

INTERLOCAL AGREEMENT 2003-405
 BETWEEN THE CITY OF NEWCASTLE AND KING COUNTY
 FOR THE DESIGN AND CONSTRUCTION OF
 COAL CREEK PARKWAY IMPROVEMENTS— Phase I

THIS AGREEMENT is entered into by and between the City of Newcastle ("the City") and King County ("the County") for improvements to Coal Creek Parkway.

RECITALS

- A. The City is developing plans for improvements to Coal Creek Parkway within the City, between SE 72nd Street and the Renton city limits.
- B. The City is proposing to implement the improvements for Coal Creek Parkway in phases:
- C. Phase I consists of improvements from SE 72nd Street to SE 84th Street, Phase II consists of improvements from SE 84th Street to the May Creek Bridge, and Phase III consists of improvements from the May Creek Bridge to the Renton city limits. For purposes of this Agreement, Phase I is referred to as "the Project."
- D. The County has agreed to provide \$1,000,000 in support of the Project.
- E. The City Comprehensive Land Use Plan has identified the need for the Project.
- F. The County recognizes the need for the Project and Coal Creek Parkway has been identified as a facility on the Regional Arterial Network (RAN).
- G. The City has obtained Transportation Improvement Board (TIB) grant funding for the Project, and for Phase II of the Coal Creek Parkway improvements. King County supported the TIB grant application for the Project.
- H. 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.
- I. 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:

AGREEMENT

1. PURPOSE

The purposes of this Agreement are to provide for the designation of a lead agency for the preparation of engineering design plans and specifications and project administration and construction, including acquisition of right-of-way and other property necessary to accommodate road widening, and to provide certain funding, for the road improvement project known as the Coal Creek Parkway Improvements – Phase I ("Project"). The Project shall consist of road improvements to Coal Creek Parkway from SE 72nd Street to SE 84th Street, including but not limited to the widening the existing two-lane roadway to four lanes, a median and left turn pockets, and installing bicycle lanes, sidewalks and signalization of three intersections.

Future or subsequent phases of improvements to Coal Creek Parkway extending south of the Project up to the Renton City limits may include improvements to the remaining sections of Coal Creek Parkway including the portion located in unincorporated King County. These subsequent phases of improvements shall be addressed or incorporated in a

subsequent agreement between the parties or by amendment to this Agreement as the City and County may deem appropriate.

2. **GENERAL TERMS AND CONDITIONS**

- A. 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 purposes of this Agreement.
- B. The City shall design or contract with a professional consulting engineering firm for the performance of all design and engineering services for the Project, in accordance with all applicable standards.
- C. 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.
- D. 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.
- E. The City Public Works Director or designee and the County Road Services Division Manager or designee shall serve as liaison for the purpose of this agreement. 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.
- F. The County shall be given the opportunity to participate in value engineering studies undertaken in subsequent phases of improvements for Coal Creek Parkway.

3. **CONSTRUCTION CONTRACT BIDDING**

- A. The City shall prepare the contract bid documents for the Project.
- B. The City shall advertise the contract in the official legal publication for the City and, if determined necessary by the City, other newspapers in the Seattle Metropolitan area to provide the widest possible coverage.
- C. The City will provide to the County a copy of the plans and specifications advertised for bid.
- D. 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.
- E. The City will tabulate the bids. The City shall provide a dated copy of the bid tabulations to the County.
- F. The City shall award the contract to the lowest responsible bidder as determined by the City for the Project subject to applicable laws and regulations.
- G. The City shall not discriminate against any person on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation, or the presence of any sensory, mental or physical disability in an otherwise qualified disabled person in employment, and the City shall not violate any of the terms of RCW Chapter 49.60 Title VII of the Civil Rights Act of 1964, or any other applicable federal, state or local law or regulation regarding nondiscrimination in employment. These provisions shall apply to all contractors, subcontractors, or unions doing business with or furnishing workers or services to the City, except other governments.

City/Coun nterlocal
Coal Creek Parkway – Phase I

- H. The City shall provide or contract for the provision of all services necessary for administration of the construction contract.

