

March 15, 1978

Introduced by: ROBERT B. DUNN

MOTION NO. C3160

78-240

A MOTION authorizing the King County Executive to enter into an agreement with the Pacific Northwest River Basins Commission regarding Water and Land Related Resoruce Studies in the Snohomish River Basin.

WHEREAS, the Water Resources Planning Act of 1965 (P.L. 89-80) created the Regional River Basin Commission and defined various levels of water and related land resource planning including "Level B" River Basins Plans, and

WHEREAS, the state of Washington has applied and successfully obtained federal funding for a "Level B" Water and Related Land Resource Study of the Snohomish River Basin, and

WHEREAS, the "Mediated Agreement" was formulated to address the major issues of flood damage reduction in the Snohomish River Basin, it does not cover the spectrum of issues in water resource management, and

WHEREAS, King County will gain valuable information from the study which will assist decision makers in water and land use management issues.

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

The King County Executive is authorized to enter into an agreement in substantially the same form as attached hereto by and between King County and the Pacific Northwest River Basins Commission.

PASSED this 17<sup>th</sup> day of April, 19 78.

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

Bernard Stern  
Chairman

Attest:

Deborah M. Quinn DEPUTY  
Clerk of the Council

MEMORANDUM OF AGREEMENT PLANNING DIVISION

THIS AGREEMENT is made and entered into between the PACIFIC NORTHWEST RIVER BASINS COMMISSION, hereinafter called the COMMISSION, and KING COUNTY, hereinafter called the COUNTY.

WITNESSETH:

WHEREAS, the COMMISSION has authority to enter into this Memorandum of Agreement (MOA) concerning the Snohomish River Basin Level "B" Study under Sec. 205(a)(5) of the Water Resources Planning Act of 1965 (P.L. 89-80) and under the related MOA between the COMMISSION and the U.S. Water Resources Council, appended hereto; and

WHEREAS, the COUNTY represents that it has authority to: (1) Provide services, including representation of local interests, assigned in accordance with the approved Plan of Study (POS) for the Snohomish River Basin Level "B" Study, for which it will receive reimbursement; (2) Accept funds from the COMMISSION as compensation for certain services; and (3) Transfer COUNTY funds to the COMMISSION for expenditure in accordance with the approved POS;

NOW THEREFORE, IN CONSIDERATION OF MUTUAL BENEFITS TO BE DERIVED FROM THIS AGREEMENT, the COMMISSION and COUNTY agree as follows:

1. SCOPE OF SERVICE

The COUNTY agrees to complete in satisfactory and proper manner, as determined by the COMMISSION, the services described within the approved POS. The COUNTY also agrees to audit of all relevant records and files by the COMMISSION or by any other duly authorized audit representative for a period of three (3) years after the termination date of this agreement or of any dispute hereunder.

2. PERFORMANCE

- a. Effective Date of Agreement: The effective date of this agreement shall be October 1, 1977.
- b. Time for Performance: Any work performed prior to the effective date of this agreement, or continuing after the completion date of the same, unless otherwise agreed upon in writing as an amendment to this agreement, will be at the COUNTY'S expense.
- c. Completion Date: Performance under this agreement shall be completed no later than September 30, 1979. Such performance shall be undertaken and completed in such manner so as to assure expeditious completion in accordance with the purposes of this agreement and the approved POS.

- d. Personal Performance: The performance(s) of all COUNTY activities contemplated by this contract shall be accomplished by the COUNTY unless the performance(s) thereof by others is specifically authorized by the COMMISSION.
- e. Compliance With All Laws: The COUNTY agrees to observe all laws, regulations, and policies of the United States and the State of Washington affecting performance under this agreement.
- f. Liability for Performance: The COUNTY agrees to hold the COMMISSION harmless for all work assigned to and done directly by the COUNTY and does hereby waive all claims against the COMMISSION, its officers, agents, and employees for damages or injuries to persons or property resulting from the COUNTY'S negligent performance of its duties so assigned by the COMMISSION.

