

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

<b>AGENDA TITLE:</b>	Motion to Authorize City Manager to sign a Joint Use Agreement with King County
<b>DEPARTMENT:</b>	City Manager's Office
<b>PRESENTED BY:</b>	Scott MacColl, Intergovernmental Relations Manager
<b>ACTION:</b>	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

**PROBLEM/ISSUE STATEMENT:**

The City of Shoreline has finalized an agreement to purchase the Brugger's Bog maintenance facility from King County. In anticipation of that transfer, the City and King County have agreed to collaborate on a shared fuel and vector truck decanting facility on the property that would allow county vehicles deployed in the Shoreline area to obtain fuel at this re-opened facility. Should the City recommission the stormwater decant facility, additional capacity will be made available to County operations at cost.

The motion is to authorize the City Manager to sign the joint use agreement with King County. The agreement would also be signed by Executive Constantine and would be approved with the Brugger's Bog Maintenance Facility Purchase and Sale Agreement submitted to the King County Council.

Authorization is necessary to move forward on the Purchase and Sale agreement. The County Council Budget and Fiscal Management Committee is expected to take up the final package on June 4, with potential final passage at the June 17 Full Council meeting.

**RECOMMENDATION**

Staff recommends that Council authorize the City Manager to sign a joint use agreement with King County for the Brugger's Bog Facility.

Approved By:            City Manager **JU**    City Attorney **IS**

## **INTRODUCTION**

The Brugger's Bog Maintenance Facility is a former King County facility that was declared surplus for County purposes. Council authorized the City to purchase the facility last November, and the City has been working with the County since to complete the process.

The motion would authorize an agreement between the County and Shoreline to share a fueling station and vector truck decanting at the maintenance facility, with the City owning the fueling station and the County providing the billing.

The shared use agreement would provide a cost saving efficiency for both the City and the County by allowing King County Sheriff Office (KCSO) personnel and other King County fleet vehicles in the greater Shoreline area to refuel at the Brugger's Bog fueling station, which will minimize the time "off the street" while still keeping costs low. Currently, KCSO vehicles must fuel either at a commercial station in the area at retail prices or they can use a Pacific Pride location at a cost per gallon less than retail prices. However, the closest Pacific Pride location is in Lynnwood, which is anywhere from 30 to 45 minutes round trip.

If the decision is made to re-open a vector decanting facility, then the County would have access to the facility at their cost.

The County will also provide fuel billing software and submit detailed invoices to the City which will allow allocation between the City's general fund and utility vehicles. This service will be provided at the same service charge that is applied to County divisions.

Under this agreement King County will:

- re-authorize Brugger's Bog Maintenance Facility as a fuel location in the county's Fuel Force system;
- procure fuel and deliver to the facility under existing county fueling contracts; and
- track and manage the fueling data for both county and city vehicles.

And the City will (the City will be installing the reader and will be responsible for the upkeep of the fuel tanks regardless):

- install a card reader;
- inspect and test the fuel tanks; and
- provide key card access to the site for selected county employees and vehicles.

Under the agreement, the City will own the tanks and card reader (the hardware) and the County will manage the data by tracking vehicles, employees and all fuel transactions.

## **RESOURCE/FINANCIAL IMPACT**

No direct financial impact. Under the three year term, King County would pay for fuel utilized by their vehicles and would bill the City for its fuel use.

### **RECOMMENDATION**

Staff recommends that Council authorize the City Manager to sign a joint use agreement with King County.

### **ATTACHMENTS**

Attachment A – Draft Joint Use Agreement for Fueling Services and Vector Decanting with King County

**JOINT USE AGREEMENT**  
**for**  
**FUELING SERVICES AND VACTOR DECANTING**  
**between**  
**THE CITY OF SHORELINE**  
**and**  
**KING COUNTY**

THIS INTERAGENCY AGREEMENT FOR SHARED FUELING SERVICES AND VACTOR DECANTING (the “Agreement”) is made and entered into this \_\_\_\_\_ day of May, 2013, by and between the City of Shoreline, an optional municipal code city and municipal corporation of the State of Washington (“Shoreline” or the “City”) and King County, a home rule charter county of the State of Washington, through its Department of Transportation, Fleet Administration Division (the “County”), either of which entity may be referred to hereinafter individually as “Party” or collectively as the “Parties.”

