

2005-392

**NORTHGATE COORDINATED TRANSPORTATION IMPROVEMENT PLAN
&
THIRD AVE NORTHEAST
BEWEEN NE 100TH Street & NE 103RD Street**

FUNDING AGREEMENT

between

KING COUNTY

and

THE CITY OF SEATTLE

This Agreement is made and entered into this ____ day of _____, 2005 between KING COUNTY, through its Department of Transportation, referred to herein as the "County", a home rule charter county of the State of Washington, and the City of Seattle, referred to herein as the "City".

Recitals

- A. The City and the County are working together to implement specific aspects of the Northgate Area Comprehensive Plan adopted in the Seattle Comprehensive Plan. Northgate is a designated urban center under Countywide and City growth management plans and the location of the principal transit transfer hub in all of north King County. It was one of three development sites identified in 1998 at the launch of the County's Transit Oriented Development (TOD) program. Progress toward Northgate urban center housing and job targets has lagged significantly behind other Seattle urban centers.
- B. In December of 2003, the City Council passed proposals that amended Northgate Overlay District development regulations, approved a development agreement to promote redevelopment of Northgate Mall, and provided the City with an option to purchase land to improve Thornton Creek water quality and provide public open space.
- C. The City Council further approved initial funding for a Coordinated Transportation Investment Plan (CTIP) and established a broad based advisory group, the Northgate Stakeholders. A goal of the CTIP is to analyze forecasted development proposals so that mitigation measures can be more predictable, rational and equitable than is the result with piecemeal permit decisions. The County encouraged the City to take a comprehensive view on transportation that their CTIP effort seeks to address and provided the City past traffic studies financed by the County.

- D. Lorig Associates has an option to purchase 5.9 acres on the east half of the lot south of Northgate Mall and south of NE 103rd St., commonly referred to as the South Lot, and is proposing approximately 500 housing units and retail space.
- E. In August 2004, the City Council approved both a memorandum of understanding with Lorig Associates regarding joint development of the South Lot and funding to purchase land and to construct the Thornton Creek Water Quality Channel stormwater project. The Council also approved the scope of work for the CTIP and appropriated additional funding.
- F. The Puget Sound Regional Council (PSRC) has allocated a \$1.3 million grant to King County to construct an extension of 3rd Ave. NE between NE 103rd St. and NE 100th St. This street improvement will provide a new north/south arterial and pedestrian connections through the South Lot.
- G. The City appropriated \$500,000 toward the unfunded costs of 3rd Ave. NE in a 2005 budget proviso that requires Seattle City County approval by ordinance of this interlocal agreement specifying the City and County roles and responsibilities, a commitment by the County to pay any unfunded costs, and other conditions.
- H. The potential to move the County Metro's Park and Ride lot at Fifth Ave. NE and NE 112th St. to the vicinity of the Northgate Transit Center and future light rail station will consolidate park and ride facilities in the area for more efficient transit operations and permit the land to be developed to another use, potentially as a park and open space at the former park and ride location.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. COUNTY RESPONSIBILITIES

- A. The County will contribute \$90,000 in cash toward the Coordinated Transportation Investment Plan (CTIP). Of this amount, the County will reimburse the City for up to \$90,000 of expenses it incurs for transportation analysis related to bus movements and the King County transit oriented development.. The County has spent \$10,000 for in-kind staff and County consultant assistance for parking and traffic management analysis in the Northgate area.
- B. The County will provide the City with information applicable to the CTIP such as traffic information, King County Metro Transit operations information, Transit requirements and any relevant information on future plans for Transit facilities at the Northgate Transit Center.
- C. The County will review and respond to the City in a timely fashion when the City requests information or reviews of draft documents.

