

July 31, 1996

Introduced By: JANE HAGUE
Rob McKenna
Brian Derdowski

m:/trans-96:/motions:/96-20(tg)

Proposed No.: 96-620

MOTION NO. **9924**

A MOTION, authorizing the Executive to execute an interlocal agreement between King County and the City of Bellevue relating to the 150th Avenue Southeast improvements.

WHEREAS, the King County Countywide Planning Policies, adopted and approved by the King County Council and ratified by cities within the county, include policies calling for collaboration between the county and the cities that have designated potential annexation areas within the Urban Growth Area, in order to provide urban services and facilities within the potential annexation areas in a timely manner, and

WHEREAS, the 150th Avenue Southeast improvements are identified in the *SE Newport Way/150th Ave. SE Feasibility Study Final Report*, and

WHEREAS, funding is appropriated in the City's Capital Investment Program for the project, and

WHEREAS, the project is programmed in the County's 1996-2001 Capital Improvement Program pursuant to Bellevue's request to implement this joint project, and

WHEREAS, the project lies partly within the municipal boundary of the City and the portion partly within unincorporated King County is within a potential annexation area for the City, and

1 WHEREAS, the City has agreed to be lead agency for the
2 project, and

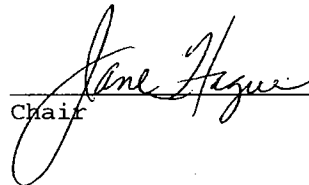
3 WHEREAS, at this time, the city is interested in
4 executing a cost-sharing agreement to undertake this project;

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


7 The King County executive is authorized to execute an
8 interlocal agreement between King County and the city of
9 Bellevue relating to the county's 150th Avenue Southeast CIP
10 Project in substantially the form as attached. The attached
11 agreement contains an annuity or "mortgage financing"
12 approach for the costs of the 150th Avenue Southeast
13 improvements in the city's potential annexation area.

14 PASSED by a vote of 12 to 0 this 19th day of
15 August, 1996.

16 KING COUNTY COUNCIL
17 KING COUNTY, WASHINGTON

18 
19 Chair

20 ATTEST:

21 
22 Clerk of the Council

23 Attachments: Interlocal Agreement

INTERLOCAL AGREEMENT FOR
150TH AVENUE S. E.

THIS AGREEMENT made and entered into by and between the County of King, a governmental subdivision of the State of Washington, hereinafter called the "County" and the City of Bellevue, a municipal corporation of the State of Washington, hereinafter called the "City", for the purpose of completing the design and construction of improvements to 150th Avenue SE from SE 37th Street (and the eastbound off-ramp from I-90) to SE Newport Way, hereinafter called the "Project".

WHEREAS, the County and the City agree that 150th Avenue SE provides an important link in the regional transportation system; and

WHEREAS, the need for the Project is consistent with *Vision 2020* policies and is identified in the *County Transportation Plan*, *Transportation Needs Report*, *Newcastle Community Plan*, *Newcastle Facilities Update*, *East Bellevue Transportation Plan*, and the *Newcastle Transportation Facilities Plan*; and

WHEREAS, the 150th Avenue SE corridor between SE 37th Street and SE Newport Way serves residents of both the City and the County; and

WHEREAS, the City and the County entered into an interagency agreement in September, 1992 for the completion of the *SE Newport Way/150th Avenue SE Feasibility Study*; and

WHEREAS, the Project is identified in the Final Report of the above study, which was completed in October, 1994; and

WHEREAS, funding is appropriated in the City's Capital Investment Program for the Project; and

WHEREAS, the City has been awarded a federal Surface Transportation Program grant for the Project; and

WHEREAS, the Project is programmed in the County's 1996-2001 Capital Improvement Program pursuant to Bellevue's request to implement this joint project; and

WHEREAS, the Project lies partly within unincorporated King County within Bellevue's sphere of influence and partly within the municipal boundary of the City; and

WHEREAS, the County's portion of the 150th corridor is within a potential annexation area for the City;

NOW, THEREFORE, it is hereby covenanted and agreed by and between the parties hereto as follows:

I. SCOPE OF WORK

The scope of work for the Project is to design and construct the improvements to 150th Ave SE described in Attachment A, including the widening of 150th Ave SE from the eastbound I-90 off-ramp and frontage road (SE 37th St) to SE 38th St, a new sidewalk on 150th from SE 38th to Newport Way, and intersection improvements at SE 37th, SE 38th, and Newport Way. The Project will be designed and constructed consistent with City road design standards to the extent possible, taking into consideration the costs and relative benefits associated with the proposed improvements.

II. RESPONSIBILITIES - Project Management and Coordination

A. **Lead Agency.** The City shall be the lead agency for the Project.

B. **Lead Agency Responsibility.** The lead agency shall be responsible for managing the financial, engineering, right-of-way, and construction aspects of the Project.

