

1 INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND
2 THE CITY OF EVERETT CONCERNING THE US 2 / I-5 INTERCHANGE
3 JUSTIFICATION PLANNING STUDY
4
5

6 This INTERLOCAL AGREEMENT, (the “Agreement”), is made and entered into
7 as of date of last signature below, by and between SNOHOMISH COUNTY, a
8 political subdivision of the State of Washington (the “County”), and the CITY OF
9 EVERETT, a Washington municipal corporation (the “City”) and collectively as
10 the “Parties”.

11
12 **RECITALS**
13

- 14 **A.** The County and City desire to jointly conduct an interchange planning study
15 (“Planning Study”) for the US 2 and Interstate 5 Interchange. This Planning Study
16 will develop interchange improvement alternatives for future phases of full design
17 and construction.
18
- 19 **B.** The Parties agree that it will be more efficient and mutually beneficial to work
20 cooperatively together and for the City to be the lead entity responsible for the
21 Planning Study.
22
- 23 **C.** The City, through its own staff and consultants, will provide design, engineering,
24 and environmental review (“Planning Services”) as necessary for completion of the
25 Planning Study.
26
- 27 **D.** The City, on behalf of the Parties, applied for a Federal Surface Transportation
28 Program Grant (the “Grant”). The Grant will be administered by the City and will
29 partially fund the costs associated with the Planning Study.
30
31
- 32 **E.** Pursuant to WAC 197-11-926(1) the Parties desire for the City to function as the
33 lead agency for the Project for purposes of both the State Environmental Policy Act
34 (“SEPA”) and the National Environmental Policy Act (“NEPA”), if and to the
35 extent applicable.
36
- 37 **F.** The County shall reimburse the City the County’s proportional costs of the
38 Planning Study as more fully described in this Agreement.
39
40

41 **AGREEMENT**
42

43 NOW, THEREFORE, in consideration of the respective agreements set forth below
44 and for other good and valuable consideration, the receipt and sufficiency of which
45 are hereby acknowledged, the County and the City agree as follows:
46

1 **1. Requirements of Interlocal Cooperation Act**

2
3 1.1 Purpose of Agreement. This Agreement is authorized by and entered into
4 pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW. The purpose and
5 intent of this Agreement is for the Parties to work together efficiently and
6 effectively to complete the Planning Study.

7
8 1.2 No Separate Entity Necessary. The Parties agree that no separate legal or
9 administrative entities are necessary to carry out this Agreement.

10
11 1.3 Ownership of Property. Except as expressly provided to the contrary in this
12 Agreement, any real or personal property used or acquired by either party in
13 connection with the performance of this Agreement will remain the sole property
14 of such party, and the other party shall have no interest therein.

15
16 1.4 Administrators. Each party to this Agreement shall designate an individual
17 (an “Administrator”), which may be designated by title or position, to oversee and
18 administer such party’s participation in this Agreement. The parties’ initial
19 Administrators shall be the following individuals:
20

21 County’s Initial Administrator:

22 Douglas W. McCormick, P.E.
23 Deputy Director/County Engineer
24 Snohomish County DPW
25 3000 Rockefeller Avenue M/S 607
26 Everett, Washington 98201
27 425-388-6655
28 Dmccormick@snoco.org

City’s Initial Administrator:

 Tom Hood, P.E.
 City Engineer
 City of Everett Public Works
 3200 Cedar St.
 Everett, WA 98201
 425-257-8800
 thood@everettwa.gov

29 Either party may change its Administrator at any time by delivering written notice
30 of such party’s new Administrator to the other party.

31 **2. Effective Date and Duration**

32 As provided by RCW 39.34.040, this Agreement shall not take effect unless and
33 until it has (i) been duly executed by both Parties, and (ii) either filed with the
34 County Auditor or posted on the County’s Interlocal Agreements website. This
35 Agreement shall remain in effect until all obligations of the Parties are discharged,
36 unless earlier terminated pursuant to the provisions of Section 11 below.

37 **3. City Responsibilities**

 3.1 Lead Agency. The City shall serve as the lead agency for the purposes of
 Planning Study.

1 3.2 Planning Study. A scope of work and location of the Planning Study is
2 contained in Exhibit A attached hereto.

3
4 (a) The City shall provide the County with an opportunity to review the
5 Planning Study, as required under Section 6 of this Agreement,

6
7 (b) The City shall segregate the costs of the Planning Study in the manner
8 described in Subsection 5.2 below.

