

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

<p>AGENDA TITLE: Memorandum of Agreement Between King County and the City of Shoreline Regarding Mitigation for the Brightwater Project</p> <p>DEPARTMENT: City Manager's Office</p> <p>PRESENTED BY: Bob Olander, Deputy City Manager and Ian Sievers, City Attorney</p>
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PROBLEM/ISSUE STATEMENT:

The City Council authorized and directed staff to appeal the Final Environmental Impact Statement (FEIS) for the Brightwater project. The general concern of the City was that the FEIS did not provide specific identifiable mitigations and deferred the mitigation negotiation to later permitting phases of the project. This is of particular concern to Shoreline since Portal 19 and the outfall are in Snohomish County and not within the permitting authority of the City of Shoreline. The City Council also authorized staff to enter into negotiations with King County in an attempt to develop a mitigation agreement that would meet the needs and concerns of Shoreline residents. Staff has had several negotiation sessions with King County Brightwater staff and is now recommending adoption of a mitigation agreement.

DISCUSSION:

At the April 26th Executive Session Council reviewed an "in progress" draft Mitigation Agreement. Council directed staff to negotiate a few additional changes in the agreement and we have been meeting this past week to finalize the negotiations. Changes in the agreement are for the most part indicated in tracking format in Attachment A. Notable changes are as follows:

- The last paragraph on page three has been changed back to our original language. King County language was not acceptable in that it required Shoreline to appeal Snohomish County permits through Snohomish County if there were disagreements. The final language permits us to add conditions to the Snohomish permit and to negotiate these directly with King County.
- At Council's suggestion we have strengthened the language in Section 5 on page four regarding the utilization of rail or barge for material transportation. In addition, at the bottom of page four and top of page five we have inserted our original language and added a sentence that sets out a procedure should the County still need to export some earth spoils by truck.
- Attachment A has also been changed to eliminate the specific cost estimates for the identified mitigation projects. Each mitigation project will be paid by King County at full cost.

King County staff has agreed to all of these changes and is prepared to sign the agreement upon approval of the Shoreline City Council. Staff believes that this is an excellent agreement which will protect and benefit the residents of Shoreline. It provides the protection and specificity that will allow us to withdraw our appeal of the FEIS.

RECOMMENDATION

It is recommended that the City Council authorize the City Manager to sign the attached Memorandum of Agreement between King County and the City of Shoreline regarding Mitigation of the Brightwater Project, substantially in the form as attached. It is further recommended that the City Council authorize the City Attorney to withdraw the appeal of the FEIS upon King County signing the agreement.

Approved By: City Manager _____ City Attorney _____

**ATTACHMENT A
BRIGHTWATER MITIGATION AGREEMENT**

<i>Description</i>	<i>Required for</i>	<i>Assumptions</i>
Design overlay to sustain loads associated with this project from Pt. Wells to Aurora Avenue N	Structural integrity of pavement, noise control	two-inch overlay with minimal grinding; three miles from Pt. Wells to Aurora
Overlay and base repair to sustain loads for construction route from Aurora Avenue N to city limits	Structural integrity of pavement	Same as above, assume 1.5 miles from Aurora to I-5 or City limits
Sign haul route with contact information	Public information	
Intersection improvements at N 185 th Street and Aurora Avenue N	Congestion relief and turning radius need	May require minor property acquisition
Intersection improvement at Richmond Beach Road and 3 rd Avenue NW	Safety at high accident location	Improve signals at 3 rd and 8 th
Intersection improvement at 8 th Avenue NW	Safety and truck flow	Improve signals, pavement strengthening on eastbound lanes on west leg
Intersection Improvements at Dayton Avenue N	Safety and truck flow	signal improvements
Signal Synchronization and or preemption system from 8 th Avenue NW to Aurora Avenue N and continue along haul route	Truck/Traffic flow; value to transit system	From 8 th Avenue NW to Aurora only
ADA compliant sidewalks/walkways along haul/truck route	Pedestrian safety and access	.75 miles from Pt. Wells to 20 th Ave NW, concrete sidewalk both sides
Street lighting at key intersections (including four way stops in Richmond Beach area)	Safety for vehicles and pedestrians	Lump sum, no specific locations analyzed
Street striping twice per year along haul route	Safety	Includes new thermoplastic
Standard railing along Richmond Beach Road to match Interurban or 175 th (replace existing nonstandard and damaged pole type railing).	Added pedestrian safety and local aesthetic environment improvement to offset added nuisance of construction traffic	Assume 1,000 LF

