

July 2, 1997
ST/lk 423Z2
clerk 7/10/97

Introduced By:

Proposed No.:

97-439

ORDINANCE NO. **12819**

AN ORDINANCE authorizing the conveyance of certain drainage-related properties and facilities to the City of Covington, and authorizing the Executive to execute an interlocal agreement for provision of drainage-related services with the city.

PREAMBLE

King County owns certain drainage-related properties and facilities within the soon-to-be incorporated area of Covington (hereinafter "the city").

The county desires to divest itself of ownership, management and financial responsibility for drainage-related properties and facilities within the city boundaries.

The city agrees to own, operate and maintain the drainage-related properties and facilities within its boundaries.

The county agrees to provide drainage-related services to the city as set forth in the attached interlocal agreement between the parties.

In consideration of the mutual benefits to be derived, it would be in the best interest of the citizens of King County to convey the properties and facilities described herein to the city and to provide contracted drainage-related services to the city.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The King County executive is hereby authorized to execute a deed of conveyance in favor of the city of Covington, for drainage-related properties and facilities listed on the attached agreement and to execute, substantially in the form attached, an interlocal agreement with the city of Covington relating to ownership, operation and maintenance of the natural and man-made drainage system within city boundaries, collection

1 and disbursement to the city of the service charge revenue and the provision of other drainage-
2 related services provided by King County.

3 INTRODUCED AND READ for the first time this 21st day of
4 July, 1997.

5 PASSED by a vote of 13 to 0 on this 28th day of July, 1997.

6 KING COUNTY COUNCIL
7 KING COUNTY, WASHINGTON

8 Jane Hague
9 Chair

10 ATTEST:

11 Zuevor
12 Clerk of the Council

13 APPROVED this 8 day of August, 1997

14 David Armi
15 King County Executive
16

17 Attachment: Interlocal Agreement for Drainage-related Services

AN INTERLOCAL AGREEMENT BETWEEN KING COUNTY
AND THE CITY OF COVINGTON
FOR THE PROVISION OF SURFACE WATER SERVICES
AND TRANSFER OF DRAINAGE FACILITIES AND PROPERTIES

1 This agreement is hereby entered into by King County, Water and Land Resources
2 Division, and the City of Covington, a municipal corporation, for the provision of surface water
3 services to Covington and the transfer of drainage system ownership and responsibility to the
4 City.

5 WHEREAS, the residents of the unincorporated King County area known as Covington
6 have voted to become an incorporated city, and

7 WHEREAS, Covington recognizes the need for comprehensive surface water
8 management to preserve and protect the environment, public and private property, and the health
9 and welfare of its citizens, and has adopted a surface water management program financed
10 through a service charge on developed properties, and

11 WHEREAS, King County has an established program of services to address the
12 management of storm and surface water runoff, and Covington wishes to contract with King
13 County to provide such services to city residents and property owners, and

14 WHEREAS, responsibility for drainage facilities formerly within King County and now
15 within Covington will transfer from King County to Covington to be assumed under the City's
16 surface water management program, together with the transfer of ownership of County-owned
17 drainage properties and transfer of drainage-related easements held by the County, and

18 WHEREAS, pursuant to RCW 36.89.050, the County and the City acknowledge that the
19 transfer of drainage-related properties and facilities is subject to the condition that the facilities
20 and properties will continue to be used for drainage control purposes, and

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

23 NOW THEREFORE, the parties hereto agree as follows:

24 I. Purpose of the Agreement

25 A. The agreement establishes the means by which the King County Water and Land
26 Resources Division (WLRD) will provide the City of Covington and its residents and
27 property owners with drainage related services and by which King County can act as
28 Covington's agent in the billing and collection of the City's surface water service
29 charge.

1 B. This agreement sets forth the process by which King County will transfer to
2 Covington, in perpetuity, ownership of and responsibility for drainage facilities and
3 properties within city limits.

4 II. Administration

5 A. The City and King County shall each appoint a representative to review compliance
6 with this agreement and to resolve any conflicts. The City and King County shall
7 notify the other in writing of its designated representative. The administrators of the
8 Agreement shall meet as needed. Either party is authorized to convene a meeting with
9 a minimum of ten (10) calendar days written notice to the other.

10 B. Any conflict that is not resolved by the Agreement administrators within ten (10)
11 working days of the meeting held to discuss the conflict shall be referred for
12 resolution to the City Manager and the WLRD Manager. If the conflict cannot be
13 resolved by the City Manager and the WLRD Manager, it shall be resolved by the
14 City Manager and the Director of the King County Department of Natural Resources
15 (DNR).