9
10 3.3 Invoicing. The City, pursuant to Section 5 of this Agreement, shall invoice
11 the County for the Planning Study provided under this Agreement.

12
13 3.4 Quality of Planning Study. The Planning Study provided under this
14 Agreement by the City shall be of good quality and consistent with
15 appropriate and accepted industry standards.

16
17 3.5 Independent Contractor. The City will perform its obligations under this
18 Agreement as an independent contractor and not as an agent, employee, or
19 servant of the County. The City has the express right to direct and control
20 the City's activities in providing the agreed services in accordance with the
21 specifications set out in this Agreement. The County shall only have the
22 right to ensure performance.

23
24 3.6 Sub-Contracting. The City may, in its sole discretion, hire one or more
25 contractors/consultants and/or sub-contractors/consultants to perform some
26 or all of the services.

27
28 **4. County Responsibilities**

29
30 4.1 Document Review and Cooperation. The County shall review and provide
31 its comments on the Planning Study pursuant to Section 6 of this
32 Agreement. The County shall make its Public Works Department staff
33 available to the City at reasonable times and upon reasonable advance
34 notice, for purposes of facilitating the City's performance of the Planning
35 Study.

36
37 4.2 Grant of Access. The County grants to the City, for the purpose of
38 performing its obligations under this Agreement, permission and right-of-
39 entry on, over, under, above and through those County rights-of-way that
40 the County is responsible for maintaining that are necessary or convenient,
41 in the reasonable judgment of the County engineer, for the City to access in
42 performing the Planning Study.

43
44 4.3 County Reimbursement of Costs for Planning Study Performed by City.
45 The County, pursuant to Section 5 of this Agreement, shall be reimburse the
46 City for the County's portion of the costs of Planning Study provided by the
47 City.

1 4.4 Payment of Invoice. Unless the County delivers written notice to the City
2 disputing the amount of a particular invoice, the County shall make payment on all invoices
3 submitted by the City within thirty (30) days following receipt by the County of said
4 invoice. Timely payment of an invoice shall not constitute acceptance by the County of
5 the Planning Study at issue which shall be governed by Section 6 below.
6

7 **5. Estimate, Segregation and Costs Attributed to Planning Services**
8

9 5.1 Estimated Cost of Planning Study.
10

11 (a) The total cost of Planning Services is estimated to be \$2,315,000, of which
12 the Grant will fund up to \$2,000,000 or eighty-six and one half percent
13 (86.5%) of eligible costs, whichever is less. The Parties will pay the
14 remaining balance, which is estimated to be \$315,000 on lump sum basis
15 pursuant to Subsection 5.2. PROVIDED, that costs for additional Planning
16 Services associated with changes that both parties desire and have been
17 agreed to in an amendment pursuant to Subsection 13.1 of this Agreement,
18 will be segregated pursuant to Subsection 5.2 of this Agreement and the
19 County shall reimburse the City for the County's percentage portion
20 pursuant to Subsection 5.2 of this Agreement.
21

22 (b) The Parties agree the County's estimated cost share of the Planning Study
23 shall not exceed \$150,000 without written approval from the County
24 pursuant to Section 12 and Subsection 13.1 of this Agreement.
25

26 5.2 Segregation of Cost for Planning Study. The Parties desire to segregate the
27 cost of Planning Study not paid by the Grant on a lump sum basis with the
28 County paying \$150,000 and the City paying the remaining balance
29 estimated to be \$165,000.
30

31 5.3 Costs Directly Attributed to Planning Study. The City agrees that only those
32 costs directly attributed to the Planning Study and allowed under accepted
33 accounting procedures will be charged to the County. By way of example,
34 those costs directly attributed may include, but are not limited to, the
35 following types of cost components:
36

37 (a) Salaries, wages, benefits of all City employees engaged therein, plus a
38 fifteen percent (15%) administration rate of total labor cost incurred by the
39 City;
40

41 (b) Travel expenses, including mileage of City employees;
42

43 (c) Materials, when provided by the City;
44

45 (d) City-owned machinery and equipment, for which the City equipment rental
46 rate shall be included in computing the cost of the machinery and
47 equipment;

