

**INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE CITY  
OF BRIER TO ADJUST THE BRIER CITY LIMITS AS PART OF THE SWAMP  
CREEK BRIDGE 503 REPLACEMENT PROJECT**

This INTERLOCAL AGREEMENT (the "Agreement"), is made and entered into by and between Snohomish County, hereinafter referred to as the "County," a political subdivision of the State of Washington, and the City of Brier, hereinafter referred to as the "City," a municipal corporation of the State of Washington.

**RECITALS**

**A.** Locust Way is a two lane County arterial located on the eastern edge of the City's municipal boundary.

**B.** The County has a project to replace Swamp Creek Bridge 503 on Locust Way (County Project No. RC1420), hereinafter referred to as the "Project". As part of the Project, the County will install a longer and wider bridge on Locust Way, built to urban standards with bike lanes and sidewalks.

**C.** The current eastern edge of the City municipal boundary line runs along the western edge of the current Locust Way, County owned right-of-way.

**D.** The County will need to acquire additional right-of-way for the Project. The right-of-way the County will need to acquire is along the western side of Locust Way and within the municipal boundary of the City.

**E.** The County anticipates acquiring through agreements and/or eminent domain approximately 45,228 of square feet of real property from a total of 2 parcels that are currently within the municipal boundaries of the City.

**F.** The parties agree the Project will improve traveling conditions for all roadway users including bicycles and pedestrians for City residents as well as County residents.

**G.** The Project shall be designed utilizing the County's Engineering Design and Development Standards (EDDS). Stormwater runoff will be collected and treated in accordance with current State and County standards.

**H.** The parties agree the County will be solely responsible for the design, right-of-way acquisition, construction, and environmental review for the Project.

**I.** Upon completion of the County's acquisition of all right-of-way located within the City limits and necessary for the Project, the parties agree to revise the City's municipal boundary to coincide with the new western edge of the right-of-way as authorized by RCW 35.21.790.

**J.** This Agreement is authorized by and consistent with the requirements of the Interlocal Cooperation Act, chapter 39.34 RCW.

**AGREEMENT**

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the City agree as follows:

**1. Requirements of Interlocal Cooperation Act**

1.1 Purpose of Agreement. This Agreement is authorized by and entered into pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW. This Agreement establishes the County as the sole agency responsible for all aspects of Project planning, design, and construction, including acquisition of right-of-way within the City to avoid issues associated with split jurisdictions at the completion of the Project.

1.2 No Separate Entity Necessary. The parties agree that no separate legal or administrative entities are necessary to carry out this Agreement.

1.3 Ownership of Property. Except as expressly provided to the contrary in this Agreement, any real or personal property used or acquired by the County in connection with the performance of this Agreement will remain the sole property of the County, and the City shall have no interest therein. No real or personal property belonging to the City is expected to be used or acquired as part of this Project.

1.4 Administrators. Each party to this Agreement shall designate an individual (an "Administrator"), which may be designated by title or position, to oversee and administer such party's participation in this Agreement. The parties' initial Administrators shall be the following individuals:

**CITY OF BRIER**

Public Works Supervisor  
City of Brier  
2901 228<sup>th</sup> Street SW  
Brier WA 98036

**SNOHOMISH COUNTY**

Deputy Public Works Director / County Engineer  
Snohomish County Public Works  
3000 Rockefeller Avenue, MS 607  
Everett, WA 98201-4046

Either party may change its Administrator at any time by delivering written notice to the other party pursuant to Section 10 of this Agreement, of such party's new Administrator.

**2. Effective Date and Duration**

As provided by RCW 39.34.040, this Agreement shall take effect when it has (i) been duly executed by both parties and (ii) either filed with the County Auditor or posted on the County's Interlocal Agreements website. This Agreement shall remain in effect until all obligations of the parties are discharged, unless earlier terminated pursuant to the provisions of Section 9 below, PROVIDED, that the County's obligations after December 31<sup>st</sup> of the year in which this Agreement is approved and becomes effective, are contingent upon local legislative appropriation of necessary funds in accordance with applicable laws.

