

REFERENCE NO. 5133
DATE 7-29-15
CITY CLERK JSC
15-068

INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF WOODINVILLE AND KING COUNTY FOR NPDES WATERSHED-SCALE STORMWATER PLANNING – BEAR CREEK

June 30, 2014 through July 31, 2018

This Intergovernmental Agreement for National Pollutant Discharge Elimination System (NPDES) Watershed-Scale Stormwater Planning – Bear Creek (“Agreement”), is made and entered into on this _____ day of July 27 2015, by and between City of Woodinville (“City”), a political subdivision of the State of Washington, and King County (“County”), a political subdivision of the State of Washington, referred to collectively as “Parties” and individually as “Party.”

RECITALS

A. Special Condition S5.C.5.c. of the County’s NPDES Phase I Municipal Stormwater Permit (effective August 1, 2013 to July 31, 2018 and modified January 16, 2015) requires King County to conduct watershed-scale stormwater planning in its choice of the Bear Creek, May Creek, or Soos Creek watersheds;

B. King County selected a subarea of the Bear Creek watershed to fulfill the S5C.5.c requirement, and the **Washington State Department of Ecology (DOE) has noted its approval in a footnote to the County’s** Phase I Stormwater Permit of the selection of the subarea on the basis that it meets the four criteria for watershed selection identified in S5C.5.c;

C. A portion of the selected Bear Creek watershed subarea is located in the incorporated City of Woodinville;

D. Special Condition S5.C.4.g. of the National Pollutant Discharge Elimination System (NPDES) Western Washington Phase II Municipal Stormwater Permit (effective August 1, 2013 to July 31, 2018 and modified January 16, 2015), to which the City is subject, requires the City to participate in the watershed-scale stormwater planning process led by King County;

E. The City and the County wish to enter into this Agreement to enable the City to meet its Special Condition S5.C.4.g. requirement by providing payment to King County for Bear Creek subarea watershed planning activities.

AGREEMENT

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City of Woodinville and the King County agree as follows:

1. DURATION OF AGREEMENT

A. The term of this Agreement is June 30, 2014, through July 31, 2018, (the “Term”) unless terminated sooner as provided herein, or unless the Phase I Permit deadline for submission of the Watershed-Scale Stormwater Plan is extended, in which case the term of this Agreement is hereby automatically extended, without further action by the Parties, to be coextensive with such deadline extended by the Permit. City of Woodinville’s and King County’s obligations

after December 31, 2015, are contingent upon each jurisdiction's legislative appropriation of necessary funds in accordance with applicable state laws, City of Woodinville ordinances, and the King County Charter. In the event funding becomes unavailable for work to be performed pursuant to this Agreement, all work, and all obligations hereunder, shall terminate in accordance with provisions of this Agreement upon the last day of funding.

- C. Notwithstanding the date on which this Agreement is executed, all activities described in Appendix A to this Agreement that are performed after June 30, 2014, shall be eligible for reimbursement under this Agreement.

2. PURPOSE OF AGREEMENT

This Agreement provides the terms under which King County will conduct stormwater planning for the previously described subarea of the Bear Creek watershed to meet its NPDES Phase I permit requirements (Special Condition S5.C.5.c), and under which the City will provide payment to King County to meet its NPDES Phase II permit requirements (Special Condition S5.C.4.g.)

Through this Agreement, the Parties confirm their intent to coordinate under a common scope of work for Bear Creek Watershed-Scale Stormwater Planning.

King County acknowledges that the City of Woodinville has appealed the modified watershed-scale stormwater planning requirements of both the Phase I and Phase II Western Washington Municipal Stormwater Permits and that such appeal is pending before the Washington State Pollution Control Hearings Board, and that nothing herein is intended or shall be interpreted to diminish in any regard the City of Woodinville's right to prosecute its pending appeal, seek a stay of the enforcement of previously identified watershed-scale basin planning requirements, obtain any available remedy should it be successful on any issue raised in the appeal, seek judicial review of the decision of the Pollution Control Hearings Board, and/or to terminate this Agreement in accordance with Section 11. below should any or all of the eleven requirements in S5.C.4.g of the Phase II modified permit be determined by the Pollution Control Hearings Board or a court of law to be in violation of law and/or stricken or ordered removed from the permit.

