

1 INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND  
2 THE CITY OF BOTHELL CONCERNING THE DESIGN OF ROAD  
3 IMPROVEMENTS TO 228<sup>TH</sup> ST SE FROM 35<sup>TH</sup> AVE SE TO 39<sup>TH</sup> AVE SE  
4  
5

6 This INTERLOCAL AGREEMENT, (the "Agreement"), is made and entered into  
7 this 29<sup>th</sup> day of October, 2019, by and between SNOHOMISH COUNTY, a  
8 political subdivision of the State of Washington (the "County"), and the CITY OF  
9 BOTHELL, a Washington municipal corporation (the "City") and collectively as the  
10 "Parties".  
11

12 **RECITALS**  
13

- 14 A. The County and City desire to jointly design improvements to 228<sup>th</sup> St SE from  
15 approximately four hundred feet west of 35<sup>th</sup> Ave SE to approximately three  
16 hundred feet east of 39<sup>th</sup> Ave SE and approximately one hundred and fifty feet south  
17 on 35<sup>th</sup> Ave SE and north on 39<sup>th</sup> Ave SE, hereinafter the "Project", as depicted on  
18 Exhibit A.  
19
- 20 B. The Project will consist of widening 228th St from three to four lanes and include  
21 bike lanes, intersection improvements, curbs, gutters, sidewalks, lighting, signals  
22 and signal interconnect.  
23
- 24 C. The City, through its own staff and consultants, will provide design, engineering,  
25 and environmental review for the Project, hereinafter "Design Services".  
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 Design Services.  
30
- 31 E. Design Services are estimated to cost \$771,863 of which the Grant will fund up to  
32 \$617,490 or eighty six and one half percent (86.5%) of eligible costs, whichever is  
33 less. The Parties will pay the remainder, which is estimated to be \$154,373, on a  
34 percentage basis with the City's percentage portion being twenty five percent (25%)  
35 and estimated to be \$38,593 and the County's percentage portion being seventy five  
36 percent (75%) and estimated to be \$115,780.  
37
- 38 F. The Parties agree that it will be more efficient and mutually beneficial to work  
39 cooperatively together and for the City to be the lead entity responsible for the  
40 Design Services.  
41
- 42 G. Pursuant to WAC 197-11-926(1) the Parties desire for the City to function as the  
43 lead agency for the Project for purposes of both the State Environmental Policy Act  
44 ("SEPA") and the National Environmental Policy Act ("NEPA"), if and to the  
45 extent applicable.  
46

1 H. The County shall reimburse the City the County's proportional costs of the Design  
2 Services as more fully described in this Agreement.  
3  
4

5 **AGREEMENT**  
6

7 NOW, THEREFORE, in consideration of the respective agreements set forth below  
8 and for other good and valuable consideration, the receipt and sufficiency of which are  
9 hereby acknowledged, the County and the City agree as follows:  
10

11 **1. Requirements of Interlocal Cooperation Act**  
12

13 1.1 Purpose of Agreement. This Agreement is authorized by and entered into  
14 pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW. The purpose and intent  
15 of this Agreement is for the Parties to work together efficiently and effectively to design  
16 the Project.  
17

18 1.2 No Separate Entity Necessary. The Parties agree that no separate legal or  
19 administrative entities are necessary to carry out this Agreement.  
20

21 1.3 Ownership of Property. Except as expressly provided to the contrary in this  
22 Agreement, any real or personal property used or acquired by either party in connection  
23 with the performance of this Agreement will remain the sole property of such party, and  
24 the other party shall have no interest therein.  
25

26 1.4 Administrators. Each party to this Agreement shall designate an individual  
27 (an "Administrator"), which may be designated by title or position, to oversee and  
28 administer such party's participation in this Agreement. The parties' initial Administrators  
29 shall be the following individuals:  
30

31 County's Initial Administrator:

32 Max Phan  
33 Engineering Manager  
34 Snohomish County DPW  
3000 Rockefeller Avenue M/S 607  
Everett, Washington 98201  
425-388-3109  
mphan@snoco.org

City's Initial Administrator:

Eddie Low  
Deputy Public Works Director  
City of Bothell  
1845 101<sup>st</sup> Ave NE  
Bothell, WA 98011  
425-806-6811  
eddie.low@ci.bothell.wa.us

31  
32 Either party may change its Administrator at any time by delivering written notice of such  
33 party's new Administrator to the other party.  
34

