



AFTER RECORDING RETURN TO:
 City of Bellingham
 Public Works, Engineering
 104 W. Magnolia St.
 Bellingham, WA 98225



**STORM DRAINAGE EASEMENT FOR PUBLIC STORMWATER
 RUNOFF (DISCHARGE) TO PRIVATE PROPERTY**

Grantor: Whatcom Transportation Authority

Grantee: City of Bellingham

Abbreviated Legal Description: ALL OF BLOCK 5, PLAT OF SEHOME ADDITION TO SEHOME AND WHATCOM (FOR COMPLETE LEGAL DESCRIPTION SEE PAGE 7, EXHIBIT A)

Assessor's Tax Parcel Nos.: 380317 414418 0000

Project No. PFC2016-0038

THIS STORM DRAINAGE EASEMENT FOR PUBLIC STORMWATER RUNOFF (DISCHARGE) TO PRIVATE PROPERTY ("Agreement") is entered into by and between WHATCOM TRANSPORTATION AUTHORITY, a Washington State municipal corporation and Public Transportation Benefit Area ("PTBA"), ("**Grantor**"), and the CITY OF BELLINGHAM, a first-class city and municipal corporation of the State of Washington ("**Grantee**"), (the "**City**"), collectively the "Parties."

RECITALS

WHEREAS, Grantor is the owner of real property described in Exhibit A and depicted in Exhibit B ("**Grantor's Property**"); and

WHEREAS, Grantor is required by City of Bellingham development regulations to make certain road improvements to a public road adjacent to Grantor's Property known as Midway Lane (hereinafter referred to as "**Public Road**"), also depicted in Exhibit B, and is further required to accommodate stormwater runoff from said road improvements; and

WHEREAS, Grantor's Property will be burdened by receiving additional stormwater from the Public Road, and it will be benefited by having additional land to develop; and

WHEREAS, Grantor is solely responsible for constructing, operating, maintaining and repairing all components of a private stormwater facility ("**Private Stormwater Facility**") located on, across and under Grantor's Property, which shall accept runoff from the Public Road, all in accordance with an Operations and Maintenance Manual approved by the City.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. **Recitals.** The above recitals are a part of this Agreement and the Parties represent and warrant that they are true and correct.

2. **Grant of Easement.** Grantor grants to the City a perpetual, non-exclusive easement on, across and under Grantor's Property for the purpose of inspecting the Private Stormwater Facility and allowing stormwater to flow from the Public Road into the Private Stormwater Facility located on, across and under Grantor's Property.

3. **Construction and Maintenance of the Private Stormwater Facility.** Grantor shall bear all costs, expenses, and risks arising out of or relating to the construction, operation, maintenance, and repair of the Private Stormwater Facility. If upon inspection by the City, it is determined that the Private Stormwater Facility is not being properly maintained or repaired, the City shall notify Grantor in writing of such fact specifying, with reasonable particularity, the maintenance or repair required. Within a reasonable period of time following receipt of such notice, Grantor shall undertake such maintenance or repair. If Grantor fails to undertake such maintenance or repairs within a reasonable time (or immediately in the case of emergencies), the City may undertake the necessary maintenance and repairs and recover the costs thereof from the Grantor.

4. **Indemnification and Hold Harmless.** Grantor shall release, defend, indemnify and hold harmless the City from all claims, injuries, penalties, and liabilities whatsoever arising out of or relating to the Private Stormwater Facility, whether such injury to persons and damage to property is due to the negligence of Grantor, its contractors, or its or their agents, servants, or employees. If a claim, suit, or action for injuries, death, or damages as provided for in the preceding sentence is caused by or results from the concurrent negligence of (a) Grantor or its agents, employees or contractors, and (b) the City or its agents, employees or contractors, the indemnity provisions provided for in the preceding sentence shall be enforceable only to the extent of the negligence of Grantor or its agents, employees or contractors.

5. **Compliance with Laws and Rules.** Grantor shall comply with all environmental permits, rules and regulations, and any other applicable statutes, rules, regulations whether federal, state, or municipal, relating to the Private Stormwater Facility.

6. **No Termination upon Breach.** No breach of this Agreement shall entitle either Party to cancel, rescind or otherwise terminate this Agreement; provided, however, that this provision shall not limit or otherwise affect any other right or remedy which such party may have hereunder by reason of any breach of this Agreement.

7. **Notices.** Any notices required under this Agreement shall be in writing and shall be provided by certified mail or personal delivery to the Parties at the following addresses:

To Grantor: Whatcom Transportation Authority
4011 Bakerview Spur
Bellingham, WA 98226-8056

To Grantee: City of Bellingham
Attn: Public Works Director
104 W. Magnolia Street, Suite 109
Bellingham, WA 98225

With copy to:

City of Bellingham Legal Department
Attn: City Attorney
210 Lottie Street
Bellingham, WA 98225

Notice shall be deemed received upon the earlier of three business days following deposit into the United States mail or upon actual receipt, whichever is sooner. Either party may change its notice address by providing written notice of such change, delivered in accordance with this Section.

