

May 7, 1996

Introduced By:

ROB MCKENNA
GREG NICKELS

Proposed No.:

96-512

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MOTION NO. 9901

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A MOTION authorizing the county executive to enter into an interlocal agreement with the city of Burien relating to the intersection of First Avenue South and South 128th Street.

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WHEREAS, the city of Burien incorporated on February 28, 1993, and

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WHEREAS, prior to the city's incorporation, the county had planned and budgeted

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for road improvements at the intersection of First Avenue South and South 128th Street,

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King County Capital Improvement Program (CIP) Project No. 302091, and

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WHEREAS, the scope of work originally planned for Project No. 302091

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included the design of plans, acquisition of right-of-way, upgrade of existing traffic

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signal, construction of left turn lanes at said intersection, and construction of a right turn

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lane for traffic turning southbound from South 128th Street onto First Avenue South, and

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WHEREAS, the intersection of First Avenue South and South 128th Street is now

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located within the city and is part of the city's street system, and

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WHEREAS, three underground storage tanks are located totally or partially

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beneath what is now the city's right-of-way of South 128th Street near the intersection of

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First Avenue South in the area of CIP Project No. 302091, and

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WHEREAS, the county agrees to transfer to the city the county funds appropriated

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and remaining for CIP Project No. 302901, and

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WHEREAS, the remaining county funds for CIP Project No. 302901 as of the

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city's incorporation is \$475,196.00 in 1995 dollars, and

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WHEREAS, the city agrees to use these funds for the removal of said underground

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storage tanks and other costs related to tank removal and environmental cleanup and

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remediation, and

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WHEREAS, upon the transfer of said funds from the county to the city, the city shall release the county from any further obligations or costs related to the presence or removal of the underground storage tanks or from any other costs related to future road improvements at the intersection of First Avenue South and South 128th Street, and

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, the parties are each authorized to enter into an agreement for cooperative action:

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

The county executive is authorized to execute an interlocal agreement, substantially in the form of the attached, with the city of Burien relating to the intersection of First Avenue South and South 128th Street which is located within Burien's city limits.

PASSED by a vote of 13 to 0 this 22nd day of July 1996.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Jane Hague
Chair

ATTEST:

Ronald A. Peterson
Clerk of the Council

Attachments: An Interlocal Agreement between King County and the City of Burien Relating to the Intersection of First Avenue South and South 128th Street

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INTERLOCAL AGREEMENT BETWEEN
KING COUNTY AND THE CITY OF BURIEN
Relating to the Intersection of
First Avenue South and Southwest/South 128th Street

This is an Agreement between King County, a home rule charter county, a political subdivision of the State of Washington, hereinafter referred to as "the County", and the City of Burien, a municipal corporation of the State of Washington, hereinafter referred to as "the City".

RECITALS

A. The City incorporated and commenced operation on February 28, 1993.

B. Prior to the City's incorporation, the County had planned and budgeted for certain road improvements at the intersection of First Avenue South and Southwest/South 128th Street, King County Capital Improvement Program (CIP) Project No. 302091.

C. The scope of work originally planned by the County for Project No. 302091 included the design of plans, acquisition of right-of-way, upgrade of existing traffic signal, construction of left turn lanes at the intersection of First Avenue South and Southwest/South 128th Street and construction of a right turn lane for traffic turning southbound onto First Avenue South.

D. The intersection of First Avenue South and Southwest/South 128th Street is now located within the City and is part of the City's street system.

E. Three underground storage tanks are located totally or partially within the City street right-of-way of Southwest 128th Street near the intersection of First Avenue South in the area of CIP Project No. 302091.

F. The County has offered to transfer the funds remaining in CIP Project No. 302091 to the City for the purpose of removing said underground storage tanks and other costs related to tank removal and environmental cleanup and remediation, with any remaining balance of the transferred funds to be used only for street improvement purposes.

G. County funds appropriated and remaining in CIP Project 302091 as of the City's incorporation in 1993 total \$475,196.00 in 1995 dollars.

