

KING COUNTY

1200 King County Courthouse 516 Third Avenue Seattle, WA 98104

Signature Report

September 18, 2003

Ordinance 14755

Proposed No. 2003-0417.2

Sponsors Patterson, Edmonds and Phillips

1	AN ORDINANCE authorizing the King County executive
2	to enter into an interlocal agreement with Tacoma Public
3	Utilities to implement restoration projects at Auburn
4	Narrows on the Green river.
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7	BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:
8	SECTION 1. Findings:
9	A. The city of Tacoma, department of public utilities, water division (doing
10	business as and referred to in this ordinance as "Tacoma Water") withdraws water from
11	the Green river in King County as a principal source of potable water supply for the city
12	of Tacoma and its customers.
13	B. In its 1987 Tacoma Comprehensive System Water Plan, Tacoma Water
14	identified the need for a second supply pipeline from the Green river, and as part of water
15	plan implementation, designed and permitted a pipeline that runs from the diversion
16	works on the Green river through south King County to the existing water supply system
17	near Tacoma ("Pipeline 5").

18	C. As construction of Pipeline 5 necessitated crossing a number of streams and
19	wetlands in King County, the county required Tacoma Water to develop a comprehensive
20	mitigation plan that was approved by the King County council in 1993 through
21	Ordinance 10776.
22	D. The mitigation plan required both on-site mitigation wherever wetlands were
23	impacted by construction and an additional amount of off-site compensatory wetland
24	mitigation to account for the temporal loss of wetland values that could not be mitigated
25	at the impact sites.
26	E. The plan also created an environmental resource fund that would over time
27	make available two million five hundred thousand dollars to be used by King County for
28	the purposes of acquiring and restoring fish habitat, protecting wildlife and water
29	resources, and providing recreational opportunities within the Green river basin.
30	F. In 1995, the King-County-owned Auburn Narrows park property was
31	identified as a candidate site for Tacoma Water's off-site wetland impact mitigation
32	activities, and King County and Tacoma Water began evaluations for implementing a
33	mitigation project at the site.
34	G. The Auburn Narrows site adjoins a segment of the Green river that King
35	County has identified as a high priority for fish and wildlife habitat enhancement, and
36	environmental resource fund funding has been targeted for a salmon habitat enhancement
37	project at the site.
88	H. Tacoma Water and King County, through its water and land resources
89	division, have agreed to work jointly on a conceptual restoration plan that encompasses

40	Tacoma Water's required mitigation project and the salmon habitat enhancement that
41	King County desires to implement.
42	I. The conceptual restoration plan has been shown to be feasible through a joint,
43	preliminary design effort completed in early 2003.
14	J. King County and Tacoma Water wish to cooperate to implement a wetland
45	restoration, enlargement and enhancement project and salmon habitat restoration project
1 6	at the Auburn Narrows site.
1 7	K. In accordance with chapter 39.34 RCW, the Interlocal Cooperation Act, King
18	County and Tacoma Water are each authorized to enter into an agreement for cooperative
1 9	action.
50	SECTION 2. The county executive is hereby authorized to enter into an interlocal
51	agreement in substantially the same form as Attachment A to this ordinance, provided
52	that the funds to be transferred from Tacoma Water to King County for purchase of
53	replacement recreational property shall be spent to purchase suitable replacement

property located in the Green River Basin, subject to approval of suitable replacement property by the state of Washington Interagency Committee on Outdoor Recreation.

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Ordinance 14755 was introduced on 9/8/2003 and passed by the Metropolitan King County Council on 9/18/2003, by the following vote:

Yes: 10 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Phillips, Mr. Pelz, Mr. McKenna, Mr. Constantine, Mr. Hammond and Mr. Irons

No: 0

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

KING COUNTY COUNCIL KING COUNTY, WASHINGTON

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this and day of October, 2003.

