

July 13, 1994
SeaMOANPDES

Introduced by: CYNTHIA SULLIVAN

Proposed No.: 94-391

MOTION NO. 9370

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A MOTION authorizing the executive or his designee to enter into an agreement with the city of Seattle for coordinating National Pollutant Discharge Elimination System (NPDES) storm water permit responsibilities.

WHEREAS, in May, 1988 the former Council of the Municipality of Metropolitan Seattle (Metro) adopted the Final 1988 Combined Sewer Overflow Control Plan to comply with state requirements to achieve a 75-percent reduction in combined sewer overflows (CSOs) system wide by the year 2006, and

WHEREAS, the 1988 plan selected sewer separation projects as the most cost effective way to control CSOs in five Seattle drainage basins, including the Lander Street and Densmore basins, and

WHEREAS, the city of Seattle and Metro in 1989 signed the Lander Separation Project Memorandum of Understanding in which Metro agreed to retain full responsibility for compliance with any existing or future regulatory requirements established to identify, characterize or control discharges of pollutants from storm drains constructed under the project, including activities necessary to acquire NPDES permits and conditions therefor, and

WHEREAS, with the consolidation of King County and Metro, King County by and through its department of metropolitan services (DMS) is required to submit an application for an NPDES permit for storm water discharges, and

WHEREAS, as recommended by the Washington State Department of Ecology, King County is participating in the NPDES application process as a co-permittee with the city of Seattle, and

WHEREAS, the proposed agreement between the city of Seattle and King County has been negotiated to clarify the county's storm water permit responsibilities in the Lander

1 Street and Densmore drainage basins and to comply with the
2 Municipal Storm Water NPDES Permit;

3 NOW, THEREFORE, BE IT MOVED by the Council of King County:

4 The county executive or his designee is hereby authorized
5 to enter into the Memorandum of Agreement for Storm water
6 Management with the city of Seattle, substantially in the form
7 of Exhibit A attached hereto.

8 PASSED by a vote of 11 to 0 this 19th day of
9 September, 1994.

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KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

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Kent Pullen
Chair

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ATTEST:

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Gerald G. Peterson
Clerk of the Council

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Attachments: Exhibit A - Memorandum of Agreement for Storm
Water Management by and between the City of
Seattle and King County

MEMORANDUM OF AGREEMENT FOR STORMWATER MANAGEMENT
BY AND BETWEEN
THE CITY OF SEATTLE AND KING COUNTY

THIS AGREEMENT is made by and between the City of Seattle (the "City"), a city of the first class of the State of Washington, and King County, a political subdivision and municipal corporation of the State of Washington, which intends to carry out its obligations under this Agreement through its Department of Metropolitan Services (hereafter King County and its Department of Metropolitan Services will be referred to as "Metro").

WHEREAS, the City has responsibility for, among other things, regulating development under its shoreline, land use, building and other construction codes, and managing parks, streets and municipal utilities within its jurisdiction; and

WHEREAS, the City has enacted a Stormwater, Grading and Drainage Control Ordinance, Seattle Municipal Code ("SMC") Sections 22.800.010 through 22.808.150, to protect surface waters and receiving waters from pollution and to meet the requirements of any municipal stormwater NPDES permit issued to the City and for other purposes; and

WHEREAS, Metro is required by federal and state law to improve regional pollution control facilities by upgrading the Metro wastewater treatment system to provide secondary treatment by 1995 and to reduce the annual volume of combined sewer overflows by 75 percent before the year 2005. Metro's predecessor, the Municipality of Metropolitan Seattle, adopted Resolution No. 4780, as amended, to provide for secondary treatment and combined sewer overflow control in the regional Comprehensive Water Pollution Abatement Plan ("Plan"). Resolution No. 5332, adopted May 26, 1988, by the Municipality of Metropolitan Seattle, amended the Plan to further control combined sewer overflows in the Metro service area by implementing a number of sewer separation projects that will remove stormwater from the sanitary sewer system and reintroduce it to the storm drain system in selected drainage basins; and

WHEREAS, Metro acknowledges its responsibility for complying with existing and future regulatory requirements established to identify, characterize and control discharges of pollutants from new stormwater discharges resulting from its separation projects, including activities necessary to acquire and comply with NPDES permits; and

WHEREAS, the City and Metro anticipate receiving a municipal stormwater NPDES permit as co-permittees in 1994, said permit to be issued by the State of Washington Department of Ecology under the Clean Water Act, 33 U.S.C. § 1251 et seq. and the Water Pollution Control Act, RCW Chapter 90.48; and

WHEREAS, the parties recognize that Metro does not have jurisdiction to implement all activities necessary to comply with stormwater NPDES permits covering discharges within the City of Seattle; and