**MEMORANDUM OF AGREEMENT
BETWEEN KING COUNTY AND THE CITY OF SHORELINE
REGARDING
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 Shoreline has appealed the FEIS; 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 parties recognize that the FEIS itself calls for future discussions on impact mitigation as the project is better defined and that this continuous process has lead to two Addenda which spell out in greater detail possible mitigation measures; and

WHEREAS, the City of Shoreline (City) 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 which will guide the parties at that more detailed stage of the Brightwater Project in formulating final mitigation measures for impacts to Shoreline; and

WHEREAS this Memorandum of Agreement sets forth areas of interest to the parties and identifies specific measures King County will take to provide the City with additional information and mitigation, and identifies the overall goals of King County and the City of Shoreline in each area; and

WHEREAS, the City and King County desire to set forth specific mitigation to address the impacts of the Brightwater project on City residents, businesses and the environment to the extent possible in this Agreement and to set forth an alternative dispute resolution process where agreement is not possible to allow negotiations to continue at meaningful points in the project, which will remove the need for the City to pursue its pending appeal of the FEIS.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. Upon the execution of this Agreement the City will promptly withdraw its appeal of the FEIS now pending with the King County Hearing Examiner. This

agreement resolves the overall issues raised by the City in its dealings with King County [regarding the environmental and permitting issues for the development of the Brightwater Project](#) and is not an admission by King County that the FEIS is inadequate.

2. Secondary Portals within the City of Shoreline

Secondary Portals 7, 27 and 23 lie within the City of Shoreline. As explained in the Final Environmental Impact Statement (FEIS), it is very unlikely that secondary portals will be required for the construction of the Brightwater conveyance system. The predesign engineering completed since the issuance of the FEIS has further diminished the likelihood that secondary portals will be required for tunnel construction. Conveyance predesign engineering will conclude in the summer of 2004 and definitively establish whether any secondary portals will be required anywhere along the entire length of the conveyance system.

If a secondary portal were to be used, it would be used in a much more limited manner than was originally described in the Final Environmental Impact Statement. The land that would potentially be needed would be ½ an acre or less to contain all activities. The portal would be used for temporary ventilation and/or ground improvement and grouting. The diameter of the secondary portal would be 8 feet in diameter or less and would most likely be used for 1 to 2 months with an absolute maximum of 6 months of use. No permanent facilities would be developed on the site of a secondary portal.

In the unlikely event that secondary portals are required, King County will perform additional site selection work to choose the exact property to be used. Because of the small site size required for a secondary portal, King County would have more flexibility in the placement of the secondary portal to avoid impacts to residences and sensitive environmental resources such as wetlands and streams. The City and the community surrounding a proposed secondary portal would be invited to offer input to assist in the determination of the secondary portal site to be used. If secondary portal sites are selected in the City, then King County would apply for any permits or approvals required by the City and determine appropriate mitigation before commencing any work at such sites.

If, in the determination of location and use of secondary portals probable significant adverse environmental impacts are identified, after taking into account mitigation measures, as specified by the City, that had not been identified in the FEIS, additional environmental analysis will be required to address the impacts and identify appropriate mitigation.

3. Portal 5 (Ballinger Way Portal within the City of Shoreline)

Portal 5 will be used as a primary portal for Brightwater conveyance construction. As a primary portal it will be used to retrieve the tunnel-boring machines and be a staging area for any secondary tunnel lining that may be required. The estimated total construction

duration of use at this portal is expected to be 12 months or less. A permanent structure of 400 square feet or less and about 15 feet tall will be constructed at this site to house odor control equipment. The total site size is approximately 1 acre with only a small portion of that required for the permanent structure to either the front or rear of the property.

After work at the portal is complete, the property, other than that required for the maintenance and operation of the permanent odor control structure, other on-site structures or facilities and any permanent access point to the conveyance tunnel itself, will be conveyed at no cost to the City as full, and complete mitigation for all direct and indirect impacts, and community mitigation caused by the construction and operational uses planned at Portal 5 by King County for the Brightwater Treatment System. The City will use the property for appropriate city use or uses that are compatible with King County's use of the retained portion of the property. This transfer of property is subject to King County Council approval which will be sought at such time as this MOA is transmitted to the Council. If the King County Council does not approve the transfer upon recommendation of King County staff, King County shall pay an amount equal to the value of the property to the City to be utilized for project mitigation. Any property conveyed to the City will be assessed for contamination and meet appropriate State and federal environmental standards for industrial and commercial lands. The value of this property will be counted towards the mitigation budget.