3. ADMINISTRATION OF AGREEMENT

Each Party to this Agreement shall designate an individual who may be designated by title or position to oversee and administer such Party's participation in this Agreement. The Parties' initial Administrators shall be the following individuals:

City of Woodinville's Initial Administrator

Thomas E. Hansen, PE, Director
City of Woodinville
Department of Public Works
17301 133rd Ave NE
Woodinville, WA 98072

King County's Initial Administrator

Mark Isaacson, Director
King County
Water and Lands Resources Division
201 S. Jackson St, RM 600
Seattle, WA 98104-3855

Either Party may change its Administrator at any time by delivering written notice of such party's new Administrator to the other Party.

4. ENTIRETY OF AGREEMENT

- A. This Agreement constitutes the entire agreement between City of Woodinville and King County and supersedes all proposals, oral and written, and all other communication between the Parties in relation to the subject matter of this Agreement. No other agreement exists between City of Woodinville and King County with regard to the instant subject matter except as expressly set forth in this instrument. Except as otherwise provided herein, no modification of this Agreement shall be effective until reduced to writing and executed by both Parties, as provided for in Section B. below.
- B. Any revisions or alterations to this Agreement shall be negotiated as an amendment requiring the written approval of both Parties.

5. SCOPE OF WORK

- A. King County shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of the work set forth in Appendix A, attached hereto and incorporated herein.
- B. King County will not be required to perform work for City of Woodinville in excess of work specified in Appendix A except by mutual agreement in a written amendment to this Agreement.

6. PERFORMANCE

King County agrees to meet all requirements of this Agreement applicable to King County, including as described in Appendix A, in a timely and professional manner. King County shall comply with the previously identified watershed-scale stormwater planning permit requirements, and all applicable federal, state, and local laws, rules, and regulations in performing this Agreement. At any time that King County cannot fulfill its responsibilities under this Agreement, King County shall notify City of Woodinville thereof in writing, together with an explanation of why the responsibilities cannot be fulfilled. Failure to perform shall be cause for City of Woodinville to terminate this Agreement with 30 days' written notice. A decision by City of Woodinville not to terminate after a failure by King County to meet its responsibilities shall not constitute a waiver of the right to terminate pursuant to the terms of this Section 6 based on such failed responsibility nor a forfeiture of City of Woodinville's right to terminate in the future pursuant to the terms of this Section 6.

7. SUBCONTRACTING

- A. King County may subcontract any of the work contemplated under this Agreement.
- B. King County shall notify City of Woodinville of such subcontracting, but prior written approval of City of Woodinville for subcontracts is not required.
- C. King County is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Agreement are carried forward to any subcontracts.
- D. If, at any time during the progress of the work, City of Woodinville determines in its sole judgment that any subcontractor is incapable of satisfactorily accomplishing the work, City of Woodinville shall notify King County, and King County and City of Woodinville shall discuss

the notification and concerns within three (3) days, and then take immediate steps to resolve the problem, including possibly terminating the subcontractor's involvement in the work. Notwithstanding City of Woodinville's right to provide input on subcontractor performance, King County solely remains responsible for administering contractor or subcontractor performance and output.

8. RIGHTS AND RESPONSIBILITIES OF CITY OF WOODINVILLE

A. Monitoring

The City of Woodinville shall have responsibility for monitoring the performance of King County's work under this Agreement. The City of Woodinville shall examine work product, quarterly reports and invoices submitted by King County, and shall render decisions concerning acceptability of work and payment of invoices. In the event that either party makes a written request for information from the other, relative to the monitoring or completion of King County's work, the non-requesting party shall respond to the requesting party either by providing such information, if available, within a reasonable time period, or by providing a rationale for City of Woodinville's or King County's inability to provide such information

B. Compensation

- (1) City of Woodinville will reimburse King County for work accomplished pursuant to this Agreement and Appendix A. Requests for reimbursement by King County shall include a quarterly report which itemizes King County's total work. King County will be reimbursed 5.8% (the percentage of total impervious area in the Bear Creek Basin study area that lies within City of Woodinville) of the total project costs for each billing period. The initial invoice will include 5.8% of the total costs incurred by King County on the project from June 30, 2014.
- (2) In no event shall the compensation to be provided under this Agreement exceed **\$95,641.00** for the Term of this Agreement.
- (3) City of Woodinville will provide reimbursement within forty-five (45) days of receipt of the written invoice, unless within such forty-five day period City of Woodinville provides King County with a written objection to either the work or the amount of the invoice. The Administrators for City of Woodinville and King County shall confer or meet and try to resolve any such objection. If the Administrators reach an impasse, the Parties may seek to resolve the dispute through alternative dispute resolution processes such as binding arbitration, mediation, or any other remedy provided for under the terms of this Agreement. Any invoice provided by King County shall clearly identify work performed and costs incurred, and shall indicate that the work as specified in Appendix A has been accomplished.

