



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

June 2, 2003

Motion 11707

Proposed No. 2003-0073.2

Sponsors Phillips, Constantine and Patterson

1 A MOTION authorizing the executive to enter into an
2 interlocal cooperation agreement with the city of Burien for
3 the disbursement of funds appropriated and allocated for
4 the Branson nearshore acquisition property.

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7 WHEREAS, King County Ordinance 13300 appropriated and allocated \$125,000
8 of open space nonbond funds to the Dumas bay eelgrass project in the city of Federal
9 Way, and

10 WHEREAS, the King County appropriated these funds for this project in support
11 of King County's response to the proposed National Marine Fisheries Service threatened
12 listing of Puget Sound chinook and bull trout, and

13 WHEREAS, the Dumas bay eelgrass project became infeasible and was not
14 completed, and

15 WHEREAS, the WRIA 9 steering committee has identified a suitable replacement
16 property known as the Branson nearshore project for the Dumas bay eelgrass project in
17 the city of Burien, and

18 WHEREAS, the city of Burien is negotiating to purchase the property;

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

20 The King County executive is hereby authorized to enter into and execute an
21 interlocal cooperation agreement, substantially in the form of the agreement attached to
22 this motion, with the city of Burien for the distribution of funds to the city to complete
23 the purchase of the Branson property.

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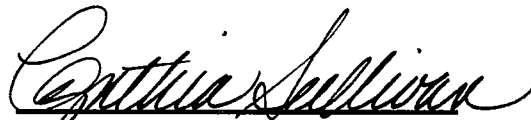
Motion 11707 was introduced on 3/3/2003 and passed by the Metropolitan King County Council on 6/2/2003, by the following vote:

Yes: 12 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Phillips, Mr. Pelz, Mr. McKenna, Mr. Constantine, Mr. Gossett, Ms. Hague, Mr. Irons and Ms. Patterson

No: 0


Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Cynthia Sullivan, Chair

ATTEST:



Anne Noris, Clerk of the Council

Attachments A. Interlocal Agreement between King County and the City of Burien for Partial Funding of Acquisition of the Branson Property, dated May 15, 2003

Revised
May 15, 2003

**INTERLOCAL AGREEMENT
BETWEEN KING COUNTY AND THE CITY OF BURIEN
FOR PARTIAL FUNDING OF
ACQUISITION OF THE BRANSON PROPERTY**

Whereas, on October 5th, 1998, the King County Council passed Ordinance 13300, which appropriated King County funds for CIP projects for the implementation of early action projects in support of King County's response to the proposed National Marine Fisheries Service "threatened" listing of Puget Sound Chinook salmon and bull trout;

Whereas, Dumas Bay Eelgrass project, located in the City of Federal Way, was one of the projects funded through this ordinance;

Whereas, the Dumas Bay Eelgrass was not implemented and funds allocated to this project were not expended;

Whereas, the Water Resource Inventory Area (WRIA) 9 Coordination Services team has identified a suitable replacement for the Dumas Bay Eelgrass project known as the Branson property located in the City of Burien;

Whereas, the WRIA 9 Steering Committee has endorsed and supported the acquisition of the Branson property;

Whereas, the City of Burien has negotiated for the purchase of the Branson property;

Whereas, pursuant to RCW 39.34, the Interlocal Cooperation Act, King County and the City of Burien (the City) (collectively, the "Parties") are each authorized to enter into an agreement for cooperative action;

NOW, THEREFORE, the parties hereto agree as follows:

Article I. Purpose of the Agreement

The purpose of this agreement is to create a cooperative arrangement between the City and the County relating to the acquisition of the Branson property and to define the terms and conditions governing both parties' obligations created by this agreement.

Article II. Project Background and Description

In 1998, King County set aside \$125,000 to conduct an ESA Early Action Project related to Eelgrass restoration in the Dumas Bay region of Federal Way in order to preserve salmon habitat. This project was not implemented and funds were not expended. The WRIA 9 team has identified a suitable replacement property, known as the Branson property.