**RECITALS**

WHEREAS, the County owns certain real property located at 19547 25th Ave. NE in Shoreline that previously served as the County’s North Maintenance Roads Services facility, commonly referred to as Brugger’s Bog (“Brugger’s Bog”); and

WHEREAS, following the City of Kirkland’s June, 2011 annexation of the Juanita, Finn Hill and Kingsgate areas formerly served by Brugger’s Bog, the facility was closed, decommissioned and recommended for surplus; and

WHEREAS, having determined that the Brugger’s Bog property is not suitable for affordable housing, the County declared the property surplus to its needs and listed the property for sale; and

WHEREAS, the County and Shoreline have negotiated a purchase and sale agreement for the Brugger’s Bog property that has been approved by the Shoreline City Council and is currently pending review and approval by the King County Council (“County Council”); and

WHEREAS, if the proposed sale of the Brugger’s Bog property to Shoreline is approved by the County Council, Shoreline plans to continue to use the property for street maintenance and other industrial purposes; and

WHEREAS, the Brugger's Bog facility has a fueling station that has been used to support King County Sheriff's Office operations as well as other County functions; and

WHEREAS, the County has continuing need for access to vector truck decanting facilities; and

WHEREAS, if the proposed sale of the Brugger's Bog property to Shoreline is approved by the County Council, Shoreline is willing to allow the County to continue to make use of the facility for fueling and decanting capacity that is available after transfer; and

WHEREAS, with shrinking road fund resources the County is seeking to establish mutually beneficial arrangements with local jurisdictions to efficiently and effectively provide road and street maintenance services; and

WHEREAS, the King County Strategic Plan calls for the building of strategic partnerships; and

WHEREAS, the Parties desire to collaborate on a mutually beneficial shared fueling services arrangement at the Brugger's Bog property that would allow County vehicles deployed in the Shoreline area to obtain fuel at the re-opened facility and would also allow Shoreline to transition into the ownership of the fueling facility without added administrative costs and staffing; and

WHEREAS, since incorporation Shoreline has contracted with the County for police services through the King County Sheriff's Department and the reopening of the fueling station to County vehicles would help the City and County to keep fueling costs down by having vehicles refuel at the Brugger's Bog facility rather than traveling to outlying, contract fueling stations or paying local, retail gas pump rates; and

WHEREAS, County use of the Brugger's Bog fuel station for fueling its police vehicles would also benefit the City by reallocating the 30-45 minutes spent on travel for refueling at distant locations to additional law enforcement in Shoreline; and

WHEREAS, paying the County to continue tracking and billing fueling for County and City vehicles will allow the City to delay acquisition of its own software for necessary segregation of fueling charges between its utility and general fund vehicles until operations make it cost effective; and

WHEREAS, to realize the mutual benefits of shared use of the Brugger's Bog facility, the Parties desire to enter into an agreement governing their respective use of the facility; and

NOW, THEREFORE, in consideration of the terms, conditions, and mutual promises, covenants and agreements set forth herein, the Parties agree as follows:

## **AGREEMENT**

### **1. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to memorialize the respective roles and responsibilities of the Parties as related to shared fueling services and vactor truck decanting at the Brugger's Bog facility.

### **2. EFFECTIVE DATE AND DURATION OF AGREEMENT**

This Agreement is contingent upon the County Council's adoption of an ordinance authorizing the County's sale, via a separate purchase and sale agreement, of the Brugger's Bog property to the City. If the County Council authorizes the sale of Brugger's Bog to the City, this Agreement will take effect when fully executed by duly authorized representatives of both Parties but not sooner than the date the transfer of the Brugger's Bog property to Shoreline is closed (the "Effective Date"), and will remain in effect for three (3) years from the effective date. The Agreement will automatically renew for additional one (1) year terms unless terminated pursuant to the provisions hereof.