### 3. BUDGET AND COMPENSATION

- a. Reimbursement and Contributed Services: The approved Plan of Study provides that the COUNTY shall have a program budget of \$81,400 of which \$42,000 (52%) shall be eligible for reimbursement and \$39,400 (48%) shall be contributed services. Any change in the total budget amount, the reimbursable amount or the contributed services amount shall be agreed upon in writing as an amendment to this agreement.
- b. Method of Compensation: The COUNTY shall submit invoices not more frequently than quarterly. Said invoices shall include supportive documents which describe and document, to the satisfaction of the COMMISSION, the work performed, activities undertaken or the progress of the project otherwise made. The COUNTY shall be paid that portion of each invoice which represents the percentage of the budget which is reimbursable (52%), up to a maximum amount of \$42,000.
- c. Indirect Costs: The COUNTY may claim indirect costs in accord with the negotiated indirect cost percentage as previously approved or subsequently modified by the United States Environmental Protection Agency.
- d. Invoice Requirements: The request for payment must itemize and break down all allowable direct costs into object categories and shall apply the indirect cost percentage to indicated direct labor costs. A distribution of costs must also be made to work elements as tabulated in Figure 4 of the approved Plan of Study where the COUNTY is shown as a funded participant in the study. A general guideline for completion of the request for payment is attached to this agreement as an Appendix and by this reference is made a part hereof.

- e. Period of Compensation: All payments will be for services performed within the effective dates of this agreement unless specifically modified in writing by amendment to this agreement.
- f. Final Request(s) for Payment: The COUNTY must submit final request(s) for compensation within sixty (60) days after satisfactory completion of the study as determined by the COMMISSION.
- g. Maintenance of Records: Records supporting requests for payment shall be maintained in a manner which will provide an audit trail to the expenditures for which reimbursement is provided by the COMMISSION. Original source documents shall be maintained by the COUNTY and made available to the COMMISSION or a duly authorized audit representative upon request.
- h. Mileage and Per Diem: If mileage and per diem are paid, it shall not be in an amount greater than the regular COUNTY rate.

#### 4. TRANSFER OF COUNTY FUNDS

The COUNTY shall transfer funds to the COMMISSION for the study in accordance with the approved POS and study budget in the amount of \$30,000. These funds shall be transferred in two installments of \$15,000 each, the first to be transferred not later than May 31, 1978, and the second not later than March 31, 1979.

#### 5. DISPUTES

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of by agreement between the COUNTY and the COMMISSION shall be decided by a Board of Arbitration, which shall consist of three members, one each being appointed by the COUNTY and the COMMISSION, and one, the Chairperson, being appointed by the COUNTY and the COMMISSION, acting jointly. The decision of the majority of the Board of Arbitration shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. Pending final decision of a dispute hereunder, the COUNTY shall proceed diligently with the performance of the contract in accordance with the decision of the COMMISSION.

This "DISPUTES" clause does not preclude consideration of questions of law in connection with decisions provided for in the paragraph above; PROVIDED, that nothing in this contract shall be construed as making final and conclusive the decision of any administrative official, representative, or board on a question of law.

6. TERMINATION OF AGREEMENT

If it becomes evident to the COMMISSION that the COUNTY is not fulfilling in a timely and proper manner obligations of performance under this contract, the COMMISSION shall notify the COUNTY in writing of its objections where upon the COUNTY shall have thirty (30 days) to correct the situation. If the COUNTY fails to rectify its performance, the COMMISSION shall thereupon have the right to terminate this agreement by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the COUNTY under this agreement shall, at the option of the COMMISSION, become its property and the COUNTY shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, the COUNTY shall not be relieved of liability to the COMMISSION for damages sustained by the COMMISSION by virtue of any breach of agreement by the COUNTY. The COMMISSION may withhold any payments for the purpose of setoff until such time as the exact amount of damages due the COMMISSION from the COUNTY is determined.

