

MEMORANDUM OF UNDERSTANDING

Between
WHATCOM COUNTY
and
THE CITY OF BELLINGHAM
Regarding the
STATE ENVIRONMENTAL POLICY ACT CO-LEAD AGENCY AGREEMENT
FOR THE ABC RECYCLING FACILITY

I. PARTIES

This Memorandum of Understanding (MOU) is entered into by and between Whatcom County (County) and the City of Bellingham (City), collectively the “Parties.”

II. PURPOSE

The purpose of this MOU is to establish and describe a collaborative effort between the Parties for the sharing of lead agency responsibilities under the State Environmental Policy Act (SEPA), chapter 43.21C RCW, to conduct an environmental review for the ABC recycling facility project proposed by ABC (Applicant). This MOU delineates the duties of the co-lead agencies, how decisions will be made, a plan for resolution of conflicts, how the MOU may be dissolved, and other terms.

III. AUTHORITIES

The Washington State Environmental Policy Act (RCW 43.21C) and its implementing regulations.

IV. PRINCIPLES OF AGREEMENT

A. The Parties mutually agree to:

1. Work together to ensure consistency and coordination in the development and preparation of a SEPA document.
2. Work together to ensure involvement of other state and federal agencies, local governments and agencies, Indian tribes, non-governmental organizations, and other interested parties of benefit to the process of developing and preparing a SEPA document.
3. Work together in apprising each other, as far in advance as possible, of any related actions or problems that might affect the environmental analyses and documentation process or that might affect either of the Parties.

B. General Duties

1. Whatcom County shall act as nominal lead. As nominal lead, the adopted SEPA public notice and hearing procedures of Whatcom County shall be used for this proposal. In the

case of an appeal, the final decision shall be made by the Whatcom County and the City of Bellingham jointly pursuant to paragraph V(D) below.

2. The Whatcom County and the City of Bellingham, either jointly or independently, may determine that consultant(s) are needed to assist in completing the required SEPA analysis and documentation for this proposal. Consistent with paragraph IV(C)(2) below, consultants shall be hired by either the Whatcom County or the City of Bellingham pursuant to each agency's regulations.
3. Comments on all SEPA document(s) received or recorded by the City of Bellingham shall be forwarded to the County.
4. In all other respects, the two co-lead agencies shall act as partners in meeting the responsibilities of lead agency under SEPA, with equal standing in all decisions to be made.

C. Preparing the Analysis:

1. It is expected that the Applicant will provide all relevant information regarding the proposal, environmental impacts, and potential mitigation in support of the proposal request.
2. Information provided by the Applicant shall be reviewed and supplemented by Whatcom County and the City of Bellingham. Consistent with Section IV(B)(2), Whatcom County and the City of Bellingham may seek the assistance of outside consultants related to their respective areas of analysis.
3. Any additional analysis identified as necessary by Whatcom County or the City of Bellingham will be conducted by qualified experts.

D. Scope/Content:

1. Mitigation identified and/or assessed in the SEPA document(s), beyond that suggested by the Applicant, shall be determined by the co-lead agencies. If a SEPA document is prepared for the proposal, the co-lead agencies shall jointly design the scope of the document so that both agencies are satisfied that a range of reasonable alternatives is represented.
2. At a minimum, a representative of each agency shall review the environmental checklist and documentation prior to issuance of all necessary SEPA documents. The responsible official from each agency shall sign the documents prior to issuance. Signatures of both the responsible officials shall represent approval of the document, including the adequacy of the environmental analysis it contains.

V. DECISION MAKING AND DISPUTE RESOLUTION

- A. The Parties agree to try to make decisions by consensus throughout the SEPA process in regards to scope, content, and timing of all SEPA documents. The co-lead agencies recognize that the final SEPA document must contain sufficient environmental analysis for decision-

making of all agencies with jurisdiction. Therefore, areas of environmental concern, potential mitigation, and reasonable alternatives suggested by either co-lead agency shall be included in the document.

- B. If the Parties cannot agree on an issue that would prevent their approval of the SEPA document or otherwise prevent them from sharing lead agency duties, either agency may withdraw from this MOU following notification to the other co-lead agency in writing of the issue under dispute, including a suggested resolution. The co-lead agency having receipt of such a letter shall have the option to agree to the suggested resolution, offer an alternate resolution, or agree to dissolve the MOU.
- C. If at any time the MOU is dissolved, Whatcom County shall acquire full responsibility as lead agency for the proposal and shall continue with completion of the SEPA process.
- D. Whatcom County and the City of Bellingham will both participate in any appeal challenging the environmental review contemplated by this agreement. In any such appeal, Whatcom County and the City of Bellingham will cooperate and share responsibilities and decision-making authority equally, consistent with the principles outlined above. In the event that this MOU is dissolved or otherwise terminated for any reason, Whatcom County shall have sole responsibility for any appeal challenging the environmental review for the proposal.

VI. OTHER PROVISIONS

- A. Nothing in this MOU shall be construed as limiting or affecting in any way the authority or legal responsibilities of Whatcom County or the City of Bellingham.
- B. Nothing in this MOU binds the Parties to perform beyond their respective authorities.
- C. Nothing in this MOU requires the Parties to assume or expend funds in excess of available appropriations, authorized by law.
- D. The mission requirements, funding, personnel, and other priorities of the Parties may affect their ability to fully implement all the provisions identified in this MOU.
- E. This MOU is neither a fiscal nor a funds obligation document. Specific activities that involve the transfer of money, services, or property between the Parties shall require execution of separate agreements or contracts.
- F. Nothing in this MOU restricts the Parties from participating in similar activities or agreements with other public or private agencies, organizations, or individuals.
- G. Each and every provision in this MOU is subject to the laws of the State of Washington, the laws of the United States of America, and to the delegated authority assigned in each instance.
- H. Amendments or supplements to this MOU may be proposed by the Parties and shall become effective upon written approval of all Parties.

- I. This MOU shall become effective upon signature by all Parties. This MOU may be executed in one or more counterparts, each of which will be considered an original document. This MOU shall remain in effect until terminated in writing by both or one of the parties. Either party may terminate this MOU upon written notice to the other party at least 30 days prior to termination.
- J. The following persons shall be the contact persons for all communications regarding this Agreement.

Whatcom County	City of Bellingham
Name: Amy Keenan	Name:
Address: Whatcom County Planning & Development Services Office at the Northwest Annex, 5280 Northwest Road, Bellingham, WA 98226	Address:
Phone: (360) 778-5943	Phone:
Email: AKeenan@co.whatcom.wa.us	Email:

- K. The Parties may, from time to time, require changes in the scope of services performed under this Agreement. The Parties shall mutually agree to the changes by written amendment to this Agreement.

This Agreement is executed by the persons signing below, who warrant they have the authority to execute this Agreement.

 Satpal Sidhu, County Executive
 Whatcom County

Date: _____

EXECUTED, this _____ day of _____, 2024, for the **CITY OF BELLINGHAM**:

Departmental Approval:

Mayor

Department Head

Attest:

Approved as to Form:

Finance Director

Office of the City Attorney