Attachments

A. Interlocal Agreement between King County and the City of Tacoma, Department of Public Utilities, Water Division to Implement Restoration Projects at Auburn Narrows on the Green River

14755 2003-417 ATTACHMENTA

INTERLOCAL AGREEMENT BETWEEN KING COUNTY AND THE CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, WATER DIVISION TO IMPLEMENT RESTORATION PROJECTS AT AUBURN NARROWS ON THE GREEN RIVER

1.	WHEREAS, the City of Tacoma, Department of Public Utilities, Water Division
2	(d.b.a. and hereinafter "Tacoma Water") withdraws water from the Green River in King
3	County as a principal source of potable water supply for the City of Tacoma and its
4	customers, and
5	WHEREAS, in its 1987 Tacoma Comprehensive System Water Plan Tacoma Water
6	identified the need for a second supply pipeline from the Green River, and as part of Water
7	Plan implementation designed and permitted a pipeline that runs from the diversion works or
8	the Green River through south King County to the existing water supply system near Tacoma
9	(hereinafter "Pipeline 5"), and
10	WHEREAS, as construction of Pipeline 5 necessitated crossing a number of streams
11	and wetlands in King County, the County required Tacoma Water to develop a
12	Comprehensive Mitigation Plan that was approved by the King County Council in 1993
13	through Ordinance 10776, and
14	WHEREAS, the Mitigation Plan required both on-site mitigation wherever wetlands
15	were impacted by construction, and an additional amount of offsite compensatory wetland
16 .	mitigation to account for the temporal loss of wetland values that could not be mitigated at
17	the impact sites, and
18	WHEREAS, the Plan also created an Environmental Resource Fund ("ERF") that
19	would over time make available \$2.5 million to be used by King County for the purposes of
20	acquiring and restoring fish habitat, protecting wildlife and water resources, and providing
21	recreational opportunities within the Green River Basin, and
22	WHEREAS, in 1995, the King County-owned Auburn Narrows Park property was
23	identified as a candidate site for Tacoma Water's offsite wetland impact mitigation activities,
24	and King County and Tacoma Water began evaluations for implementing a mitigation project
25	at the site, and
26	WHEREAS, the Auburn Narrows site adjoins a segment of the Green River that King
27	County has identified as a high priority for fish and wildlife preservation, and ERF funding
28	has been targeted for a salmon habitat enhancement project at the site, and,

1		WHEREAS, Tacoma Water and King County, through its Water and Land Resource		
2		Division, worked jointly on a conceptual restoration plan encompassing Tacoma Water's		
3		required mitigation project and the salmon habitat enhancement that King County desires to		
4		implement, and		
5		WHEREAS, the conceptual restoration plan was shown to be feasible through a joint		
6		preliminary design effort completed in early 2003, and		
7		WHEREAS, King County and Tacoma Water, hereinafter the "Parties," wish to		
8	•	cooperate to implement a wetland restoration, enlargement and enhancement project and		
9		salmon habitat restoration project at the Auburn Narrows site, and		
10		WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, King County		
11		and Tacoma Water are each authorized to enter into an agreement for cooperative action;		
12		NOW THEREFORE, the Parties hereto agree as follows:		
13	I.	Purpose		
14		A. This Agreement provides a mechanism for King County, as represented by its Water		
15		and Land Resources (WLR) Division, and Tacoma Water to cooperate to design and		
16		construct a wetland restoration, enlargement and enhancement project and a salmon		
17		habitat restoration project at the Auburn Narrows site in King County. The wetland		
18		restoration, enlargement and enhancement project will hereinafter be referred to as		
19		"Project A" and the habitat restoration project will hereinafter be referred to as		
20		"Project B" (collectively referred to as the "Projects"). The Parties intend that		
21		Project A will be constructed before the end of 2004; Project B may or may not have		
22		been completed at that time.		
23		B. This Agreement provides for ongoing maintenance and monitoring of the Projects		
24		pursuant to any permitting requirements that may apply.		
25	П.	Description of Projects		
26		The Auburn Narrows site on which the Projects are to be implemented is a 50.9-acre		
27		parcel owned by King County along the Green River, downstream of the State Route 18		
28		Bridge and north of the SE Auburn-Black Diamond Road. The southern 24.8 acres of the		
29		site consists of a high river terrace; the northern 26.1 acres of the site consists of a lower		
30		floodplain. The lower terrace supports both upland and floodplain wetland communities,		
31		including forest, scrub-shrub and herbaceous habitats. Six wetlands are located in the		
32		lower floodplain terrace, including a 2.73-acre oxbow pond and 1.02 acres of other		

wetland habitats. The upper terrace consists of abandoned upland pasture dominated by pasture grasses, thistle, red elderberry, and Scotch broom. Though the site has not been developed, it is currently designated as urban recreation land by the funding sources used to acquire the site. The public accesses a Washington Department of Fish and Wildlife easement along the river via an informal trail through the site.