1     **2. Effective Date and Duration**

2  
3         As provided by RCW 39.34.040, this Agreement shall not take effect unless and  
4 until it has (i) been duly executed by both Parties, and (ii) either filed with the County  
5 Auditor or posted on the County's Interlocal Agreements website. This Agreement shall  
6 remain in effect until all obligations of the Parties are discharged, unless earlier terminated  
7 pursuant to the provisions of Section 11 below.  
8

9     **3. City Responsibilities**

10  
11         3.1     Lead Agency. The City shall serve as the lead agency for the Project for  
12 purposes of Design Services.  
13

14         3.2     Design Services. The City shall provide Design Services, for the Project.  
15

16         3.3     Project Design.  
17

18         (a)     The right-of-way/road sections of the Project shall be designed utilizing the  
19 County's Engineering Design and Development Standards ("EDDS") and  
20 the Revised Draft Guidelines for Accessible Public Rights-of-Way  
21 ("PROWAG"), November 23, 2005, U.S. Access Board in the event  
22 accessibility issues arise.  
23

24         (b)     Project design may include, but shall not be limited to, environmental  
25 assessments & related permits, land surveying, traffic studies, roundabout  
26 and/or traffic signal evaluations and design, roadway design, fiber  
27 communication, structural design for retaining walls, culvert  
28 extensions/replacements, design reports, determination of right-of-way  
29 needs and right-of-way plan, and other related project developments tasks.  
30

31         (c)     The critical area aspects of the Project, including mitigation, shall be  
32 designed to comply with the County's Critical Areas Regulations and the  
33 regulations of all applicable state or federal agencies.  
34

35         (d)     The City shall provide the County with an opportunity for review of the  
36 Project design as required under Section 6 of this Agreement and a full and  
37 complete copy of the construction design plans for the Project after the final  
38 one hundred percent (100%) plans have been completed by the City,  
39 accepted by the County pursuant to Section 6 below and signed by the  
40 County Engineer.  
41

42         (e)     The City shall segregate the costs of the Design Services in the manner  
43 described in Subsection 5.2 below.  
44

45         3.4     Invoicing. The City, pursuant to Section 5 of this Agreement, shall invoice  
46 the County for Design Services provided under this Agreement. Invoices may be sent  
47 monthly, quarterly or on any other schedule that is mutually convenient to the Parties. The

1 City shall include in each invoice, documentation of all costs for labor, materials and  
2 equipment included in the invoice.

3  
4 3.5 Quality of Design Services. The Design Services provided under this  
5 Agreement by the City shall be of good quality, consistent with appropriate and accepted  
6 industry standards.

7  
8 3.6 Independent Contractor. The City will perform its obligations under this  
9 Agreement as an independent contractor and not as an agent, employee, or servant of the  
10 County. The City has the express right to direct and control the City's activities in  
11 providing the agreed services in accordance with the specifications set out in this  
12 Agreement. The County shall only have the right to ensure performance.

13  
14 3.7 Sub-Contracting. The City may, in its sole discretion, hire one or more  
15 contractors/consultants and/or sub-contractors/consultants to perform some or all of the  
16 services.

17  
18 **4. County Responsibilities**

19  
20 4.1 Document Review and Cooperation. The County shall review and provide  
21 its comments on the design of the Project pursuant to Section 6 of this Agreement. The  
22 County shall make its Public Works Department staff, available to the City at reasonable  
23 times and upon reasonable advance notice, for purposes of facilitating the City's  
24 performance of the Design Services.

25  
26 4.2 Grant of Access. The County grants to the City, for the purpose of  
27 performing its obligations under this Agreement, permission and right-of-entry on, over,  
28 under, above and through those County rights-of-way that the County is responsible for  
29 maintaining that are necessary or convenient, in the reasonable judgment of the County  
30 engineer, for the City to access in performing the Design Services.

31  
32 4.3 County Reimbursement of Costs for Design Services Performed by City.  
33 The County, pursuant to Section 5 of this Agreement, shall be reimburse the City for the  
34 County's portion of the costs of Design Services provided by the City.

35  
36 4.4 Payment of Invoice. Unless the County delivers written notice to the City  
37 disputing the amount of a particular invoice, the County shall make payment on all invoices  
38 submitted by the City within thirty (30) days following receipt by the County of said  
39 invoices. Timely payment of an invoice shall not constitute acceptance by the County of  
40 the Design Services at issue which shall be governed by Section 6 below.

41  
42 **5. Estimate, Segregation and Costs Attributed to Design Services**

43  
44 5.1 Estimated Cost of Design Services.