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4. Portal 19 (Point Wells Portal within unincorporated Snohomish County)

Portal 19, located on a portion of the current Chevron property, will be used as a primary portal for the Brightwater System and has been identified as a tunnel boring machine launching portal that will receive spoils and tunnel lining segments and will be the staging point for outfall construction activities. The estimated total construction duration at this portal is expected to be 4 years or less. No permanent above grade structures will be constructed. The below grade structures may include a transition structure, sampling station and dechlorination facility. King County will acquire a construction easement from the property owner for the construction activities that will occur on this property and will acquire in fee only 1 acre for permanent underground facilities.

King County will work with the City to address the probable significant adverse construction impacts of noise, light, glare, traffic, dust, and other impact associated with Brightwater activities at Portal 19 that lie just north of the City limits of Shoreline. King County acknowledges that the City is not the permitting jurisdiction with approval authority at this portal site but will be affected by construction activities. Therefore, King County agrees for purposes of this agreement that the City will be allowed to review the permit conditions required by Snohomish County for Portal 19 and to add reasonable conditions necessary (as determined by the City), above those required to gain the appropriate permits from Snohomish County, to mitigate impacts from Portal 19 within Shoreline. The additional conditions will be formalized between King County and the City by amending this agreement. King County shall have the right to contest the reasonableness of the City's mitigation conditions as specified in Section 10 of this

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agreement. The City acknowledges that Portal 19 and other Brightwater facilities are essential public facilities under the Growth Management Act, whose impacts are sometimes difficult to mitigate.

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Understanding that noise and glare related to construction and/or operation at Portal 19 and Portal 5 of the proposed Brightwater facilities are of concern to the City, King County will hire an acoustic design expert and a lighting expert to assess probable significant adverse impacts and develop design alternatives to address these impacts. King County will also review construction and mitigation in order to minimize view obstructions to the extent feasible.

5. Consideration of rail or barge mitigation options during construction at Portal 19

King County understands that traffic related to construction and operation at Portal 19 is of the highest level of concern to the City and its citizens. It has been clearly stated by the City that utilizing rail or barge to convey the required materials to and from Portal 19 during construction is the preferred alternative with the least environmental impact and that using trucks is the least desirable form of transportation that could be used. Based on the concerns expressed by the City, King County commits to the rail and barge transportation alternatives as the primary and preferred alternatives to the use of trucks for spoils removal and equipment/supplies delivery from Portal 19 if feasible. The City of Shoreline understands that the additional costs associated with the use of barge or rail at Portal 19 will come from the Brightwater mitigation budget. The County will work in good faith to implement a barge or rail alternative. If the County determines that the use of rail or barge is not feasible then it shall notify the City and disclose its reasoning and analysis used to reach this conclusion.

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Deleted: If King County does not use rail or barge transportation or uses some combination of rail and/or barge and trucking, then King County will negotiate appropriate mitigation for the construction haul route, selected from those possible mitigation options outlined in Attachment A and work in good faith with the City to determine additional mitigation necessary to alleviate any probably significant adverse traffic impacts caused by construction or operation of Brightwater facilities.

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Inserted: because of insurmountable permitting or environmental issues. If the use of rail or barge transportation does not prove feasible, then King County will provide at a minimum the construction route mitigations outlined in Attachment A and work in good faith with the City to determine additional mitigations necessary to alleviate any significant adverse traffic impacts.

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The City of Shoreline acknowledges that elimination of all construction related truck trips is not possible and that King County's exploration of rail or barge transportation alternatives may not prove feasible because of insurmountable permitting or environmental issues. If the use of rail or barge transportation does not prove feasible, then King County will provide at a minimum the construction route mitigations outlined in Attachment A and work in good faith with the City to determine additional mitigations necessary to alleviate any significant adverse traffic impacts. If King County constructs rail or barge facilities but cannot export all earthwork spoils by rail or barge for reasons beyond the control of King County, the City and King County will negotiate appropriate mitigation for the construction haul route selected from the mitigations listed in Attachment A.