Due to the nature of the funding sources used to acquire the site in the mid-1970s, a conversion process is required to change the use of the site to habitat restoration and/or mitigation uses. This will include action by the Washington State Interagency Committee for Outdoor Recreation (IAC) to change the current designated use to that of a restoration and mitigation site. It will also require the acquisition of additional property, of equivalent appraised value, to be owned by King County and designated for active recreation use.

The goals of the Projects are to meet Tacoma Water's offsite wetland mitigation requirements listed in its permits for the Second Supply Pipeline and to increase salmonid habitat features by creating a new side channel connected to the Green River. The Parties intend that construction of the Projects will be coordinated in order to achieve efficiencies; however for purposes of planning and division of responsibilities (and implementation if necessary), the Projects are separable: Tacoma Water's Project A consists of wetland restoration, enlargement, and enhancement; and King County's Project B consists of side channel habitat improvements. The location and boundaries of the Projects are identified and graphically depicted on the diagram attached to this Agreement as Exhibit One, which is incorporated herein and made a part hereof.

III. Project Administration

A. The work to be performed under this Agreement will be administered by a Project Manager for King County as designated by the WLR Division and a Project Manager for Tacoma Water as designated by Tacoma Water. Each party shall, within 10 days of mutual acceptance of this Agreement, notify the other in writing of its designated Project Manager. As of the date of execution of this Agreement, the King County Project Manager is the Manager of the Land and Water Stewardship Section of the WLR Division, and the designated Project Manager for Tacoma Water is the Second Supply Pipeline Project Manager. The Project Managers will coordinate as needed to manage implementation of the Projects, to resolve issues referred by the Joint Design

1		Team (as described below) and to ensure compliance with the terms of this
2		Agreement. The Project Managers will seek to make decisions by consensus.
3	. 1	B. Up to the time of completion of construction of the Projects, the WLR Division and
4		Tacoma Water will provide technical staff to participate in a Joint Design Team
5		("JDT") to: 1) share technical, ecological and engineering information regarding the
6 .		Projects; 2) prepare and update schedules, scopes and budgets for the Projects; 3)
7		coordinate the execution of tasks to complete Scope of Work elements; and 4)
8		prepare recommendations for any actions or decisions needed by the Project
9		Managers. The JDT will meet on a biweekly basis and in addition will be available t
10		coordinate as needed. Any issues that cannot be resolved within the JDT will be
11		referred to the Project Managers for resolution.
12	IV.	Responsibilities
13	F	Responsibilities as outlined below correspond to work elements as outlined in the Scope
14		f Work attached to this Agreement as Exhibit Two, which is incorporated herein and
15		nade a part hereof. In cases where Tacoma Water uses a contractor to execute its
16	r	esponsibilities, Tacoma Water agrees to manage its contractor so as to meet the terms of
17		nis Agreement. In cases where King County uses a contractor to execute its
18	re	esponsibilities, King County agrees to manage its contractor so as to meet the terms of
19	th	uis Agreement.
20	· A	. Property Use
21		King County will conduct all Property Use activities as outlined on Exhibit Two.
22	В	. Permitting
23		Tacoma Water will conduct all Permitting activities required for Project A and King
24		County will conduct all Permitting activities required for Project B.
25	C	. Design
26		Prior to the execution of this Agreement, the Parties completed preliminary design
27		activities for Projects A and B; these activities are described in Exhibit Two.
28	D.	Final Design and Bid Documents
29		Tacoma Water will prepare the Plans, Specifications and Estimates ("PS&E") for
30		Project A and King County will prepare the PS&E for Project B.
31	E.	Construction
32		1. Tacoma Water will construct Project A.