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NOW THEREFORE, pursuant to RCW Ch. 39.34, and in consideration of the terms and conditions contained herein, it is mutually agreed by the County and the City as follows:

AGREEMENT

1. COUNTY RESPONSIBILITIES.

1.1 Within thirty (30) days of the execution of this agreement by the parties, the County shall transfer to the City the balance of County funds appropriated for CIP Project No. 302091 totalling \$475,196.00 in 1995 dollars.

1.2 The parties agree that the funds for Project No. 302091 transferred to the City as described in Section 1.1 shall constitute all funds to be provided to the City by the County for the removal of the underground storage tanks, environmental cleanup and remediation, and any other costs related thereto, and for any other work to be done at the intersection of First Avenue South and Southwest/South 128th Street. The County shall have no further obligation to the City for the removal of the underground storage tanks, environmental cleanup and remediation, and any other costs related thereto, or any other work at the intersection of First Avenue South and Southwest/South 128th Street.

1.3 The County shall make available to the City any plans and specifications the County has developed for CIP Project No. 302091.

1.4 Notwithstanding anything else to the contrary contained in this Agreement, this Agreement does not release the County from any liability it would otherwise have to third parties as a prior owner or occupier of the land holding these underground storage tanks, for environmental cleanup and remediation relating to these underground storage tanks, or other underground storage tanks in the immediate vicinity thereof.

2. CITY RESPONSIBILITIES.

2.1 The City will use the Project 302091 funds transferred to it by the County to excavate and remove the abandoned underground storage tanks located totally or partially within the City street right-of-way at First Avenue South and Southwest 128th Street, and to perform any necessary environmental cleanup and remediation, and any other costs related thereto. The pre-1965 tank fill locations for the underground storage tanks in the right-of-way of Southwest 128th Street are depicted in the attached Exhibit 1.

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2.2 At the time the underground storage tanks are excavated, the City will determine the exact location of the tanks and will document such location by a record of survey prepared by a land surveyor licensed to practice in the State of Washington, a copy of which shall be provided to the County.

2.3 Notwithstanding anything else to the contrary contained in this Agreement, this Agreement does not release the City from any liability it would otherwise have to third parties as the owner and occupier of the land holding these underground storage tanks, for environmental cleanup and remediation relating to these underground storage tanks, or other underground storage tanks in the immediate vicinity thereof. At the time the underground storage tanks are excavated, the City will document the condition of the soil and whether there are any contaminants present in the soil, and will provide a copy of such documentation to the County. In the event that any contaminants are found in the soil, the City will promptly notify the County, and the City will comply with all applicable laws and regulations relating to reporting such contaminants and their cleanup and remediation. Upon completion of cleanup and remediation, the City will provide the County with documentation that no regulatory authority with jurisdiction requires any further cleanup and remediation.

2.4 If there are any Project No. 302091 funds remaining unexpended by the City after the costs of the tank removal, environmental cleanup and remediation, and related costs, the City shall use such unexpended funds only for street improvements.

2.5 The City shall serve as manager and administrator for the work described herein.

2.6 The City shall be responsible for following all applicable Federal, State and local laws, rules and regulations in the performance of the work described herein. The City assures that its procedures are consistent with laws relating to public contract bidding procedures, and the County neither incurs nor assumes any responsibility for the City's bid, award or contracting process. The City further assures that if it does not have its own minority and women business enterprise (M/WBE) utilization program, that it will comply with the requirements of King County's M/WBE program as codified in K.C.C. 4.18. In addition to M/WB utilization, the City assures that its contracting practices are consistent with the policies and procedures of fair employment and affirmative action as codified in K.C.C. 12.18 and K.C.C. 12.16.

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3. INDEMNIFICATION

The City agrees to defend, indemnify and hold harmless the County, and its officials, employees, agents and representatives, for all claims (including demands, suits, penalties, losses, damages or costs of any kind whatsoever) to the extent such a claim arises or is caused by the City's own negligence or that of its officials, employees, agents or representatives in the performance of this Agreement. The City's obligation to defend, indemnify and hold harmless the County extends to any claims made against the County by the City's employees. For this purpose, the City hereby waives, by mutual negotiation, as respects the County only, any immunity that would otherwise be available to the City against such claims under the industrial insurance provisions of Title 51 RCW.

