



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

July 20, 2004

Ordinance 14970

Proposed No. 2004-0313.1

Sponsors Edmonds and Lambert

1 AN ORDINANCE authorizing the executive to enter into
2 an agreement with the city of Woodinville regarding
3 mitigation for the Brightwater project.
4
5

6 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

7 **SECTION 1. Findings:**

8 A. In November 2003, King County issued its Final Environmental Impact
9 Statement ("FEIS") regarding the Brightwater regional wastewater treatment system and,
10 in December 2003, the King County executive selected the Route 9 – 195th Street system
11 as the system alternative that would be advanced for final design, permitting and
12 construction.

13 B. The selected Brightwater regional wastewater treatment system includes the
14 construction of a new regional treatment plant in unincorporated Snohomish county, deep
15 tunnel conveyance facilities through several jurisdictions, a marine outfall in
16 unincorporated Snohomish county and five primary portal sites in the cities of Bothell,
17 Kenmore and Shoreline and unincorporated Snohomish county.

18 C. In December 2003, the city of Woodinville filed an appeal with the King
19 County hearing examiner challenging the adequacy of the Brightwater FEIS under the
20 state Environmental Policy Act. The appeal hearing is scheduled to commence on July 6,
21 2004.

22 D. King County has been working with all host jurisdictions and agencies to
23 agree upon appropriate mitigation associated with the Brightwater facilities. The city of
24 Woodinville and King County have negotiated the attached mitigation agreement to
25 address the possible impacts of the Brightwater project on the city, its residents,
26 businesses and the environment. This agreement is not an admission by King County
27 that the FEIS is inadequate.

28 E. The city of Woodinville has approved the agreement and has withdrawn its
29 appeal of the FEIS.

30 F. This agreement is consistent with the county's environmental mitigation
31 policies in K.C.C. 28.86.140, the state Environmental Policy Act and the Growth
32 Management Act. The agreement provides mitigation of the adverse environmental
33 impacts identified in the FEIS and provides for community mitigation and amenities in
34 the neighborhoods and jurisdictions in which the Brightwater facilities will be
35 constructed.

36 SECTION 2. The executive or the executive's designee is hereby authorized to

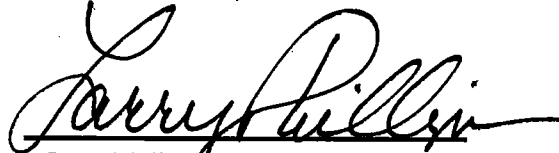
Ordinance 14970

37 enter into an agreement with the city of Woodinville, substantially in the form of
38 Attachment A to this ordinance, regarding mitigation for the Brightwater project.
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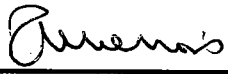
Ordinance 14970 was introduced on 7/6/2004 and passed by the Metropolitan King County Council on 7/19/2004, by the following vote:

Yes: 11 - Mr. Phillips, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Pelz, Mr. Ferguson, Mr. Hammond, Mr. Gossett, Ms. Hague, Ms. Patterson and Mr. Constantine
No: 0
Excused: 2 - Mr. McKenna and Mr. Irons

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Larry Phillips, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 29 day of July, 2004.



Ron Sims, County Executive

RECEIVED
2004 JUL 29 PM 2:50
CLERK
KING COUNTY COUNCIL

Attachments

A. Memorandum of Agreement Between King County and the City of Woodinville Regarding Principles for Addressing Mitigation for the Brightwater Project

ATTACHMENT A

**MEMORANDUM OF AGREEMENT
BETWEEN KING COUNTY AND THE CITY OF WOODINVILLE
REGARDING PRINCIPLES FOR ADDRESSING
MITIGATION FOR THE BRIGHTWATER PROJECT**

WHEREAS, in November 2003, King County issued its Final Environmental Impact Statement (FEIS) regarding the Brightwater Regional Wastewater Treatment System (“Brightwater Project”); and

WHEREAS, in December 2003 the King County Executive selected the Route 9 – 195th Street System as the final alternative; and

WHEREAS, the selected system includes the construction of a new regional treatment plant, deep tunnel conveyance facilities, a marine outfall and five (5) primary portal sites; and