7. MISCELLANEOUS PROVISIONS

- a. Discrimination: The COMMISSION and the COUNTY agree to be bound by all federal and state laws, regulations, and policies against discrimination and agree not to discriminate in employment, either directly or indirectly, because of a person's age, sex, marital status, creed, color, national origin, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification.
- b. All Writings Contained Herein: This Memorandum of Agreement and appendices contain the entire understanding between the parties, and there are no other agreements, understandings, or representations set forth or incorporated by reference herein. No subsequent modification(s) or amendment(s) of this agreement shall be of any force or effect unless in writing, signed by authorized representatives of the COUNTY and the COMMISSION and made a part of this original agreement.
- c. Assignments: No right or claim of the COUNTY arising under this contract shall be transferred or assigned by the COUNTY.
- d. Waiver: Waiver of any COUNTY default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this agreement unless stated as such in writing by the authorized representative of the COMMISSION.

- e. Subcontractor Compliance: The COUNTY is responsible for ensuring that all subcontractors comply with the terms of this agreement.
  
- f. Industrial Insurance: The COUNTY certifies full compliance with all state industrial insurance laws where applicable. If the COUNTY fails to comply with such laws, the COMMISSION shall have the right to immediately terminate this contract for cause as provided in Section 6 herein.
  
- g. Conflict of Interest: No officer, member, agency, or employee of either party exercising any function or responsibility in the review, approval, or carrying out of this agreement shall participate in any decision with affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.
  
- h. Lead Agency Responsibilities: All materials produced by members of the Study Team which are submitted to the COUNTY in its capacity as lead or co-lead agency of elements of the POS shall be deemed compliance by the COUNTY with the POS. The COUNTY shall not be responsible for the content, quality or timely completion of any material produced by other members of the study team for elements in which the COUNTY acts as lead or co-lead agency.

IN WITNESS WHEREOF, the parties hereby execute this Memorandum of Agreement:

SNOHOMISH COUNTY

PACIFIC NORTHWEST RIVER BASINS  
COMMISSION

\_\_\_\_\_  
Chairman,                                      DATE  
Board of Commissioners

\_\_\_\_\_  
Chairman                                      DATE

ATTEST:

By \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Prosecuting Attorney

AppendixGUIDELINE: SUBMISSION OF REQUEST FOR PAYMENT  
AND SUPPORTIVE DOCUMENTS

The purpose of this appendix is to assist the COUNTY in determining allowable items of cost. If the COUNTY fails to name an item of cost in the request for payment, this does not imply it is either allowable or unallowable; rather, determination of allowability shall be based upon the treatment of similar or related items of cost.

1. Factors Allowing Costs:

In order to be allowable, costs must:

- a. Be necessary and reasonable and specifically related to the subject study,
- b. Not be prohibited by any laws or regulations,
- c. Conform to any cost limitations or exclusions,
- d. Be consistent with state and federal (when applicable) policies, regulations, and procedures,
- e. Be given consistent treatment through uniform accounting principles,
- f. Not be allocated to or included as a cost of any other state/federal financed program, past or present.

2. Certification:

To assure expenditures are proper, requests for payment must be certified by the COUNTY or its authorized representative before payment will be allowed.

3. Unforeseen/Emergency Expenditures:

A contingency line item providing a specified amount for reimbursements for unforeseen expenditures may be made only with the prior written approval of the COMMISSION.

4. Allowable Expenditures:

No request for payment will be honored for those expenditures incurred before the effective date of the agreement, or after termination of such agreement, unless otherwise agreed upon in writing.

5. Contract Provisions Controlling:

Where any discrepancies between the specific provisions of the agreement and the applicable cost principles arise, the agreement provisions shall apply.

6. Allowable Direct Costs:

Generally, whether costs are allowable depends upon cost principles applicable to the particular project agreement. However, certain costs are commonly allowed. These include:

- advertising related to the project
- compensation for personal services
- materials and supplies
- printing
- travel

Where any questions involving allowability of direct costs arise, the COMMISSION should be consulted; otherwise, costs may be disallowed.