- D. The County will pay the City within 45 days of receiving an appropriate project report and invoice from the City. The County agrees to pay the City in accordance with the payment schedule detailed in Section 3, below.
- E. The County agrees to design and construct the 3rd Ave. NE street extension project (Puget Sound Regional Council Regional Transportation Improvement Program project reference number MET-141C) in conformance with all applicable City codes, plans and policies. The project includes a 73' right of way with two through lanes and a turn lane (each 11' width) and 12' sidewalks on the east and west sides of the street. The County will dedicate up to 36.5 feet of right of way at no cost to the City for the construction of the western half of 3rd Ave. NE which will be a public street with sidewalks, with a total area of 21,876 sq. ft. See, Exhibit A. The drawing attached as Exhibit A is under discussion between the parties and is not an agreed-upon final design, nor does it necessarily comply with City requirements.
- F. The County agrees to pay cost overruns and any additional other unfunded costs beyond the amount of the grant award and the City's payment of \$500,000 as specified in Section 2.A.
- G. For purposes of permit issuance only, the County agrees to submit the design of the 3rd Ave. NE improvements to the City for review and approval at 30% of design completion, 90% of design completion and completion of design and bid documents. Designs will be submitted to the City Traffic Engineer.
- H. The County will allow City and private utilities to locate facilities within the 3rd Avenue NE right of way at the cost to be paid by the City, private utilities, or adjacent developers and the County will work with the City to develop mutually acceptable designs to accommodate the needs of those utilities during the design of the roadway. A sedimentation vault for the Thornton Creek Water Quality Channel may be constructed the within the street right of way at the southern end of the alignment. Construction and placement of utilities will be according to the City Street Improvement Manual and subject to City approval.
- I. At its cost, the County will construct (at an estimated cost of \$80,000) an improved pedestrian corridor running east to west across its park and ride lot from the new 3rd Ave. NE to the Northgate Transit Center and will coordinate the planning and design jointly with Lorig Associates and the City.
- J. The County will make a good faith effort to meet the combined project schedule in Section 4.
- K. The County will install at its cost a traffic signal at the intersection of NE 100th St. and 2nd Ave. NE, and may make improvements, to the existing signal at 100th and 1st Ave. to accommodate southbound left turn movements, and westbound right-turning movements subject to the City's approval.

- L. The County may install or repair sidewalks between 2nd Ave. NE and 3rd Ave. NE on the north side of NE 100th St.. The width of the sidewalk is to be 12 feet from the face of the curb to the back of the sidewalk in conformance with City code requirements.

SECTION 2. CITY RESPONSIBILITIES

- A. The City will reimburse the County for up to \$500,000 for environmental compliance, design, engineering, permit review, and construction inspection costs incurred by the County for a 3rd Ave. NE extension between NE 100th St. and NE 103rd St.. The improvements include pedestrian amenities (such as but not limited to crosswalks, pedestrian lighting, etc.) at the intersection of NE 100th St. and 3rd Ave. NE, as well as NE 103rd St. and 3rd Ave. NE.
- B. The City and the County agree that design and engineering costs incurred for any underground tunnels that may be constructed between the Lorig development and the County lot to the west as part of the 3rd Ave. NE extension or future developments are not eligible for reimbursement by the City.
- C. The City agrees to provide the County with opportunities to review and comment on the CTIP analyses and work products, and agrees to incorporate data and information regarding transit operations and requirements into the CTIP.
- D. The City agrees to pay the County within 45 days of receiving an appropriate project report and invoice from the County. The City agrees to pay the County in accordance with the payment schedule detailed in Section 3, below.
- E. The City agrees to work with the County to identify needs and to jointly evaluate options for bus layover both near-term until the County's new transit oriented development Northgate TOD is planned and constructed and for the long-term after the County's TOD development is built. The City agrees to allow the bus layover spaces currently located on the north side of NE 100th St. between 2nd Ave. NE and 3rd Ave. NE to continue at that location and to allow 400 additional feet to permit up to four transit vehicles to lay over on the north side of NE 100th St. between 3rd Ave. NE and 5th Ave. NE for an indefinite time period. These layover spaces are needed 24 hours per day year-round. Any relocation of these layover spaces in the future would require mutual agreement by the City and the County. The layover spaces are designed on Exhibit B.
- F. The City agrees to complete its review of and comment on County design submittals on 3rd Ave. NE improvements within fifteen working days of their receipt
- G. Based on the City's review of the County's warrant request, the City has agreed to permit the traffic signal at NE 100th St. and 2nd Ave. NE, and improvements to the existing signal at 1st Ave. NE and NE 100th St. to accommodate southbound left turn and westbound right turn movements.

- H. The City agrees to design and obtain a permit for a traffic signal and associated curb and pavement improvements on the north side of the street at the intersection of 3rd Ave. NE and NE 103rd St.. The City will pay the County to construct these two items (signal and curb/pavement) based on the bids for construction. The County will pay the incremental cost for a signal controller compatible with transit signal priority, and the City will allow for hardware communication for future transit signal priority.
- I. For permitting purposes only, the City agrees to designate the City Traffic Engineer as the County's point of contact for review and approval of design submittals.
- J. The Mayor agrees to propose legislation to the Seattle City Council to dedicate land to establish a 73' right of way adjacent to the Northgate Commons and Thornton Creek Channel projects to the east and the King County property to the west as necessary for the 3rd Ave NE street extension project as illustrated in Exhibit A and to designate the new 3rd Ave. NE as a minor arterial. If the Seattle City Council does not accept dedication of this street by December 2006, this agreement will terminate and the parties will have no further obligations under this agreement.
- K. The City agrees to make a good faith effort to meet the project schedule in Section 4.