WHEREAS, the City and Metro desire to implement stormwater management programs and otherwise comply with the terms of any NPDES permit issued to the parties in a cooperative manner that results in a coordinated joint effort that avoids duplicative or conflicting programs; and

WHEREAS, the City and Metro desire that Metro be authorized to act as an agent of the City in conducting inspections and issuing notices of violation under the Stormwater, Grading and Drainage Control Ordinance so long as any and all inspections and notices of violation are in accordance with a Joint Program as provided herein; and

WHEREAS, by Ordinance No. _____ passed on _____, 1994, the City authorized execution of this Agreement; and

WHEREAS, by Ordinance No. _____ passed on _____, 1994, King County authorized the execution of this Agreement;

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, the parties agree as follows:

1. TERM

1.1 The term of this Agreement is intended to coincide with the agreement between the parties concerning sewage treatment known as the Agreement for Sewage Disposal. Thus, its term shall be from the date of execution by both parties until July 1, 2036. The Director of the Water Pollution Control Department, for Metro, and the Director of Engineering, for the City, shall review this agreement from time to time, but no less often than the renewal periods of the relevant NPDES permits, for the purpose of considering whether amendments hereto are warranted by changes in such permits.

2. DEFINITIONS

2.1 Unless otherwise provided, the terms used in this Agreement shall have the meaning defined in the Stormwater, Grading and Drainage Control Ordinance, SMC Chapter 22.801.

2.2 "Metro Drainage Basins" shall mean the drainage basin of the Lander Street storm drain and the drainage basin of the Densmore storm drain as more particularly described in Appendix A hereto, and those stormwater drainage basins within the City of Seattle where Metro separates stormwater and sewage collection or transmission pipes during the term of this Agreement.

2.3 "Water Pollution Control Department" shall mean that department or its successor within the Department of Metropolitan Services of King County.

2.4 "Environmental Programs" shall mean that program or its successor within the Water Pollution Control Department of the Department of Metropolitan Services of King County.

2.5 "Joint Program" shall mean a joint stormwater management and inspection program provided for in section 3 of this Agreement.

3. JOINT STORMWATER MANAGEMENT AND INSPECTION PROGRAMS

3.1 The City and Metro may enter into one or more joint stormwater management and inspection programs for Metro Drainage Basins (hereafter "Joint Program").

3.2 Any Joint Program shall be approved by the Director of the Water Pollution Control Department and the Director of Engineering.

3.3 A Joint Program may include the following elements:

- (a) Identification and characterization of discharge of pollutants from storm drains;
- (b) Characterization plans and source control inventories;
- (c) Best Management Practices, land use controls and other source control measures;
- (d) Educational and other public information responsibilities;
- (e) Maintenance responsibilities;
- (f) Inspection responsibilities;
- (g) Enforcement procedures and responsibilities;
- (h) Funding arrangements;
- (i) Any other provision deemed necessary to comply with the terms of a municipal stormwater NPDES permit issued to the parties or necessary to implement this Agreement.

3.4 The City and Metro shall use their best efforts to coordinate their respective stormwater management, inspection and enforcement programs within Metro Drainage Basins to assure that the activities of both governments are consistent and avoid duplicative regulation.

3.5 Any inspection and enforcement program conducted by Metro within Metro Drainage Basins covered by this agreement shall be consistent with and in accordance with the Stormwater, Grading and Drainage Control Ordinance, SMC Chapter 22.808. The interpretation and application of the Stormwater, Grading and Drainage Control Ordinance by the Director of Engineering shall be final and binding upon Metro.

3.6 By this Agreement Metro is appointed an agent for the City to conduct inspections pursuant to SMC 22.802.090 that are consistent with and in accordance with a Joint Program approved under section 3.2. Metro may conduct such inspections on behalf of and in the name of the City.

3.7 By this Agreement Metro is appointed agent for the City to issue notices of violation pursuant to SMC 22.808.030(B) that are consistent with and in accordance with a Joint Program approved under section 3.2. Metro may issue such notices of violation on behalf of and in the name of the City.

3.8 The City shall retain exclusive jurisdiction and discretion to take any other enforcement action including, but not limited to, stop work orders, emergency actions, abatement actions, entering into voluntary compliance agreements and actions to recover penalties and damages.

3.9 The parties shall provide notice and furnish copies of any inspection reports, notices of violation or other enforcement actions either party undertakes within a Metro Drainage Basin.

4. RIGHT OF ENTRY AGREEMENTS

4.1 The City shall require, within Metro Drainage Basins, that any written rights of entry required under SMC 22.802.090(C)(1) include a right of entry for Metro when it is conducting an inspection in accordance with a Joint Program approved under section 3.2 of this Agreement.