The Branson property is a 6.27 acre property with 247 feet of undeveloped shoreline. The property has numerous benefits to salmon, including the following:

- **Protection of rearing habitat:** Eelgrass beds are located in the intertidal zone on the Branson property. Juvenile salmonids use eelgrass beds as nurseries.
- **Protection of juvenile food supply:** Overhanging vegetation exists along the entire length of the land. Juvenile salmonids rely upon terrestrial insects for a significant portion of their diets. Overhanging vegetation provides habitat for these insects.
- **Protection of adult food supply:** A surf smelt spawning area exists in the property. Adult chinook and coho, among other species, rely on surf smelt as a food source.
- **Protection of habitat-forming processes:** The Branson property is a regular and consistent supplier of coarse and fine sediment to Puget Sound due to mass movement processes, through landslides and on-going erosion. Sediments preserve the ability for nearshore habitat such as eelgrass meadows and mud flats to form.

Article III. Term of Agreement

This agreement shall be continued in full force and effect and binding upon the parties hereto upon execution of the agreement by both parties. The terms of the agreement shall be indefinite. The agreement will be terminated if the City is unable or unwilling: 1) to expend the funds provided through this agreement; 2) upon reimbursement by the City to the County of all unexpended funds provided by the County pursuant to this agreement in the manner and amounts described below.

Article IV. Administration of Agreement

This agreement will be administered for King County by Linda Hanson, WRIA 9 Project Coordinator and for Burien by Scott Thomas, Parks Planner for the City of Burien ("Agreement Coordinators"). In case of a dispute that cannot be resolved by the Agreement Coordinators, the dispute shall be referred to the King County Manager of the Water and Land Resources Division and the City of Burien Manager for resolution.

Article V. Conditions of Agreement

Section 5.1 -- Project Descriptions. Funds available pursuant to this agreement may be used only for Projects described in Section II of this agreement, which is incorporated herein by reference, or such substituted Projects as may be approved by the County as set forth below.

Section 5.2 -- Use of Funds. Funds provided to the City pursuant to this agreement as well as funds provided by the City to this agreement may be used only for expenses related to property acquisition. Those expenses include appraisals, title searches, negotiations, administrative overhead, and the cost of actual acquisition or purchase options.

Section 5.3 -- Substitution/Deletion of Projects. If the City does not proceed with the Projects described in Section 5.1 of this agreement, the City may reimburse the County all funds provided in good faith to acquire the property for open space, plus accrued interest earnings on the unexpended balance. Alternatively, the City may submit specific requests for project reprogramming to the County for its approval. All projects proposed for

reprogramming must meet the original intent of King County's effort to protect salmon habitat and be approved by action of the King County Council. All reprogramming requests shall be submitted to the County's Department of Natural Resources, Water & Land Resources Division, or its successor.

Article VI. Responsibilities of the City

Section 6.1 -- Project Description. As part of the obligation to receive funds from the County, the City shall submit the following information concerning each project: 1) a narrative description of the project; 2) a description of the specific uses for funds in the Project; and 3) a description of the means by which the City acquired the property identified in this agreement.

Section 6.2 -- Reporting. All funds received pursuant to this agreement and accrued interest therefrom will be accounted for separately from all other City funds, accounts and moneys. Until the property described in the Project is acquired and all funds provided pursuant to this agreement expended, the City shall provide semi-annual written reports to the County within 30 days of the end of each relevant time period. The semi-annual report shall contain the following information: a) an accounting of all cash expenditures and encumbrances for support of the Project; b) the status of each Project and any changes to the approved time line; and c) other relevant information requested by the County for the purpose of determining compliance with this agreement.