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SECTION 3. REIMBURSEMENT OF ELIGIBLE COSTS

A. Payment of Funds Committed Under this Agreement to the City

1. The County will pay the City \$30,000 upon submission by the City of a draft Environmental Impact Statement (EIS) for the CTIP for the County's review and comment.
2. The County will pay the City an additional \$30,000 upon the publication of a draft EIS for public comment for the area covered by the CTIP process.
3. The County will pay the City an additional \$30,000 upon the City's publication of the Final EIS.
4. The County will provide the City with a report from its financial system showing the in-kind costs associated with the project incurred by the County during the County's work on this project.

B. Payment of Funds Committed Under This Agreement to the County

1. The City will pay the County up to \$125,000 upon the completion of the preliminary engineering, up to 30% design, of the 3rd Ave. NE extension project and related improvements. The County will submit an appropriate invoice and a set of preliminary design drawings to the City for the City's review and approval.

2. The City will pay the County up to \$250,000 upon the City's approval for permitting purposes of 90% design documents by the County. The County will submit an appropriate invoice and a set of design documents to the City for the City's review.
3. The City will pay the County up to \$125,000 upon completion and the City's approval for permitting purposes of a full set of bid documents for the 3rd Ave. extension project. The County will submit an appropriate invoice and a full set of bid documents to the City for the City's review.
4. As part of the solicitation for bids for the 3rd Ave. NE extension project, the County will solicit bids for the traffic signal and associated curb and pavement improvements on the north side of the street at the intersection of 3rd and NE 103rd St.. Upon the City's acceptance of the bid price for that work, the County will construct those improvements as part of the 3rd Ave. NE extension project. The City will be responsible for reimbursing the County for the payments it makes those improvements.

SECTION 4. COMBINED PROJECT SCHEDULES

1. June, 2005- City completes 2010 and 2030 CTIP traffic analyses that are necessary for planning and design of 3rd Ave. NE Improvements.
3. June, 2005- Northgate Stakeholder Review of CTIP Traffic Modeling Results
5. November, 2005- County completes NEPA environmental and preliminary design reviews
6. March, 2006- City and County complete all necessary utility agreements
7. June, 2006- utility installations begin
8. February, 2007- street construction begins
9. December, 2007- street opens

SECTION 5. COMPLIANCE WITH LAWS.

The City and the County shall comply with all applicable federal, state and local laws and regulations in performing under this Agreement.

SECTION 6. LEGAL RELATIONS.

A. This Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture, agent-principal relationship, or partnership is formed as a result of this Agreement. The employees of the City or individuals providing paid or volunteer services to the City shall be considered the employees, volunteers, agents or representatives of the City and shall not be deemed, nor represent themselves, to be the employees, volunteers, agents or representatives of the County. In addition, the employees of the County or individuals providing paid or volunteer services to the County shall be considered the employees, volunteers, agents or representatives of the County and shall not be deemed, nor represent themselves, to be the employees, volunteers, agents or

representatives of the City.

B. This Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement between the County and City.

C. The City shall be solely and completely responsible for all acts and omissions of its employees, volunteers and all other such persons acting on its behalf. The City acknowledges that the County shall have no responsibility for overseeing or monitoring the performance of such persons. In addition, the County shall be solely and completely responsible for all acts and omissions of its employees, volunteers and all other such persons acting on its behalf. The County acknowledges that the City shall have no responsibility for overseeing or monitoring the performance of such persons.

D. To the maximum extent permitted by law, the City agrees to defend, indemnify and hold harmless the County and its officers, employees and agents from and against all liabilities, claims, actions, lawsuits, damages, losses, costs and expenses (including reasonable attorneys' fees and court expenses) for all injuries to or death of any person, repayment of grant funds, infringement of any patent or copyright, and/or damage to any property occurring, directly or indirectly, from the City's performance or failure to perform under this Agreement, whether or not resulting from the negligence of the City, except to the extent such injuries, infringements or damages result from the County's negligence or willful misconduct. If (and only if) the provisions of RCW 4.24.115 apply to the work and services under this Agreement and any such damages and injuries to persons or property are caused by or result from the concurrent negligence of the City and the County or their respective contractor(s), employees, agents, or representatives, the indemnification of each party applies only to the extent of the negligence of that party, its contractor or employees, agents, or representatives. The City's obligations under this Section shall include, but not be limited to, claims and actions against the County and its officers, employees and agents by a volunteer to or an employee or former employee of the City, and the City expressly waives, as respects the County only and only for the limited purpose stated herein, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other workers' compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claims and actions.

