



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

July 12, 2010

Ordinance 16879

Proposed No. 2010-0345.2

Sponsors Patterson and Phillips

1 AN ORDINANCE authorizing the executive to enter into
2 an interlocal agreement with the Port of Seattle for the
3 provision of surface water management services.

4 STATEMENT OF FACTS:

5 1. The Port of Seattle ("the Port") must monitor stream flow in Miller,
6 Walker and Des Moines creeks for a period of fifteen years, which is until
7 2023, as a requirement of Section 401 Certification for the airport's Master
8 Plan Update Improvement projects. The Section 401 Certification is
9 required by the Washington State Department of Ecology ("WSDOE") of
10 any entity applying for a federal permit or license to conduct activities that
11 might result in a discharge of dredge or fill material into water or non-
12 isolated wetlands or excavation in water or non-isolated wetlands, in order
13 to ensure conformance with state water quality standards and other state
14 environmental regulations.

15 2. WSDOE has requested that an independent party with established
16 experience conduct the required stream flow monitoring.

17 3. King County has been, and is currently, monitoring stream flows
18 throughout King County as part of its comprehensive hydrologic
19 assessment program.

20 4. Since 2004, King County provided stream flow monitoring services to
21 the Port under a series of technical service agreements, which have
22 expired.

23 5. King County has also provided basin stewardship and monitoring
24 coordination services to jurisdictions in the Des Moines creek and Miller
25 creek basins through a series of agreements.

26 6. In the future, the Port may wish to request that King County provide
27 additional, not-yet-identified surface water services, which King County
28 may wish to provide subject to available staffing and budget authority.

29 7. Through an interlocal agreement, King County is able to provide
30 surface water management-related technical services to the Port on an
31 ongoing year-to-year basis, and the Port wishes to enter into an interlocal
32 agreement with King County for this purpose.

33 8. Under chapter 39.34 RCW, the Interlocal Cooperation Act, the parties
34 are each authorized to enter into an interlocal agreement for cooperative
35 action.

36 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

37 SECTION 1. The King County executive is hereby authorized to enter into an

38 interlocal agreement, in substantially the same form as Attachment A to this ordinance,
39 with the Port of Seattle for the provision of surface water management services.
40

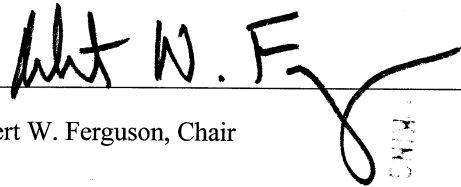
Ordinance 16879 was introduced on 6/21/2010 and passed by the Metropolitan King County Council on 7/12/2010, by the following vote:

Yes: 6 - Ms. Drago, Mr. Phillips, Mr. von Reichbauer, Ms. Patterson,
Ms. Lambert and Mr. Ferguson

No: 0

Excused: 3 - Mr. Gossett, Ms. Hague and Mr. Dunn

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



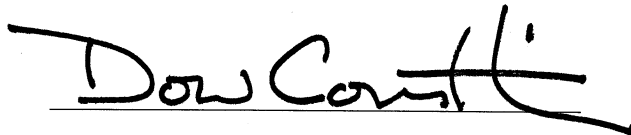
Robert W. Ferguson, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 22nd day of July, 2010.



Dow Constantine, County Executive

Attachments: A. Interlocal Agreement Between King County and the Port of Seattle for the Provision of Surface Water Management Services (Revised 6-29-10)

RECEIVED
2010 JUL 22 PM 4: 08
CLERK
KING COUNTY COUNCIL

**INTERLOCAL AGREEMENT
BETWEEN KING COUNTY AND THE PORT OF SEATTLE
FOR THE PROVISION OF SURFACE WATER MANAGEMENT SERVICES**

This Interlocal Agreement (“Agreement”) is hereby entered into by King County (“King County” or “the County”) and the Port of Seattle (“Port”), hereinafter referred to collectively as the “Parties,” to provide the terms under which the Water and Land Resources Division (WLRD) of the King County Department of Natural Resources and Parks will provide surface water management-related technical services to the Port at the Seattle-Tacoma International Airport.