- (e) Other costs and incidental expenses; including depreciation on City machinery and equipment;
- (f) The full cost to the City of rental machinery and equipment, together with any operator furnished therewith;
- (g) The cost of equipment, supplies, and related expenses when purchased by the City; and
- (h) Payment to consultants, sub-consultants, contractors or sub-contractors for work performed on behalf of the City that is associated with the Planning Study;

6. Review and Acceptance by County Planning Study

- 6.1 Review and Acceptance of Planning Study by County. The County shall have the right to review and comment on the Planning Study. Such review and comment shall occur as described in this Section.
- 6.2 Planning Study Review Notice. The City shall provide the County with written notice (each such notice, a “Study Review Notice”) when the Planning Study is at the following completion stages: (i) draft and (ii) final. The County shall have twenty (20) business days after receiving a Study Review Notice in which to review the study at issue and deliver written comments to the City. The City, after each review stage, shall address and incorporate the County’s comments for that portion of the Planning Study located within the County and in the final study.
- 6.3 Deemed Acceptance. Should the County fail to respond to a Study Review Notice within the twenty (20) business day period set forth above, the County shall be deemed to have accepted and approved the portion of the Planning Study at issue.

7. Indemnification/Hold Harmless

- 7.1 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: (i) any accidents, damages or injuries to persons or property occurring in, on, about or around the project area due to or arising out of the County’s performance pursuant to this Agreement, but only to the extent such accidents, damages or injuries are due to any negligent or wrongful act or omission of the County; or (ii) any breach or Default (as such term is defined in Section 10.1 below) by the County under this Agreement.

1
2 7.2 City's Indemnification of County. The City will require consultants hired
3 by the City for Planning Study to indemnify, defend, and hold harmless
4 Snohomish County and its elected officials, employees, officers, and agents
5 with respect to work performed for this Project to the same extent that the
6 City is provided such indemnification. To the extent such indemnity by
7 consultants does not apply, the City shall indemnify, defend and hold the
8 County harmless from and against all liabilities, suits, losses, costs,
9 damages, claims, expenses, penalties or charges, including, without
10 limitation, reasonable attorneys' fees and disbursements, that the County
11 may incur or pay out by reason of: (i) any accidents, damages or injuries to
12 persons or property occurring in, on or around the project area due to or
13 arising out of the City's performance pursuant to this Agreement, but only
14 to the extent the same are caused by any negligent or wrongful act of the
15 City; or (ii) any breach or Default (as such term is defined in Section 10.1
16 below) of the City under this Agreement.

17
18 7.3 Waiver of Immunity Under Industrial Insurance Act. The indemnification
19 provisions of Sections 7.1 and 7.2 above are specifically intended to
20 constitute a waiver of each party's immunity under Washington's Industrial
21 Insurance Act, Title 51 RCW, as respects the other party only, and only to
22 the extent necessary to provide the indemnified party with a full and
23 complete indemnity of claims made by the indemnitor's employees. The
24 parties acknowledge that these provisions were specifically negotiated and
25 agreed upon by them.

26
27 7.4 Survival. The provisions of this Section 7 shall survive the expiration or
28 earlier termination of this Agreement.

29
30 **8. Insurance**

31
32 8.1 Each party shall maintain its own insurance and/or self-insurance for its
33 liabilities from damage to property and /or injuries to persons arising out of
34 its activities associated with this Agreement as it deems reasonably
35 appropriate and prudent. The maintenance of, or lack thereof of insurance
36 and/or self-insurance shall not limit the liability of the indemnifying part to
37 the indemnified party(s).

38
39 8.2 Consultants and contractors hired by the City shall name Snohomish
40 County, its elected officials, employees, officers and agents as an additional
41 insured with respect to the work performed for this Planning Study.
42 Additional insured status shall be evidenced with an additional insured
43 endorsement.

44
45 **9. Compliance with Laws**

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

1
2 **10. Default and Remedies**
3

4 10.1 Default. If either the County or the City fails to perform any act or
5 obligation required to be performed by it hereunder, the other party shall
6 deliver written notice of such failure to the non-performing party. The non-
7 performing party shall have thirty (30) days after its receipt of such notice
8 in which to correct its failure to perform the act or obligation at issue, after
9 which time it shall be in default (“Default”) under this Agreement;
10 provided, however, that if the non-performance is of a type that could not
11 reasonably be cured within said thirty (30) day period, then the non-
12 performing party shall not be in Default if it commences cure within said
13 thirty (30) day period and thereafter diligently pursues cure to completion.
14