4. **PAYMENT**

- A. The County agrees to contribute \$1,000,000 for the Project in accordance with the terms of this paragraph 4.
- B. Upon the effective date of this Agreement, the City may request, in writing, up to \$1,000,000 for right-of-way and other necessary property acquisition costs for the Project. Within thirty days of the request, the County shall transmit the requested funds to the City. If the amount of County funds transferred to the City for right-of-way acquisition costs exceeds the actual right of way acquisition costs less grant reimbursements for the right of way acquisition phase, the resulting balance of the County funds shall be used by the City to pay for the local share of any construction progress bills, or a portion thereof. The City shall provide documentation on the disposition of the County funds requested for the right of way acquisition phase.
- C. If the City does not request the full \$1,000,000 from the County pursuant to subparagraph 4.B, the County shall contribute the remaining balance of the \$1,000,000 to the Project's construction costs. The City shall invoice the County on a monthly basis for the local share of actual progress payment billing expenses incurred during the construction phase of the Project. The County agrees to use of County funds to pay the local share until the balance of the \$ 1,000,000 is exhausted. Such bills shall be adjusted to reflect the grant reimbursements for the construction phase and any resulting balance from the right of way acquisition phase as described in subparagraph 4.B. Invoices shall include the same detail as provided to the State TIB. The County shall pay all invoices within thirty days of the date of the invoice.

5. **DURATION/TERMINATION**

- A. 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.
- B. If expected or actual funding of the Project by third parties 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.
- D. In the event of termination prior to completion of the Project:
1. All direct and indirect phasing-out costs shall be paid by the party requesting termination.
 2. Termination costs payable shall not exceed the actual costs incurred as a result of termination of the Project.
 3. The other party shall be released from any obligation to provide further services pursuant to the Agreement.
 4. The City shall have no obligation to return funds provided to the City by the County prior to the effective date of the termination of the Agreement except that the City shall reimburse the County the full market value of any portion of parcels acquired with County funds that are used for purposes not authorized by this agreement.

6. INDEMNIFICATION AND HOLD HARMLESS

- A. 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.
- B. 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, with respect to 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.
- C. 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.

7. DISPUTE RESOLUTION

- A. 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, the matter shall be submitted to the City Public Works Director and County Road Services Division Manager for joint resolution.
- B. If the dispute involves a claimed breach of this Agreement and either party is dissatisfied with the decision of the City Public Works Director and the County Road Services Division Manager, the party may bring suit against the other party in the King County Superior Court.
- C. The parties may also agree to an alternative dispute resolution process.

8. OTHER PROVISIONS

- A. 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.
- B. 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.
- C. 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.
- D. The City shall retain ownership and usual maintenance responsibility for the road, drainage system, signs, sidewalk and other property within its jurisdiction.

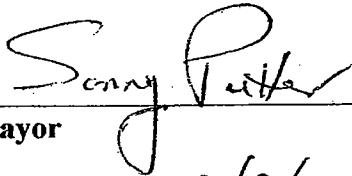
City/Coun., Interlocal
Coal Creek Parkway – Phase I

- E. 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.
- F. This Agreement contains the entire agreement of the parties and any representations or understandings, whether oral or written, not incorporated herein are excluded.
- G. 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.

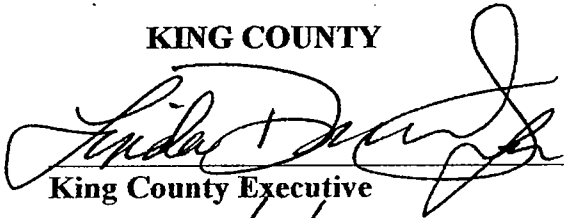
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last written below.

CITY OF NEWCASTLE



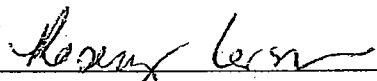
Mayor
Date 9/8/00

KING COUNTY



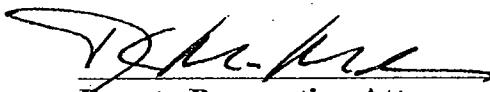
King County Executive
Date 11/7/00

APPROVED AS TO FORM:



City Attorney

APPROVED AS TO FORM:



Deputy Prosecuting Attorney