



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**September 28, 2010**

**Ordinance 16939**

**Proposed No. 2010-0487.2**

**Sponsors Ferguson**

1           AN ORDINANCE authorizing the King County executive  
2           or the executive's designee to approve a memorandum of  
3           agreement with the city of Shoreline relating to the Aurora  
4           Avenue North multi-modal corridor project.

5           STATEMENT OF FACTS:

6           1. The city of Shoreline is currently completing a mass transportation  
7           project known as the Aurora Avenue North multi-modal corridor project,  
8           including a segment between North 185th Street and North 205th Street.

9           2. The city of Shoreline was awarded a \$475,000.00 Federal Transit  
10          Administration ("FTA") grant for Bus Rapid Transit-Aurora Corridor  
11          Improvement Project (SR99) Phase III.

12          3. The city cannot obligate the FTA grant funds in a timely manner and  
13          requires local funding to complete its project.

14          4. King County Metro, the transit division of the county's department of  
15          transportation, has locally generated revenues now allocated to projects  
16          eligible for funding with FTA grants, and these locally generated revenues  
17          are not currently being used as match for federal grants.

18          5. Providing local county funds to the city in exchange for the city's FTA  
19          grant for will allow the city to proceed with construction of its Aurora

20 Avenue North multi-modal corridor project segment between North 185th

21 Street and North 205th Street.

22 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

23 SECTION 1. The King County executive or the executive's designee is hereby

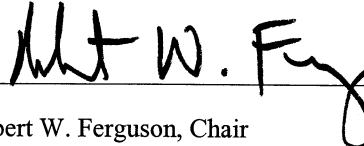
24 authorized to execute an agreement with the city of Shoreline, substantially in the form of

- 25 Attachment A to this ordinance, for an exchange of funds relating to the Aurora Avenue
- 26 North multi-modal corridor project.
- 27


Ordinance 16939 was introduced on 8/30/2010 and passed by the Metropolitan King County Council on 9/27/2010, by the following vote:

Yes: 9 - Ms. Drago, Mr. Phillips, Mr. von Reichbauer, Mr. Gossett,  
Ms. Hague, Ms. Patterson, Ms. Lambert, Mr. Ferguson and Mr. Dunn  
No: 0  
Excused: 0

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

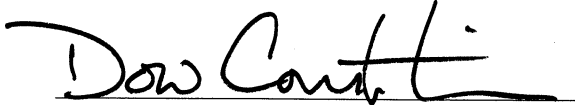
  
Robert W. Ferguson, Chair

ATTEST:

  
Anne Noris, Clerk of the Council

RECEIVED  
2010 OCT - 8 AM 11:35  
CLERK  
KING COUNTY COUNCIL

APPROVED this 7 day of October, 2010.

  
Dow Constantine, County Executive

**Attachments:** A. Memorandum of Agreement Between King County Metro and the City of Shoreline Relating to The Aurora Avenue North Multi-Modal Corridor Project - dated 9-14-10

Memorandum of Agreement  
Between  
King County Metro and the City of Shoreline  
Relating to  
The Aurora Avenue North Multi-Modal Corridor Project

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_, 2010 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 Shoreline, referred to herein as the "City".

WHEREAS, the City is currently planning and doing preliminary engineering on a mass transportation project known as the Aurora Avenue North Multi-Modal Corridor project segment between North 185<sup>th</sup> Street and North 205<sup>th</sup> Street (herein referred to as "the Aurora project"); and

WHEREAS, the United States Congress approved an earmark for \$475,000 of Federal Transit Administration ("FTA") funds for the Aurora Project; and

WHEREAS, the Aurora project benefits the County's public transportation system by adding Business Access Transit lanes for more efficient and convenient bus service; and

WHEREAS, King County Metro, a Division of the County's Department of Transportation, has locally generated revenues now allocated to projects eligible for funding with federal grants, and these locally generated revenues are not currently being used as match for federal grants; and

WHEREAS, providing local County funds to the City in exchange for the City's FTA grant funds currently programmed to the Aurora project will allow the City to proceed with implementation of the project;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

**SECTION 1. EXCHANGE OF FUNDS**

- A. The City will work with the County to secure \$475,000.00 in FTA Section 5309 Bus grants for the County's use. These FTA funds shall be from grants that have been earmarked for the Aurora project.
- B. In exchange for the FTA grant funds, the County will provide the City with unencumbered local County funds in an amount not to exceed \$434,625.00 (herein referred to as "Local Funds"), and these Local Funds are to be used solely for the Aurora project, unless the Aurora project is terminated or removed from the City's list of Capital Improvement Projects approved by its Council (herein referred to as "CIP") and the City and County agree to another use that confers transit benefits to the citizens of the County

as further described in Section 4 herein. This amount is equal to the total of the FTA funding, less 5% in administrative costs. An additional 1.75% per year of the total FTA funding will be deducted in administrative costs until the County can draw the FTA funds from the federal treasury.