C. **Rights of Way Acquisition.** The City shall be responsible for acquisition of all necessary property for the Project whether the property is in the City or the County. The County agrees to cooperate, as necessary, in the City's efforts to acquire property that lies within the unincorporated County area; the County agrees to use its land use authority to require dedication of the property required for the Project by any affected property owners with pending land use actions. The County authorizes the City to exercise eminent domain, as necessary, to acquire property for the Project that lies within unincorporated King County. The price of acquisition must be agreeable to both agencies. The City will ensure that any property it acquires for the Project that lies within unincorporated King County is in compliance with all federal, state and local environmental laws and regulations. Costs of litigation and judgment shall be considered Project costs eligible for the cost sharing agreement described in Section III.A.

D. **Review and Comment.** The lead agency shall give the other party twenty-one (21) days to review and comment when Project plans, specifications, and estimates are fifty percent complete and ninety percent complete and at other times as may be reasonably requested.

E. **Permits.** The lead agency shall be responsible for obtaining required permits. Any permits required from the other party shall be expedited pursuant to procedures the Road Services Division has established with the Department of Development and Environmental Services.

F. **Environmental Reviews.** The lead agency shall be responsible for all environmental reviews and approvals.

G. **Public Outreach.** The lead agency shall be responsible for all public outreach activities according to its normal practices.

H. **Project Completion.** Subsequent to Project completion, but prior to acceptance from the contractor, both agencies shall perform a mutual walk-through inspection of the

completed facility to assure themselves that it has been constructed in compliance with the intent of the plans and specifications. A letter from the King County Road Engineer, acknowledging completion of the Project to his/her satisfaction (or punch list, if necessary) shall be sent to the lead agency within thirty days of the walk-through or satisfactory completion of items on the punch list. Following acceptance of the Project from the contractor, the agency within whose jurisdiction any portion of the Project is located shall be the owner of such portion, and such portion shall be part of the road system of that agency.

I. **Scope Changes.** The City Transportation Director shall immediately advise the King County Road Engineer, in writing, of any significant scope changes which result in added costs in excess of the cost shown in Section IV.A. and shall propose a cost update review pursuant to Section III.D.

J. **Maintenance.** Following acceptance of the Project from the contractor, maintenance of the Project (e.g. pavement repair, signal and sign maintenance, and landscape maintenance, where applicable), or any portion thereof, shall be the responsibility of the agency within whose jurisdiction such portion is located unless a written agreement stipulating otherwise is signed by the appropriate City and County officials.

K. **Project Team.** The provisions of this Agreement will be managed by a Project Team composed of the King County Road Engineer or designee and the Bellevue City Transportation Director or designee with additional staff to be determined by each party.

L. **Administrative Procedures.** The Project Team will meet as necessary to ensure the provisions of the Agreement are fulfilled and will develop written procedures and records as required to accomplish the work of this Agreement.

M. **Conflict Resolution.** The Project Team will use consensus to reach agreements. In the event consensus cannot be reached on an issue, the parties will first seek the assistance of a neutral mediator, selected jointly. If the issue still cannot be resolved, the issue will be forwarded to the legislative authorities of the City and County for resolution.

III. FINANCIAL ARRANGEMENTS

A. **Project Cost Allocation.** Each jurisdiction shall be responsible for the costs of the portion of the Project located within its jurisdiction. The Project cost by jurisdiction and Project element is listed in Attachment A. Project costs shall be reported in a format that identifies these costs by jurisdiction and Project element, provided that engineering design and environmental study costs may be apportioned pursuant to the percentage of the costs within each jurisdiction. An amended cost distribution shall be developed subsequent to any agreed to cost changes.

B. **Appropriations.** Both agencies shall take action to submit appropriation requests to their respective legislative bodies to assure sufficient funds are available in their respective capital budgets to carry out the work as set forth in the schedule described in Section V.

C. **Funding Sources.** Each agency is entitled to use whatever mix of capital funds it deems appropriate for its share of the Project. This agreement does not preclude either agency from using grant moneys solely for its share of the Project. However, joint grant applications may be submitted which offset the total cost of the Project, and in those situations, the grant shall offset the Project costs in proportion to the cost of the Project within each jurisdiction pursuant to Section III.A. In the event cost changes occur after the award of the grant an adjustment to reflect the revised costs within each jurisdiction shall be undertaken.

D. **Cost Estimate Updates.** The lead agency shall provide updated Project cost estimates and related changes in cash flow requirements at least twice per year and at such other times as the lead agency may determine. Special design features or extra mitigation beyond the scope of the Project as herein defined shall be the responsibility of the requesting agency. The lead agency shall have final approval of requests for design changes. The costs of mitigation which is required due to more specific environmental studies or more detailed engineering analysis will be apportioned between the two agencies as described in Section III.A.