Following acquisition of the property and expenditure of all funds provided pursuant to this agreement, the City shall provide the County with a final report, within 90 days of the end of the calendar year in which all funds were expended. Said report shall contain a summary of all project expenditures, a description of the project status and accomplishments and other relevant information requested by the County for the purpose of verifying compliance with this agreement.

The City shall also provide the County, within 90 days of the end of each calendar, annual reports which specify any change in the status of the Project during the prior year and any change in the status of the Project which the City Reasonably anticipates during the ensuing year. Such reports shall be required only if a change has taken place or is anticipated, except as provided above for ongoing and final project reports. All such reports shall be submitted to the County's Department of Natural Resources, Water & Land Resources Division, or its successor.

Section 6.3 -- Disposition of Remaining Funds.

If the City does not expend all funds provided through this agreement and no substitute project is requested or approved as to the excess funds, such funds shall be refunded to the County. For purposes of this section, "funds" shall include all moneys provided by the county plus interest accrued by the City on such moneys.

Section 6.4 -- Maintenance in Perpetuity. The City, and any successor in interest, agrees to maintain properties acquired with funds provided pursuant to this agreement as open space in perpetuity. If the City changes the status or use of properties acquired with funds provided pursuant to this agreement to any purpose, the City shall pay the County an

amount in cash to be mutually determined or substitute other property acceptable to the County. In either case, the value of the property shall be established at the time of the change in status or use, based upon the changed status or use and not based on its value as open space.

Upon changes in status and/or use of the property acquired herein, at its own cost, the City will provide the County an independent MIA appraisal in accordance with this section. The value established by the appraisal will not be binding on the County. The City shall provide the County with written notice prior to the change of use and shall reimburse the County within 90 days of such notification. Reimbursement not received within 90 days will accrue interest at the then legal rate.

Article VII. Responsibilities of the County

Subject to the terms of this agreement, the County will provide funds in the amount of \$125,000 toward the acquisition of the Branson property. The City may request additional funds; however, the County has no obligation to provide funds to the City in excess of this amount. The County assumes no obligation for future support of the Project described herein except as expressly set forth in this agreement.

Article VIII Other Provisions

Section 8.1 -- Hold Harmless and Indemnification.

A. The County assumes no responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of the City, its employees, contractors or others by reason of this agreement. The City shall protect, indemnify and save harmless the County, its officers, agents and employees from any and all claims, cost and whatsoever occurring or resulting from: 1) the City's failure to pay any compensation, fees, wages, benefits or taxes; and 2) the supplying to the City of works services, materials or supplies by City employees or agents or other contractors or suppliers in connection with or in support of performance of this agreement.

B. The City further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception, which occurs due to the negligent or intentional acts by the City, its officers, employees, agents or representatives, with regard to the implementation of the terms of this agreement.

C. The City shall protect, indemnify and save harmless the County from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the City, its officers, employees or agents. For purpose of this agreement only, the City agrees to waive the immunity granted it for industrial insurance claims pursuant to Washington Statute Chapter 51 to the extent necessary to extend its obligations under this paragraph to any claim, demand, or cause of action brought by or on behalf of any employee, including judgments, awards and costs arising therefrom including attorney's fees.

Section 8.2 -- Amendment. The parties reserve the right to amend or modify this agreement. Such amendments or modifications must be by written instrument signed by the parties and approved by the respective City and County Councils.

Section 8.3 -- Contract Waiver. No waiver by either party of any term or condition of this agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provision of this agreement. No waiver shall be effective unless made in writing.

Section 8.4 -- Entirety. This agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated are excluded. This agreement merges and supersedes all prior negotiations, representations and agreements between the parties relating to the projects and constitutes the entire agreement between the parties. The parties recognize that time is of the essence in the performance of the provisions of this agreement.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the sp:

KING COUNTY

Approved as to form:

Deputy Prosecuting Attorney
Date: _____

King County Executive
Date: _____

CITY OF BURIEN

Approved as to form:

Title: _____
Date: _____

Title: _____
Date: _____