4.2 Any permission form for a right of entry submitted under SMC 22.802.090(C)(2) to property owners with existing discharges within Metro Drainage Basins shall include a right of entry for Metro when it is conducting an inspection in accordance with a Joint Program approved under section 3.2 of this Agreement.

5. ENFORCEMENT ACTIONS

5.1 Where inspections can not be obtained on a voluntary basis and Metro has reason to believe that there may be a failure to comply with the terms of the Stormwater, Grading and Drainage Control Ordinance or the terms of any NPDES permit issued to the City and Metro, Metro may request that the City seek a warrant to conduct an inspection of the subject property in accordance with SMC 22.808.030(A).

5.2 Where Metro determines that there may be a violation of the Stormwater, Grading and Drainage Control Ordinance or the terms of any NPDES stormwater permit issued to the City and Metro, Metro may request that the City take one or more of the following actions provided under SMC 22.808.030:

- 22.808.030 (a) Issue a notice of violation pursuant to SMC
 22.808.030 (B);
 22.808.030 (b) Issue a stop work order pursuant to SMC
 22.808.030 (C); and
 (c) Take any actions appropriate under the emergency provisions of SMC 22.808.030.
 (d) Take any actions appropriate under the penalty, damages and collection of costs provisions of SMC 22.808.060 through SMC 22.808.100.

5.3 Whenever Metro requests the City to conduct an inspection or take an enforcement action the request shall be in writing and provide the following information:

- (a) The basis for requesting an inspection or a description of the violation;
 (b) The action Metro deems necessary to correct the violation;
 (c) Whether Metro deems it necessary to issue a stop work order or take emergency action.

5.4 The City shall respond in writing to any Metro request for an inspection or enforcement action within ten (10) business days from receipt of a request unless Metro declares that an emergency exists or that time is of the essence in responding to a request. In that event, the City shall respond to a request for enforcement action within twenty-four hours unless a longer time for response is specified in Metro's request.

5.5 The City shall use its best efforts to diligently obtain a warrant or other appropriate authority for an inspection or prosecute any enforcement action taken upon request by Metro. Metro agrees to use its best efforts to provide such assistance and support as may be necessary to prosecute any enforcement action taken at the request of Metro.

5.6 The City and Metro agree to use their best efforts to resolve any disputes over appropriate enforcement actions. In the event the City declines to take an enforcement action requested by Metro under section 5.2 of this Agreement, then the City shall defend, indemnify and hold Metro harmless from any loss or liability for claims, damages, costs or other expenses arising in any action brought by the United States Environmental Protection Agency, the Washington Department of Ecology or any other third party, where such action concerns the enforcement action requested by Metro.

5.7 When the City agrees to demand payment for or prosecute an action to recover damages or costs under SMC 22.808.060 or SMC 22.808.070 incurred by Metro under a Joint Program, any damages recovered less the costs incurred by the City in prosecuting the action shall be paid to Metro to extent possible under the provisions of the Stormwater, Grading and Drainage Control

Ordinance. Any penalties or fines recovered by the City shall be retained exclusively by the City.

5.8 Nothing in this Agreement is intended to replace or supersede any authority Metro may have to independently bring and maintain an action to recover costs or damages.

6. DISPUTE RESOLUTION

6.1 The City and Metro agree to use their best efforts to resolve any dispute under this Agreement or relating to an inspection or enforcement action. In the event a dispute cannot be resolved either party may make written request for resolution by the Director of the Drainage and Wastewater Utility and the Manager of Environmental Programs. If the dispute cannot be resolved within thirty (30) days of the time such matter is referred to the Director of the Drainage and Wastewater Utility and the Manager of Environmental Programs, either party may request that the Director of Engineering and Director of the Water Pollution Control Department jointly resolve the dispute.

7. AMENDMENT OF ORDINANCE AND DIRECTOR'S RULES

7.1 The City will afford Metro an opportunity for informal review and comment at the earliest possible date on any proposed amendments to the Stormwater, Grading and Drainage Control Ordinance and any Director's Rules promulgated under the authority of the ordinance.

8. OWNERSHIP AND MAINTENANCE

8.1 The City owns the storm drain facilities known as the Densmore Drain up to the point where the system connects to the Metro system at the overflow structure in East Green Lake Drive North. The City owns the Lander Basin storm drain system up to Metro's Lander Regulator outfall. The City agrees to assume responsibility for repair and eventual replacement of these storm drain facilities.

