

Interlocal Agreement for the Construction of the Miller Creek Stream Realignment and Daylighting Project

This Agreement is entered into by the City of SeaTac (SEATAC) and the City of Burien (BURIEN), collectively referred to as "Parties" and individually referred to as "Party."

WHEREAS, BURIEN is planning to construct the Miller Creek Stream Realignment and Daylighting Project (PROJECT) that will provide environmental enhancements and a new fish-passable crossing under Des Moines Memorial Drive (DMMD) for Miller Creek as it leaves BURIEN and crosses into SEATAC; and

WHEREAS, SEATAC owns a portion of Des Moines Memorial Drive and maintains the existing Miller Creek culvert crossing (CULVERT), both in the vicinity of 14460 Des Moines Memorial Drive, SeaTac, WA; and

WHEREAS, the existing CULVERT is programmed by SEATAC for repair/replacement, the cost of which has been estimated as high as \$1.37 million; and

WHEREAS, the private closed conveyance system immediately downstream of the CULVERT has failed multiple times and is known to be in poor condition and in need of repair; and

WHEREAS, construction of the PROJECT will eliminate the need for both the CULVERT and the private conveyance system immediately downstream; and

WHEREAS, construction of the PROJECT benefits both Parties; and

WHEREAS, support for the PROJECT by multiple jurisdictions improves the chance of success with respect to grant funding opportunities; thereby reducing overall PROJECT costs; and

WHEREAS, SEATAC is willing to compensate BURIEN for the construction of PROJECT elements within the City of SeaTac right of way (WORK), subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the terms, conditions, and performances contained herein, the above recitals that are incorporated herein as if fully set forth below, IT IS MUTUALLY AGREED AS FOLLOWS:

1. PURPOSE

- 1.1. This Agreement defines roles and responsibilities between the Parties for the PROJECT, including design, construction, and maintenance; and specifies reimbursement to BURIEN by SEATAC for the costs of performing the WORK.

2. BURIEN RESPONSIBILITIES

2.1. BURIEN shall design and construct the Project and agrees that PROJECT elements within SEATAC shall be consistent with existing roadway geometrics, the Manual of Uniform Traffic Control Devices (MUTCD) and comply with the following standards and specifications:

2.1.1. Department of Ecology Stormwater Manual, or equivalent;

2.1.2. *WSDOT Standard Specifications for Road, Bridge, and Municipal Construction* (M 41-10), as amended (Standard Specifications);

2.2. BURIEN shall submit to SEATAC, for SEATAC review and written approval all PROJECT elements to be constructed within SEATAC right of way (ROW):

2.2.1. 100% plans, specifications, and estimate.

2.3. BURIEN shall construct the PROJECT in accordance with the final approved plans and specifications (Bid Documents). Prior to constructing the PROJECT, BURIEN shall:

2.3.1. Provide SEATAC a construction schedule which shall be updated as the construction proceeds;

2.3.2. Give SEATAC written notice fourteen (14) calendar days prior to the start of the construction of the PROJECT;

2.3.3. Submit to SEATAC for prior review and written approval documentation of any changes made to the Bid Documents affecting the WORK. Such changes shall not be implemented prior to SEATAC's written approval; and

2.3.4. Coordinate with SEATAC on the correction of items identified during construction as not conforming to the approved plans and specifications.

2.4. Within ninety (90) calendar days following BURIEN's completion of the PROJECT, BURIEN shall submit to SEATAC an electronic copy of as-built plans signed and stamped by the engineer of record.

2.5. Prior to final acceptance of the PROJECT, BURIEN shall be responsible for all operation, maintenance, repair, removal and/or replacement of all PROJECT elements.

3. SEATAC RESPONSIBILITIES

3.1. SEATAC, in consideration of the faithful performance of the WORK to be done by BURIEN, agrees to compensate BURIEN for the actual direct and related indirect cost of

the WORK in an amount not to exceed \$985,000.00 (Nine Hundred Eighty Five Thousand Dollars) according to the payment schedule in Section 6:

- 3.2. SEATAC shall not be obligated to participate in any costs in excess of the not to exceed amount specified in Section 3.1, for the WORK without the Parties first executing a written amendment to this Agreement authorizing a cost increase.
- 3.3. SEATAC shall review the 100% plans, specifications and estimate submitted by BURIEN for the PROJECT as specified in Section 2.2, as well as any proposed changes to previously approved design documents and return written review comments to BURIEN within fourteen (14) calendar days. BURIEN shall thereafter provide a written response to SEATAC addressing any questions or issues raised by SEATAC. The Parties shall thereafter coordinate to the extent necessary to resolve any remaining issues for SEATAC's approval of a particular design documentation package.
- 3.4. SEATAC, at its discretion and sole cost, may furnish an inspector during construction of the WORK.
 - 3.4.1. SEATAC's Designated Representative specified in Section 5 will provide BURIEN with the contact information for its inspector. All contact between said inspector and BURIEN's contractor shall be through BURIEN's Designated Representative as specified in Section 5.
 - 3.4.2. During construction of the PROJECT, SEATAC shall have the right to inspect the WORK and shall notify BURIEN of any necessary changes or the need for corrections if any element of the WORK is contrary to the approved plans and specifications. If SEATAC provides written notification to BURIEN of any required changes or corrections, BURIEN shall respond to SEATAC with a written plan on how the changes and/or corrections will be addressed.
 - 3.4.3. BURIEN agrees that all changes made to the approved plans and specifications for the WORK shall require SEATAC's prior written approval. SEATAC has the sole right to reject such proposed changes and will provide BURIEN with the reasons for any rejection in its written review comments. BURIEN shall not proceed with any changes without SEATAC's written approval.

4. FINAL INSPECTION AND ACCEPTANCE OF THE PROJECT

- 4.1. Final Inspection – BURIEN shall administer Final Inspection of the PROJECT. SEATAC shall be invited to participate in the Substantial Completion Inspection activities, including any formal PROJECT tours and any formal meetings or discussions. SEATAC will submit to BURIEN a complete list of concerns or deficiencies within ten (10) calendar days of the date of the Substantial Completion Inspection for inclusion in the formal punch list. BURIEN shall provide notice of the time and date of the Final Inspection to SEATAC a minimum of fourteen (14) calendar days prior to the Final Inspection.

4.2. SEATAC Final Acceptance of WORK – After Final Inspection and SEATAC's determination of adequate completion of any and all punch list work, SEATAC will issue a letter of final acceptance to BURIEN for the WORK. If SEATAC determines that any elements of punch list work have not been adequately completed, SEATAC shall provide written notice to BURIEN, detailing the deficiencies or incomplete WORK within five (5) calendar days after Final Inspection. Failure of SEATAC to issue a notice letter of final acceptance within five (5) calendar days after Final Inspection shall constitute acceptance of the WORK by SEATAC.

4.3. Ongoing Operation and Maintenance. Upon final acceptance of the PROJECT by both Parties, and following the expiration of any maintenance and or warranties, all PROJECT elements within SEATAC ROW shall be the responsibility of SEATAC to operate, maintain and repair.

5. DESIGNATED REPRESENTATIVES

5.1. All contact between the Parties, including, but not limited to, invoicing and administration for this Agreement and the WORK will be between the Designated Representatives of each Party, as follows:

5.1.1. For SEATAC: Florendo Cabudol, *CITY ENGINEER* *FC*
Public Works Department
4800 South 188th Street
SeaTac, WA 98188 *fcabudol@seatacwa.gov*
(206) 973-4740 ~~FCabudol@ci.seatac.wa.us~~ *FC*

5.1.2. For BURIEN: Maiya Andrews
Public Work Director
400 SW 152nd St, Suite 300
BURIEN, WA 98166
(206)439-3164 *maiya@BURIENwa.gov*

6. FUNDING AND PAYMENT

6.1. Within 30-days of BURIEN issuing its contractor a Notice to Proceed for construction of the Project, SEATAC will pay BURIEN \$985,000.

7. CLAIMS FOR ADDITIONAL PAYMENT BY CONTRACTOR

7.1. In the event BURIEN's contractor files any claims for additional payment associated with the WORK, SEATAC shall not be obligated to pay such claims or their cost of defense due to BURIEN being compensated for solely administering the construction contract.

8. RIGHT OF ENTRY

8.1. BURIEN hereby grants to SEATAC, its employees, authorized agents, contractors, and subcontractors, a right of entry upon all BURIEN-owned property necessary for SEATAC's design review, construction inspection, and the periodic structural inspection of the WORK.