45  
46 (a) The total cost of Design Services is estimated to be \$771,863, of which the  
47 Grant will fund up to \$617,490 or eighty six and one half percent (86.5%)

1 of eligible costs, whichever is less. The Parties will pay the remaining  
2 balance, which is estimated to be \$154,373, on a percentage basis pursuant  
3 to Subsection 5.2. PROVIDED, that costs for additional Design Services  
4 associated with changes that both parties desire and have been agreed to in  
5 an amendment pursuant to Subsection 13.1 of this Agreement, will be  
6 segregated pursuant to Subsection 5.2 of this Agreement and the County  
7 shall reimburse the City for the County's percentage portion pursuant to  
8 Subsection 5.2 of this Agreement.  
9

- 10 (b) The Parties agree the County's estimated cost of Design Services associated  
11 with the County's Project Area shall not exceed \$115,780 without written  
12 approval from the County pursuant to Section 12 and Subsection 13.1 of  
13 this Agreement.  
14

15 5.2 Segregation of Cost for Design Services. The Parties desire to segregate the  
16 cost of Design Services not paid by the Grant on a percentage basis with the County's  
17 percentage portion being seventy five percent (75%) and the City's percentage portion  
18 being twenty five percent (25%).  
19

20 5.3 Costs Directly Attributed to Design Services. The City agrees that only  
21 those costs directly attributed to the Design Services and allowed under accepted  
22 accounting procedures will be charged to the County. By way of example, those costs  
23 directly attributed may include, but are not limited to, the following types of cost  
24 components:  
25

- 26 (a) Salaries, wages, benefits of all City employees engaged therein, plus a  
27 fifteen percent (15%) administration rate of total labor cost incurred by the  
28 City;  
29  
30 (b) Travel expenses, including mileage of City employees;  
31  
32 (c) Materials, when provided by the City;  
33  
34 (d) City-owned machinery and equipment, for which the City equipment rental  
35 rate shall be included in computing the cost of the machinery and  
36 equipment;  
37  
38 (e) Other costs and incidental expenses; including depreciation on City  
39 machinery and equipment;  
40  
41 (f) The full cost to the City of rental machinery and equipment, together with  
42 any operator furnished therewith;  
43  
44 (g) The cost of equipment, supplies, and related expenses when purchased by  
45 the City; and  
46

- 1 (h) Payment to consultants, sub-consultants, contractors or sub-contractors for  
2 work performed on behalf of the City that is associated with the Design  
3 Services;  
4

5 **6. Review and Acceptance by County of Design Services**  
6

7 6.1 Review and Acceptance of Design by County. The County shall have the  
8 right to review and comment on the design of the Project. Such review and comment shall  
9 occur as described in this Section.  
10

11 6.2 Design Review Notice. The City shall provide the County with written  
12 notice (each such notice, a "Design Review Notice") when the design for the Project is at  
13 the following completion stages: (i) thirty percent (30%), (ii) sixty percent (60%) and (iii)  
14 ninety percent (90%). The County shall have twenty (20) business days after receiving a  
15 Design Review Notice in which to review the construction design plans at issue and deliver  
16 written comments to the City. The City, after each Project review stage, shall address and  
17 incorporate the County's comments for that portion of the Project located within the  
18 County and in the final design.  
19

20 6.3 Deemed Acceptance. Should the County fail to respond to a Design Review  
21 Notice within the twenty (20) business day period set forth above, the County shall be  
22 deemed to have accepted and approved the portion of the Design Services at issue.  
23

24 **7. Indemnification/Hold Harmless**  
25

26 7.1 County's Indemnification of City. The County shall indemnify, defend and  
27 hold the City harmless from and against all liabilities, suits, losses, costs, damages, claims,  
28 expenses, penalties or charges, including, without limitation, reasonable attorneys' fees and  
29 disbursements, that the City may incur or pay out by reason of: (i) any accidents, damages  
30 or injuries to persons or property occurring in, on, about or around the Project Area due to  
31 or arising out of the County's performance pursuant to this Agreement, but only to the  
32 extent such accidents, damages or injuries are due to any negligent or wrongful act or  
33 omission of the County; or (ii) any breach or Default (as such term is defined in Section  
34 10.1 below) by the County under this Agreement.  
35

36 7.2 City's Indemnification of County. The City will require consultants hired  
37 by the City for Design Services to indemnify, defend, and hold harmless Snohomish  
38 County and its elected officials, employees, officers, and agents with respect to work  
39 performed for this Project to the same extent that the City is provided such indemnification.  
40 To the extent such indemnity by consultants does not apply, the City shall indemnify,  
41 defend and hold the County harmless from and against all liabilities, suits, losses, costs,  
42 damages, claims, expenses, penalties or charges, including, without limitation, reasonable  
43 attorneys' fees and disbursements, that the County may incur or pay out by reason of: (i)  
44 any accidents, damages or injuries to persons or property occurring in, on or around the  
45 Project area due to or arising out of the City's performance of Design Services pursuant to  
46 this Agreement, but only to the extent the same are caused by any negligent or wrongful

1 act of the City; or (ii) any breach or Default (as such term is defined in Section 10.1 below)  
2 of the City under this Agreement.