E. To the maximum extent permitted by law, the County agrees to defend, indemnify and hold harmless the City and its officers, employees and agents from and against all liabilities, claims, actions, lawsuits, damages, losses, costs and expenses (including reasonable attorneys' fees and court expenses) for all injuries to or death of any person, repayment of grant funds, infringement of any patent or copyright, and/or damage to any property occurring, directly or indirectly, from the County's performance or failure to perform under this Agreement, whether or not resulting from the negligence of the County, except to the extent such injuries, infringements or damages result from the City's negligence or willful misconduct. If (and only if) the provisions of RCW 4.24.115 apply to the work and

services under this Agreement and any such damages and injuries to persons or property are caused by or result from the concurrent negligence of the City and the County or their respective contractor(s), employees, agents, or representatives, the indemnification of each party applies only to the extent of the negligence of that party, its contractor or employees, agents, or representatives. The County's obligations under this Section shall include, but not be limited to, claims and actions against the City and its officers, employees and agents by a volunteer to or an employee or former employee of the County, and the County expressly waives, as respects the City only and only for the limited purpose stated herein, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other workers' compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claims and actions.

F. The provisions of this Section shall survive and remain applicable to each of the parties notwithstanding any termination or expiration of this Agreement.

SECTION 7. TERMINATION.

A. This Agreement shall take effect upon its signing by both parties. Either party may terminate this Agreement in the event the other fails to perform a material obligation under this Agreement, and such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provided to such other party. Notice of termination of this Agreement shall be given by the party terminating this Agreement to the other party not less than thirty (30) days prior to the effective date of termination. No delay in enforcing the provisions hereof as to any breach shall impair, damage or waive the right of any party entitled to enforce the same or obtain relief against or recover for the continuation or repetition of such breach or any similar breach thereof at any later time or times.

B. Neither payment by the County nor the City shall be construed as a waiver of each party's rights or remedies against the other. Failure to require full and timely performance of any provision at any time shall not waive or reduce the right to insist upon complete and timely performance of such provision thereafter.

SECTION 8. RECORD KEEPING

The City and the County shall keep accurate records of all activities and expenditures conducted and incurred under this Agreement and report progress in achieving the performance measures identified by the parties during the course of this project and for three years thereafter.

SECTION 9. AUDITS, INSPECTIONS AND RETENTION OF RECORDS

The County, the City, the State Auditor, and any of their representatives shall have full access to and the right to examine, during normal business hours and as often as they

deem necessary, all of the City's and County's records with respect to all matters covered by this Agreement. Such representatives shall be permitted to audit, examine and make excerpts or transcripts from such records, and to make audits of all Agreements, invoices, materials, payrolls, and other matters covered by or related to this Agreement.

All documents, books, papers, accounting records, and other materials pertaining to this Agreement shall be retained by the City and the County for six years from the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the City and the County agree to maintain same until all such litigation, appeals, claims or exceptions are finally resolved.

SECTION 11. SUCCESSION.

This Agreement, together with all exhibits now or hereafter made a part, shall be binding on the parties and their respective heirs, executors, administrators, successors and assigns.

SECTION 12. ASSIGNMENTS.

Neither this Agreement nor any interest herein may be assigned by the City or the County without the prior written consent of the non-assigning party.

SECTION 13. NOTICE REQUIREMENTS.

Any notice given under this Agreement shall be in writing and given by sending such notice by registered mail, return receipt requested, with postage prepaid, addressed as follows, or at such other address as the party to be notified shall have last directed in writing, or by serving said notice personally.

KING COUNTY: Transit General Manager
 Department of Transportation – KSC-TR-0415
 King Street Center
 201 S. Jackson Street
 Seattle, WA 98104-38565

CITY: Director
 Seattle Department of Transportation, SMT-39-00
 700 Fifth Ave.
 Suite 3900
 Seattle, WA 98104-5043

The effective date of notice shall be the date of personal service or the date of receipt as shown on the return receipt, as applicable.

EXHIBIT A

SECTION 14. AMENDMENT AND EXTENSION.

This Agreement and the exhibits now or hereafter a part of this Agreement shall not be deemed amended in any manner unless such amendment is in writing and signed by a duly authorized representative of each party.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed by a duly authorized representative.

THE CITY OF SEATTLE

KING COUNTY

Grace Crunican
Director
Seattle Department of Transportation
Transportation

Kevin Desmond
Metro Transit General Manager
King County Department of

Date: _____

Date: _____

~~EXHIBIT A~~