8.2. SEATAC hereby grants to BURIEN and its authorized agents, contractors, subcontractors, and employees, a right of entry upon all land in which BURIEN has an interest for the purpose of performing the WORK. A no fee SEATAC Right-of-Way Use permit is required.

9. TERM

9.1. This Agreement is effective on the date the last party signs this agreement and will terminate upon SEATAC's acceptance of the WORK or the expiration of any contractor warranties of the WORK, whichever is later. This Agreement may also be terminated sooner pursuant to Section 10, TERMINATION.

10. TERMINATION

Neither BURIEN nor SEATAC may terminate this Agreement without the written concurrence of the other Party.

10.1.1. If this Agreement is terminated by SEATAC prior to the fulfillment of the terms stated herein, SEATAC agrees to reimburse BURIEN for the actual direct and related indirect expenses and costs it has incurred for the WORK up to the date of termination, as well as the costs of non-cancelable obligations.

10.1.2. If this Agreement is terminated by BURIEN prior to the fulfillment of the terms stated herein, BURIEN will be responsible for the actual direct and related indirect expenses and costs it has incurred for the WORK up to the date of termination, as well as the costs of non-cancelable obligations.

10.1.3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

11. AMENDMENT

11.1. This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

12. INDEPENDENT CONTRACTOR

- 12.1. BURIEN shall be deemed an independent contractor for all purposes and the employees of BURIEN or any of its contractors or subcontractors, shall not in any manner be deemed to be employees of SEATAC.

13. INDEMNIFICATION AND INSURANCE

- 13.1. To the extent authorized by law, the Parties shall protect, defend, indemnify, and hold harmless each other and their employees and authorized agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, the work to be performed or performed pursuant to the provisions of this Agreement. The Parties shall not be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) SEATAC, its employees, authorized agents, contractors and/or subcontractors and (b) BURIEN, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's, its employees, contractors, subcontractors and/or authorized agents own negligence.

- 13.2. BURIEN shall require all contractors and subcontractors that construct the PROJECT to carry insurance that names the City of SeaTac and its officers and employees primary non-contributory additional insureds, with policy limits in the following amounts:

Commercial General Liability--\$3.0 million.
Automobile Liability--\$1.0 million per occurrence.

~~Worker's Compensation~~--Employees of Contractors and Subcontractors are to be insured under Washington State Industrial Insurance.

The above policy limits may be obtained through the use of excess liability (umbrella) insurance. BURIEN shall obtain a certificate of insurance that complies with the requirements above, which must be approved by the SeaTac Risk Management or Legal Department.

- 13.3. This Section 13 shall survive termination of this Agreement.

14. DISPUTES

- 14.1. In the event that a dispute arises under this Agreement, it shall be resolved as follows: The Parties shall each appoint a member to a disputes board; these two members shall select a third member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with the aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the

cost of the third disputes board member; however, each Party shall be responsible for its own costs and fees.

15. VENUE

15.1. In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in King County Superior Court,. Further, the Parties agree that each will be solely responsible for payment of its own attorney's fees, witness fees, and costs.

16. RECORDS RETENTION AND AUDIT

16.1. During the progress of the WORK and for a period not less than six (6) years from the date of final payment by SEATAC, the records and accounts pertaining to the WORK and accounting therefore are to be kept available by the Parties for inspection and audit by Washington State and/or the Federal Highway Administration and copies of all records, accounts, documents, or other data pertaining to the WORK will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the six-year retention period. This Section 16 shall survive termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Party's date signed last below:

CITY OF SEATAC

CITY OF BURIEN

Carl C. Cole, City Manager

By (print):

Carl C. Cole

Signature:

City Manager

Date:

10/14/2020

By (print):

Brian J. Wilson
Brian J. Wilson
City Manager

Signature:

City Manager

Date:

Date: 9/23/2020

APPROVED AS TO FORM:

Approved by Mark S. Johnsen on 10/9/2020;
see attached email.

City Attorney

10/9/2020

Date:

APPROVED AS TO FORM:

City Attorney

September 21, 2020

Date:

From: [Mark Johnsen](#)
To: [Ellaïne Wi](#)
Subject: RE: Contract for Legal Review and Approval
Date: Friday, October 9, 2020 8:44:42 AM

Approved as to form

Mark

From: Ellaïne Wi
Sent: Wednesday, September 30, 2020 8:26 AM
To: Mark Johnsen <mjohnsen@seatacwa.gov>
Subject: FW: Contract for Legal Review and Approval

For you review and approval.

