

RESOLUTION R- 4230

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE INTERLOCAL AGREEMENT WITH KING COUNTY FOR THE DESIGN AND CONSTRUCTION OF ROADWAY IMPROVEMENTS ALONG A PORTION OF JUANITA DRIVE, IN CONNECTION WITH THE CITY'S JUANITA DRIVE ROADWAY IMPROVEMENT PROJECT.

WHEREAS, the City of Kirkland will improve Juanita Drive, including a portion of Juanita Drive located in unincorporated King County, which is adjacent to and contiguous with the corporate limits of the City of Kirkland; and

WHEREAS, King County has agreed to reimburse the City of Kirkland for the design and construction of those portions of the roadway improvements on Juanita Drive that are located within unincorporated King County; and

WHEREAS, the City of Kirkland is authorized by RCW Chapter 39.34 to enter into interlocal agreements with other governmental entities;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized to execute an Interlocal Agreement with King County on behalf of the City in substantially the form attached hereto as Exhibit A and incorporated herein by this.

Passed by majority vote of the Kirkland City Council in open meeting this 15th day of February, 2000.

Signed in authentication thereof this 15th day of February, 2000.

MAYOR

Attest:

City Clerk

**INTERLOCAL AGREEMENT**  
**BETWEEN THE CITY OF KIRKLAND AND KING COUNTY**  
**FOR THE DESIGN AND CONSTRUCTION**  
**OF**  
**JUANITA DRIVE at NE 116TH PL**

THIS AGREEMENT is entered into by and between the City of Kirkland ("the City") and King County ("the County") for the purposes of performing design and construction of improvements within King County boundary limits along Juanita Drive, at NE 116th PL, more particularly described herein (the "Project"):

**RECITALS**

- A. The Project is located in unincorporated King County, being adjacent to and contiguous with the corporate limits of the City.
- B. The City is developing plans for improving Juanita Drive between the west corporate limits of the City, near 92nd Ave. NE, and 98th Ave. NE ("Kirkland's Project").
- C. The City of Kirkland Transportation Improvement Plan has identified the need for Kirkland's Project.
- D. The City has obtained a State TIB grant for the funding Kirkland's Project.
- E. The County recognizes the need for providing an engineered design for a roadway transition section between the City and the County at the western most terminus of Kirkland's Project.
- F. 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.
- G. 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. SCOPE OF WORK**

The scope of work under this agreement is to prepare engineering design plans and specifications for, and to physically construct the Project. The physical improvements for the Project will provide for a roadway taper and transition section between unincorporated King County and the City along Juanita Drive, at its intersection with NE 116th Place. The Project improvements will include the installation of concrete sidewalk and driveway approaches where needed on the southerly side of Juanita Drive, concrete curb and gutter along both sides of the roadway, related storm drainage improvements where required, and asphalt pavement repair and widening as needed to provide a roadway transition taper between the City's new three lane roadway section and the County's existing two lane road section.

**2. 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 Scope of Work.
- B. The City shall contract with a professional consulting engineering firm for performance of the design and engineering services for the Project. Plans developed for the County's portion of the Project will be in accordance with County Road Standards. That portion of the Project within the City's jurisdiction shall comply with the City's standards and regulations.
- C. The City shall provide all engineering, administrative, inspection (except as noted in Section 5.B) and clerical services necessary for the execution of the Project. In providing such services for the portion of the Project within the County, the City may exercise all the powers and perform all the duties vested by law or ordinance in the City Engineer.
- D. The County shall enact any ordinances that may be necessary for the City to lawfully carry out the terms of this Agreement.
- E. The City shall be responsible for incorporating the public information and involvement process required for the Project into its public involvement process for Kirkland's project. The County shall be given the opportunity to attend and participate in any public meetings.
- F. The parties to this Agreement shall appoint a contact person or persons to act as a liaison for the Project. 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.
- G. The schedule for the Project shall be mutually agreed upon by the City and County. The City will provide 60% and 90% plans and specifications to the County for review. The County will provide written comments, if any, to the City within fourteen days after the County receives the plans and specifications.
- H. The County shall be responsible for the acquisition of all property that lies within County jurisdiction and where it is deemed necessary for the Project, and that property shall be acquired or right-of-entry secured for the City's contractor prior to construction, all at no cost to the City.
- I. The County hereby grants to the City right of entry into the boundary limits of the County for the purpose of performing any and all tasks necessary to complete the Project.