9. INVOICES

King County shall submit all invoices at least quarterly but no more than monthly, accompanied by a progress report, to:

City of Woodinville Public Works Department
Attn: Thomas E. Hansen, PE, Director, Dept. of Public Works
17301 133rd Ave NE
Woodinville, WA 98072

Invoices shall be for services performed in fulfillment of this Agreement and shall include an accounting of time spent on tasks identified in Appendix A. The Invoice and supporting documents must itemize all costs incurred to complete the Scope of Work. Upon expiration of this Agreement, any invoice for payment not already made shall be submitted within 30 days after the expiration date.

10. AUDIT AND INSPECTION

King County shall maintain records pursuant to this Agreement in accordance with generally accepted accounting principles and practices consistently applied. King County's records shall be available for inspection and audit by City of Woodinville, the State Auditor, federal auditors, and any persons duly authorized by the parties. King County shall preserve and make such records available to said parties until at minimum, the expiration of six (6) years from the date of final payment under this Agreement.

11. DELAYS, REVISIONS AND TERMINATION

- A. City of Woodinville shall have cause to terminate or suspend this Agreement or refuse payments hereunder for failure of King County's work or products to fulfill any requirements of the Appendices, for failure of King County to submit products in a timely fashion, or for any delays, errors or omissions attributable to King County. Failure by City of Woodinville to terminate or suspend the Agreement, or failure by City of Woodinville to refuse payment of an invoice, shall not constitute a waiver of City of Woodinville's right to terminate or suspend or to refuse payment nor a forfeiture of City of Woodinville's future right to terminate, suspend or refuse payment. At City of Woodinville's option, copies of all finished or unfinished work products prepared by King County under this Agreement shall be furnished to City of Woodinville, provided King County is compensated as specified in this Agreement. By signing this Agreement, King County agrees that they will provide copies of such finished or unfinished work products for which Woodinville has paid its proportionate cost share as specified in this Agreement, within a reasonable time period when requested by the City of Woodinville, to the City of Woodinville, even after the agreement is terminated.
- B. City of Woodinville may terminate this Agreement for a violation of express provisions of this Agreement by King County or for cause. King County may terminate this Agreement for a violation of express provisions of this Agreement by City of Woodinville or for cause. The aggrieved party will give the other party written notice of such violation or failure. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.
- C. If this Agreement is terminated by City of Woodinville as provided herein, King County will be paid for services performed prior to the time of termination or work stoppage, whichever comes first, in accordance with the current billing rates, provided that such work shall have met all requirements under this Agreement and the Appendices up to the date of termination. In the event City of Woodinville withdraws from or terminates this Agreement, City of Woodinville will not be held liable for any future monetary loss incurred by King County due to termination.

- D. City of Woodinville or King County may terminate this Agreement by written, mutual consent of both parties with thirty (30) days' notice to be given by either party unless other timing is mutually agreeable.
- E. This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

12. RIGHTS AND REMEDIES

In no event shall any payment by City of Woodinville to King County constitute a waiver by City of Woodinville of any breach of covenant or any default that may exist on the part of King County. The making of any such payment by City of Woodinville while any such breach or default exists shall in no way impair or prejudice any of City of Woodinville's rights and remedies with respect to breach or default of this Agreement.

13. HOLD HARMLESS

King County agrees to protect, defend and hold harmless City of Woodinville, its elected and appointed officials, employees and agents, from and against all claims, demands and causes of action of any kind or character, including any cost of defense and attorney's fees, arising out of any negligent actions, errors or omissions of King County, its officials, employees and agents in performing this Agreement.

City of Woodinville agrees to protect, defend and hold harmless King County, its elected and appointed officials, employees and agents, from and against all claims, demands and causes of action of any kind or character, including any cost of defense and attorney's fees, arising out of any negligent actions, errors or omissions of City of Woodinville, its officials, employees and agents in performing this Agreement

14. RELATIONSHIP TO EXISTING LAWS

The laws of the State of Washington shall govern this Agreement. . Venue for any lawsuit brought for the enforcement of this Agreement shall be as provided by law.

15. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the Agreement as determined by City of Woodinville.

16. INSURANCE

King County shall carry for the duration of this Agreement, insurance and/or self-insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by King County, its agents, representatives, employees or subcontractors. Annual proof of insurance or self-insurance will be submitted to City of Woodinville.

17. INDEPENDENT CONTRACTOR

King County will perform the services under this Agreement as an independent contractor and not as an agent, employee, or servant of City of Woodinville. The parties agree that King County is not entitled to any benefits or rights enjoyed by employees of City of Woodinville. King County specifically has the right to direct and control its own activities in providing the agreed services in accordance with the specifications set out in this Agreement. City of Woodinville shall only have the right to ensure performance.

18. THIRD PARTY BENEFICIARY

No entity is a third-party beneficiary of this Agreement.

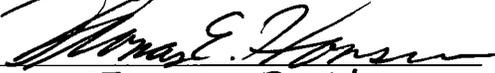
19. MISCELLANEOUS

- A. No obligation in this Agreement shall limit King County in fulfilling its responsibilities otherwise defined by law.
- B. No obligation in this Agreement shall limit City of Woodinville in fulfilling its responsibilities otherwise defined by law.

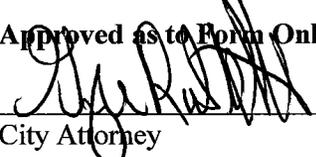
IN WITNESS WHEREOF, City of Woodinville and King County have executed this Agreement as of the date first above written.

CITY OF WOODINVILLE:

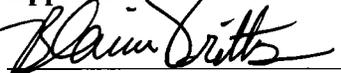
City of Woodinville, a political subdivision of the State of Washington

By 
Name: THOMAS E. HANSEN
Title: INTERIM CITY MGR.
7/22/15

Approved as to Form Only:

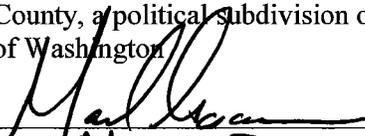

City Attorney

Approved as to Hold Harmless & Insurance


Risk Management Designee

KING COUNTY:

King County, a political subdivision of the State of Washington

By 
Name: Mark Isaacson
Title: Director, Water and Land Resources
Division, DNRP

Approved as to Form Only:


Deputy Prosecuting Attorney

APPENDIX A SCOPE OF WORK

Watershed-Scale Stormwater Planning – Bear Creek

Project Description:

In conjunction with King County's performance of the scope of work appropriate and necessary for it to meet the watershed-scale stormwater planning requirements for the selected and approved subset of the Bear Creek Watershed, the County shall in consideration of the funding provided for by the City pursuant to this Agreement, perform the needed and appropriate activities required of the City by subsection section S5.C.4.g. of the previously described Modified Western Washington Phase II Municipal Stormwater Permit.

PROVIDED, HOWEVER, Woodinville retains the right in lieu of performance of the following work by King County, to provide to King County any proposed changes to Woodinville's development-related codes, rules, standards, and plans and other stormwater management strategies for any evaluation required by the Phase I Municipal Stormwater Permit and by the Western Washington Phase II Municipal Stormwater Permit (Phase II Permit) under S5.C.g.ii (e), and how Woodinville will create an implementation plan and schedule under S5.C.g.ii (f) of the Phase II Permit and to schedule its own public review and comment process under S5.C.g.ii (g) of the Phase II Permit within Woodinville. In the event that the City exercises this right of in lieu performance for the three provisions identified, and the Department of Ecology (DOE) rejects, requires modification of, or requests clarification of any such submittals by the City, the City agrees that (1) it shall be solely responsible for responding to such communications from DOE, (2) it shall be solely responsible for meeting these three Phase II Permit requirements, and (3) King County shall have no responsibility for the Phase II Permit requirements with regard to these three identified provisions._

Notwithstanding the foregoing, the City of Woodinville will exercise NPDES Phase II permit special condition S1.D.3.c. by submitting a letter to Ecology signed by a City of Woodinville's representative with G19 authority defining the limits of King County's responsibility on behalf of the City of Woodinville's permit compliance to only include three permit requirements as defined in Phase II permit subsections S5.C.4.g.: (1) submission of a collaboration and dispute resolution document, (2) submission of an Ecology approved Scope of Work, and (3) submission of a Watershed-Scale Stormwater Management Plan.