3  
4 7.3 Waiver of Immunity Under Industrial Insurance Act. The indemnification  
5 provisions of Sections 7.1 and 7.2 above are specifically intended to constitute a waiver of  
6 each party's immunity under Washington's Industrial Insurance Act, Title 51 RCW, as  
7 respects the other party only, and only to the extent necessary to provide the indemnified  
8 party with a full and complete indemnity of claims made by the indemnitor's employees.  
9 The parties acknowledge that these provisions were specifically negotiated and agreed  
10 upon by them.

11  
12 7.4 Survival. The provisions of this Section 7 shall survive the expiration or  
13 earlier termination of this Agreement.

14  
15 **8. Insurance**

16  
17 8.1 Each party shall maintain its own insurance and/or self-insurance for its  
18 liabilities from damage to property and /or injuries to persons arising out of its activities  
19 associated with this Agreement as it deems reasonably appropriate and prudent. The  
20 maintenance of, or lack thereof of insurance and/or self-insurance shall not limit the  
21 liability of the indemnifying party to the indemnified party(s).

22  
23 8.2 Consultants and contractors hired by the City shall name Snohomish  
24 County, its elected officials, employees, officers and agents as an additional insured with  
25 respect to the work performed for this Project. Additional insured status shall be evidenced  
26 with an additional insured endorsement.

27  
28 **9. Compliance with Laws**

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

31  
32 **10. Default and Remedies**

33  
34 10.1 Default. If either the County or the City fails to perform any act or  
35 obligation required to be performed by it hereunder, the other party shall deliver written  
36 notice of such failure to the non-performing party. The non-performing party shall have  
37 thirty (30) days after its receipt of such notice in which to correct its failure to perform the  
38 act or obligation at issue, after which time it shall be in default ("Default") under this  
39 Agreement; provided, however, that if the non-performance is of a type that could not  
40 reasonably be cured within said thirty (30) day period, then the non-performing party shall  
41 not be in Default if it commences cure within said thirty (30) day period and thereafter  
42 diligently pursues cure to completion.

43  
44 10.2 Remedies. In the event of a party's Default under this Agreement, then  
45 after giving notice and an opportunity to cure pursuant to Section 10.1 above, the non-  
46 Defaulting party shall have the right to exercise any or all rights and remedies available to  
47 it in law or equity.

1  
2 **11. Early Termination**  
3

4 11.1 30 Days' Notice. Except as provided in Section 11.2 below, either party  
5 may terminate this Agreement at any time, with or without cause, upon not less than thirty  
6 (30) days' advance written notice to the other party. The termination notice shall specify  
7 the date on which the Agreement shall terminate.  
8

9 11.2 Lack of Funding. This Agreement is contingent upon governmental  
10 funding and local legislative appropriations. In the event that funding from any source is  
11 withdrawn, reduced, limited, or not appropriated after the effective date of this Agreement,  
12 this Agreement may be terminated by either party immediately by delivering written notice  
13 to the other party. The termination notice shall specify the date on which the Agreement  
14 shall terminate.  
15

16 11.3 Calculation of Costs Due Upon Early Termination. Upon early  
17 termination of this Agreement by either Party as provided in this Section 11, the County  
18 shall pay the City for all Design Services performed up to the date of termination, as well  
19 as the costs of any and all non-cancelable obligations. The City shall notify the County  
20 within thirty (30) days of the date of termination of all remaining costs including non-  
21 cancelable costs. No payment shall be made by the County for any expense incurred or  
22 Design Services performed following the effective date of termination unless authorized in  
23 writing by the County.  
24