### **3. DESIGN**

- A. The City shall contract with a professional consulting engineering firm for performing all design and engineering services for the Project, in accordance with all applicable standards and after consulting with the County.
- B. The City will distribute 90% complete plans and specifications to the County for a final coordination meeting.
- C. The County will be invited to attend a final coordination meeting. The anticipated final coordination meeting date should be two weeks after the 90% plans and specifications are distributed to the County.

### **4. CONSTRUCTION CONTRACT BIDDING**

- A. The City shall, through its design consultant, prepare the contract bid documents for the Project; the Project will be incorporated and bid as a part of Kirkland's Project as a separate schedule.
- B. The City shall advertise the contract in the official legal publication for the City and, if necessary, 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. The City shall provide to the County an engineer's estimate with 10% contingency and inspection costs for the County's portion of the project.
- 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. The County shall provide written approval or rejection for its portion of the project within 15 days of the verified bid tabulation.
- F. The County has the right to reject the bids for its portion of the project, if the bid exceeds the engineer's estimate.
- G. The City shall award the contract to the lowest responsible bidder for the total Project subject to applicable laws and regulations.
- H. 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.

**5. CONSTRUCTION CONTRACT ADMINISTRATION**

- A. The City shall provide all services necessary for administration of the construction contract.
- B. The County may furnish an inspector during the construction of the Project. The County will be financially responsible for the County Inspector. The County's inspector shall advise the City of any deficiencies noted. The County's inspector shall not communicate with or instruct the contractor on any matters regarding contract performance, unless the City grants approval.
- C. The County shall notify the City, in writing, of any construction changes it wishes to make in the contract plans and specifications that affect the County's or City's portion of the Project. The County will be financially responsible for those requested construction changes.
- D. The City will keep the County advised as to the progress of the Project, and shall not order or approve any changes in the approved Project design which substantially change the nature of the Project without first consulting the County.
- E. Prior to Project completion, both parties shall perform a mutual final inspection of the Project. The County may provide a written deficiency list to the City within five working days after the final inspection. Construction deficiencies, where existing, will be remedied by the contractor so as to satisfy the intent of the contract plans and specifications. The final written acceptance of the Project shall be provided to the City by the County within 10 days of Project completion.

**6. PAYMENT**

- A. The City shall bill the County for actual expenses incurred by the City for completing the County's portion of the Project including engineering and design, contract administration, construction and construction inspection, plus any County requested changes as described in Section 5.C. Billing shall occur no more frequently than monthly. All billings will reflect actual costs, including an annual administrative overhead rate. 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. Invoices shall include the same detail as provided to the State TIB.
- B. In the event a lawsuit is instituted to enforce the payment obligations of the County, the prevailing party shall be entitled to recover all costs of such a lawsuit, including reasonable attorney's fees.
- C. The County's financial obligation for the design of its portion of the project is \$10,000. The County's financial obligation for increases above the bid amount plus 10% contingency for construction and 15% for inspection shall require written approval from King County.

**7. DURATION/TERMINATION**

- A. This Agreement 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 in Section 7.B and C.
- B. If expected or actual funding 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.
- C. 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.

**8. INDEMNIFICATION AND HOLD HARMLESS**

- A. 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, 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 officers, 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, 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.
- 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.

**9. 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 decided by the City of Kirkland Public Works Director.
- B. If the dispute involves a claimed breach of this Agreement and the County is dissatisfied with the decision of the City of Kirkland Public Works Director, the County may bring suit against the City in the King County Superior Court.
- C. The parties may also agree to an alternative dispute resolution process.

**10. 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. Each party shall retain ownership and usual maintenance responsibility for the road, drainage system, signs, sidewalk and other property within its jurisdiction.
- 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 KIRKLAND**

**KING COUNTY**

\_\_\_\_\_  
**Assistant City Manager**

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

**Date** \_\_\_\_\_

**Date** \_\_\_\_\_

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**City Attorney**

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