The parties agree that the City shall be entitled to appeal the feasibility of rail/barge or the adequacy of measures proposed to mitigate significant adverse impacts by the County under Section 10 of this agreement.

6. Transportation Management Plan

King County commits to working with the City to develop a Transportation Management Plan (TMP) for construction at Portals 5 and 19 (and any secondary portals). As part of this effort, King County will include in the TMP the City's concerns on traffic management issues, with appropriate mitigation for any probable significant traffic impacts upon the City. The TMP will include, but is not limited to, the following:

- a. Construction truck traffic (trucks with three or more axles) will be scheduled to avoid commuter rush hours and school bus times (7am-9am and 4pm-6pm).
- b. Investigate and consider reasonable commute trip reduction measures such as designating a park and ride area, van or bus shuttle to and from the work site, ride sharing and other measures.
- c. Designating a construction and haul route.
- d. Establishing appropriate weight limits as determined by the City.
- e. Covering of spoils transported by truck or rail.
- f. Approval of a detailed traffic signing and control plan by the City.
- g. Regular construction site and route street sweeping.
- h. Washdown facilities for trucks leaving the site.
- i. Hours of haul and construction will be limited to regular construction times as outlined in the Shoreline Municipal Code which are between the hours of 7:01 a.m. and 9:59 p.m. on weekdays and from 9:01 a.m. and 9:59 p.m. on weekends.

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Any construction haul route that is required through or that is likely to significantly impact the City of Shoreline, will be reviewed with the City, and all required permits will be obtained from the City before construction begins. King County will negotiate with the City to identify possible mitigation measures for any probable significant impacts that are identified.

7. Odor Control

Odor control is of paramount concern to King County and the City. To address this concern, King County has voluntarily committed itself to an odor control standard of "no detectable odor at the property line" for all elements of the Brightwater System, which includes Portals 5 and 19 and any secondary portals. This standard will be met at the site property lines, 24 hours a day, 365 days a year. King County will be responsible for odor control detection and will pay for any testing required to investigate City or public complaints of odor.

King County reaffirms its commitment to building the Brightwater Treatment plant and conveyance system to meet the above-stated odor standards subject to King County appropriation. Within the next 60 days, the King County Executive shall transmit this Memorandum of Agreement ("MOA") to the King County Council so that the condition of the plant construction and related odor standard being subject to appropriation can be

removed as a condition at such time as the King County Council approves this condition in the MOA.

8. Public Park and Shoreline Access

As community mitigation, King County agrees to open for public use, as parkland, the unused southerly portion of the Richmond Beach pump station site west of Richmond Beach Drive N.W. and to provide to the City \$750,000, within 90 days of the signing of this agreement, to use for community improvements. The City of Shoreline shall work with the community to determine how the investments will be made and report to the County. This specified community mitigation of public use and funding is provided in lieu of King County designing and constructing a pedestrian overcrossing or any other amenity as community mitigation. All maintenance activities required on the southern portion of the property open for public use will be performed by the City of Shoreline to the standards of similar public park facilities within the City. The northern portion of the Richmond Beach pump station will remain exclusively for King County use only and will be fenced for security reasons. Direct driveway access must be provided to King County to access the northern portion of the site that will be retained for King County use. King County will retain ownership of the property and grant a surface use easement to the City subject to King County Council approval which will be sought at such time as this MOA is transmitted to the Council. If the King County Council does not approve the surface use easement upon recommendation by the King County staff, King County shall increase the above mitigation payment to \$800,000.

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9. Guidelines for City of Shoreline Staff Review Funding

King County commits to reimburse the City for staff time that will be required to provide review of Brightwater design and permit submittals based on an agreed-to scope of work at an hourly rate of \$122.00 as specified in the Shoreline Municipal Code. King County will also provide reimbursement for staff involvement required for public meetings based on an agreed-to scope of work at an hourly rate of \$122.00. King County will not reimburse any legal fees incurred by the City related to the Brightwater Project.

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Inserted: B.

Deleted: and associated hourly rates attached as Exhibit B ____

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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 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.

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

KING COUNTY

By: _____

Dated: _____

Title: _____

CITY OF SHORELINE

By: _____

Dated: _____

Title: _____