

June 4, 1998

Introduced By:

Brian Derdowski

clerk 5/28/98

Proposed No.:

98-346

MOTION NO. **10488**

1  
2 A MOTION authorizing the county executive to enter into an  
3 interlocal agreement with the city of Maple Valley for transfer  
4 and expenditure of road mitigation payment system revenues for  
5 Witte Road.

6 WHEREAS, the county has established a Road Mitigation Payment System as  
7 authorized in K.C.C. chapter 14.75, and

8 WHEREAS, the list of projects for which road impact fees are collected by the  
9 county as adopted by Ordinance 11021 includes a capacity improvement project on Witte  
10 Road, and

11 WHEREAS, the Witte Road project is now located in the new city of Maple Valley,  
12 and

13 WHEREAS, the county has not completed capacity improvements to Witte Road as  
14 contemplated by the project, and

15 WHEREAS, there is no alternative improvement project that can provide a  
16 "corridor substitute" for the capacity improvements in the Witte Road corridor that will  
17 mitigate essentially the same traffic impacts as provided in K.C.C. 14.75.100, and

18 WHEREAS, the city desires to initiate Witte Road capacity improvements as one of  
19 its first capital improvement projects and has proposed a capital investment plan project T-1  
20 for "Witte Road Improvements," and

104884

1 WHEREAS, the adopted 1998-2003 King County Road's Capital Improvement  
2 Program includes funding for the transfer of Witte Road related mitigation payments;

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

4 The county executive is authorized to execute an interlocal agreement, substantially  
5 in the form attached, with the city of Maple Valley for the transfer of King County Road  
6 Mitigation Payment System revenues related to the Witte Road.

7 PASSED by a vote of 13 to 0 this 29<sup>th</sup> day of June

8 19 98

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

*Louise Miller*

Chair

9  
10 ATTEST:

11 *Zunenois*

12 Clerk of the Council

13  
14 Attachment: An Interlocal Agreement between King County and the City of Maple Valley

15

Revised 6/24/98

AN INTERLOCAL AGREEMENT BETWEEN  
KING COUNTY AND THE CITY OF MAPLE VALLEY  
FOR TRANSFER OF KING COUNTY ROAD MITIGATION PAYMENT  
SYSTEM REVENUES RELATED TO THE "WITTE ROAD PROJECT" AND  
CONSTRUCTION OF THE PROJECT BY THE CITY.

This agreement is hereby made and entered into between King County, a home rule charter county, a political subdivision of the State of Washington (hereinafter called the "County"), and the City of Maple Valley, a municipal corporation of the State of Washington (hereinafter called the "City").

WHEREAS, the County has established a Road Mitigation Payment System as authorized in K.C.C. 14.75; and

WHEREAS, the list of projects for which road impact fees are collected by the County as adopted by Ordinance 11021, includes a capacity improvement project on Witte Road, and

WHEREAS, the Witte Road project is now located in the new City of Maple Valley, and

WHEREAS, the County has not completed capacity improvements to Witte Road as contemplated by the project, and

WHEREAS, there is no alternative improvement project that can provide a "corridor substitute" for the capacity improvements in the Witte Road corridor that will mitigate essentially the same traffic impacts as provided in KCC 14.75.100, and

WHEREAS, the City desires to initiate Witte Road capacity improvements as one of its first capital improvement projects and has proposed a capital investment plan project T-1 for "Witte Road Improvements".

NOW THEREFORE, pursuant to RCW 39.34, the County and City hereby agree:

**1. PURPOSE.** The purpose of this Agreement is to provide for the transfer of Road Mitigation Payment System (MPS) revenues collected by King County related to the Witte Road project (hereinafter called Witte Road MPS revenues) to the City and to outline their use by the City for Witte Road improvements.

**2.0. Witte Road MPS Revenue.** The County agrees to identify and transfer to the City revenues equivalent to all Witte Road MPS revenues collected by the county since the start of the MPS program in January 1, 1991. In addition to the Witte Road MPS revenues the County agrees to include interest as outlined in Section 2.1. The City

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authorizes the County to collect additional mitigation payments from pending and future permit activities that are subject to fee schedules in effect that have a portion of the payment related to Witte Road. The County agrees to transfer these future Witte Road MPS revenues on a monthly or quarterly basis to the City as may be agreed to by City and County Road Services Division staff. These periodic payments shall not include interest.