8.2 Metro owns the storm drain facilities downstream from the point where the Densmore Drain connects to the Metro system at the overflow structure in East Green Lake Drive North including the University Regulator stormwater pump station and the outfall in Lake Union. Metro owns the Lander low flow connection, regulator station, and outfall station. Metro agrees to assume responsibility for repair and eventual replacement of these facilities.

8.3 The City agrees to perform routine maintenance of storm drains within Metro Drainage Basins covered by this agreement. Routine maintenance performed by the City will include periodic catch basin cleaning and removal of accumulated sediments in the

storm drains on a schedule consistent with routine cleaning of other City storm drains.

8.4 The City shall provide Metro a copy of all its written maintenance standards and operational procedures and such other information as Metro may request relating to catch basin cleaning and street cleaning within Metro Drainage Basins. Metro may comment on and make specific recommendations relating to any such standards and procedures.

8.5 Metro may request that the City conduct specific street cleaning and catch basin cleaning within Metro Drainage Basins.

8.6 Section 5, "Maintenance and Pollutant Control Responsibilities," of the City of Seattle/Municipality of Metropolitan Seattle Lander Separation Project Agreement dated July 31, 1989, shall be superseded by this agreement as of the effective date of this agreement.

9. NPDES PERMIT FEES

9.1 The parties agree that Metro shall pay the Washington Department of Ecology a portion of the annual NPDES stormwater permit fee assessed the City based on a pro rata share of Metro Drainage Basins compared to the entire land area of the City subject to a NPDES stormwater permit. For the purposes of this Agreement the City and Metro agree that this share is 7.7 % of the total permit fee assessed the City. Metro shall pay its portion of any NPDES stormwater permit fee directly to the State of Washington.

9.2 This provision shall be revised to reflect changes in the basis on which the Washington Department of Ecology assesses permit fees under the municipal stormwater NPDES program, and to account for any additional separation projects accomplished by Metro.

10. INDEMNIFICATION

10.1 Metro shall defend, indemnify and hold the City harmless from any loss or liability for claims for damages, costs or other expenses resulting from any inspection or enforcement action Metro undertakes independent of the City.

10.2 The City shall defend, indemnify and hold Metro harmless from any loss or liability for claims for damages, costs or other expenses resulting from any inspection or enforcement action the City undertakes independent of Metro.

11. NOTICES

11.1 Unless otherwise notified in writing, all notices under this Agreement shall be given in writing, addressed as follows:

To the City:
 Director of Engineering
 The City of Seattle
 4th Floor Municipal Building
 600 Fourth Avenue
 Seattle, WA 98104-1877

And to:
 Manager
 Franchises, Utilities & Street Use
 The City of Seattle
 501 Municipal Building
 600 Fourth Avenue
 Seattle, WA 98104-1877

And to:
 Project Manager
 Drainage and Wastewater Utility
 660 Dexter Horton Building
 710 Second Avenue
 Seattle, WA 98104-1709

To Metro:
 Director
 Water Pollution Control Department
 King County Department of Metropolitan Services
 521 Second Avenue M/S 82
 Seattle, WA 98104

And to:
 Project Manager
 Industrial Waste Water Section
 King County Department of Metropolitan Services
 Suite 200
 130 Nickerson Street
 Seattle, WA 98109

12. AMENDMENT

12.1 This Agreement shall not be amended except in writing, executed by both the parties.

13. CAPTIONS

13.1 Section titles or other headings contained in this Agreement are for convenience only and shall not be part of this Agreement, nor considered in its interpretation.

14. BINDING ON SUCCESSORS

14.1 This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of both parties.

15. ENTIRE UNDERSTANDING

15.1 This Agreement constitutes the entire understanding between the parties relative to the matters identified herein.

16. INTERPRETATION

16.1 This Agreement was drafted jointly by both the City and Metro. Both parties intend that the provisions of this Agreement be interpreted as a whole and that no provision herein will be interpreted as a whole and that no provision herein will be construed for or against either party. The terms of this agreement shall be deemed to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Agreement shall not effect the validity of the remainder of this Agreement.

17. THIRD PARTY BENEFICIARIES

17.1 Nothing in this agreement is intended to be nor shall be construed to create or confer a benefit to third parties.

18. TERMINATION

18.1 This Agreement may be terminated by either party by providing written notice of not less than sixty (60) days as provided in section 11 of this Agreement.

IN WITNESS WHEREOF, the persons signing below by their signatures represent they have been duly authorized by their representative legislative authorities to execute this Agreement on behalf of the party for which they sign.

ATTEST:

Clerk of the King County
Council

KING COUNTY

By _____

Daryl Grigsby
Director of WPCD

Date _____

ATTEST:

Clerk of the City Council

THE CITY OF SEATTLE

By _____

Gary Zarker
Director of Engineering

Date _____