**3. County Responsibilities**

3.1 Right-of-way Acquisition. Consistent with RCW 36.85.010 and chapter 8.08 RCW, the County shall be responsible for identifying, paying for, acquiring, and maintaining all right-of-way necessary for the Project.

3.2 Construction of Project. The County will construct the Project, subject to County Legislative Authority appropriation of funds necessary for this purpose. Project construction includes, but is not limited to, all planned improvements to the westerly or City side of the Locust Way right-of-way.

3.3 Notice to City When Right-of-way Acquisition is Complete. The County shall provide written notice to the City pursuant to Section 10 of this Agreement upon completion of the County's acquisition of all right-of-way, located adjacent to the existing Locust Way right-of-way and within the City limits, that is necessary for the Project.

3.4 Ordinance or Resolution to Revise Municipal Boundary. Upon completion of the County's acquisition of all right-of-way, located adjacent to the existing Locust Way right-of-way and within the City limits, that is necessary for the Project, the County shall pass an ordinance or resolution pursuant to RCW 35.21.790 revising the County's municipal boundary to coincide with the new westerly edge of the Locust Way right-of-way.

3.5 Maintenance of Right-of-way. During the Project and upon its completion, the County will be responsible for all maintenance and improvements thereon, including any other property acquired in order to complete the Project.

#### **4. City Responsibilities**

4.1 Covenant to Cooperate. The City shall cooperate with the County in accomplishing the Project to the extent its participation is necessary.

4.2 City's Financial Participation in Project. The City is not participating financially in the Project.

4.3 Ordinance to Revise Municipal Boundary. Upon completion of the County's acquisition of all right-of-way, located adjacent to the existing Locust Way right-of-way and within the City limits, that is necessary for the Project, the City shall present an ordinance or resolution pursuant to RCW 35.21.790 revising the City's municipal boundary to coincide with the new westerly edge of the Locust Way right-of-way to the City Council. If the City fails to pass the ordinance or resolution, then the County shall have the right to terminate this Agreement in accordance with Section 9.

#### **5. Indemnification/Hold Harmless**

5.1 County's Indemnification of City. The County shall indemnify, defend and hold the City harmless from and against all liabilities, suits, losses, costs, damages, claims, expenses, penalties or charges, including, without limitation, reasonable attorneys' fees and disbursements, that the City may incur or pay out by reason of the County's actions or omissions in implementing the Project, except to the extent caused by negligent or wrongful acts of the City. This duty to defend, indemnify, and hold harmless includes, but is not limited to, (i) takings claims that arise from the County acquiring or using right-of-way for the Project, and (ii) any accidents, damages or injuries to persons or property occurring in, on, about or around the Project due to or arising out of the County's performance of the Project, or (iii) any breach or Default (as such term is defined in Section 8.1 below) by the County under this Agreement.

5.2 City's Indemnification of County. The City shall indemnify, defend and hold the County harmless from and against all liabilities, suits, losses, costs, damages, claims, expenses, penalties or charges, including, without limitation, reasonable attorneys' fees and disbursements, that the County may incur or pay out by reason of: (i) any accidents, damages or injuries to persons or property occurring in, on or around the Project during the term of this Agreement, but only to the extent the same are caused by any negligent or wrongful act of the City; or (ii) any breach or Default (as such term is defined in Section 8.1 below) of the City under this Agreement.

5.3 Waiver of Immunity Under Industrial Insurance Act. The indemnification provisions of Section 5.1 and Section 5.2 above are specifically intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance Act, Title 51 RCW, 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.

5.4 Survival. The provisions of this Section 5 shall survive the expiration or earlier termination of this Agreement.

## 6. Insurance

Each Party shall maintain its own insurance and/or self-insurance for its liabilities from damage to property and /or injuries to persons arising out of its activities associated with this Agreement as it deems reasonably appropriate and prudent. The maintenance of, or lack thereof of insurance and/or self-insurance shall not limit the liability of the indemnifying part to the indemnified party(s).