### **3. FUELING SERVICES AND VACTOR DECANTING**

#### **3.1 County Responsibilities**

- 3.1.1 Fueling Services. Pursuant to the terms and conditions of a separate agreement by which the security code reader will be sold by the County to the City and contingent upon the City's assumption of financial and operational responsibility therefor, the County will restore the security code reader for fuel dispensing equipment at Brugger's Bog within thirty (30) days of the Effective Date at the City's expense and assure the operability of the reader and data delivery to the County's Fuel Force system; procure fuel and have it delivered to the Brugger's Bog facility under existing County fueling contracts; track and manage the fueling data for both Shoreline and County vehicles by tracking vehicles, employees and all on-site fuel transactions; and bill the City for its share of fuel dispensed at the facility.
- 3.1.2 Vactor Decanting. If vactor decanting is utilized by the County at the Brugger's Bog facility, the County will follow the same policies for disposal and schedule of rates or charges as apply to City operations.
- 3.1.3 The County will be responsible for training its personnel on proper use of the fueling station or decant facility, site access and safety protocols. The County will inform the City if it is aware of faulty or damaged equipment.

- 3.1.4 The County shall be responsible for repairing or replacing any Brugger's Bog fuel station property that is damaged by a County vehicle, including but not limited to vehicles owned by the City, equipment owned by the City or for which the City is responsible, the fueling station itself, fencing, gate, landscaping, or any other property owned by the City, but only to the extent such damage is proven to have been caused by the County as a direct result of its use of the fueling station and, further, only to the extent the damage is not normal wear and tear or otherwise *de minimus*.
- 3.1.5 In the event the County's negligent use of the City's fueling station is proved to have caused a significant hazardous fuel spill, the County shall reimburse the City's reasonable costs associated with mitigation of the spill.

### 3.2 City Responsibilities

- 3.2.1 Fueling Services. The City will reimburse the County for its costs of installing and testing the security code reader; own, inspect and test the fuel tanks; provide access to the site for designated County employees and vehicles; and reimburse the County for the City's share of fuel dispensed at the facility.
- 3.2.2 Vactor Decanting. Should the City operate a decanting facility at the Brugger's Bog yard during the term of this Agreement, the County will have priority use of capacity that is available after City use of the facility for purposes of decanting vactor trucks and disposing of stormwater liquids and associated solids collected by such trucks.
- 3.2.3 The City will be responsible for improper use or fraud from fueling non-City owned vehicles

### 3.3 Fuel Availability

The County shall have access to the City fueling station at all times, unless unforeseen circumstances affect the availability of the fueling station such as a supplier's inability to furnish fuel, and fueling station repairs or maintenance. The City will provide at least fourteen (14) days' notice to the County for anticipated disruptions in access, or as soon as possible in the event of unforeseen disruptions.

## 4. **PAYMENT**

For the duration of this Agreement, the City will pay the County for all fuel purchased by City employees at the Brugger's Bog fueling station for use in City vehicles. The cost of the fuel to the City will include the County's actual fuel cost plus a mark-up fee in the same amount as that applicable to County users. Payment for the fuel purchased by the City shall be made according to the Payment Procedures set forth in Section 5 of this Agreement.

## 5. PAYMENT PROCEDURES

- 5.1 Invoices and Billing. All invoices submitted by the County to the City will be supported by appropriate documentation showing fueling transactions by date, equipment number, quantity of fuel, and fuel type. The County will submit invoices to the City using the current fuel-billing cycle. The City shall remit payment to the County within thirty (30) days of receiving an invoice.
- 5.2 Invoicing Contact Information. Invoices and associated documentation from the County to the City shall be submitted to the address and contact person identified in Section 6 of this Agreement.

## 6. ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS

All notices under this Agreement shall be delivered to the following addresses (or such other addresses as either Party may designate in writing):

If to the County:

King County, Department of Transportation, Fleet Administration Division  
Attention: Jennifer Lindwall, Director  
KSC-TR-0822  
201 S. Jackson St  
Seattle, WA 98104

If to the City:

**Billing Invoices:**

City of Shoreline  
Attention: Nan Peterson  
17500 Midvale Avenue North  
Shoreline, WA 98133-4905

**Contract Notices:**

City of Shoreline  
Attention: Mark Relph, Public Works Director  
17500 Midvale Avenue North  
Shoreline, WA 98133-4905

