX: (360) 778-6231
www.whatcomcounty.us

MEMORANDUM

TO: The Honorable Satpal Singh Sidhu, Whatcom County Executive, and
Honorable Members of the Whatcom County Council

THROUGH: Jon Hutchings, Director

FROM: Gary S. Stoyka, Natural Resources Program Manager

DATE: April 6, 2021

RE: April 13, 2021 Council Water Work Session

Please refer to the proposed agenda below for the next Water Work Session. Additional supporting documents may be distributed at or before the meeting.

AGENDA

| | | | |
|---------------------|---|--------------------------|---------------------------------|
| Date: | Tuesday, April 13, 2021 | | |
| Time: | 10:30 a.m. to 11:45 a.m. | | |
| Place: | Virtual Meeting. For instructions on how to watch or participate in this meeting, please visit us at www.whatcomcounty.us/joinvirtualcouncil or contact the Council Office at 360.778.5010. View meeting schedules, agendas, minutes, videos, and archives at www.whatcom.legistar.com . | | |
| | | | |
| Time | Topic | Council Action Requested | Background Information Attached |
| 10:30 AM – 10:45 AM | Overview of 2021 Flood Control Zone District Capital Projects | Informational | None |
| 10:45 AM – 11:15 AM | Water Resources Update | Discussion | None |
| 11:15 AM – 11:45 AM | Sudden Valley Community Association Memorandum of Understanding | Discussion | Memorandum of Understanding |

If you have questions, please feel free to call me at (360) 778-6218.

cc:

Dana Brown-Davis
George Boggs
Beth Bushaw
Atina Casas
Cathy Craver

Lonni Cummings
Erika Douglas
Kristi Felbinger
Josh Fleischmann
Karen Frakes

Paula Harris
Jim Karcher
Mike McFarlane
Roland Middleton
Jill Nixon

Kraig Olason
Mark Personius
Doug Ranney
Jennifer Schneider
Tyler Schroeder

John Thompson
John Wolpers

**MEMORANDUM OF UNDERSTANDING FOR
CAPITAL PROJECT COORDINATION WITHIN THE LAKE WHATCOM WATERSHED**

between

WHATCOM COUNTY ("County"), a political subdivision of the State of Washington, and
the Sudden Valley Community Association ("SVCA")

WHEREAS, Lake Whatcom is the drinking water source for approximately 100,000 Whatcom County residents, including the residents of Sudden Valley; and

WHEREAS, the Sudden Valley Community Association (SVCA) is the largest development in the Lake Whatcom watershed; and

WHEREAS, the SVCA has been an active stakeholder participating in the Lake Whatcom Management Program since 1999; and

WHEREAS, County Council Resolution 2008-036 establishes a comprehensive stormwater management plan for the county portion of the Lake Whatcom watershed; and

WHEREAS, the United States Environmental Protection Agency (USEPA) approved the final Lake Whatcom Total Maximum Daily Load (TMDL) Water Quality Improvement Report and Implementation Strategy for phosphorus and fecal coliform bacteria in April 2016, which requires the City of Bellingham and the County to develop a response strategy; and

WHEREAS, the County utilizes the Lake Whatcom Comprehensive Stormwater Management Plan to guide the building of capital improvement projects to improve water quality from stormwater runoff; and

WHEREAS, the plan recommends water quality improvement projects to reduce phosphorus from entering Lake Whatcom from areas within the SVCA drainages; and

WHEREAS, the County and SVCA (collectively referred to herein as the "Parties") share a common interest in working cooperatively to protect and enhance surface waters discharging to Lake Whatcom;

NOW THEREFORE, WHATCOM COUNTY AND THE SVCA 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 protect and improve Lake Whatcom water quality. Both the County and SVCA 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 Design. The County will manage the design and permitting of those Projects agreed-upon by the parties and will incorporate SVCA comments into those designs where appropriate. This will include a public involvement component with assistance from the SVCA.

3.) Project Construction The County will advertise for construction bids, and will award construction contracts under the County's purchasing requirements. The County will fund construction of water quality treatment facilities.

4.) Right-of-Way and Permits. SVCA agrees to grant all necessary rights-of-way, easements, permits and approvals deemed necessary by the County necessary for the Projects.

5.) Construction Administration. The County will serve as the lead agency in administering the design and construction contracts for all projects, and will perform all construction-phase engineering, inspection and documentation for the project.

6.) 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 will be defined and incorporated into this agreement as an addendum. Each addendum will include specific information regarding the size, location and specific agreement details regarding project financing, permanent and temporary easements, design and construction considerations.

7.) 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 SVCA shall be the SVCA General Manager. Responsible parties identified herein are 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.

8.) Ownership and Maintenance of Facilities.

- a) The County shall own the stormwater water quality treatment facilities installed as part of any Project, and as defined in their respective facility specific permanent easements constructed under this agreement. The SVCA shall provide the County with dedicated access and maintenance easements at 30% design. The County shall provide or pay for operation, inspection maintenance and repair of all water quality treatment facilities installed by the County, as described in future addenda.
- b) SVCA will manage their existing drainage conveyance systems and new drainage conveyance systems installed as a component of water quality treatment facilities as constructed under this agreement in a manner that will protect the County water quality treatment facilities from excessive fouling from sediment laden stormwater. Upon notification by the County, SVCA will address conditions that are generating excessive sediments entering the surface flows that contribute to County owned water quality treatment facilities.

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 SVCA as Additional Insureds. The County shall require the construction contractor who is ultimately awarded the contract to provide the County and the SVCA with a certificate of insurance and endorsement specifically naming the County and the SVCA as additional insureds prior to the contractor commencing work on the construction project. The contractor will 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 SVCA.

11.) Mutual Termination for Convenience. The County or SVCA 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.

11.) 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 SVCA 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.

12.) 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 SVCA. Those other agreements continue in effect according to the terms of those agreements.

DATED this _____ day of _____, 2021.

_____, SVCA 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 _____ day of _____, 2021,

_____, SVCA President
Board of Commissioners

STATE OF WASHINGTON)

: ss

COUNTY OF WHATCOM)

On this day personally appeared before me _____, to me known to be the _____ of the Board of Commissioners of SVCA, the SVCA that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the water district, 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 SVCA.

WITNESS my hand and official seal this _____ day of _____, 2021.

NOTARY PUBLIC in and for the State of

Washington: Residing at _____

My Commission Expires: _____

Approved as to form:

_____, Attorney for SVCA

FOR WHATCOM COUNTY

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NOTARY PUBLIC in and for the State of

Washington: Residing at _____

My Commission Expires: _____