25 **12. Notices**  
26

27 All notices required to be given by any party to the other party under this Agreement  
28 shall be in writing and shall be delivered either in person, by United States mail, or by  
29 electronic mail (email) to the applicable Administrator or the Administrator's designee.  
30 Notice delivered in person shall be deemed given when accepted by the recipient. Notice  
31 by United States mail shall be deemed given as of the date the same is deposited in the  
32 United States mail, postage prepaid, and addressed to the Administrator, or their designee,  
33 at the addresses set forth in Section 1.4 of this Agreement. Notice delivered by email shall  
34 be deemed given as of the date and time received by the recipient.  
35

36 **13. Miscellaneous**  
37

38 13.1 Entire Agreement; Amendment. This Agreement constitutes the entire  
39 agreement between the parties regarding the subject matter hereof, and supersedes any  
40 and all prior oral or written agreements between the parties regarding the subject matter  
41 contained herein. This Agreement may not be modified or amended in any manner except  
42 by a written document signed by both Parties; PROVIDED, that the County Public Works  
43 Director and City Manager are authorized to execute written amendments to the  
44 Agreement for Extra Design Services requested pursuant to Sub-section 5.1(a) of this  
45 Agreement not exceeding a total of seventy seven thousand one hundred and eighty six  
46 dollars (\$77,186).  
47



1           13.2     Governing Law and Venue. This Agreement shall be governed by and  
2 enforced in accordance with the laws of the State of Washington. The venue of any action  
3 arising out of this Agreement shall be in the Superior Court of the State of Washington, in  
4 and for Snohomish County.  
5

6           13.3     Interpretation. This Agreement and each of the terms and provisions of it  
7 are deemed to have been explicitly negotiated by the parties, and the language in all parts  
8 of this Agreement shall, in all cases, be construed according to its fair meaning and not  
9 strictly for or against either of the parties hereto. The captions and headings in this  
10 Agreement are used only for convenience and are not intended to affect the interpretation  
11 of the provisions of this Agreement. This Agreement shall be construed so that wherever  
12 applicable the use of the singular number shall include the plural number, and vice versa,  
13 and the use of any gender shall be applicable to all genders.  
14

15           13.4     Severability. If any provision of this Agreement or the application thereof  
16 to any person or circumstance shall, for any reason and to any extent, be found invalid or  
17 unenforceable, the remainder of this Agreement and the application of that provision to  
18 other persons or circumstances shall not be affected thereby, but shall instead continue in  
19 full force and effect, to the extent permitted by law.  
20

21           13.5     No Waiver. A party's forbearance or delay in exercising any right or  
22 remedy with respect to a Default by the other party under this Agreement shall not  
23 constitute a waiver of the Default at issue. Nor shall a waiver by either party of any  
24 particular Default constitute a waiver of any other Default or any similar future Default.  
25

26           13.6     No Assignment. This Agreement shall not be assigned, either in whole or  
27 in part, by either party without the express written consent of the other party, which may  
28 be granted or withheld in such party's sole discretion. Any attempt to assign this  
29 Agreement in violation of the preceding sentence shall be null and void and shall constitute  
30 a Default under this Agreement.  
31

32           13.7     Warranty of Authority. Each of the signatories hereto warrants and  
33 represents that he or she is competent and authorized to enter into this Agreement on behalf  
34 of the party for whom he or she purports to sign this Agreement.  
35

36           13.8     No Joint Venture. Nothing contained in this Agreement shall be  
37 construed as creating any type or manner of partnership, joint venture or other joint  
38 enterprise between the parties.  
39

40           13.9     No Third Party Beneficiaries. This Agreement and each and every  
41 provision hereof are for the sole benefit of the City and the County. No other persons or  
42 parties shall be deemed to have any rights in, under or to this Agreement.  
43


44           13.10    Execution in Counterparts. This Agreement may be executed in two or  
45 more counterparts, each of which shall constitute an original and all of which shall  
46 constitute one and the same agreement.  
47

1 IN WITNESS WHEREOF, the parties have executed this Agreement as of the date  
2 first above written.  
3

4 **SNOHOMISH COUNTY**

5  
6  
7 By:   
8 Dave Somers  
9 County Executive

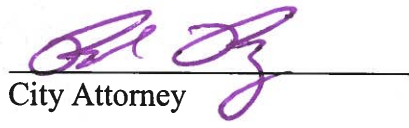
**CITY OF BOTHELL**

10  
11  
12 By:   
13 Jennifer Phillips  
14 City Manager

15  
16  
17 **Approved as to Form:**

18  
19  
20   
21 Deputy Prosecuting Attorney

**Approved as to Form:**

22  
23   
24 City Attorney

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COUNCIL USE ONLY	
Approved:	10.16.19
Docfile:	D-4



## Exhibit A

### Project Location Map