## 7. COMPLIANCE WITH LAWS

- 7.1 General Requirement. The Parties, at no expense to the other, shall comply with all applicable federal, state and local laws, rules, regulations, orders, and directives of their administrative agencies and the officers thereof.
- 7.2 Equal Employment Opportunity and Outreach. In the performance of this Agreement, the County and City shall comply with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 UC 200d), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), and Chapter 49.60 RCW as now or hereafter amended.
- 7.3 Americans with Disabilities Act. The City and County shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 as amended (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Agreement.
- 7.4 Affirmative Efforts to Use Women and Minority Business Enterprises (WMBE). In the event the City subcontracts the City's fuel services to an outside firm, inclusion efforts shall be made including the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making useful schedule or requirement modifications that may assist WMBE businesses to compete, targeted recruitment, using consultant services or minority community organizations to strategize outreach, and selection strategies and criteria that result in greater subconsultant diversity. Outreach efforts may also include using the Vendor/Contractor Registration (VCR).
- 7.4.1 WMBE Record Keeping. The City and the County shall maintain, for at least 24 months after the expiration or earlier termination of this Agreement, relevant records and information necessary to document affirmative efforts to solicit women and minority business participation, including solicitations to subconsultants and suppliers, all subconsultant and supplier proposals received, and all subconsultants and suppliers actually utilized under this Agreement. The Parties shall have the right to monitor the affirmative efforts of the other Party and to inspect and copy such records as are necessary to ensure compliance with the requirements of this Section.
- 7.4.2 Non-discrimination. The Parties shall not create barriers to open and fair opportunities for WMBEs to participate in any subcontract and to obtain or compete for subcontracts as sources of supplies, equipment, construction and services. The Parties shall ensure that their employees are aware of, and adhere to the obligation to maintain a working environment free from discriminatory

conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.

## **8. OTHER LEGAL REQUIREMENTS**

- 8.1 Licenses and Similar Authorizations. The City and County, at no expense to the other, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- 8.2 Use of Recycled Content Paper. Whenever practicable, the Parties shall both use reusable products including recycled-content paper on all documents submitted to the other under this Agreement. The Parties are to duplex all documents that are prepared for each other under this Agreement, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. The Parties are to use 100% post-consumer recycled content, chlorine-free paper in any documents that are produced for each other, whenever practicable, and to use other paper-saving and recycling measures in the performance of this Agreement.

## **9. LIABILITY**

The Parties to this Agreement shall be responsible for their own acts and/or omissions and those of their officers, employees and agents. Neither Party to this Agreement shall be responsible for the acts and/or omissions of entities or individuals not a party to this Agreement.

## **10. INDEMNIFICATION**

Each Party shall protect, defend, indemnify and save harmless the other Party, its officers, officials, employees and agents while acting within the scope of their employment as such, from any and all suits, costs, claims, actions, losses, penalties, judgments, and/or awards of damages, of whatsoever kind arising out of, or in connection with, or incident to the services associated with this Agreement to the extent caused by or resulting from each party's own negligent acts or omissions. Each Party agrees that it is fully responsible for the acts and omissions of its own subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them. The provisions of this Section 10 (Indemnification) shall survive the expiration or earlier termination of this Agreement.

## 11. AUDIT

Upon request, the City and County shall permit each other and any other governmental agency involved in the funding of the Project (“Agency”), to inspect and audit all pertinent books and records of the City and County, any subconsultant, or any other person or entity that performed work in connection with or related to the Project, at any and all times deemed necessary by the City or County, including up to six (6) years after the final payment has been made under this Agreement. Such inspection and audit shall occur in King County, Washington or other such reasonable location as the City or County selects. The City or County shall supply the other with, or shall permit each other to make, a copy of any books and records and any portion thereof. The City or County shall ensure that such inspection, audit and copying right of the City or County is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Agreement.

## 12. CONTRACTUAL RELATIONSHIP

The relationship of the City and the County to each other by reason of this Agreement shall be that of independent contractors and both agree that neither entity nor any employee of the City or County shall be deemed to be an employee of the other for any purpose. This Agreement does not authorize the City or the County to act as the agent or legal representative of the other for any purpose whatsoever unless expressly provided for by the terms of this Agreement. The City and the County are not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the other or to bind the other in any manner whatsoever unless expressly provided for by the terms of this Agreement.

