



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

October 15, 2002

Motion 11583

Proposed No. 2002-0473.2

Sponsors Irons

1 A MOTION authorizing the county executive to enter into a
2 revised interlocal agreement with the city of Issaquah related
3 to the design and construction of the SE Issaquah By-pass
4 Road.

5
6
7 WHEREAS, part of the project is in unincorporated King County and part of the
8 design and construction of the SE Issaquah By-pass Road ("project") is in the city of
9 Issaquah, and

10 WHEREAS, the parties desire to revise the project phases, and funding allocation
11 and cost reimbursement schedules, and

12 WHEREAS, section 10.7 of the agreement provides that the agreement may be
13 amended only by an instrument in writing, duly executed by both parties;

14 NOW, THEREFORE, BE IT MOVED by the Council of King County:

15 SECTION 1. The King County executive, on behalf of the citizens of King
16 County, is hereby authorized to execute, substantially in the form attached, the revised

17 interlocal agreement related to the design and construction of the Southeast Issaquah By-
18 pass Road with the city of Issaquah.

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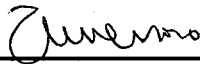
Motion 11583 was introduced on 9/30/2002 and passed by the Metropolitan King County Council on 10/14/2002, by the following vote:

Yes: 12 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Phillips, Mr. Pelz, Mr. McKenna, Mr. Constantine, Mr. Pullen, Mr. Gossett, Ms. Hague and Ms. Patterson
No: 0
Excused: 1 - Mr. Irons

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Cynthia Sullivan, Chair

ATTEST:



Anne Noris, Clerk of the Council

Attachments Revision #2 - October 2, 2002 - Interlocal Agreement Between the City of Issaquah and King County for the Design and Construction of the Southeast Issaquah By-Pass Road

REVISION #2

October 2, 2002

INTERLOCAL AGREEMENT

BETWEEN THE CITY OF ISSAQUAH AND KING COUNTY
FOR THE DESIGN AND CONSTRUCTION OF
THE SOUTHEAST ISSAQUAH BY-PASS ROAD

THIS AGREEMENT is entered into by and between the City of Issaquah ("the City") and King County ("the County") for the purposes of performing design and construction of the Southeast Issaquah By-pass Road, more particularly described herein (the "Project"):

RECITALS

- A. The Project is located within the corporate limits of the City and in unincorporated King County.
- B. The City is developing plans for a new north/south arterial roadway called Southeast Issaquah By-pass Road that would connect the Interstate 90 Sunset Interchange and Issaquah-Hobart Road south of the current city limits.
- C. The City of Issaquah Comprehensive Land Use Plan has identified the need for this Project.
- D. The County recognizes the need for this roadway improvement project.
- E. The City has obtained a state TIB grant for partial funding of this Project.
- F. King County supported the grant application for this Project.
- G. It is in the best interest of the City and the County to establish a lead agency to coordinate the Project and to provide for the design, construction and contract administration for the Project.
- H. The City and the County are authorized, pursuant to RCW Chapter 39.34, to enter into an interlocal government cooperative agreement of this nature.

NOW, THEREFORE, the City and the County agree as follows:

1. PURPOSE OF THE AGREEMENT:

The purpose of this agreement is to establish the roles and responsibilities of the parties for the fulfillment of a scope of work and schedule for the road project known as the Southeast Bypass Project, and to establish the financial participation of the parties in funding the project.

- 1.1 Description of the Project: The Project will provide for the construction of a new north/south arterial roadway between Interstate 90 and Front Street/Issaquah-Hobart Road in the vicinity of the south City Limits, providing a bypass of Front Street through downtown Issaquah. The proposed arterial would be approximately 2.4 kilometers long and would generally be a two-lane facility. Additional lanes will be added for transitions in order to accommodate turn-lanes at the north and south end and at other access points which may be incorporated into the final project. The roadway will include turn-lanes at intersections, stormwater management, water quality treatment, retaining walls, landscaping, signage, lighting, and signalization and will include curb, gutter and sidewalk on one or both sides of the street as determined by the City.

At its discretion and with no use of County Road Funds, the City may include trail work as needed to complement the network of trails in the area.