## 7. Compliance with Laws

In the performance of its obligations under this Agreement, each party shall comply with all applicable federal, state, and local laws, rules and regulations.

## 8. Default and Remedies

8.1 Default. If either the County or the City fails to perform any act or obligation required to be performed by it hereunder, the other party shall deliver written notice of such failure to the non-performing party. The non-performing party shall have thirty (30) days after its receipt of such notice in which to correct its failure to perform the act or obligation at issue, after which time it shall be in default ("Default") under this Agreement; PROVIDED, HOWEVER, that if the non-performance is of a type that could not reasonably be cured within said thirty (30) day period, then the non-performing party shall not be in Default if it commences cure within said thirty (30) day period and thereafter diligently pursues cure to completion.

8.2 Remedies. In the event of a party's Default under this Agreement, then after giving notice and an opportunity to cure pursuant to Section 8.1 above, the non-Defaulting party shall have the right to exercise any or all rights and remedies available to it in law or equity.

## **9. Termination**

9.1 The County may terminate this Agreement at any time, with or without cause, upon providing not less than thirty (30) days' advance written notice to the City pursuant to Section 10 of this Agreement. The termination notice shall specify the date on which the Agreement shall terminate.

9.2 The City may terminate this Agreement at any time prior to the County acquiring any of the property that is necessary for the Project and now located within the City's municipal boundaries upon providing not less than thirty (30) days' advance written notice to the County pursuant to Section 10 of this Agreement. The termination notice shall specify the date on which the Agreement shall terminate.

## **10. Notices**

All notices required to be given by any party to the other party under this Agreement shall be in writing and shall be delivered either in person, by United States mail, or by electronic mail (email) to the applicable Administrator or the Administrator's designee. Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, and addressed to the Administrator, or their designee, at the addresses set forth in Section 1.4 of this Agreement. Notice delivered by email shall be deemed given as of the date and time received by the recipient.

## **11. Miscellaneous**

11.1 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the parties regarding the subject matter contained herein. This Agreement may not be modified or amended in any manner except by a written document signed by the party against whom such modification is sought to be enforced.

11.2 Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Snohomish County. In the event that a lawsuit is instituted to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all costs of such a lawsuit, including reasonable attorney's fees.

11.3 Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall

include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

11.4 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

11.5 No Waiver. A party's forbearance or delay in exercising any right or remedy with respect to a Default by the other party under this Agreement shall not constitute a waiver of the Default at issue. Nor shall a waiver by either party of any particular Default constitute a waiver of any other Default or any similar future Default.

11.6 No Assignment. This Agreement shall not be assigned, either in whole or in part, by either party without the express written consent of the other party, which may be granted or withheld in such party's sole discretion. Any attempt to assign this Agreement in violation of the preceding sentence shall be null and void and shall constitute a Default under this Agreement.

11.7 Warranty of Authority. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign this Agreement.

11.8 No Joint Venture. Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture or other joint enterprise between the parties.


11.9 No Third Party Beneficiaries. This Agreement and each and every provision hereof are for the sole benefit of the City and the County. No other persons or parties shall be deemed to have any rights in, under or to this Agreement.

11.10 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

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IN WITNESS WHEREOF, the parties have signed this AGREEMENT, effective on the date indicated.

**“County”**  
**SNOHOMISH COUNTY**

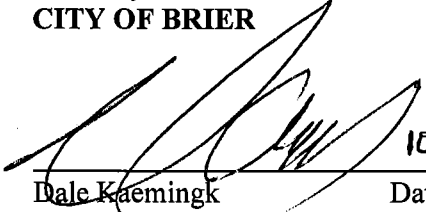
  
\_\_\_\_\_  
County Executive                      Date

**KEN KLEIN**  
Executive Director

Approved as to Form:

/s/ George Marsh                      10/12/2023  
Deputy Prosecuting Attorney

**“City”**  
**CITY OF BRIER**

  
\_\_\_\_\_  
Dale Kaemingk                      Date  
Mayor

Approved as to Form:

on file  
\_\_\_\_\_  
City Attorney

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