16 III. City's Authority for Surface Water Program

17 By ordinance, Covington will establish and maintain the legal authority to operate a
18 surface water management program, including operation and maintenance of drainage
19 facilities, financed through a surface water service charge to developed properties within
20 the city. Such ordinance will also authorize the County to provide drainage services to the
21 City under contract, including acting as the City's agent to collect the city's surface water
22 service charge from property owners.

23 IV. Drainage Service Provision

24 A. King County Responsibilities.

- 25 1. As of the date of incorporation and acting as Covington's agent, King County
26 will provide basic drainage services as outlined in the "Description of Basic
27 Drainage Services and Estimated Costs," attached to this agreement as Exhibit
28 One and incorporated herein.
- 29 2. Upon the City's request and acting as Covington's agent, King County will
30 provide enhanced drainage services as outlined on the "Description of Enhanced
31 Drainage Services and Estimated Costs," attached to this agreement as Exhibit
32 Two and incorporated herein. Provision of enhanced services is subject to

1 availability of WLRD staff. King County will act as Covington's agent in the
2 provision of enhanced drainage services:

- 3 3. King County will inform Covington officials of delinquent surface water service
4 charge billing accounts.
- 5 4. King County will keep records of services delivered in Covington and will make
6 said records available to Covington at least quarterly or as requested.
- 7 5. The County is a contractor of services only and does not purport to represent the
8 City professionally other than in providing services as outlined in this
9 agreement.

10 B. Covington Responsibilities

- 11 1. Covington will maintain policies and procedures to manage the delivery of
12 services under this agreement.
- 13 2. Covington's initial surface water service charge rate structure shall be as set
14 forth in Exhibit Three, attached to this agreement and incorporated herein. Said
15 rate structure may be modified as follows: If in any given calendar year the City
16 elects to change its service charge rate structure for the following calendar year,
17 it will notify the County of the new structure at least 60 days prior to the
18 beginning of the new calendar year, allowing time for the County to make
19 necessary adjustments to the billing system.
- 20 3. Covington will be responsible for all actions resulting from delinquent accounts,
21 including any liens and foreclosures on Covington property resulting from such
22 delinquencies.

23 A. Management of Drainage Service Provision

- 24 3. The City and County will, by written correspondence, identify the City and
25 County liaisons responsible for administering the drainage services provided for
26 in this agreement, including day-to-day service provision, contract performance,
27 and notifying the County of requests for changes to agreement terms.
- 28 4. The liaisons will meet regularly to review service issues.
- 29 5. The liaisons will implement procedures as outlined below for adjusting the type
30 and level of services to be provided to the City.
 - 31 a) **Provision of Enhanced Services.** Should the City wish the County to
32 provide enhanced drainage services as outlined on Exhibit Two, or other

1 enhanced services to be identified, the parties will agree in writing to a
2 scope of work and cost estimate for services to be provided if the work
3 identified is projected to cost over \$500.

- 4 b) **Service Revisions.** If Covington wishes to revise or discontinue a specific
5 service being provided by King County at any given time, the City will
6 inform the County in writing of the requested revision or discontinuance.
7 The County will accommodate requests to revise services where practicable
8 in the County's judgment. In the absence of a written request to discontinue
9 a service, the County will continue to provide and bill the City for the
10 service. This provision does not supersede the Termination and Amendment
11 provisions of this agreement, as outlined in section VI.

12 A. Financial Arrangements for Drainage Services

13 4. Surface Water Service Charge Revenue Collection and Disbursement

- 14 a) King County will bill Covington's surface water service charge to city
15 property owners using the King County Property Tax and Drainage Billing
16 Statement.
- 17 b) King County will hold service charge revenues collected for Covington in a
18 separate account and will disburse the revenue to the City via electronic
19 transfer on each business day.
- 20 c) Covington will pay the County for revenue collection and disbursement as
21 set forth on Exhibit One.
- 22 1) Covington will pay the County an annual per-account fee for surface
23 water management service charge billing and revenue collection
24 services. The fee is one dollar and seventy-seven (\$1.77) per Covington
25 account for 1997 and is adjustable on an annual basis.
- 26 2) Covington will pay a one-time fee of one dollar and eighty-six cents
27 (\$1.86) per account to cover the cost of modifying the billing system
28 for Covington accounts. The fee will be billed and paid in two annual
29 installments of ninety-three cents (\$0.93). The first half of the charge
30 will appear on the first bill for services.
- 31 3) The King County Department of Finance will charge the City a flat one
32 percent (1%) of all revenue collected by the County for the City under

1 the terms of this agreement, except those revenues collected as a result
2 of City enforcement action. This charge will remain unchanged for the
3 duration of this Agreement and will be deducted from the revenues
4 collected on a monthly basis by the County and forwarded to the City.