- 1.2 Project Scope of Work: The City has developed a Project Scope of Work and Schedule, attached to this agreement as Exhibit A and incorporated herein. The Scope of Work sets forth the following phases of the Project:
- 1.2.1 Phase I: Preparation of SEPA/NEPA Review for the Project. Phase I is in process and the City intends to complete Phase I by December 1, 2003.
- 1.2.2 Phase II: Issaquah City Council decision to build or not build the Project. The completion date for Phase II is targeted for July 1, 2004 as set forth in the attached Schedule.
- 1.2.3 Phase III: Project Design, Right of Way Acquisition and Permitting. The timeline for Phase III of the Project begins following an affirmative decision to build the Project in Phase II, or approximately August, 2004 and extends to March, 2005.
- 1.2.4 Phase IV: Construction of the Project. Subject to a fully funded project, Phase IV is intended to begin in April, 2005 with completion targeted for November, 2006.

2. RESPONSIBILITIES OF THE PARTIES

- 2.1 The City shall be the lead agency for the Project with regard to design, construction, SEPA review, permitting, funding and all other matters pertinent to accomplishment of the Scope of Work.
- 2.2 The City shall design or contract with a professional consulting engineering firm for performing all design and engineering services for the Project, in accordance with all applicable standards.

- 2.3 The City shall provide all engineering, administrative, inspection and clerical services necessary for the execution of the Project. In providing such services, the City may exercise all the powers and perform all the duties vested by law or ordinance to City officials.
- 2.4 The City shall be responsible for incorporating the public information and involvement process required for the Project. The County shall be given the opportunity to attend and participate in any public meetings.
- 2.5 The County shall be given the opportunity to participate in the value engineering study required as part of the TIB grant.
- 2.6 The parties to this Agreement shall appoint a contact person or persons to act as a liaison for the Project. These contact persons will meet on an "as needed" basis to provide guidance for the Project and serve as a coordination body between the parties.
- 2.7 This agreement does not modify the terms and conditions of the "Master Transportation Financing Agreement (Sunset Interchange, SPAR, Issaquah Bypass)" (MTFA) effective June 10, 1996.

3. CONSTRUCTION CONTRACT BIDDING

- 3.1 The City shall prepare the contract bid documents for the Project.
- 3.2 The City shall provide to the County documentation of the revenues sources and grant commitments together with the City's current engineer's estimate for construction, as the City's certification that the project is fully funded for construction prior to advertisement of the bid documents.
- 3.3 The City shall advertise the contract in the official legal publication for the City and, if necessary, other newspapers in the Seattle Metropolitan area to provide the widest possible coverage.
- 3.4 The City will provide to the County a copy of the plans and specifications advertised for bid.
- 3.5 The City will open the bids. The City will notify the County of the time and date of the opening of the bids, which is typically two to three weeks after the Project is advertised. The County may, but need not, attend the opening of the bids.
- 3.6 The City will tabulate the bids. The City shall provide a dated copy of the bid tabulations to the County.

- 3.7 The City shall award the contract to the lowest responsible bidder for the total Project subject to applicable laws and regulations.
- 3.8 The City shall provide all services necessary for administration of the construction contract.

4. FUNDING AND COST REIMBURSEMENT:

- 4.1 The total financial commitment by the County to the Southeast Bypass Project is limited to \$4,000,000.
- 4.2 In 2001, the County agrees to allocate up to \$1 million in appropriated funds to the City's execution of the project and in 2002 a second \$1 million for Phase I, Phase II and Phase III costs.
 - 4.2.1 The County agrees to reimburse the City for costs up to \$ 2,000,000 related to the completion of Phase I, Phase II and Phase III, upon submission of invoices as set forth in Section 4.3, below.
- 4.3 The City shall invoice the County no more often than monthly for actual expenses incurred. City shall provide the same level of detail and documentation as provided to the TIB and will reflect the County's contribution as a proportionate share of the budget and expenditure for the Phase in progress.
- 4.4 In subsequent years, the County Executive will authorize payments in excess of the \$ 2,000,000 considered in Section 4.2 above in order to reimburse the City for Phase IV costs, up to the maximum County total financial commitment of \$4 million. Reimbursement for Phase IV costs shall be based on submission of invoices by the City as set forth in Section 4.3 above for up to the amount authorized by the County Executive, provided that the City has awarded and executed a construction contract for the Project.

5. DISCRIMINATION:

During the performance of this Agreement, the City, for itself, its assignees and successors in interest, hereinafter referred to as the City, agrees as follows:

- 5.1 **COMPLIANCE WITH REGULATIONS:** The City shall comply with the Regulations relative to non-discrimination in Federal-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations (CFR) Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement. The City shall comply with the American Disabilities Act of 1992, as amended.