15 10.2 Remedies. In the event of a party’s Default under this Agreement, then after
16 giving notice and an opportunity to cure pursuant to Section 10.1 above, the
17 non-Defaulting party shall have the right to exercise any or all rights and
18 remedies available to it in law or equity.
19

20 **11. Early Termination**
21

22 11.1 30 Days’ Notice. Except as provided in Section 11.2 below, either party
23 may terminate this Agreement at any time, with or without cause, upon not
24 less than thirty (30) days’ advance written notice to the other party. The
25 termination notice shall specify the date on which the Agreement shall
26 terminate.
27

28 11.2 Lack of Funding. This Agreement is contingent upon governmental
29 funding and local legislative appropriations. In the event that funding from
30 any source is withdrawn, reduced, limited, or not appropriated after the
31 effective date of this Agreement, this Agreement may be terminated by
32 either party immediately by delivering written notice to the other party. The
33 termination notice shall specify the date on which the Agreement shall
34 terminate.
35

36 11.3 Calculation of Costs Due Upon Early Termination. Upon early termination
37 of this Agreement by either Party as provided in this Section 11, the County
38 shall pay the City for all Planning Services performed up to the date of
39 termination, as well as the costs of any and all non-cancelable obligations.
40 The City shall notify the County within thirty (30) days of the date of
41 termination of all remaining costs including non-cancelable costs. No
42 payment shall be made by the County for any expense incurred or Planning
43 Study performed following the effective date of termination unless
44 authorized in writing by the County.

1 **12. Notices**

2
3 All notices required to be given by any party to the other party under this Agreement
4 shall be in writing and shall be delivered either in person, by United States mail, or
5 by electronic mail (email) to the applicable Administrator or the Administrator's
6 designee. Notice delivered in person shall be deemed given when accepted by the
7 recipient. Notice by United States mail shall be deemed given as of the date the
8 same is deposited in the United States mail, postage prepaid, and addressed to the
9 Administrator, or their designee, at the addresses set forth in Section 1.4 of this
10 Agreement. Notice delivered by email shall be deemed given as of the date and
11 time received by the recipient.
12

13 **13. Miscellaneous**

14
15 13.1 Entire Agreement; Amendment. This Agreement constitutes the entire
16 agreement between the parties regarding the subject matter hereof, and
17 supersedes any and all prior oral or written agreements between the parties
18 regarding the subject matter contained herein. This Agreement may not be
19 modified or amended in any manner except by a written document signed
20 by both Parties; PROVIDED, that the County Public Works Director and
21 City Mayor are authorized to execute written amendments to the Agreement
22 for additional Planning Study requested pursuant to Sub-section 5.1(a) of
23 this Agreement not exceeding a total of one hundred fifty thousand dollars
24 (\$150,000).
25

26 13.2 Governing Law and Venue. This Agreement shall be governed by and
27 enforced in accordance with the laws of the State of Washington. The venue
28 of any action arising out of this Agreement shall be in the Superior Court of
29 the State of Washington, in and for Snohomish County.
30

31 13.3 Interpretation. This Agreement and each of the terms and provisions of it
32 are deemed to have been explicitly negotiated by the parties, and the
33 language in all parts of this Agreement shall, in all cases, be construed
34 according to its fair meaning and not strictly for or against either of the
35 parties hereto. The captions and headings in this Agreement are used only
36 for convenience and are not intended to affect the interpretation of the
37 provisions of this Agreement. This Agreement shall be construed so that
38 wherever applicable the use of the singular number shall include the plural
39 number, and vice versa, and the use of any gender shall be applicable to all
40 genders.
41

42 13.4 Severability. If any provision of this Agreement or the application thereof
43 to any person or circumstance shall, for any reason and to any extent, be
44 found invalid or unenforceable, the remainder of this Agreement and the
45 application of that provision to other persons or circumstances shall not be
46 affected thereby, but shall instead continue in full force and effect, to the
47 extent permitted by law.

