

Attachment A

13188



King County

**EXECUTIVE DETERMINATION OF EMERGENCY AND WAIVER
FROM COMPETITIVE PROCUREMENT REQUIREMENTS FOR
THE BRIGHTWATER PROJECT'S BT-3 TUNNEL**

WHEREAS, King County is constructing Brightwater, a new regional treatment plant to serve northern King and southern Snohomish Counties; and

WHEREAS, the Brightwater project's 13-mile conveyance tunnel consists of the East Tunnel, West Tunnel and two Central Tunnels (BT-2 and BT-3 tunnels); and

WHEREAS, tunneling was completed on the East Tunnel (BT-1 Tunnel) in November 2008 and tunneling of the West Tunnel (BT-4 tunnel) is rapidly nearing completion; and

WHEREAS, the BT-2 and BT-3 tunnels have experienced lengthy construction delays that have impacted the project schedule and resulted in a delay in the projected completion date for the Brightwater project; and

WHEREAS, delays in starting up the Brightwater project may result in sanitary sewer overflows and sewer backups into homes and businesses and result in King County and its ratepayers being subject to enforcement actions and penalties for failing to provide capacity and failing to meet its National Pollutant Discharge Elimination System permit requirements; and

WHEREAS, the BT-2 tunnel boring machine has been idle for eight months while the contractor, Vinci/Parsons RCI/Frontier-Kemper JV (VPPFK), for the Central tunnels has performed repairs leading to the resumption of mining this week; and

WHEREAS, the BT-3 tunnel boring machine has also been idle for eight months while VPPFK has been planning, designing and implementing a repair process similar to that undertaken on BT-2; and

WHEREAS, the BT-3 tunnel boring machine has been moved to its designated repair location at 53rd Avenue NE and NE 195th Street (STA 820+00) where three additional months will be required to perform substantial repairs and VPPFK's willingness to continue mining beyond 53rd Avenue NE is in question; and

WHEREAS, VPPFK estimates completion of the BT-3 tunnel will cost approximately \$98 million and, based on VPPFK's schedule, King County staff believes completion of the Brightwater project would be delayed until December 2013; and

WHEREAS, King County asserts VPFK is in default of its obligations because, among other things, the contractor cannot achieve substantial completion of all work by November, 23, 2010, as required by the contract; and

WHEREAS, Jay Dee/Coluccio/Taisei JV (JCT), the West Tunnel (BT-4) contractor, has expressed an interest in performing the remaining tunnel work for the BT-3 tunnel from the Ballinger shaft to 53rd Avenue NE and NE 195th Street (STA 820+00); and

WHEREAS, King County Wastewater Treatment Division staff have assessed the situation and believe there is a substantial likelihood that JCT can complete the remaining mining work for the BT-3 tunnel at a lower cost and in significantly less time; and

WHEREAS, the timely execution of a contract amendment between JCT and King County to complete the mining for the BT-3 tunnel is critical because the BT-4 tunnel boring machine is near the shaft where it will complete its mining operations; and

WHEREAS, the King County Wastewater Treatment Division has issued a temporary stop work order to the BT-4 tunnel contractor, JCT, to allow for any changes in tunnel alignment should the county contract with JCT to complete the remaining mining for the BT-3 tunnel; and

WHEREAS, the cost to King County of suspending mining for the BT-4 tunnel under the temporary stop work order is approximately \$50,000 per day and is required to preserve the option of amending its contract with JCT to use the BT-4 tunnel boring machine to complete the BT-3 tunnel; and

WHEREAS, any further delay in completing the BT-3 tunnel presents a real impediment to the completion of the Brightwater project and, therefore, substantially impacts the usefulness of a public facility and may result in a financial loss to King County; and

WHEREAS, this emergency declaration is an initial step to allow the King County Wastewater Treatment Division to request information from JCT regarding the cost and schedule for completion of the remaining mining on the BT-3 tunnel; and

WHEREAS, an emergency waiver of competitive bidding and formal solicitation requirements of state and county law is necessary to prevent immediate impacts to public health and safety and the environment and prevent further financial loss to the County associated with the delays in the mining of Brightwater's BT-3 tunnel.

NOW, THEREFORE, THE KING COUNTY EXECUTIVE, DOW CONSTANTINE, DETERMINES AND DECLARES AS FOLLOWS:

SECTION 1

Any further delay in schedule for Brightwater's BT-3 tunnel will result in immediate risk to public health and safety and the environment, impact the usefulness of

a public facility and could result in a financial loss to the county, and thereby constitutes an emergency, pursuant to K.C.C. 12.52 and K.C.C. 4.16.050.

SECTION 2

In order to respond to such emergency, the requirements of K.C.C. 4.04, 4.16, 4.18, 12.16 and 12.18.095 and, pursuant to RCW 38.52, the requirements of competitive bidding and public notice are hereby waived with reference to any contract relating to county's lease or purchase of supplies, equipment, personal services or public works as defined by RCW 39.04.010 for Brightwater's BT-3 tunnel, or to any contract for the selection and award of professional, technical and construction contracts for the same.

DATED this 18th day of February, 2010



DOW CONSTANTINE, King County Executive
State of Washington

