

MOTION NO. 9939

1
2 A MOTION authorizing an interlocal agreement between
3 King County and the City of Lake Forest Park for the
4 purpose of cooperatively enhancing the fish habitat of
Hillside Creek.

5 WHEREAS, Hillside Creek is a tributary to McAleer Creek formerly located in
6 King County and now located within Lake Forest Park, and

7 WHEREAS, portions of Hillside Creek are currently piped and do not provide
8 good fish habitat, and

9 WHEREAS, King County constructed the McAleer Creek By-pass Project in an
10 unincorporated area that was subsequently annexed by Lake Forest Park, and

11 WHEREAS, King County was required by the Washington State Department of
12 Fish and Wildlife (WDFW) to provide fish habitat mitigation to compensate for impacts
13 to fish resources due to the McAleer Creek By-pass Project, and

14 WHEREAS, King County, Lake Forest Park, and WDFW agree that the Hillside
15 Creek Mitigation Project could provide fisheries benefits for the McAleer Creek Basin
16 and Lake Washington, and

17 WHEREAS, the fisheries benefits from the Hillside Creek Mitigation Project are
18 much greater than from an alternative project, the Blue Heron Park Mitigation Project,
19 and

20 WHEREAS, King County, Lake Forest Park, and WDFW further agree that King
21 County's participation in the Hillside Creek Mitigation Project and conveyance of design
22 plans for the Blue Heron Park Mitigation Project to WDFW will fulfill King County's
23 McAleer Creek By-Pass mitigation requirements, and

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

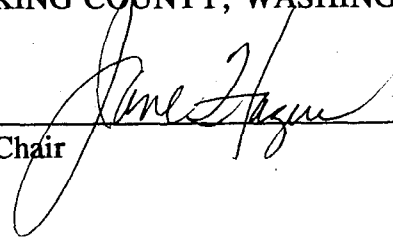
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NOW THEREFORE, BE IT MOVED by the council of King County:

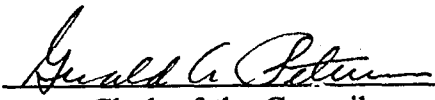
The county executive is hereby authorized to enter into an interlocal agreement with the City of Lake Forest Park, in substantially the same form as attached hereto, for the cooperative fish habitat enhancement of Hillside Creek.

PASSED by a vote of 12 to 0 this 3rd day of September, 19 96.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Chair

ATTEST:


Clerk of the Council

Attachments:

A. Hillside Creek Mitigation Project Agreement

HILLSIDE CREEK MITIGATION PROJECT AGREEMENT

1 This agreement is hereby entered into by King County, Washington, hereinafter
2 referred to as "King County," and the City of Lake Forest Park, a municipal corporation
3 hereinafter referred to as "Lake Forest Park," collectively referred to as the "Parties,"
4 for the purpose of cooperatively completing the Hillside Creek Mitigation Project to
5 improve the fish habitat in an unnamed stream commonly referred to as "Hillside Creek,"
6 which is a tributary to McAleer Creek and is currently piped under the Brookside School
7 in Lake Forest Park.

8 WHEREAS, King County constructed the McAleer Creek By-pass Project in an
9 unincorporated area that was subsequently annexed by Lake Forest Park, and

10 WHEREAS, King County was required by the Washington Department of Fish and
11 Wildlife (WDFW) to provide fish habitat mitigation to compensate for impacts to fish
12 resources due to the McAleer Creek By-pass Project, and

13 WHEREAS, to provide the environmental mitigation required by WDFW, King
14 County designed habitat improvements in the form of a side-channel to McAleer Creek to
15 be located in Blue Heron Park (Blue Heron Park Mitigation Project), and

16 WHEREAS, Lake Forest Park was contacted by the Lake Forest Park
17 Environmental Quality Commission (EQC), a group of citizen volunteers, concerning
18 potential stream restoration opportunities in Hillside Creek, and

19 WHEREAS, Lake Forest Park, King County, and WDFW agreed that the Hillside
20 Creek Mitigation Project could provide greater fisheries benefits than the Blue Heron
21 Park Mitigation Project, and

22 WHEREAS, the EQC is willing to provide volunteer assistance to complete the
23 Hillside Creek Mitigation Project, and

24 WHEREAS, WDFW has agreed that King County's mitigation requirements for
25 the McAleer Creek By-pass Project will be met if King County (1) forwards to WDFW
26 the completed design plans for the Blue Heron Park Mitigation Project, (2) reviews and
27 approves of design plans for the Hillside Creek Mitigation Project, and (3) transfers
28 \$15,000 to Lake Forest Park to design and construct the Hillside Creek project, and