WHEREAS, the Port must monitor stream flow in Miller, Walker and Des Moines Creeks for a period of 15 years as a requirement of the 401 Certification issued by the Department of Ecology for the Airport’s Master Plan Update Improvement projects; and

WHEREAS, the Department of Ecology has requested that an independent party with established experience conduct the required stream flow monitoring; and

WHEREAS, King County has been and is currently monitoring stream flows throughout King County as part of its comprehensive hydrologic assessment program; and

WHEREAS, since 2004 King County has been providing stream gaging services to the Port under a series of technical service agreements, which are now expired; and

WHEREAS, King County has also been providing basin stewardship and monitoring coordination services to jurisdictions of the Des Moines Creek and Miller Creek Basins through a series of agreements; and

WHEREAS, through an interlocal agreement, King County is able to provide surface water management-related technical services to the Port of Seattle, and the Port wishes King County to provide these services, and

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, the parties are each authorized to enter into an agreement for cooperative action;

NOW THEREFORE, the parties hereto agree as follows:

I. Purpose of the Agreement

The purpose of this Agreement is to establish the terms and conditions under which King County, as represented by its Water and Land Resources Division, will provide the Port with surface water management-related technical services. At the time of execution of this Agreement, the Parties have established that King County will provide to the Port on

an annual basis Des Moines Creek gaging services, as described in Exhibit One, attached to this Agreement and incorporated herein and made a part hereof. The Parties have also established that, at least for 2010 and possibly thereafter, King County will provide to the Port basin stewardship and monitoring coordination services as described in Exhibit Two, attached to this Agreement and incorporated herein and made a part hereof. The Parties also agree that this Agreement may be amended in the future pursuant to Sections III and V to enable the provision of similar surface water-related services.

II. Administration

- A. **Administrators.** WLRD and the Port will each designate an Administrator to coordinate on an as-needed basis to ensure compliance with the terms of this Agreement and to promote the efficient delivery of services. The Administrator for the Port shall be Robert Duffner, Surface Water Manager, or other representative as designated by the Port. The Project Administrator for King County shall be the WLRD Intergovernmental Coordinator or other representative as designated by the county.
- B. **Project Managers.** The Parties will each designate a Project Manager for Des Moines Creek gaging services and a Project Manager for basin stewardship and monitoring coordination services in order to manage the day-to-day project management. For the Des Moines Creek gaging services described in Exhibit One, the Project Manager for the Port shall be Aaron Moldver (or his replacement), and the Project Manager for King County will be David Funke or other representative as designated by the County. For the basin stewardship and monitoring coordination services described in Exhibit Two, the Project Manager for the Port will be Robert Duffner, Surface Water Manager (or his replacement), and the Project Manager for King County will be Dennis Clark (or other representative as designated by King County).
- C. **Conflict Resolution.** Any conflict that cannot be resolved by the Administrators will be referred for resolution to the Division Director of WLRD for King County, and the Aviation Planning and Environmental Services Director for the Port. This dispute resolution provision shall not be construed as prohibiting either Party from seeking

enforcement of the terms of this Agreement, or relief or remedy from a breach of the terms of this Agreement, in law or in equity.

III. Responsibilities

- A. Service provision will be on a calendar year basis (January 1 to December 31) or portion thereof, as described in specific scopes of work.
- B. For the Remainder of Year 2010
 - a. The scope of work and cost estimate for Des Moines Creek gaging services and basin stewardship services are shown on Exhibit One and Exhibit Two respectively for the year 2010. The Port Commission has already approved expenditure of funds to pay for these services in its 2010 budget. Therefore, once both Parties have signed the Agreement, King County agrees to provide these services.
- C. For 2011 and All Subsequent Years
 - a. By October 1st of each year, the Administrators will jointly develop written scopes of work and estimated costs for any surface water-related services required by the Port for the following year, in a form similar to the attached Exhibits. Service costs are subject to annual adjustments, including cost of living increases adopted by the King County Council.
 - b. Provision of basin steward services in a given year is dependent upon the participation of a number of jurisdictions. By August 1st of each year, King County will notify the Port whether it intends to provide basin stewardship services for the following year. However, King County reserves the right to withdraw its offer of basin steward services, so long as notice is provided to the Port by December 15th.
 - c. No later than January 1st of each year, the Port Administrator will obtain approval of the budget total from the Port Commission. The King County and Port Administrators shall jointly finalize the scope of work, schedule and budget, to document the services to be provided consistent with the Commission's budget approval. The Administrators will sign the scope of work to indicate their mutual agreement, and King County will provide the services. Such scopes of work shall be documented in new attachments to this agreement that are approved in writing

by both Administrators which attachments shall be incorporated by reference into this Agreement.