1	2.	By December 31, 2003, King County will notify Tacoma Water concerning
2		whether or not King-County desires Tacoma Water to construct Project B in
3	ſ	conjunction with Project A.
4	3. 1	King County will construct Project B if it does not choose to have Tacoma Water
5		construct Project B.
6	4.	If King County Elects to Have Tacoma Water Construct Project B
7		a. Tacoma Water agrees to construct Project B in conjunction with Project A if
8		King County so notifies and requests; King County will identify a contact
9		person to act as a County Owner Representative for Project B during
10		construction.
11	ŧ	o. If King County notifies Tacoma Water that it does desire Tacoma Water to
12		construct Project B in coordination with Project A, King County will, on or
13		before January 31, 2004, provide Tacoma Water the PS&E for Project B for
14	•	inclusion in the overall construction bid package. King County will thereafter
15		work with Tacoma Water to integrate the Project A and Project B bid
16		documents.
17	c	. Tacoma Water and King County must have each approved the construction
18		bid package before bids are solicited. King County's Owner Representative
19		must have approved Tacoma Water's selected contractor before a contract
20		with such contractor is executed.
21	d	. Tacoma Water will ensure that the construction bid includes separate cost
22		figures for Construction of Project A and Construction of Project B.
.3	e.	If work change orders are proposed, Tacoma Water will make a preliminary
4		determination regarding whether such change orders affect only Project A,
5		only Project B, or both Projects. Change orders potentially affecting only
6		Project B or both Projects must be reviewed and approved by the Project B
7		Owner Representative prior to implementation.
8	f.	Tacoma Water will separately contract for a Construction Site Manager. King
9		County will have approval over the selection of the Construction Site
0		Manager.

F. Monitoring and Maintenance

1 2

- 1. Tacoma Water's responsibility for monitoring and maintenance of Project A will be established by the permitting agencies for some period of years. Tacoma Water will perform required monitoring and maintenance activities for one year after Project A completion. Thereafter, King County will perform said required monitoring and maintenance activities on behalf of Tacoma Water for the remaining years of the monitoring/maintenance period with reasonable costs thereof to be reimbursed by Tacoma Water as described below. Tacoma Water will provide King County with the opportunity to review and comment upon the Project A Monitoring Plan prior to Tacoma Water's completion of Project A.
- 2. For each year after the first year of monitoring/maintenance for Project A, King County will prepare for Tacoma Water's review and approval a maintenance work plan with cost estimates including contingency costs. King County will execute the work plan elements at the appropriate times during the course of the year. King County will secure Tacoma Water's written approval prior to performing work causing the total of cost estimates plus contingency costs to be exceeded.
- 3. King County will monitor and maintain Project B as required by permitting agencies.
- G. Neither party is acting as the agent of the other under the terms of this Agreement or with regard to the Project.
 - 1. All services performed by King County, its employees and/or contractors relative to Project A, and all services performed by Tacoma Water, its employees and/or contractors to Project B, shall be furnished as independent contractors, respectively, and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant. No payroll or employment taxes of any kind shall be withheld or paid by either Party for services rendered by the other with respect to payments made hereunder. The payroll or employment taxes that are the subject of this provision include, but are not limited to, FICA, FUTA, state disability insurance tax and state unemployment insurance tax. By reason of each Parties' independent contractor status hereunder, no