**2.1. INTEREST CALCULATION.** For the purposes of calculating the interest amount, the MPS revenues for Witte Road shall be apportioned into annual totals using the annual collection levels of MPS revenue collected by the County for zones MPS270, MPS271, MPS272, MPS276, and MPS277. The interest amount shall be computed at a rate of 5.15% compounded annually. See Attachment A for calculation of the interest based on collection of revenues through December 31, 1997.

**2.2. INITIAL PAYMENT METHOD - LUMP SUM AMOUNT.** The City and the County agree that the initial transfer will be made as a lump sum payment to include both the Witte Road MPS revenues and the interest. The lump sum payment shall be made by wire transfer. The City shall provide the County with wire transfer instructions. The transfer shall occur within 30 days of the effective date of the agreement as outlined in Section 7.0.

**2.3. INDIVIDUAL PAYMENT REFUNDS.** The County agrees to administer any adjustments in any mitigation payments for individual permits which affect Witte Road pursuant to KCC 14.75 and shall reflect these adjustments as part of any future monthly/quarterly transfers to the City after the initial transfer. Refunds of county-collected fees will be made as follows: 1) If a refund includes revenues that have not yet been transferred to the City, the refund (including interest) will be paid by the County out of such revenues and will be deducted from the revenues the County transfers to the City. 2) If a refund includes revenues that have already been transferred to the City, the City will not be responsible to refund these monies to the County. Instead, the County will pay the refund (including interest) and will deduct a like amount from future amounts that would otherwise be transferred to the City. 3) If revenues that have not been transferred to the City, or that can reasonably be expected to be collected in the future, will not be sufficient to cover all or part of a refund (including interest), the City will be responsible for the shortfall except that the City and Road Services Division staff may determine to set aside a final transfer amount to cover any refunds that may occur for canceled or withdrawn permits. The City's responsibility for any shortfall shall end upon termination of the agreement as provided in Section 10.0.

**2.4. TIMELY EXPENDITURE OF INDIVIDUAL PAYMENTS AND TIMELY USE OF REVENUES FOR WITTE ROAD.** The County agrees to take action through the pooling procedure pursuant to KCC 14.75.110(G) to assure that the requirement for expenditure of individual payments within six years as required by KCC 14.75.110(E) is accomplished. The County and City agree that the transfer of the Witte Road MPS

revenues to the City pursuant to Section 2.2 and their expenditure pursuant to Section 2.5 by the City accomplishes the purposes for which the MPS revenues were collected. The City and County agree that six years from the date of transfer is a reasonable period for timely expenditure of the Witte Road MPS revenues by the City.

**2.5. EXPENDITURE BY THE CITY.** The City agrees to expend the Witte Road MPS revenues within six years of their transfer from the County to the City. The City agrees to provide, on an as needed basis, an expenditure report on the status of the Witte Road capital improvement project and the use of Witte Road MPS revenues to the County Road Services Division. Upon expenditure of the balance of any Witte Road MPS revenues from the County the City shall submit a final expenditure status report to the Road Services Division. The County shall retain the final and other intermittent reports as documentation that Witte Road MPS revenues have been expended on improvements for Witte Road within six years of their transfer to the City.

**3.0. WITTE ROAD CAPITAL IMPROVEMENT PROJECT.** The scope of the project is anticipated to include widening the existing two-lane roadway by adding channelization at various locations and providing for the separation of pedestrian, bicyclist and if necessary equestrian traffic from auto traffic. Other costs such as illumination, street furnishings, landscaping, and/or related drainage improvements may also be included as part of the scope of the project.