E. **Project Cost Billing.** The City will bill the County for its fair share of actual expenses incurred, on no more than a monthly basis. These bills will reflect actual costs, including the current administrative overhead rate consistent with grant guidelines. All payments shall be due within 30 days of the billing date, with one percent per month interest being charged to the County as a delinquent charge, starting 30 days after the billing date.

F. **City's Liability Upon Annexation.** The City agrees to reimburse the County for the undepreciated value of the County's investment in the Project as described in Section III.A. or as it may be subsequently revised (net of applicable grants) at whatever point in the future the City annexes territory surrounding the Project. This includes territory to the west and east of 150th and at the shared intersection of 150th and SE 38th Street. This reimbursement will be made as follows:

G. **Annuity Established.** Within thirty (30) days of completion of construction of the Project, King County will establish and transmit to the City an annuity to depreciate the value of the County's investment over ten years, with a nominal interest rate of 4%. "Annuity Year" shall mean a 12 month period. Annuity Year 1 shall commence on the first day of the first month following completion of construction of the Project, as acknowledged to the City Transportation Director by the County Road Engineer. Each succeeding Annuity Year shall commence on the anniversary of the commencement of Annuity Year 1. The initial value to be depreciated will be the total Project costs paid by the county for the Project less any federal or state grant funding received to offset a portion of the County costs for the Project. Attachment B is an illustrative estimated annuity schedule for the Project.

H. **Annuity Payment Options.** Upon annexation of the surrounding territory, the City will have the option of making annual payments, pursuant to the annuity schedule, of the undepreciated value of the County's portion of the Project as described in Section III.G., or to make a lump sum payment. The City's obligation for making annual payments or a lump sum shall begin in the month of the Annuity Year in which the annexation takes effect. If the city elects to make annual payments, the City shall pay all moneys due for the remaining months of that Annuity Year, and for all remaining Annuity Years when due (see Section III.I.). If the City elects the lump sum option, the City lump sum will be adjusted, as necessary, for a partial Annuity Year based on the effective date of the annexation. If the annexation takes effect before

the Project construction is complete, the City's obligation begins in the first month of Annuity Year 1.

I. **Annuity Payment Schedule.** Within thirty (30) days of the effective date of a future annexation by the City of the territory surrounding the Project, the City will notify the County which payment option it chooses. Within thirty (30) days of receipt of this notice, the County will transmit to the City an invoice and payment schedule. The City will make payment within thirty (30) days of receipt of the invoice.

J. **Partial Annexation.** If a future annexation by the City includes a portion — but not all — of the territory surrounding the Project, the City will be obligated only for a pro rata allocation of the Project annuity. This pro rata allocation will be based on the portion of the total lineal feet of the Project that is included in the annexation area.

IV. COSTS

A. **Project Cost.** The estimated total cost of the Project, in 1995 dollars, is \$3,879,000. It is acknowledged that costs in 1995 dollars will inflate to a higher amount at date of expenditure for the same scope of work. Over the life span of the Project, costs are assumed to inflate at 4% per year.

B. **Project Cost Baseline.** Accordingly, the budget commitment in 1995 dollars will be considered to be adhered to if the expenditures in future years, when deflated to 1995 dollars, equal in sum the dollar amount in Section IV.A.

C. **Project Cost Exceeding Cost Baseline.** Should Project costs, after adjustment as provided in Section IV.B., appear to be exceeding the amount in Section IV.A., the City Transportation Director shall disclose such fact to the County Road Engineer as soon as practicable and seek concurrence pursuant to Section II.M. prior to continuing with the Project. Following receipt of such concurrence, each agency shall submit an appropriation request or amendment of the six year capital program to their respective legislative body to adjust the budget appropriations, six year capital program schedule or cost for the Project to the revised amount.

V. SCHEDULE

Both agencies acknowledge the need to implement the Project quickly. Each agency also acknowledges that right-of-way and/or environmental aspects of the Project may delay completion thereof. Accordingly, no specific schedule can be set. However, it is the parties' mutual intent to complete the engineering work by early 1997, complete right-of-way acquisition by the end of 1997, and commence construction in 1998.

VI. DURATION/TERMINATION OF AGREEMENT

A. **Effective Date.** This agreement will become effective upon the signing of this agreement by both parties, and will remain in effect until ten years from the date of acceptance of the Project or until the unamortized balance is paid to the county due to annexation of the entire area encompassing the Project.

B. **Termination Procedure.** In the event of termination prior to completion of the objectives of this agreement, all direct and indirect costs incurred up to the date of termination shall be payable pursuant to the terms in Section III. Termination costs claimed shall not exceed the actual costs incurred as a result of termination of the Project.