ELLAÏNE M. WI
Legal Analyst
Legal Department
o: 206.973.4640 f: 206.838.7223



IN THE OFFICE: Mondays, Tuesdays, Wednesdays, and Thursdays (1:00-5:00 PM)
WORKING FROM HOME: Mondays, Tuesdays, Wednesdays, and Thursdays (8:30 AM-12:30 PM), and Fridays (8:30 AM-5:00 PM)

This communication may be subject to public disclosure laws of the State of Washington (RCW.42.56).

From: Karen Spencer
Sent: Wednesday, September 30, 2020 8:20 AM
To: Ellaïne Wi <ewi@seatacwa.gov>
Cc: Brenda J. Cruz <bcruz@seatacwa.gov>; Florendo Cabudol <FCabudol@seatacwa.gov>
Subject: Contract for Legal Review and Approval

Please review attached contract.

Karen Spencer
PW Administrative Assistant 3
City of SeaTac
206-973-4720



SeaTac City Council
Request for Council Action
Agenda Bill #: 5304

Council consideration: A Motion authorizing the City Manager to execute an Interlocal Agreement (ILA) with the City of Burien for the construction of the Miller Creek Realignment and Daylighting Project.

Date Action Requested: RCM: 2/11/2020

Review Dates: T&PW: 10/11/2017, 9/5/2019

Prepared By: Will Appleton, Public Works Director

Amount: \$985,000.00 **Budgeted?:** Yes

Applicable Fund Name: Surface Water Management Utility Fund (#403)

Director Approval: Public Works Director Will Appleton 01/30/2020

City Manager Approval: City Manager Carl Cole 02/05/2020

Purpose: To execute an Interlocal Agreement between the City of SeaTac and the City of Burien to facilitate the administration of SeaTac's financial participation in the Miller Creek Realignment and Daylighting Project.

ANALYSIS: The Miller Creek Realignment and Daylighting Project will provide environmental enhancements to Miller Creek as it leaves Burien and crosses Des Moines Memorial Drive into the City of SeaTac. This project also constructs a new stream crossing of Des Moines Memorial Drive that will eliminate the need for the City to replace an existing culvert which is in need of repair/replacement (this failing culvert will be removed by the project). In addition to providing a new fish passable stream crossing, the project will remove Miller Creek from a failing private conveyance system that runs underneath the Des Moines Way Self Storage business and discharging to a Port owned wetland to the south. This private culvert is known to be in poor condition and has suffered multiple pipe separation events leading to sinkholes and significant amounts of sediments being introduced into the downstream wetland system. Project benefits include: improved water quality and habitat within the creek by flattening the slope of the creek to reduce erosive flows; additional floodplain to allow the water to spread out during high flows; restoration and creation of higher quality riparian habitat along the creek; replacement of failing culverts with new fish friendly culverts; and, daylighting a portion of Miller Creek to a natural open channel.

Updated project construction costs, based on the 90% design, are estimated at \$3.5 million, of which \$1.22 million has been identified as improvements within the City of SeaTac. However, the ILA provides that the City will contribute only \$985,000 towards this project because we are sharing grant funding with Burien. Besides Burien and SeaTac, additional funding and grants for this project is being provided by the Port of Seattle and the Department of Ecology.

The City's participation in this project has significant benefits. The construction of this project will remove flows from the City's failing culvert crossing as well as the private culvert downstream. In fact, the City's \$985,000 contribution towards this project is less than the City's \$1.3 million cost estimate to fix the failed culvert. SeaTac also stands to benefit from the environmental improvements that this project will provide. Miller Creek is a salmon bearing stream and it is appropriate to support efforts to improve the long term environmental prospects of restoring habitat and fish utilization for our future generations. Construction of the project is scheduled for 2020.

BUDGET SIGNIFICANCE: A total not to exceed amount of \$985,000 is budgeted for this project out of the Surface Water Fund (403). Funding of this project offsets equivalent funding that would otherwise be spent on a capital project to address the City's failing culvert; therefore, there is no negative impact to the 403 fund.

COMMITTEE REVIEW(S) AND RECOMMENDATION(S): This project has been reviewed by the T&PW committee on 10/11/2017 and 9/5/2019, with the presentation on 9/5/2019 being a project schedule and budget update. The committee recommended approval.