1		Workers' Compensation insurance has been or will be obtained by Tacoma Water
2		on account of King County and vice versa.
3	v.	Financial Responsibilities
4		A. Property Use
5		Tacoma Water will reimburse King County for all reasonable and actual costs to
6		conduct Property Use activities as identified in Exhibit Two and conducted by King
7 .		County. Estimated costs for Property Use activities is \$255,000. Property Use costs
8		to be reimbursed by Tacoma Water will not exceed \$270,000 without written
9		agreement of Tacoma Water.
10		B. Permitting
11		Tacoma Water is responsible for all costs it incurs in the course of acquiring permits
12		for Project A and King County is responsible for all costs it incurs in the course of
13		acquiring permits for Project B.
14	•	C. Preliminary Design
15		Each Party agrees to bear the cost of the preliminary design activities it has
16		conducted.
17		D. Final Design
18		King County will pay for all costs it incurs in the course of conducting final design
9		activities for Project B, and Tacoma Water is responsible for all costs it incurs in the
20		course of conducting final design activities for Project A.
21		E. Construction
2		1. If King County elects to construct Project B, it will pay for all costs incurred for
3		such construction and Tacoma Water will pay for all costs incurred to construct
4		Project A.
5		2. If King County chooses to have Tacoma Water construct Project B in conjunction
6		with constructing Project A, the following cost provisions apply:
7		a. Tacoma Water will pay for all costs associated with the Bid Tendering and
8		Contract Execution tasks as identified in Exhibit Two.

1		b. King County shall pay for Project B construction costs as represented by the
2		bid amount for Project B. Tacoma Water is responsible for Project A
3	•	construction costs as represented by the bid amount for Project A.
4	•	c. King County will be fully responsible for costs of work change orders
5		affecting Project B which have been reviewed and approved by the Project B
6		Owner Representative. For work change orders affecting both Projects which
7		have been reviewed and approved by the Project B Owner Representative,
8	•	King County and Tacoma Water shall divide cost responsibilities by the
9		relative proportion of the Project B construction cost bid amount to the Project
10		A construction costs bid amount.
11		d. King County and Tacoma Water shall pay one-third and two-thirds shares
12		respectively of Construction Site Manager costs.
13		F. Monitoring and Maintenance
[4		King County is responsible for all monitoring and maintenance costs for Project B.
15		Tacoma Water is responsible for all monitoring and maintenance costs for Project A,
16		with monitoring and maintenance work to be conducted according to Agreement
7		Section IV.F.
.8	VI.	Billing
9		A. Upon execution of this Agreement, King County will invoice Tacoma Water for
0		actual costs incurred to date to complete the Property Use tasks and will bill Tacoma
1		Water on a quarterly basis thereafter for additional costs incurred. Tacoma Water
2		will pay invoices within 45 days of receipt.
3	•	B. If King County elects to have Tacoma Water construct Project B in conjunction with
4		Project A, Tacoma Water will bill King County for costs incurred for the
5		Construction Site Management and Project B construction costs as outlined in
6		Agreement Section V. King County will pay invoices within 45 days of receipt.
7		C. Once King County has begun monitoring and maintenance for Project A King County
8		will bill Tacoma Water for costs incurred on a quarterly basis. Tacoma will pay
•		invoices within 45 days of receipt.

	V 11.	Effectiveness, Duration, Termination and Amendment
2		A. This Agreement is effective upon signature by King County and Tacoma Water and
3		will remain in effect until completion of the required monitoring and maintenance
4		period.
5		B. Up to the completion of construction of Project A and Project B, this Agreement may
6		be terminated upon the written consent of both Parties.
7		C. After completion of construction of Project A and Project B, this Agreement may be
8		terminated by either Party upon 90 days written notice. Tacoma Water agrees that if
· 9		it intends to terminate the provision of monitoring and maintenance services by King
10		County it will, prior to such termination, provide King County with the opportunity to
11		discuss with Tacoma Water its rationale for wishing to terminate services and
12		circumstances under which King County might be provided the opportunity to
13		continue as the monitoring and maintenance service provider.
14		C. This Agreement is not assignable by either Party, either in whole or in part.
15		D. This Agreement may be amended, altered, terminated or clarified only by written
16		agreement of the parties hereto.
17		E. This Agreement is a complete expression of the terms hereto and any oral or written
18	•	representations or understandings not incorporated herein are superceded by this
19		Agreement. The Parties recognize that time is of the essence in the performance of
20		the provisions of this Agreement. Waiver of any default shall not be deemed to be a
21 .		waiver of any subsequent default. Waiver of breach of any provision of this
22		Agreement shall not be deemed to be a waiver of any other or subsequent breach and
23		shall not be construed to be a modification of the terms of the Agreement unless
24		stated to be such through written approval by the parties which shall be attached to
25		the original Agreement.
26		F. Nothing herein shall be construed as obligating the Parties to expend money in excess
27		of appropriations authorized by law and administratively allocated for this work.
28	VIII.	Dispute Resolution
29		A. Any conflicts that cannot be resolved by the Project Managers will be referred for
30		resolution to the Division Manager of the WLR Division and the Tacoma Water
31		Superintendent.