VII. NON-DISCRIMINATION

A. **Contractor non-discrimination compliance.** For purposes of any contract entered into under this agreement, the City shall require that the Contractor comply with the requirements of King County Code (KCC), Chapter 12.16 (Attachment C) as though the contract was with the County.

B. **Fair Employment.** The City shall include in any such contract all of the fair employment language contained in Attachment D.

C. **Americans with Disabilities Act.** To confirm that the Contractor is in compliance with Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act (ADA), the City shall ensure that the selected Contractor complete the ADA/504 Self Evaluation Questionnaire (Attachment E) and that the Assurance of Compliance shall be incorporated into the contract.

D. **Minority/Women's Business Participation.** For purposes of any contract entered into under this agreement, the City and the Contractor shall comply with KCC Chapter 4.18 (Attachment F). Additionally, and in conjunction with compliance with KCC 4.18, the City and the Contractor shall comply with the County's substitution policy (Attachment G). Further, the City shall include the following language in any contract entered into under this agreement:

"King County in general, and the County's M/WB program in particular, are damaged when a contract or portion of a contract to be performed by a M/WB is not actually performed by a M/WB in compliance with KCC 4.18. Because the actual amount of such damage is not reasonably calculable, the parties agree and stipulate that liquidated damages of 100% of the value of the utilization lost due to the violation, not to exceed 10% of the total dollar value of the contract, shall be the amount required to compensate the City and the County for resulting delays in carrying out the purpose of the program, the costs of meeting utilization goals through additional contracts, the administrative costs of investigation and enforcement and other damages and costs caused by the violation."

VIII. SEVERABILITY

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.

IX. INDEMNIFICATION AND HOLD HARMLESS

Each party hereto agrees to indemnify and hold harmless the other party, and its officers, agents and employees, for all claims (including demands, suits, penalties, losses, damages, attorney's fees 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 officers, agents or employees in performance of this agreement.

The foregoing indemnity is specifically and expressly intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects 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.

X. OTHER PROVISIONS

A. **Liability.** No liability shall attach to the City or the County by reason of entering into this agreement except as expressly provided herein.

B. **Scope of agreement.** This agreement contains the entire written agreement of the parties and supersedes all prior discussions. This agreement may be amended only in writing, signed by both parties.

C. **Employment Status.** Each party shall be deemed an independent contractor for all purposes and the employees of either party or any of its contractors, subcontractors and the employees shall not in any manner be deemed to be employees or agents of the other party.

D. **Waiver of Default.** Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the agreement unless stated to be such through written approval by the non-breaching party which shall be attached to the original agreement.

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 hereto have executed this Agreement this _____ day of _____, 1996.

KING COUNTY, WASHINGTON

CITY OF BELLEVUE, WASHINGTON

King County Executive

City Manager

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Deputy Prosecuting Attorney

Assistant City Attorney

Date

Date

ATTACHMENT A

LOCATION	IMPROVEMENT(S)	AGENCY	ESTIMATED COST ('95\$)
150th Ave/SB 37th/L-90 off-ramp	Add SB LT lane, NB RT lane, and EB thru lane	Bellevue	N/A (incl. in cost below)
150th Ave (SE 37th - SE 38th)	Add thru lane in each direction (NB and SB)	Bellevue	\$ 1,816,000
150th Ave/SE 38th St	1) Add SB RT lane (included w/improvement above) 2) Add NB LT lane, and EB RT lane 3) Operational and/or physical improvements to manage access to/from Allen Road	1) Bellevue 2) King County 3) King County	1) N/A (incl. in cost above) 2) \$372,000 3) None (assumed to be operational)
150th Ave (SE 38th - Newport)	Add sidewalk on west side	King County	\$ 709,000
150th Ave SE/Newport Way	Add SB RT lane, WB LT lane, and NB thru lane	King County	\$ 982,000
TOTAL	(see above)	joint	\$ 3,879,000

ATTACHMENT B

Concept: King County assumes responsibility for "payment" until annexation;
 Bellevue assumes responsibility for "payment" or "Project Balance" upon annexation.
 Total in 1995\$.

150th Ave - KC Share \$ 2,061,000

Total \$ 2,061,000
 Imputed Interest 4.0%
 Term of "Payback" 10

	"Payment"	"Interest"	Project Balance
Year 1	\$ 254,349	82,520	1,891,171
Year 2	\$ 254,349	75,647	1,712,468
Year 3	\$ 254,349	68,499	1,526,618
Year 4	\$ 254,349	61,065	1,333,333
Year 5	\$ 254,349	53,333	1,132,318
Year 6	\$ 254,349	45,293	923,261
Year 7	\$ 254,349	36,930	705,842
Year 8	\$ 254,349	28,234	479,727
Year 9	\$ 254,349	19,189	244,567
Year 10	\$ 254,349	9,783	0