WHEREAS the City of Woodinville and King County agree that the FEIS does an adequate job of evaluating the probable significant adverse impacts of the Brightwater Project that may impact the City of Woodinville; and

WHEREAS, the City of Woodinville and King County desire to look ahead to the specific issues which will be raised during the pre-design and permit application process and to enter into an agreement on principles to guide the parties at that more detailed stage of the Brightwater Project; and

WHEREAS this Memorandum of Agreement sets forth areas of interest to the parties, identifies measures King County is willing to take to provide the City of Woodinville with additional information in each area and identifies the overall goals of King County and the City of Woodinville in each area.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. The City of Woodinville and King County agree that the FEIS does an adequate job of evaluating the probable significant adverse impacts of the Brightwater project that may impact the City of Woodinville.
2. Guidelines for Addressing Potential Odor Impacts
 - A. Odor Control Standards

Odor control is of paramount concern to King County and the City of Woodinville, the current city boundary of which lies immediately to the south of the selected site for the Brightwater Treatment Plant and immediately southeast of the selected site for Portal 41. To address this concern, King County has voluntarily committed itself to build and operate the Brightwater Treatment Plant to meet an odor control standard of “no detectable off-site odor”. This standard will be met at the plant Site property line and the Portal 41 property line, 24 hours a day, 365 days a

year, using multi-stage chemical odor control units and carbon polishing with all process units covered or enclosed.

B. Odor Reserve Fund

An Odor Reserve Fund (Fund) will be established by King County to provide, if needed, additional financial resources to meet the odor control standards noted above. The Fund would be used exclusively to further enhance the odor control system, should it not meet the standard of “no detectable odors at the property line”. This fund will provide an added level of confidence to the City of Woodinville and its residents that King County’s odor control standards will be met.

King County will establish the amount of the Odor Reserve Fund following a peer review of the odor control system and will base the amount upon estimated costs of projected actions that would be taken should the system not meet the standards.

King County will establish an Air Quality Board before the Brightwater system begins operation. The Board will be formed to monitor King County’s performance meeting the odor control standards and to advise King County on if, and when, to utilize the Odor Reserve Fund. It will be composed of a limited number of members representing local governments and organizations, regulating agencies, citizens and odor experts

A peer review panel would be assembled in 2004 by King County to review the Brightwater odor control system design before finalization. The peer review will be composed of experts in odor control. The peer review panel will be tasked with recommending an amount for the Odor Reserve Fund and a reasonable period of time for holding the amount in reserve that is of sufficient length to prove the odor control effectiveness of the system and developing a charter for the Air Quality Board. King County will retain the odor reserve for at least that period of time.

The City of Woodinville will review the results of the peer review and provide input in the reserve fund amount. The City of Woodinville will also appoint a City representative to serve on the Air Quality Board.

3. Guidelines for Addressing Transportation Management Plan

King County commits to meeting with Woodinville to develop a Transportation Management Plan (TMP) for construction at the Brightwater Treatment Plant. As part of this effort, King County will work into the TMP the City of Woodinville’s concerns on traffic management issues, with appropriate mitigation for any probable significant traffic impacts such as level of service degradation upon the City of Woodinville.

If there is any construction haul route that is required through or that is likely to significantly impact the City of Woodinville it will be reviewed with the City of

Woodinville, and all required permits would be obtained from the City of Woodinville before construction begins. King County will negotiate with the City of Woodinville to identify mitigation measures for any significant impacts that are identified. King County will consult with the City of Woodinville regarding any revisions to the TMP that may affect the City and its residents.

4. Route 9 Improvements

King County has been and will continue to work with WSDOT to coordinate the Brightwater Treatment Plant construction with the Route 9 widening project and to mitigate probable significant transportation impacts related to the concurrent construction of the Route 9 highway adjacent to the Brightwater site. If the widening project stays on schedule to be completed in 2006, King County will make every effort to begin construction after the road project is complete. Construction staging may be possible for WSDOT on the Brightwater site to ease construction impacts on the roadway itself, and King County is working to make that opportunity available to WSDOT. King County's understanding is that WSDOT is making every effort to begin this improvement project as quickly as possible. The City of Woodinville will express its support of the Route 9 widening project and the desire for that project to stay on schedule to State and local agencies as requested through letters or resolutions. If the City must formally approve any aspect of permitting of the Route 9 widening project, it will not unreasonably withhold any such approval.