1		B. Any conflicts that cannot be resolved by the Division Manager of the WLR Division
2		and the Tacoma Water Superintendent will be referred for resolution to the
3		Department Director of the King County Department of Natural Resources and the
4	•	Director of Tacoma Public Utilities. Any conflicts that cannot be resolved by the
5		Department Director of the King County Department of Natural Resources and the
6		Director of Tacoma Public Utilities shall, within 15 days of being submitted to said
7		Party representatives, be submitted to binding arbitration to be conducted as follows:
8		Each party will appoint an arbitrator within five working days of the request for
9		arbitration; the two appointed arbitrators shall meet and attempt to resolve the
10	•	submitted issues within ten working days thereafter. In the event of failure to so
11		resolve the dispute, the two arbitrators shall select an independent arbitrator from a
12		list provided by the American Arbitration Association (AAA) within five working
13		days thereafter. If the two selected arbitrators fail to so appoint a third arbitrator, the
14		AAA shall appoint one from its list of construction industry arbitrators. The matter
15		shall be heard by the panel of three arbitrators within five working days after
16		appointment of the third arbitrator or as soon thereafter as the matter may be heard.
17		After the hearing, which shall be conducted in accordance with the construction
18		industry rules of the AAA then pertaining, the arbitrators shall have 20 days to render
19		their decision. The decision of the arbitrators shall be final and binding upon the
20		parties and shall constitute a final adjudication of all matters submitted to arbitration.
21		All notices hereunder shall be given as provided elsewhere in this Agreement for
22		notices generally.
23	IX.	Indemnification and Hold Harmless
24		Each Party shall protect, defend, indemnify, and save harmless the other Party, its
25		officers, officials, employees, and agents, while acting within the scope of their
26		employment as such, from any and all costs, claims, judgments, and/or awards of
27		damages, arising out of or in any way resulting from the indemnifying Party's its officers,

1	officials, employees, agents and/or contractors) negligent or intentional acts or omissions				
2	under the terms of this Agreement or with respect to the Projects hereunder. For this				
3	purpose the Parties hereby waive a	ny immunity that would otherwise be availab	le against		
4	such claims under the Industrial Ins	surance provisions of Title 51 RCW and state	that		
5	these indemnification provisions ha	eve been mutually negotiated.			
6	•				
7	IN WITNESS WHEREOF, the parties here	eto have executed this Agreement on the	of · ·		
8.	, 2003.				
9					
10	Approved as to form:	KING COUNTY:			
11		•			
12	·	,			
13					
14	Deputy Prosecuting Attorney	King County Executive			
15					
16	Approved as to form:	CITY OF TACOMA:			
17					
18		•			
19	A				
20	Assistant City Attorney	Director of Utilities	•		
21	Ammored on to such that From the su				
22 23	Approved as to available Funding:	Approved:			
24					
25	Finance	Kenneth Merry, Tacoma Water			
26	1 Hallot	Superintendent			
27		Superintendent			
28	Reviewed:				
29	(
30	•				
31					
	Asset Management	·			

AUBLIEN NAPROWS RESTORATION PROJECT

300 600 SCALE IN FEET

I:\2004-45

Exhibit Two

Auburn Narrows Projects Scope of Work

Work Element	Sub-tasks (where applicable)
Property Use	Easement acquisition
· ·	Site conversion ·
	Replacement property acquisition
Permitting	
Preliminary Design	Site investigation
	Conceptual design
·.	Fisheries
	Design report
	Site survey
	Hydrologic data collection and analysis
	Grading plan
	Well pump test
Final Design	Plans, Specifications and Estimates
Construction	Bid Tendering
	Contract Execution
	Construction
Construction Site	·
Management	
Monitoring	
Maintenance	