**3.1. ELIGIBLE COSTS.** Witte Road MPS revenues may be used for any related environmental review, design, right-of-way ("ROW"), and construction costs for the project as outlined in Section 3.0. In the event that the City purchases any ROW or other property for the project with MPS revenue, and all or a part of such ROW or other property is subsequently determined to be surplus to the project, the City shall sell such surplus ROW or other property, and the proceeds of the sale shall be used to offset other eligible costs of the project. A separate capital improvement project for Witte Road shall be established to provide for project cost accounting and budgeting. The City agrees to not finance the Witte Road project exclusively with the MPS revenues. The actual level of public revenue shall be established by City at the time it determines whether to implement the project in phases or as one project and/or when the City implements a road mitigation program for the City which includes Witte Road pursuant to RCW 82.02.050 and establishes applicable policies and procedures.

**3.2. REIMBURSEMENT OF PRIOR EXPENDITURES.** Any eligible project expenses which were financed initially by other City funds may be reimbursed by the Witte Road MPS revenues consistent with Section 3.1.

**3.3. PHASING OF THE PROJECT.** The County and City agree the City may construct the project in phases. The City agrees that in the phasing of the project that each phase in which MPS revenues are used shall undertake capacity related improvements.

**4.0. PROJECT MANAGEMENT.** The City agrees to take responsibility for management and supervision of the design, ROW and construction, of the Witte Road capital improvement project unless a separate agreement provides for the use of County staff.

**4.1. ADMINISTRATION OF AGREEMENT.** The parties shall each appoint representatives to administer this agreement. Each party shall notify the other in writing of its designated representatives.

**5.0. CONFLICT RESOLUTION.** The City and the County agree to use consensus in resolving any issues or disputes. Any problem which cannot be resolved by the parties' designated representatives shall be referred to the City Manager and the Road Services Division Manager for settlement. If the issue still cannot be resolved, the parties agree to seek the assistance of a neutral mediator selected jointly.

**6.0. MITIGATION FEES UNRELATED TO CURRENT KING COUNTY FEE SCHEDULES.** The City shall not independently impose mitigation fees for the Witte Road project on developments in unincorporated King County unless a reciprocal impact fee agreement with the County is executed and implemented.

**7.0. EFFECTIVE DATE.** This Agreement is effective upon approval by the governing bodies of the City and County and upon signature of the parties.

**8.0. AMENDMENTS.** This agreement may be amended only by an instrument in writing duly executed by the parties hereto.

**9.0. MODIFICATION.** No waiver, alteration, or modification of any of the provisions of this agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the County.

**10.0. TERMINATION.** The Agreement shall continue to be in effect from year to year unless terminated upon written agreement by both parties or after the final expenditure report is transmitted to the Road Services Division as provided in Section 2.5.

**11.0 VENUE AND APPLICABLE LAW.** In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the parties hereto agree that any such action shall be initiated in the King County Superior Court of the State of Washington. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the King County Superior Court in accordance with the laws of the State of Washington.

**12.0 INDEMNIFICATION AND HOLD HARMLESS.** Each party shall protect, defend, indemnify and save harmless the other party, its officers, officials, employees and agents from any and all costs, claims, judgments, and/or awards of damages arising out of or in any way resulting from the indemnifying party's own acts or omissions in carrying out the terms of this Agreement. In the event the indemnified party incurs any costs including attorney's fees to enforce the provisions of this section, all such costs and fees shall be recoverable from the indemnitor.

**13.0 NO THIRD PARTY RIGHTS.** Nothing contained herein is intended to, nor shall be construed to, create any rights in any third party, or to form the basis for any liability on the part of the City or the County, or their officials, employees, agents, or representatives, to any third party.

**14.0 AUDITS AND INSPECTIONS.** The records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review or audit by the County or City during the terms of this Agreement and three (3) years after termination.

**15.0 NON-WAIVER OF BREACH.** The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

**16.0 SEVERABILITY.** If any provision of this Agreement shall be held to be 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.

**17.0 ENTIRE AGREEMENT.** This written agreement supersedes all prior oral or written statements of any officer or other representative of the City and the County, and those statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this agreement. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement.

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

KING COUNTY, WASHINGTON

CITY OF MAPLE VALLEY,  
WASHINGTON

\_\_\_\_\_  
King County Executive

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Prosecuting Attorney

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date