5. Biosolids Truck Trips

All biosolids trucks that would come to, or leave, the Brightwater treatment plant would do so via State Route 522 and State Route 9. These covered trucks would number approximately 2-3 trucks per day, as stated in the FEIS. If SR 522 and SR 9 become unavailable for a period of time these biosolids haul routes may be modified to include arterials in the City of Woodinville. These routes will not be assigned for daily hauling without advance notice, negotiation and agreement by the City of Woodinville. King County will work with the City of Woodinville to define these routes and provide appropriate mitigation for any significant impacts associated with these haul routes. King County will have a route plan in place with the City of Woodinville before the plant commences operations to address any emergency that would cause a haul route to be switched to the City of Woodinville for a limited period of time.

6. FEIS Clarifications

Upon review of the Brightwater FEIS, the City of Woodinville has identified some statements which in its view warrant clarifications. The FEIS noted in Volume 11 at p. 11-13 that the Route 9 site is not within the area proposed for annexation by the City of Woodinville. This is a correct statement regarding the area currently proposed for annexation by the City. As nearly all of the Route 9 area remains within the City's designated urban growth area, however, it could at some future date be proposed for annexation.

A second area of clarification related to the statement in the FEIS as to the ownership of wells in the City of Woodinville. The FEIS states in Volume 6 at p. 6-21 that the City of Woodinville has wells. The wells in question are located in the City of Woodinville, but are owned by the Woodinville Water District, and not the City. This clarification was not spelled out in the FEIS.

King County will issue written clarifications to these items.

7. Guidelines for Addressing Emergency Management Planning

King County recognizes the importance of emergency management planning and pledges to work with the City of Woodinville and the Woodinville Fire and Life Safety District (taking into account current inter-local agreements) regarding emergency management planning and related facility design issues to accommodate the construction and operation of the Brightwater Project. Input will be gained by working directly with each of the parties mentioned above during the design and permitting phases of the Brightwater project, which are now underway.

King County will work with all emergency first responders that would be required to provide service along the Brightwater System, including the City of Woodinville, to address adequate response times, availability of required equipment and training of response staff to assure each jurisdiction that the needs of the Brightwater project can be provided for during construction and operations and that citizens will continue to have timely response from local emergency service providers.

8. Guidelines for Addressing Potential Construction and Operational Impacts at the Treatment Plant Site

The City of Woodinville is in close proximity to the Brightwater treatment plant site and its citizens and businesses could be affected by the construction or operation of the Brightwater facilities if probable significant impacts were not appropriately mitigated.

King County will work with the City of Woodinville to address the probable significant construction and operational impacts associated with Brightwater activities at the treatment plant site that lies just north of the current City limits of Woodinville and within its proposed urban growth area. Woodinville is not currently the permitting jurisdiction with approval authority at this site, but could potentially be affected by construction or operational activities.

King County commits to consulting with and allowing the City of Woodinville to review and comment on all preliminary design drawings that will be part of the submittal package for the Conditional Use Permit application to Snohomish County regarding the treatment plant site. King County will identify probable significant impacts to the City of Woodinville and propose appropriate mitigation. The process will work as follows: three weeks prior to King County's submittal to Snohomish County, preliminary design drawings for the permit submittal will be shared with the City of Woodinville; after two weeks, input will be taken from the

City of Woodinville; and King County will make adjustments to the drawings as it deems appropriate, based on the City's comments before a formal submittal is made to Snohomish County. King County will release all other Snohomish County permit applications to the City of Woodinville concurrently as they are submitted to Snohomish County.

The product of this consulting, review and comment process is advisory and is not binding on either King County or the issuing agency. Nothing in this section shall create any liability or responsibility by the City of Woodinville for any plan, design or permit review. Responsibility for the complete and accurate preparation of permits, plans and specifications and for compliance with applicable codes shall rest exclusively with King County.

