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SNOHOMISH COUNTY, WASHINGTON

Document Title:

INTERLOCAL AGREEMENT

Reference Number(s) of related documents:
n/a

Grantor / Party:

SNOHOMISH COUNTY

Grantee / Party:

MUKILTEO WATER AND WASTEWATER DISTRICT

Legal Description:
n/a

Assessor's Property Tax Parcel/Account Number
n/a

The Auditor/Recorder will rely on the information provided on this form. The responsibility for the accuracy of the indexing information is that of the document preparer.

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Signature of Requesting Party

ORIGINAL

INTERLOCAL AGREEMENT FOR THE PURCHASE AND SALE OF SNOHOMISH COUNTY AIRPORT WETLAND COMPENSATION BANK CREDITS

This Agreement ("Agreement"), made and entered into this 27th day of May, 2009 by and between **Snohomish County, a Political Subdivision of the State of Washington**, ("COUNTY"), and **Mukilteo Water and Wastewater District, a Washington municipal corporation** ("BUYER"), for purchase and sale of Wetland Compensation Bank Credits ("WCB Credits").

WHEREAS, the COUNTY has created the Snohomish County Airport Wetland Compensation Bank Program Memorandum of Agreement (hereinafter called "MOA"), which has been approved by the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Washington State Department of Ecology, U.S. National Marine Fisheries Service, Federal Aviation Administration, City of Everett and Snohomish County; and

WHEREAS, the BUYER is planning construction or improvements under a project entitled **Big Gulch Repair and Rehabilitation** (the "PROJECT") and has requested the purchase of wetland mitigation credits from the Snohomish County Airport Wetland Compensation Banks (collectively "WCB" and individually "Swanson WCB #1 and Narbeck WCB #2") to mitigate for an unavoidable 9,300 square feet ("sf") wetland impact that will occur in the PROJECT. With regulatory agencies with jurisdiction having agreed to a 1:1 mitigation compensation ratio for this impact, mitigation for the 9,300sf impact will total a minimum of 9,300sf. WCB Credits have been established as being one (1) acre (43,560sf) of mitigation per each full WCB Credit. Thus, a 0.214 partial WCB Credit will provide 9,321.84sf (0.214 x 43,560sf) of mitigation that will fully mitigate for the proposed 9,300sf wetland impact, and

WHEREAS, the Interlocal Cooperation Act, chapter 39.34 RCW, provides statutory authority for the COUNTY and the BUYER to enter joint or cooperative actions on the basis of mutual advantage and to provide services and facilities in a manner and pursuant to forms of governmental organization that will best accord with geographic, economic, population and other factors.

NOW, THEREFORE, the COUNTY and BUYER agree as follows:

1. WCB CREDITS. The BUYER shall purchase a total of a 0.214 partial WCB Credit from the COUNTY. One-half of the partial WCB Credit shall be withdrawn from the Swanson WCB # 1 and the remaining one-half from the Narbeck WCB # 2.

2. PURCHASE PRICE. The total purchase price for the 0.214 partial WCB Credit is (\$150,000) One Hundred Fifty Thousand Dollars (the "Purchase Price"), allocated as \$75,000 for Swanson WCB # 1 0.107 partial Credit and \$75,000 for Narbeck WCB # 2 0.107 partial Credit. The Purchase Price is payable as follows:

1.1 PAYMENT OF PURCHASE PRICE. BUYER shall pay the COUNTY the full Purchase Price within fifteen calendar days following of execution of this Agreement by BUYER and COUNTY.

3. WETLAND COMPENSATION BANK CREDITS

3.1 CERTIFICATE OF WCB CREDIT. Upon BUYER's payment of Purchase Price to COUNTY, COUNTY will execute and deliver to BUYER a Certificate of Wetland Bank Credit transferring a 0.214 partial WCB Credit to BUYER for BUYER's use in mitigating for unavoidable impacts at the Project that have been approved through the regulatory permitting process. The partial 0.214 WCB Credit shall be allocated One Hundred Percent (100%) as a partial Wetland Credit, as opposed to a Preservation Credit, in the COUNTY's WCB Transaction Ledger.

3.2 STATUS OF PARTIAL WCB CREDIT. The 0.214 partial WCB Credit shall be suitable for use in mitigating unavoidable impacts consistent with the MOA. BUYER shall obtain all permits necessary for the use of the WCB Credits for the PROJECT. COUNTY has obtained advance approval of the partial 0.214 WCB Credit withdrawal for BUYER's use from the WCB Regulatory Oversight Committee, conditioned upon submittal by BUYER to the Army Corps of Engineers and Washington Department of Ecology a Joint Aquatic Resources Permit Application ("JARPA") that justifies use of bank credits for the PROJECT. The BUYER assumes all responsibility to justify the use of the WCB Credits with the Army Corps of Engineers. Assuming the JARPA submitted by the BUYER justifies the use of the WCB Credits, the Army Corps of Engineers has approved the use of the WCB Credits to mitigate non-stream wetland impacts at the PROJECT.