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

31 NOW THEREFORE, the Parties mutually agree to the following:
32

1 **I. Purpose**

2 The purpose of this agreement is to (1) establish a mechanism for transferring
3 \$15,000 from King County to Lake Forest Park to support design and construction
4 of the Hillside Creek Mitigation Project, and (2) facilitate review of the design
5 plans for the Hillside Creek Mitigation Project. These actions and transmittal to
6 WDFW of the completed design plans for the Blue Heron Park Mitigation Project
7 will fulfill King County's mitigation requirements for the McAleer Creek By-pass
8 Project.

9 **II. Administration**

10 Design of the Hillside Creek Mitigation Project will be managed by a project team
11 composed of an employee selected by the King County Surface Water Management
12 Division and an employee selected by Lake Forest Park. Project design decisions
13 shall be made by consensus. In the event of a dispute under this agreement, the
14 employees shall forward the disputed issue to the Manager of the King County
15 Surface Water Management Division and the Public Works Director of Lake Forest
16 Park for resolution.

17 **III. Responsibilities**

18 **A. King County shall:**

- 19 1. Provide \$15,000 to Lake Forest Park to design and construct the Hillside
20 Creek Mitigation Project.
21 2. Review and approve of Hillside Creek Mitigation Project design plans
22 prepared by Lake Forest Park to ensure that important fish habitat design
23 elements are included.

24 **B. Lake Forest Park shall:**

- 25 1. Forward Hillside Creek Mitigation Project design plans to King County
26 and WDFW for review and approval.
27 2. Issue any required permits for the Hillside Creek Mitigation Project.
28 3. Use the \$15,000 paid by King County to pay for expenses incurred
29 during design and construction of the Hillside Creek Mitigation Project.
30 If design and construction costs are less than \$15,000, Lake Forest Park
31 may use the remaining money for other environmental restoration work
32 subject to approval by King County and WDFW.

- 1 4. Be responsible for proper accounting and use of the \$15,000 to ensure
- 2 that only eligible design and construction expenditures are reimbursed.
- 3 Eligible expenditures are identified in Section IV.C of this agreement.
- 4 5. Pay for any additional costs required to complete design and construction
- 5 of the Hillside Creek Mitigation Project. Lake Forest Park may, at its
- 6 sole discretion, obtain any funding needed to complete the project from
- 7 outside sources.
- 8 6. Assume ownership and maintenance responsibilities for the Hillside Creek
- 9 Mitigation Project.

10 **IV. Billing and Payment**

- 11 A. King County shall provide \$15,000 to Lake Forest Park to pay for expenses
- 12 incurred during design and construction of the Hillside Creek Mitigation
- 13 Project after final approval of project plans by King County and WDFW and
- 14 after receiving an itemized invoice from Lake Forest Park.
- 15 B. King County shall pay Lake Forest Park within 60 days of receipt of invoice.
- 16 C. Costs eligible for reimbursement include costs incurred by Lake Forest Park
- 17 and the EQC for labor, materials, equipment, and all other costs directly
- 18 related to project design and construction.

19 **V. Duration, Termination, and Amendment**

- 20 A. This agreement is effective upon signature by the Parties and remains in
- 21 effect until December 31, 1998, or until the \$15,000 paid to Lake Forest Park
- 22 by King County has been spent, whichever is earlier.
- 23 B. This agreement may be terminated by either Party upon 30 days written
- 24 notice. In the event of termination, the Parties will discuss with WDFW how
- 25 appropriate environmental mitigation may be achieved.
- 26 C. This agreement may be amended, altered, clarified, or extended only by the
- 27 written agreement of the Parties hereto.
- 28 D. This agreement is not assignable by either Party, either in whole or in part.
- 29 E. This agreement is the complete expression of the terms hereto and any oral or
- 30 written representations or understandings not incorporated herein are
- 31 excluded. The parties recognize that time is of the essence in the
- 32 performance of the provisions of this agreement. Waiver of any default shall

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not be deemed to be 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. Indemnification and Hold Harmless

Each Party shall protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of its employment as such, from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from either Party's own negligent acts or omissions. Each Party agrees that its obligations under this subparagraph 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 either 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.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the _____ day of _____, 19_____.

Approved as to Form

King County:

By: _____
Title: Deputy Prosecuting Attorney

By: _____
Title: King County Executive

Approved as to Form

City of Lake Forest Park

By: _____
Title: _____

By: _____
Title: _____