## **SECTION 2. TIMING OF FUND EXCHANGE**

- A. The City and the County will jointly request that the Puget Sound Regional Council reprogram the \$475,000.00 Section 5309 Bus grant currently programmed in the Regional Transportation Improvement Program (herein referred to as the "TIP") for the Aurora project to an eligible County capital project. This joint request will occur as soon as possible following the approval and signing of this agreement.
- B. When the grant funds are reprogrammed for a County project in the TIP, the County will enter into a grant agreement with the FTA to obligate the funds before the eligibility of the funds expires at the end of federal fiscal year 2011. When FTA eligible costs have been identified for the grant funded County project, the County will draw the FTA funds from the federal treasury in accordance with FTA regulations and federal law.
- C. The County will transmit \$434,625.00 to the City as soon as practical after this Agreement is fully executed. This amount represents \$475,000.00 less \$23,750.00 which constitutes a 5% administrative cost for this type of fund exchange. An additional \$16,625.00 which constitutes 1.75% per year of the total FTA funding will be charged to the City until the County draws the FTA funds. If, for whatever reason, the County is unable to enter into a funding agreement that would obligate the FTA funds before the eligibility of the funds expires at the end of federal fiscal year 2011, the City will pay the County \$475,000. Payment shall be made before February 28, 2012.

## **SECTION 3. COUNTY RESPONSIBILITY FOR MEETING FEDERAL GRANT REQUIREMENTS**

The County shall enter into a grant agreement with FTA in which it will assume all responsibility for meeting federal grant requirements for the federal funding reprogrammed for the County's use.

## **SECTION 4. CITY'S USE OF LOCAL FUNDS**

- A. If the Aurora project is terminated or permanently removed from the CIP prior to the full expenditure of the Local Funds provided to the City under this agreement, the City hereby agrees to contact the County and provide documentation of the amount of unexpended Local Funds. Upon removal of the project from the CIP, the City and County will attempt to agree upon a different City project for expenditure of the remainder of the funds. The City may not use the Local Funds it receives under this agreement for any purpose other than the Aurora project without the written consent of

the County. If no alternate use of the remaining funds can be agreed upon by the City and County following termination or removal of the Aurora project from the CIP, at the County's discretion, the County may request in writing the return of any unexpended Local Funds. The City shall return such unexpended funds within sixty (60) days of receiving the County's request.

## **SECTION 5. 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 individual 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. The City and the County shall be solely and completely responsible for all acts and omissions of their employees, volunteers and all other such persons acting on the respective entities' behalf. The City acknowledges that the County and the County acknowledges that the City shall have no responsibility for overseeing or monitoring the performance of such persons.
- 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. 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.

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

## **SECTION 6. 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 7. DURATION AND TERMINATION.**

- A. This Agreement shall take effect upon its signing by both parties. This Agreement shall terminate upon the County's receipt of a final report showing that the Local Funds have been completely and properly expended.
- B. 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 days (30) days prior to the effective date of termination. Each party shall also be entitled to bring an action at law or in equity to abate, prevent or enjoin any such breach, to recover monetary damages caused by such breach or to compel specific performance by the other party of its obligations under this Agreement, it being recognized that the beneficiaries of the obligations hereunder cannot be adequately compensated by monetary damages in the event of a breach. 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.
- C. Neither payment by the County nor performance by 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. REPORTING AND RECORD KEEPING**

- A. The City shall report in writing to the County annually, on the anniversary of receipt of the Local Funds, regarding the expenditure of the Local Funds and the amount and status of the unexpended Local Funds. The report shall be in sufficient detail to allow the County to ascertain that the Local Funds were expended consistent with the restrictions of this Agreement. This duty to report shall expire upon the County's receipt of a final report showing that the Local Funds have been completely and properly expended.
- B. The City and the County agree to keep accurate records of activities and expenditures relating to the Aurora project and the County capital project that receive funds through this Agreement. Either party shall have full access to and the right to examine all

documents and accounting records of the other party relating to expenditure and use of the funds that are the subject of this agreement.

#### **SECTION 9. SUCCESSION.**

This Agreement shall be binding on the parties and their respective heirs, executors, administrators, successors and assigns.

#### **SECTION 10. ASSIGNMENTS.**

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

#### **SECTION 11. 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 – KS-TR-0415  
                         King Street Center  
                         201 S. Jackson Street  
                         Seattle, WA 98104-38565

CITY:                Public Works Director  
                         City of Shoreline  
                         17544 Midvale Ave. N.  
                         Shoreline, WA 98133

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.

#### **SECTION 12. AMENDMENT.**

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.



**SECTION 13. SEVERABILITY.**

If any portion of this Agreement is ruled by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed and delivered by its duly authorized officer or representative as of the date set forth below its signature.

_____ Signature	_____ Date
Robert L. Olander Shoreline City Manager	

_____ Signature	_____ Date
Harold S. Taniguchi, Director King County Department of Transportation	

Approved as to Form:

\_\_\_\_\_  
Ian Sievers, City Attorney