8. **Jurisdiction and Venue.** Any dispute arising out of or relating to this Agreement shall be governed by the laws of the state of Washington and venue shall lie exclusively in the Superior Court for the State of Washington, Whatcom County: *

9. **Attorney's Fees.** In the event of any controversy, claim, or dispute arising out of or relating to this Agreement, the substantially prevailing party shall be entitled to recover its reasonable attorney's fees and costs, including but not limited to expert fees.

10. **No Waiver.** The failure of either Grantor or the City to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such

EASEMENT AGREEMENT

forbearance or waiver had occurred.

11. **Amendment.** This Agreement may be amended only by written instrument executed by all parties.

12. **Running Covenants.** All rights, title and privileges of this agreement and easement granted herein, including the benefits and burdens, shall run with the land, defined herein as Grantor's Property, and shall be binding upon and inure to the benefit of the Parties, their respective heirs, devisees, executors, administrators, the City's, assigns, and successors in interest.

EXECUTED this 5th day of April, 2019 for Grantor, **WHATCOM
TRANSPORTATION AUTHORITY**, by:



Peter Stark
Signature

Peter L Stark, General Manager
Print Name and Title

EXECUTED this 16th day of April, 2019 for Grantee, **CITY OF
BELLINGHAM**, by:



Kelli Linville
Mayor

Attest:

Brian Henshaw
Brian Henshaw, Finance Director
EASEMENT AGREEMENT

Departmental Approval:

Ted Carlson
Ted Carlson, Public Works Director

Approved as to Form:

Matthew Stamps
Office of the City Attorney

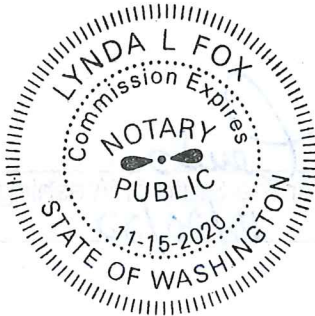
STATE OF WASHINGTON)

) ss.

COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Peter L. Stark 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 General Manager of **WHATCOM TRANSPORTATION AUTHORITY** to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED this 5th day of April, 2019.



Lynda L. Fox

NOTARY PUBLIC in and for the State of Washington
My appointment expires: November 15, 2020

STATE OF WASHINGTON)

) ss.

COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that **KELLI LINVILLE** is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the **MAYOR** of the **CITY OF BELLINGHAM** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 16th day of April, 2019.



Tracy Lewis
NOTARY PUBLIC in and for the State of Washington
My appointment expires: 10/20/22



Pacific Surveying & Engineering, Inc

land surveying • civil engineering • consulting • planning • gis

909 Squaticum Way Suite 111, Bellingham, WA 98225
Phone 360.671.7387 Facsimile 360.671.4685 Email info@psurvey.com

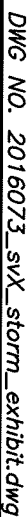
EXHIBIT 'A' SUBJECT PROPERTY LEGAL DESCRIPTION

ALL OF BLOCK 5, PLAT OF SEHOME ADDITION TO SEHOME AND WHATCOM, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 93, RECORDS OF WHATCOM COUNTY, WASHINGTON. EXCEPT THAT PORTION DEEDED TO THE CITY OF BELLINGHAM BY DEED RECORDED UNDER AUDITORS FILE NO. 1980600772 AND 1980600809. TOGETHER WITH VACATED ALLEY, VACATED NORTH HALF OF FOURTH STREET ABUTTING AND VACATED SOUTH HALF OF 5TH AVENUE AS VACATED BY CIVIL CAUSE NO. 37890, AND VACATED EAST HALF OF BROADWAY STREET AS VACATED BY CIVIL CAUSE NO. 55474.

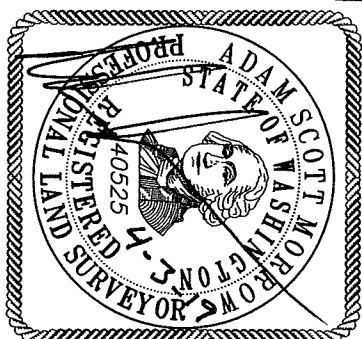
SITUATE IN WHATCOM COUNTY, WASHINGTON.



SITUATE IN A PORTION OF THE SW 1/4 OF THE NE 1/4 OF SECTION 17, TOWNSHIP 38 NORTH,
RANGE 3 EAST, W.M., CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON



SUBJECT PROPERTY OWNERSHIP:
WHATCOM TRANSPORTATION AUTHORITY
4111 BAKERVIEW SPUR
BELLINGHAM, WA 98226
T.P. #380317 414418 0000



N01°25'19"E
BAKERVILLE SPUR