- 5.2 **NONDISCRIMINATION:** The City, with regard to the work performed by it during this Agreement, shall not discriminate on the grounds of race, creed, color, sex, age, marital status, national origin or handicap in the selection and retention of sub-consultants or contractors, including procurements of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix A -11 of the Regulations.
- 5.3 **SOLICITATIONS FOR CONSULTANTS OR CONTRACTORS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT:** In all solicitations, either by competitive bidding or negotiation, made by the City for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor or consultant or supplier shall be notified by the City of the City's obligations under this AGREEMENT and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.
- 5.4 **INFORMATION AND REPORTS:** The City shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the County to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the County, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- 5.6 **SANCTIONS FOR NONCOMPLIANCE:** In the event of the City's noncompliance with the nondiscrimination provisions of this Agreement, the County shall impose such sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
- 5.6.1 Withholding of payments to the City under this Agreement until the City complies, and/or
- 5.6.2 Cancellation, termination or suspension of this Agreement, in whole or in part.
- 5.7 **NONDISCRIMINATION:** The City, or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The City shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted Agreements. Failure by the City to carry out these requirements is a material breach of this Agreement, which may

result in the termination of this Agreement or such other remedy as the recipient deems appropriate.

- 5.8 **INCORPORATION OF PROVISIONS:** The City shall include the provisions of paragraphs (A) through (H) in every contract and/or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The City shall take such action, with respect to any contractor, consultant or subconsultant or procurement as the County or the Federal Highway Administration may direct, as a means of enforcing such provisions including sanctions for noncompliance provided, however, that, in the event a City becomes involved in, or is threatened with litigation with a contractor, consultant or subconsultant or supplier as a result of such direction, the City may request the County to enter into such litigation to protect the interests of the County, and in addition, the City may request the United States to enter into such litigation to protect the interests of the United States.
- 5.9 **UNFAIR EMPLOYMENT PRACTICES:** The City shall comply with RCW 49.60.180 and Executive Order number E.O. 77-13 of the Governor of the State of Washington, which prohibits unfair employment practices.

6. COMPLIANCE WITH LOCAL REGULATIONS

In addition to the foregoing, the City, Consultant, Contractor or any party subcontracting under the authority of this Agreement shall comply with the following local regulations. In the event of an apparent difference between the following local regulations and language contained elsewhere in this Agreement, all parties shall comply with the language that provides the greater protection against discrimination.

- 6.1 KCC Chapters 12.16 and 12.18 are incorporated by reference as if fully set forth herein and all parties agree to abide by all the conditions of said Chapters. Failure by all parties to comply with any requirements of these Chapters shall be a material breach of this Agreement.
- 6.1.1 During the performance of this Agreement, all parties subcontracting under the authority of this Agreement shall not discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or presence of any sensory, mental, or physical handicap in the employment or application for employment or in the administration or delivery of services or any other benefits under this Agreement.
- 6.1.2 All parties shall comply fully with all applicable Federal, State and Local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, RCW Chapter 49.60 and Titles VI and VII of the Civil Rights Act of 1964.

- 6.1.3 During the performance of this Agreement, all parties under the authority of this Agreement shall not engage in unfair employment practices. It is an unfair employment practice for any:
- 6.1.3.1 employer or labor organization to discriminate against any person with respect to referral, hiring, tenure, promotion, terms, conditions, wages or other privileges of employment;
 - 6.1.3.2 employment agency or labor organization to discriminate against any person with respect to membership rights and privileges, admission to or participation in any guidance program, apprenticeship training program, or other occupational training program;
 - 6.1.3.3 employer, employment agency, or labor organization to print, circulate, or cause to be printed, published or circulated, any statement, advertisement, or publication relating to employment or membership, or to use any form of application therefore, which indicates any discrimination unless based upon a bona fide occupation qualification;
 - 6.1.3.4 employment agency to discriminate against any person with respect to any reference for employment or assignment to a particular job classification;
 - 6.1.3.5 employer, employment agency or a labor organization to retaliate against any person because this person has opposed any practice forbidden by KCC Chapter 12.18 or because that person has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing initiated under the provisions of KCC Chapter 12.18;
 - 6.1.3.6 publisher, firm, corporation, organization or association printing, publishing or circulating any newspaper, magazine or other written publication to print or cause to be printed or circulated any advertisement with knowledge that the same is in violation of KCC Section 12.18.030 C, or to segregate and separately designate advertisements as applying only to men and women unless such discrimination is reasonably necessary to the normal operation of the particular business, enterprise or employment, unless based upon a bona fide occupational qualification; and/or
 - 6.1.3.7 employer to prohibit any person from speaking in a language other than English in the workplace unless:

6.1.3.7.1 the employer can show that requiring that employees speak English at certain times is justified by business necessity, and

6.1.3.7.2 the employer informs employees of the requirement and the consequences of violating the rule.