- 1 13.5 No Waiver. A party's forbearance or delay in exercising any right or
2 remedy with respect to a Default by the other party under this Agreement
3 shall not constitute a waiver of the Default at issue. Nor shall a waiver by
4 either party of any particular Default constitute a waiver of any other
5 Default or any similar future Default.
6
- 7 13.6 No Assignment. This Agreement shall not be assigned, either in whole or
8 in part, by either party without the express written consent of the other party,
9 which may be granted or withheld in such party's sole discretion. Any
10 attempt to assign this Agreement in violation of the preceding sentence shall
11 be null and void and shall constitute a Default under this Agreement.
12
- 13 13.7 Warranty of Authority. Each of the signatories hereto warrants and
14 represents that he or she is competent and authorized to enter into this
15 Agreement on behalf of the party for whom he or she purports to sign this
16 Agreement.
17
- 18 13.8 No Joint Venture. Nothing contained in this Agreement shall be construed
19 as creating any type or manner of partnership, joint venture or other joint
20 enterprise between the parties.
21
- 22 13.9 No Third Party Beneficiaries. This Agreement and each and every
23 provision hereof are for the sole benefit of the City and the County. No
24 other persons or parties shall be deemed to have any rights in, under or to
25 this Agreement.
26
- 27 13.10 Execution in Counterparts. This Agreement may be executed in two or
28 more counterparts, each of which shall constitute an original and all of
29 which shall constitute one and the same agreement.
30

31 IN WITNESS WHEREOF, the parties have executed this Agreement as of the date
32 first above written.
33

34 **SNOHOMISH COUNTY**

CITY OF EVERETT

35
36
37 By: _____
38 County Executive

By: _____
Cassie Franklin
Mayor

41
42 **Attest:**

43
44 _____
45 Office of the City Clerk
46
47

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Approved as to Form:

Approved as to Form:

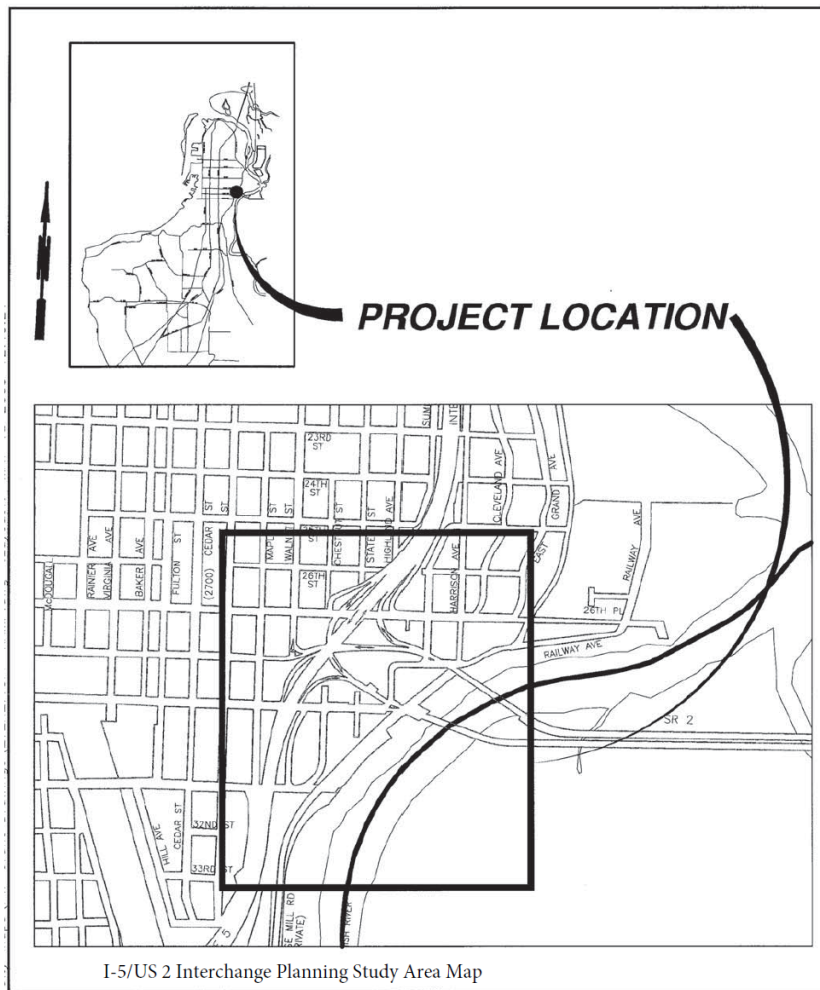
/s/ George B Marsh 4/25/2024
Deputy Prosecuting Attorney

Office of the City Attorney

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Exhibit A

Planning Study Scope of Work Outline and Location Map



Everett 2018