5 4. Service Costs

- 6 b) Estimated costs for services are shown in Exhibit One and Exhibit Two.
7 Cost estimates and actual costs (as reflected on quarterly service invoices)
8 account for direct services plus administrative overhead charges, as required
9 by King County Council Motion No. 8689.
- 10 c) Costs shown in exhibit One are estimated for the Covington city area as it
11 exists at the effective date of this agreement. Estimated and actual costs may
12 increase should Covington annex further land areas and request the County
13 to provide surface water services in these areas. Requested increases in
14 service due to an increased Covington service area will be handled through
15 procedures outlined in agreement section IV. C.
- 16 d) Adjustments to the type and level of service and cost of services are subject
17 to the annual budget processes of King County and Covington. Costs for
18 each year will reflect relevant economic adjustments such as cost of living
19 increases adopted by the King County Council.
- 20 e) In the event that King County may be required or requested to provide
21 services to Covington in unscheduled or unpredictable circumstances or
22 events, the parties will agree in writing for additional payment for services
23 should those extraordinary service costs exceed the difference between the
24 City's total annual surface water service charge revenue and the total of
25 basic drainage services as outlined on Exhibit One.

26 1. Billing and Payments

- 27 c) King County will prepare and present to Covington quarterly invoices
28 showing the actual services provided and the total cost of those services.
29 Actual costs billed may vary from estimated costs.
- 30 d) Covington will pay King County within 45 days after receipt of the invoice.
31 Interest at the legal rate may be assessed on balances unpaid after 45 days.

32 V. Transfer of Drainage System Ownership and Responsibility

1 A. Covington Responsibilities

- 2 1. As of the City's incorporation date, the City will assume full and complete
3 responsibility for the operation, maintenance, repairs, and any subsequent
4 improvements to the drainage facilities and/or properties listed on Exhibit Four
5 ("City of Covington Residential and Regional Drainage Facilities") and Exhibit
6 Five ("City of Covington Drainage Properties"), attached to this agreement and
7 incorporated herein, and all liability arising from such responsibilities.
8 Responsibilities include all financial responsibilities, including but not limited to
9 materials, construction, personnel, payroll, and purchasing costs.
- 10 2. The City agrees to operate and maintain the drainage facilities and properties
11 listed on Exhibits Four and Five as designed and to at least the same
12 maintenance standards as those adopted and employed by King County to ensure
13 that the local and watershed-wide effects of said facilities shall not be
14 diminished.
- 15 3. The City will abide by and enforce all the terms, conditions, reservations,
16 restrictions, and covenants to title.
- 17 4. The City will provide King County access to all relevant information maintained
18 by the City in connection with the facilities and properties listed on Exhibits
19 Four and Five following transfer if legal action is brought or threatened against
20 King County or King County and the City jointly with regard to the properties or
21 facilities listed in Exhibits Four and Five.
- 22 5. The City will consult with King County prior to the destruction of any
23 documentation associated with the facilities and/or properties listed on Exhibits
24 Four and Five for a period of seven (7) years.
- 25 6. The City grants King County all necessary access to drainage-related properties
26 and easements transferred to the City for purposes of providing the City with the
27 drainage facility maintenance services contracted for through this agreement.
- 28 7. The City accepts the properties and facilities listed on Exhibits Four and Five
29 "as is." The County makes no warranty concerning such facilities other than as
30 set forth in this agreement.

31 G. King County Responsibilities

- 1 2. On the incorporation date or as soon as possible thereafter, King County will
 2 convey to the City by deeds the County-owned drainage properties listed on
 3 Exhibit Five. The deeds include all access easements, all reservations of record
 4 known to King County, and any specific covenants pertaining to use and
 5 maintenance of the sites. Copies of all deeds will be attached to and incorporated
 6 by reference into this Agreement.
- 7 3. King County will furnish the City with a list of any and all contracts or other
 8 agreements, conditions or maintenance obligations, or dedications related to the
 9 use or other restrictions on the conveyed properties. King County will provide
 10 the City a copy of each such contract, agreement, permit or dedication to the
 11 extent known and available to King County.
- 12 4. King County hereby assigns to the City all easements on private property
 13 heretofore acquired by or dedicated to King County for drainage purposes.
- 14 5. King County will provide the City, at the earliest opportunity, copies of all
 15 warranties, maps, titles, "as built," and any and all other records related to the
 16 properties and facilities listed on Exhibits Four and Five, to the extent known
 17 and available to King County.