6.2 If any party engages in unfair employment practices, as defined above, remedies as set forth in KCC 12.18 shall be applied.

7. DURATION/TERMINATION

7.1 This Agreement will become effective upon signing of this Agreement by both parties and shall remain in effect until final acceptance of the Project and payment by the County of all moneys due from the County to the City, subject to the early termination provisions below.

7.2 If expected or actual funding is withdrawn, reduced or limited in any way prior to the completion of the Project, either party may, with thirty (30) days written notice to the other party, terminate this Agreement.

7.3 In the event of termination prior to completion of the Project: All direct and indirect phasing-out costs shall be paid by the party requesting termination. Termination costs payable shall not exceed the actual costs incurred as a result of termination of the Project. The other party shall be released from any obligation to provide further services pursuant to the Agreement.

8. INDEMNIFICATION AND HOLD HARMLESS

8.1 Each party hereto agrees to indemnify and hold harmless the other party, and its officials, agents and employees, for all claims (including demands, suits, penalties, losses, damages, attorney's fees, expenses or costs of any kind whatsoever) to the extent such a claim arises or is caused by the indemnifying party's own negligence or that of its officials, agents or employees in the performance of this Agreement.

8.2 The foregoing indemnity is specifically intended to constitute a waiver of each party's immunity under the State of 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.

8.3 The provisions of this section shall survive the expiration or earlier termination of this Agreement with regard to any event that occurred prior to or on the date of such expiration or earlier termination.

9. DISPUTE RESOLUTION

- 9.1 In the event of a dispute between the parties regarding this Agreement, the parties shall attempt to resolve the matter informally. If the parties are unable to resolve the matter informally within 30 days, either party may request, in writing, a meeting between the Manager of the King County Road Services Division Manager and the City Public Works Director to discuss and resolve the matter. If the matter still is not resolved, it may be referred to the Mayor and the King County Executive for resolution.
- 9.2 The Mayor of Issaquah and the King County Executive may agree, in writing, to use another dispute resolution process.

10. OTHER PROVISIONS

- 10.1 The City shall be deemed an independent contractor for all purposes and the employees of the City, or any of its contractors, subcontractors and their employees, shall not in any manner be deemed to be employees or agents of the County.
- 10.2 Nothing contained herein is intended to, nor shall be construed to, create any rights in any party not a signatory to this Agreement, or to form the basis for any liability on the part of the City, the County, or their officials, employees, agents or representatives, to any party not a signatory to this Agreement.
- 10.3 Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 10.4 The City shall retain ownership and usual maintenance responsibility for the road, drainage system, signs, sidewalk and other property within its jurisdiction.
- 10.5 If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the parties.
- 10.6 This Agreement contains the entire agreement of the parties and any representations or understandings, whether oral or written, not incorporated herein are excluded.
- 10.7 This Agreement may be amended only by an instrument in writing, duly executed by both parties.

IN CONSIDERATION of the mutual benefit accruing herein, the parties hereto agree that the work as set forth herein will be performed by the City under the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last written below.

CITY OF ISSAQUAH

KING COUNTY

Mayor

King County Executive

Date _____

Date _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Deputy Prosecuting Attorney

4-6-01

Exhibit A

**EXECUTIVE LEVEL
PROJECT SCOPE
ISSAQUAH SE BYPASS PROJECT**

The purpose of this scope is to define the City of Issaquah project process for the SE Bypass Project. The scope is written in phases consistent with City intent.

1. ENVIRONMENTAL DOCUMENTATION:
 - A. Complete SEPA/NEPA DEIS for all viable alternatives.
 1. Incorporate evolving environmental regulations and adjust alternatives accordingly.
 2. Add the "Second Avenue/Railroad Grade alternative to DEIS by supplement.
 3. Continue WSDOT/COE wetlands permitting collaborative planning process.
 - B. Complete SEPA/NEPA FEIS
 1. After receiving a record of decision from FHWA, proceed through City Council process for build/no-build decision.
2. ASSUMING NO BUILD DECISION FROM CITY COUNCIL:
 - A. Evaluate null alternative impacts
 - B. Determine what mitigations might be employed to off set lack of Bypass capacity in the City.
 - C. Receive direction from City Council for implementation of mitigations.
3. ASSUMING A BUILD DECISION FROM CITY COUNCIL:
 - A. Continue pursuit of grants from State and Federal agencies.
 - B. Complete design.
 - C. Determine right of way needs.
 - D. Acquire right of way.
 - E. Construction.

Individual tasks within this scope have expanded scopes of responsibility for consultants, city staff and others all of which combine into the total project known as the Issaquah SE Bypass.