This paragraph 3 is not intended to, and does not, indemnify the County for any claim, cost, expense, or liability of any kind asserted by third parties related to environmental cleanup and remediation costs. This agreement shall further be subject to the provisions of RCW 4.24.115, to the extent applicable.

4. RELEASE

In consideration for the County's transfer of the CIP Project No. 302091 funds to the City, and the City's tank excavation and project management, each party hereby releases and discharges the other, and their respective officials, agents, employees, and representatives, from any and all claims that either party may have against the other, now or in the future, whether known or unknown, related to or arising from the presence of the underground storage tanks within the right-of-way of Southwest 128th Street at First Avenue South, including, but not limited to, costs of excavation and removal of the underground storage tanks, any necessary environmental cleanup and remediation, and any other costs related thereto.

5. COOPERATION

The City and the County agree to cooperate in pursuing the liability of prior owners and operators in order to recover cleanup and remediation costs from potentially liable parties, and to work together to minimize or eliminate any liability of the City and the County for further cleanup and remediation costs.

6. AUDITS AND INSPECTIONS

The records related to matters covered by this Agreement are subject to inspection, review or audit by the County or the City at the requesting party's sole expense. Such records shall be

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made available for inspection during regular business hours within a reasonable time of the request.

7. WAIVER AND AMENDMENTS

Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. This Agreement shall not be modified or amended except by an instrument, in writing, signed by the parties hereto.

8. 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 King County or the City of Burien or their officials, employees, agents or representatives, to any third party.

9. SEVERABILITY

If any provision of this Agreement is held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

10. ENTIRE AGREEMENT

The parties agree that this Agreement is the complete expression of the terms hereof and any representations or understandings, whether oral or written, not incorporated herein are excluded.

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

KING COUNTY

CITY OF BURIEN

GARY LOCKE
KING COUNTY EXECUTIVE

MAYOR

DATE

DATE

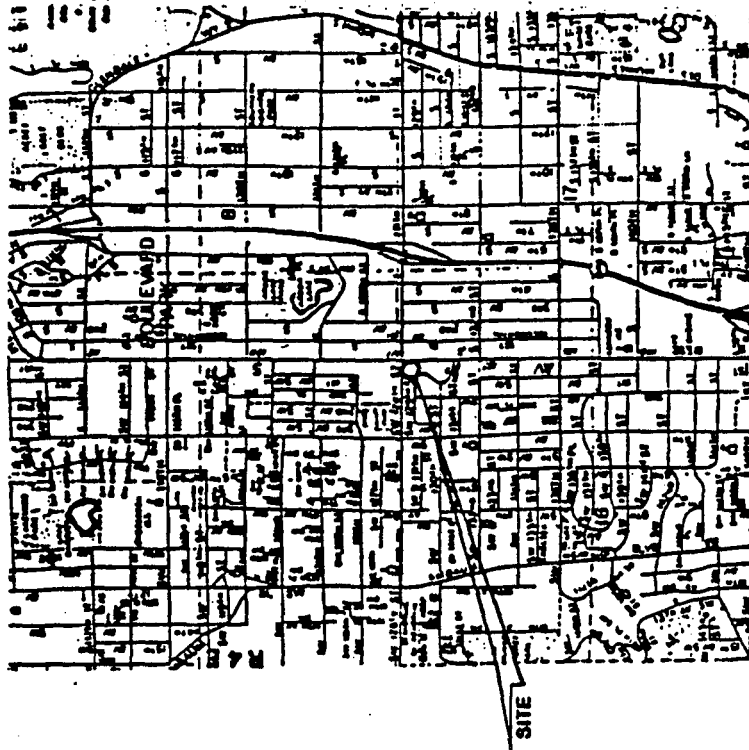
Approved as to Form:

Approved as to Form:

King County
Deputy Prosecuting Attorney

City Attorney

EXHIBIT E



CIRCLE K
(MP ONLY)

RESTAURANT

ABA MASSAGE &
BODY SHOP

RESIDENTIAL



UNOCAL SERVICE STATION NO. 6382
1ST AVENUE SOUTH & S.W. 128TH STREET
SEATTLE, WASHINGTON

SITE & EXPLORATION PLAN

FIGURE 1