The appropriate sections of the existing "Woodinville Design Guidelines" will be taken into account as design work on the Brightwater treatment plant continues, in an effort to respect the proximity between the treatment plant site and the City of Woodinville and the potential that the site may eventually be annexed to the City.

King County will also take into account the planning, design and construction work that the City of Woodinville has completed to date to enhance the Little Bear Creek corridor for the betterment of an important regional habitat and the recreational use of residents of the City of Woodinville. The design of Brightwater will attempt to build on this work and where possible, further enhance the habitat of Little Bear Creek and provide additional public recreation opportunities or develop continuity between recreational opportunities developed by the City and the Brightwater Project.

King County commits to involving a representative of the City of Woodinville in mitigation discussions related to the treatment plant site. King County commits to gaining input from and involving the City of Woodinville in the planning of all public mitigation meetings related to the Brightwater Treatment Plant.

9. Guidelines for Woodinville Staff Review Funding

King County commits to reimburse the City of Woodinville for staff time (including staff time for review and input by the Woodinville Fire and Life Safety District) that will be required to provide review of Brightwater design and permit submittals based on an agreed to scope of work and associated hourly rates. King County will also provide reimbursement for staff involvement required for public meetings also based on an agreed to scope of work and associated hourly rates. King County will not reimburse any legal fees incurred by the City of Woodinville related to the Brightwater Project or fund the participation of the City of Woodinville's representative on the Air Quality Board.

10. Guidelines for Dispute Resolution

The parties shall use reasonable efforts to mediate any dispute arising under this Memorandum of Agreement. In the event of such a dispute, each party shall designate, in writing, not more than 3 candidates it proposes to act as a non-binding mediator within ten (10) days following notification of a dispute. The

candidates proposed shall be from Judicial Arbitration and Mediation Services (JAMS) or Judicial Dispute Resolution (JDR) or shall be a neutral, independent and recognized expert in the field in which the dispute arises. If the Parties cannot agree on one of the mediators from the combined list within five (5) days, then the Parties shall promptly meet and select a mediator by blind draw. Upon selection of the mediator, the Parties shall within thirty (30) days or as soon thereafter as possible, meet and engage in a mediation of the dispute with the assistance of the mediator. The cost for mediation services shall be borne equally between the parties, each party paying one-half of the cost. The mediator shall determine reasonable procedures. Testimony and briefing, if any, provided to the mediator shall be inadmissible in any subsequent court proceedings. If mediation fails to resolve the dispute, the Parties may thereafter seek redress in court. Venue and jurisdiction shall lie with the King County Superior Court in Seattle, Washington.

11. Regulatory Authority Preserved

Nothing herein shall be construed as a waiver, abridgment or other limitation of the City of Woodinville's or King County's regulatory authority under state law, which the City and King County hereby reserves in full.

12. Termination and Modification

- A. Unless terminated earlier through the mutual, written consent of the parties, this Memorandum of Agreement shall terminate upon completion of the tasks described herein.
- B. This Memorandum of Agreement may only be modified by an amendment in writing signed by each party.

13. Mutual Indemnification

Each party to this Agreement shall be solely responsible for its own negligent and/or wrongful acts or omissions, and those of its own agents, employees, representatives or subcontractors, to the fullest extent allowed by the laws of the State of Washington. Each party agrees to protect, indemnify and save the other Party harmless from and against any and all such liability for injury or damage to the other party or the other Party's property and also from and against all claims, demand and causes of action of every kind and character arising directly or indirectly, or in any way incident to, in connection with or arising out of work performed under the terms hereof, caused by its own fault or that of its agents, employees, representatives or subcontractors.

Each party specifically promises to indemnify the other party against claims or suits brought under Title 51 RCW by its own employees, contractors or subcontractors, and waives any immunity that it may have under that title with respect to, but only to, the limited extent necessary to indemnify the other party. Each party shall also indemnify and hold the other party harmless from any wage, overtime or benefit claim of its own employee, agent, representative, contractor or subcontractor performing services under this Agreement. Each party further

agrees to fully indemnify the other party from and against any and all costs of defending any such claim or demand.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement on the date set forth below.

KING COUNTY

By: _____

Dated: _____

Title: _____

CITY OF WOODINVILLE

By: _____

Dated: _____

Title: _____