

2003-391 ATTACHMENT 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

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 on
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 Resources
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 **II. 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

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

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

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

23 **III. Project Administration**

24 A. The work to be performed under this Agreement will be administered by a Project
25 Manager for King County as designated by the WLR Division and a Project Manager
26 for Tacoma Water as designated by Tacoma Water. Each party shall, within 10 days
27 of mutual acceptance of this Agreement, notify the other in writing of its designated
28 Project Manager. As of the date of execution of this Agreement, the King County
29 Project Manager is the Manager of the Land and Water Stewardship Section of the
30 WLR Division, and the designated Project Manager for Tacoma Water is the Second
31 Supply Pipeline Project Manager. The Project Managers will coordinate as needed to
32 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 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 to
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 Responsibilities as outlined below correspond to work elements as outlined in the Scope
14 of Work attached to this Agreement as Exhibit Two, which is incorporated herein and
15 made a part hereof. In cases where Tacoma Water uses a contractor to execute its
16 responsibilities, Tacoma Water agrees to manage its contractor so as to meet the terms of
17 this Agreement. In cases where King County uses a contractor to execute its
18 responsibilities, King County agrees to manage its contractor so as to meet the terms of
19 this Agreement.

20 A. Property Use

21 King County will conduct all Property Use activities as outlined on Exhibit Two.

22 B. 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 conjunction with Project A.
- 4 3. 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 b. 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.
23 e. If work change orders are proposed, Tacoma Water will make a preliminary
24 determination regarding whether such change orders affect only Project A,
25 only Project B, or both Projects. Change orders potentially affecting only
26 Project B or both Projects must be reviewed and approved by the Project B
27 Owner Representative prior to implementation.
28 f. Tacoma Water will separately contract for a Construction Site Manager. King
29 County will have approval over the selection of the Construction Site
30 Manager.

1 F. Monitoring and Maintenance

- 2 1. Tacoma Water's responsibility for monitoring and maintenance of Project A will
3 be established by the permitting agencies for some period of years. Tacoma
4 Water will perform required monitoring and maintenance activities for one year
5 after Project A completion. Thereafter, King County will perform said required
6 monitoring and maintenance activities on behalf of Tacoma Water for the
7 remaining years of the monitoring/maintenance period with reasonable costs
8 thereof to be reimbursed by Tacoma Water as described below. Tacoma Water
9 will provide King County with the opportunity to review and comment upon the
10 Project A Monitoring Plan prior to Tacoma Water's completion of Project A.
11 2. For each year after the first year of monitoring/maintenance for Project A, King
12 County will prepare for Tacoma Water's review and approval a maintenance
13 work plan with cost estimates including contingency costs. King County will
14 execute the work plan elements at the appropriate times during the course of the
15 year. King County will secure Tacoma Water's written approval prior to
16 performing work causing the total of cost estimates plus contingency costs to be
17 exceeded.
18 3. King County will monitor and maintain Project B as required by permitting
19 agencies.

20 G. Neither party is acting as the agent of the other under the terms of this Agreement or
21 with regard to the Project.

- 22 1. All services performed by King County, its employees and/or contractors relative
23 to Project A, and all services performed by Tacoma Water, its employees and/or
24 contractors to Project B, shall be furnished as independent contractors,
25 respectively, and nothing herein contained shall be construed to create a
26 relationship of employer/employee or master/servant. No payroll or employment
27 taxes of any kind shall be withheld or paid by either Party for services rendered
28 by the other with respect to payments made hereunder. The payroll or
29 employment taxes that are the subject of this provision include, but are not limited
30 to, FICA, FUTA, state disability insurance tax and state unemployment insurance
31 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
19 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

- 22 1. If King County elects to construct Project B, it will pay for all costs incurred for
23 such construction and Tacoma Water will pay for all costs incurred to construct
24 Project A.
- 25 2. If King County chooses to have Tacoma Water construct Project B in conjunction
26 with constructing Project A, the following cost provisions apply:
- 27 a. Tacoma Water will pay for all costs associated with the Bid Tendering and
28 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

14 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
17 Section IV.F.

18 **VI. Billing**

- 19 A. Upon execution of this Agreement, King County will invoice Tacoma Water for
20 actual costs incurred to date to complete the Property Use tasks and will bill Tacoma
21 Water on a quarterly basis thereafter for additional costs incurred. Tacoma Water
22 will pay invoices within 45 days of receipt.
23 B. If King County elects to have Tacoma Water construct Project B in conjunction with
24 Project A, Tacoma Water will bill King County for costs incurred for the
25 Construction Site Management and Project B construction costs as outlined in
26 Agreement Section V. King County will pay invoices within 45 days of receipt.
27 C. Once King County has begun monitoring and maintenance for Project A King County
28 will bill Tacoma Water for costs incurred on a quarterly basis. Tacoma will pay
29 invoices within 45 days of receipt.

1 VII. 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 any immunity that would otherwise be available against
4 such claims under the Industrial Insurance provisions of Title 51 RCW and state that
5 these indemnification provisions have been mutually negotiated.

6
7 IN WITNESS WHEREOF, the parties hereto 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 _____
20 Assistant City Attorney

Director of Utilities

21
22 Approved as to available Funding:

Approved:

23
24 _____
25 Finance

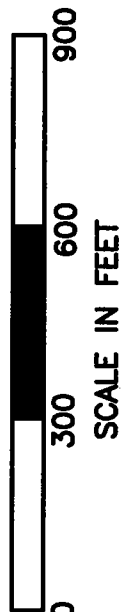
Kenneth Merry, Tacoma Water
Superintendent

26
27
28 Reviewed:

29
30
31 _____
32 Asset Management



I:\2004-45



AUBURN NARROWS RESTORATION PROJECT
EXHIBIT ONE

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	