18 A. Both Parties

- 19 3. Both parties will make staff available to identify and review any additional
 20 County-owned drainage properties and/or facilities to be conveyed to the City.
 21 Such facilities and properties include those located in areas annexed to the City
 22 in the future and those for which the County's facility acceptance process has
 23 not yet been completed. Additional County-owned drainage properties or
 24 facilities shall be transferred to the City pursuant to this agreement.
 25 Documentation of additional facilities to be transferred shall be attached to this
 26 agreement as an amendment, pursuant to Agreement Section VI.
- 27 4. The records related to matters covered by this Agreement are subject to
 28 inspection, review or audit by King County or the City at the requesting party's
 29 sole expense. Such records shall be made available for inspection during regular
 30 business hours within a reasonable time of the request.

31 VI. Effectiveness, Termination and Amendment

- 32 A. This agreement is effective upon signature by both parties.

- 1 B. The drainage service provision aspects of this agreement shall remain in effect until
2 December 31, 2000. Either party may terminate service provision with 120 days
3 written notice to the other party.
- 4 C. Notwithstanding termination of this agreement, all facilities and properties
5 transferred pursuant to this agreement shall remain the City's, unless the County
6 consents to accept said properties and facilities in writing, and as approved by the
7 King County Council.
- 8 D. This agreement may be amended, altered, or clarified only by written agreement of
9 the parties hereto, and may be supplemented by addenda or amendments which have
10 been agreed upon by both parties in writing. Copies of such addenda and
11 amendments shall be attached hereto and by this reference made part of this
12 agreement as though fully set forth herein.
- 13 E. This agreement is a complete expression of the terms hereto and any oral or written
14 representations or understandings not incorporated herein are excluded. The parties
15 recognize that time is of the essence in the performance of the provisions of this
16 agreement. Waiver of any default shall not be deemed to be a waiver of any
17 subsequent default. Waiver of breach of any provision of this agreement shall not be
18 deemed to be a waiver of any other or subsequent breach and shall not be construed
19 to be a modification of the terms of the agreement unless stated to be such through
20 written approval by the parties which shall be attached to the original agreement.

21 VII. Indemnification and Hold Harmless

- 22 A. King County shall indemnify and hold harmless the City and its elected officials,
23 officers, agents or employees, or any of them, from and against any and all claims,
24 actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever,
25 which are caused by or result from a negligent action or omission of King County, its
26 officers, agents and employees in performing its obligations pursuant to this
27 Agreement, including all claims arising prior to the effective date of incorporation.

28 In the event that any suit based upon such a claim, action, loss or damage is
29 brought against the City or the City and King County, King County shall defend the
30 same at its sole cost and expense and, if final judgment be rendered against the City
31 and its elected officials, officers, agents and employees or jointly against the City and

1 King County and their respective elected officials, officers, agents and employees,
2 King County shall satisfy the same.

3 B. In executing this Agreement, the County does not assume liability or responsibility
4 for or in any way release the City from any liability or responsibility which arises in
5 whole or in part from the existence or effect of City ordinances, rules or regulations.
6 If any cause, claim, suit, action or administrative proceeding is commenced in which
7 the enforceability and/or validity of any such City ordinance, rule or regulation is at
8 issue, the City shall defend the same at its sole expense and if judgment is entered or
9 damages are awarded against the City, the County or both, the City shall satisfy the
10 same, including all chargeable costs and attorney's fees.

11 C. The City shall indemnify and hold harmless King County and its elected officials,
12 officers, agents and employees, or any of them, from and against any and all claims,
13 actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever,
14 which are caused by or result from a negligent act or omission of the City, its
15 officers, agents and employees in performing obligations pursuant to this Agreement,
16 and from claims that arose after the effective date of incorporation.

17 In the event that any suit based upon such a claim, action, loss or damage is
18 brought against King County or King County and the City, the City shall defend the
19 same at its sole cost and expense and, if final judgment be rendered against King
20 County and its officers, agents and employees or jointly against King County and the
21 City and their respective officers, agents and employees, the City shall satisfy the
22 same.

23 D. Each Party to this Agreement shall immediately notify the other of any and all
24 claims, actions, losses or damages that arise or are brought against that Party relating
25 to or pertaining to the sites identified in the Agreement Attachment(s).

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E. 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 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 WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ of _____, 19__.

Approved as to form:

KING COUNTY:

Deputy Prosecuting Attorney

King County Executive

CITY OF COVINGTON:

Legal Counsel

City Manager