## 13. ASSIGNMENT AND SUBCONTRACTING

- 13.1 Consent Required. Neither Party shall assign or subcontract any of its obligations under this Agreement without the other’s prior written consent, which may be granted or withheld in the City or County’s discretion. Any subcontract made by the City or County shall incorporate by reference all the terms of this Agreement, except as otherwise provided. The Parties shall ensure that all subconsultants comply with the obligations and requirements of the subcontract. The City or County’s consent to any assignment or subcontract shall not release the City or County from liability under this Agreement, or from any obligation to be performed under this Agreement, whether occurring before or after such consent, assignment, or subcontract.
- 13.2 WMBE Roster. If the County intends to subcontract any part of the Project, the County shall utilize the City’s Roster lists to solicit qualified sub/consultants, including WMBE and Small Business firms when applicable. The City shall make the Roster lists available to the County throughout the term of this Agreement. Roster lists include the Consultant Roster, Small Construction Projects Roster (SCPR) and the Vendor/Contractor Registration (VCR). Please also refer to Section 7.4 of this Agreement.

## 14. DISPUTES

Any dispute or misunderstanding that may arise under this Agreement concerning the City or County's performance shall first be resolved through negotiations, if possible, between the County's Fleet Division Director, or designee, and Shoreline's Public Works Director, or designee, or if necessary shall be referred to the senior executive(s) for both the City and County. If such officials do not agree upon a decision within a reasonable period of time, the Parties may pursue other legal means to resolve such disputes, including but not limited to alternate dispute resolution processes.

## 15. TERMINATION

- 15.1 For Cause. The City or County may terminate this Agreement if either is in material breach of any of the terms of this Agreement, and such breach has not been corrected to the other's reasonable satisfaction in a timely manner.
- 15.2 For Reasons Beyond Control of Parties. Either Party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as but not limited to an act of nature; war or warlike operation; civil commotion; riot; labor dispute including strike, walkout, or lockout, except labor disputes involving the Party's own employees; sabotage; or superior governmental regulation or control.
- 15.3 For Convenience. The City or County may terminate this Agreement at any time after the initial three year term without cause and for any reason including convenience, upon at least thirty (30) days written notice to the other prior to the effective date of termination.
- 15.4 Termination for Non-Appropriation or Lack of Funds. The County may terminate this Agreement at any time during the term of the Agreement in the event that sufficient funds are not appropriated to cover performance of the County's obligations under this Agreement by giving not less than thirty (30) days' written notice to the City.
- 15.5 Actions Upon Termination. In the event of termination with or without fault the County shall be paid for the fuel remaining at the Brugger's Bog fueling station at its cost of acquisition. In the event of termination not the fault of the City or County, the other shall be paid for the services properly performed prior to termination, together with any reimbursable expenses then due, but in no event shall such compensation exceed the maximum compensation to be paid under the Agreement. The City and County agree that this payment shall fully and adequately compensate the other and all subconsultants for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind

whatsoever (whether foreseen or unforeseen) attributable to the termination of this Agreement.

## **16. LEGAL RELATIONS**

- 16.1 Amendments. No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of the Parties hereto.
- 16.2 Binding Agreement. This Agreement shall not be binding until signed by both Parties. The provisions, covenants and conditions in this Agreement shall bind the Parties, their legal heirs, representatives, successors, and assigns.
- 16.3 Applicable Law/Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County situated in Seattle, Washington.
- 16.4 Remedies Cumulative. Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.
- 16.5 Captions. The titles of sections or subsections are for convenience only and do not define or limit the contents.
- 16.6 Severability. If any term or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 16.7 Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by the City or County of any performance by the City or County after the time the same shall have become due nor payment to the City or County under this Agreement shall constitute a waiver by the City or County of the breach or default of any covenant, term or condition of this Agreement unless otherwise expressly agreed to by the City or County, in writing.
- 16.8 Entire Agreement. This Agreement, along with any exhibits and attachments, constitutes the entire agreement between the Parties with respect to the Project. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, agent, associate or employee of the County prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.

16.9 Negotiated Agreement. The Parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against either Party on the basis of such Party's draftsmanship thereof.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the Parties have executed this Agreement by having their duly authorized representatives affix their signatures below.

**KING COUNTY**

**THE CITY OF SHORELINE**

By: \_\_\_\_\_  
Jennifer Lindwall, Director  
Department of Transportation,  
Fleet Administration Division

By: \_\_\_\_\_  
Julie T. Underwood, City Manager

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Ian R. Sievers, Shoreline City Attorney