3.3 WCB TRANSACTION LEDGER. COUNTY shall maintain a WCB Transaction Ledger showing the transfer and use of all WCB Credits. COUNTY shall notify the Oversight Committee of all WCB Credit transactions.

4. RISK OF LOSS. COUNTY shall bear the risk of loss of or damage to the WCB. In the event of material loss of or damage to the WCB prior to execution of the Agreement by both parties, BUYER may terminate this Agreement by giving notice of termination to COUNTY. In the event of material loss or damage to the WCB after execution of this Agreement by both parties, the COUNTY shall repair the WCB to MOA standards and indemnify BUYER against any loss or claim by reason of such damage.

5. COUNTY'S REPRESENTATIONS. COUNTY represents to BUYER at the date of execution of this agreement and the date of closing that:

5.1 AUTHORITY. COUNTY has full power and authority to execute this Agreement and perform COUNTY'S obligations by virtue of the approval of the Snohomish County Council and the signature of the County Executive.

5.2 MAINTENANCE OF WCB. COUNTY will maintain, monitor, preserve and protect the WCB and take remedial action if necessary as set forth in the MOA.

5.3 NO WARRANTY OF WCB CREDITS. COUNTY makes no warranty regarding the use of the WCB Credits for the PROJECT. BUYER'S use of the WCB Credits shall be consistent with the MOA and decisions of the Oversight Committee. BUYER has had sufficient opportunity to investigate the condition of the WCB and the terms of the MOA and is satisfied with its condition and terms.

5.4. BUDGET CONTINGENCY. Any services to be performed by the COUNTY under this agreement are contingent upon the appropriation of funds by the Snohomish County Council in the annual budget for such year.

6. BUYER'S AUTHORITY. BUYER represents and warrants to COUNTY that at the date BUYER executes this Agreement, BUYER, and the person signing on behalf of BUYER, has full power and authority to execute this Agreement and to perform BUYER's obligations hereunder.

7. RESTRICTION OF TRANSFER TO OTHERS. BUYER may not sell, transfer or assign the WCB Credits without the express written consent of the COUNTY.

8. CLOSING.

8.1 DATE OF CLOSING. This sale will be closed in the office of the Snohomish County Airport within fifteen (15) days following execution of this Agreement by BUYER and COUNTY. As used in this Agreement, "closing" or "date of closing" means the date on which the 0.214 partial WCB Credit is transferred to BUYER and recorded in the ledger book and full Purchase Price of \$150,000 is paid by BUYER to COUNTY.

8.2 TAXES. Sales tax shall be paid at closing by the BUYER.

8.3 POSSESSION. BUYER shall be entitled to possession and use of the partial 0.214 WCB Credit upon closing.

9. NOTICES. All notices, waivers, elections, approvals and demands required or permitted to be given under this Agreement must be in writing and personally delivered, sent by certified mail, return receipt requested, to the addressee's mailing address set forth below. Any notice will be effective when actually received or, if mailed as provided herein, on the earlier of actual receipt or two (2) days after the date deposited in the mail.

COUNTY: **Dave Waggoner**
Airport Director
Snohomish County Airport
3220 100th ST SW
Everett, WA. 98204-1390

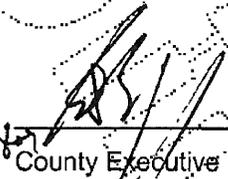
BUYER: **Dan Hammer**
Executive Director
Mukilteo Water and Wastewater District
P.O. Box 260
Mukilteo, WA 98275

10. GENERAL. This is the entire agreement of BUYER and COUNTY with respect to the Purchase and Sale of a 0.214 partial WCB Credit. This Agreement may be modified only in writing, signed by BUYER and COUNTY. Any waivers under this Agreement must be in writing. A waiver of any right or remedy in the event of a default will not constitute a waiver of such right or remedy in the event of any subsequent default. This agreement is for the benefit of, and binding upon, BUYER and COUNTY and their heirs, personal representative, successors and assigns. The invalidity or unenforceability of any provision of this Agreement will not affect the validity of enforceability of any other provision.

Signed in duplicate original this 29th day of May 2009.

Snohomish County

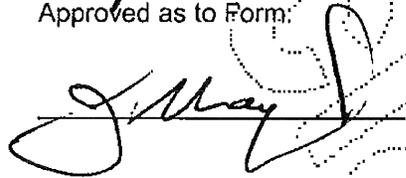
Mukilteo Water and Wastewater District

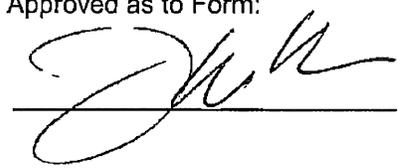

PETER B. CAMP
Executive Director
County Executive


General Manager

Approved as to Form:

Approved as to Form:


Deputy Prosecuting Attorney


Attorney for the District

COUNCIL USE ONLY
Approved: 5/27/09
Docfile: D-12