IV. Costs and Billing

- A. For each year in which services are provided, the Port will pay actual costs, including salaries, benefits and supplies, to provide all surface water-related services; provided however, that the Port will not pay more than the total cost estimate provided in the attached Exhibits and approved by the Port Commission.
- B. King County will invoice the Port for the actual cost of providing services on a quarterly basis, per the schedule below.
 - a. For the period January 1 to March 31: invoice to be received by May 1
 - b. For the period April 1 to June 30: invoice to be received by August 1
 - c. For the period July 1 to September 30: invoice to be received by November 1
 - d. For the period October 1 to December 31: invoice to be received by February 1 of the following year
- C. The Port will pay King County for billed amounts within 60 days after receipt of the invoice.
- D. As part of the Des Moines Creek gaging services provided pursuant to Exhibit One, the County owns the stream monitoring equipment (stage sensors/data loggers) currently existing at each gaging site, with the exception of 42R – Lake Reba Outlet which is owned by the Port. King County will continue to utilize the existing equipment at no additional cost to the Port. In the event that the Port determines it wishes to replace any existing equipment, the Port will pay all costs for the replacement equipment and retain ownership at project completion. King County will maintain and repair all equipment, whether owned by King County or the Port, according to the standards contained in Exhibit 1, Section B (3).

V. Effectiveness, Termination and Amendment

- A. This Agreement shall become effective upon signature by both Parties and shall remain in effect until terminated pursuant to Section V.B. below.
- B. This agreement may be terminated by either party for any reason upon provision of sixty (60) days written notice to the other Party.

- C. Except as provided in Section III.C.c. above, this Agreement may be amended, altered, or clarified only by written agreement of the Parties, and may be supplemented by addenda or amendments which have been agreed upon by both Parties in writing. Copies of such addenda and amendments shall be attached hereto and upon execution shall be incorporated herein and made a part hereof.
- D. This Agreement is a complete expression of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded. The Parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the Parties which shall be attached to the original Agreement.

VI. Reporting Obligations

- A. Except as provided in Section B, below, King County's sole reporting obligation under this Agreement is to provide the results of any activities conducted pursuant to this Agreement to the Port. The Parties agree that King County's reporting obligations do not extend to any third party, including any regulatory agency that may seek to obtain or require the results of any activities conducted pursuant to this Agreement. The Parties further agree that any reporting obligations that may exist with regard to third parties, including regulatory agencies, shall remain solely the responsibility of the Port. King County shall have no liability for any failure to meet any existing reporting requirements and the Port agrees to defend, indemnify and hold harmless King County for any damages, suits or claims by third parties related to failure to report the results of activities conducted pursuant to this Agreement.
- B. In the event that King County receives a request for information pursuant to the Washington Public Records Act, Ch. 42.56 RCW for results of any activities conducted pursuant to this Agreement, the King County Administrator will

immediately contact the Port Project Administrator, provide a copy of the request, and respond to the request in accordance with the terms of applicable law.

VII. Indemnification and Hold Harmless

- A. The Port shall protect, defend, indemnify, and save harmless King County, its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, judgments, penalties, and/or awards of damages, arising out of or in any way resulting from the Port's own negligent acts or omissions.
- B. King County shall protect, defend, indemnify, and save harmless the Port, its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, judgments, penalties, and/or awards of damages, arising out of or in any way resulting from King County's own negligent acts or omissions.
- C. Each Party agrees that its obligations under this Section VII. extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that a Party incurs any judgment, award, and/or cost arising therefrom,

including attorneys' fees, to enforce the provisions of this Article, all such fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's culpability.

- D. The indemnifications provided for in this Section shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day of _____, 2010.

Approved as to Form

KING COUNTY:

Deputy Prosecuting Attorney

King County Executive

Approved as to Form

PORT OF SEATTLE:

Port Counsel

Tay Yoshitani
Chief Executive Officer

