

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF MONROE AND SNOHOMISH COUNTY**

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into by and between the City of Monroe, a Washington municipal corporation ("City"), and Snohomish County, a political subdivision of the State of Washington ("County"). The City and County are sometimes referred to herein individually as "Party" and collectively as "Parties."

WHEREAS, the City successfully applied for grant funding from the Puget Sound Regional Council to construct a sidewalk extension within WSDOT right-of-way and adjacent to the Evergreen State Fairgrounds site ("Fairgrounds") owned by the County and located at 14405 179th Avenue SE in Monroe; and

WHEREAS, the City has entered into a public works contract with Taylor's Excavators Inc. to construct said sidewalk and associated improvements (the "Project", as further defined in section 1 below); and

WHEREAS, extension of the sidewalk at said location will provide connectivity between 179th Ave SE and Cascade View Drive that will facilitate emergency access to and from the Fairgrounds by the County and will increase pedestrian access and circulation to the Fairgrounds; and

WHEREAS, in recognition of the benefit that the Project will provide the County, the City requested and the County agreed to contribute Two Hundred Seventy-Five Thousand Dollars (\$275,000.00) for the total project costs of constructing the sidewalk Project, as defined herein; and

WHEREAS, chapter 39.34 RCW allows the City and the County to enter into an Interlocal Agreement for the purpose of jointly funding and facilitating the Project;

NOW, THEREFORE; the City and the County agree as follows:

1. Scope of Work.

The Parties mutually acknowledge that the City of Monroe has entered into a public works contract with Taylor's Excavators Inc., dated August 22, 2022, to construct the new City-owned sidewalk and associated improvements between 179th Ave SE and Cascade View Drive, ("Taylor's Excavators Construction Contract"). The improvements identified in the Taylor's Excavators Construction Contract include, but are not limited to, TESC, sidewalk excavation, grading, fencing, lighting, landscaping, asphalt paving, pedestrian bridge, and other related work, all in accordance with the Taylor's Excavators Construction Contract Plans identified as City Project Number M2017-0003 and WSDOT Federal Aid No. CM-002(864) ("Project"). The City, working on behalf of itself and the County, shall administer the Taylor's Excavators Construction Contract to ensure compliance with Contract terms and successful completion of the Project.

2. Payment for Work.

a. Payment for Work. The County agrees to contribute Two Hundred Seventy-Five Thousand Dollars (\$275,000.00) toward the Project, including but not limited to construction and construction administration related to the Project. Said contribution reflects approximately six percent (6%) of the total Project cost, as delineated by the following breakdown:

| Item | City Cost |
|-----------------------------|------------------------|
| Design | \$ 168,335.30 |
| Construction Administration | \$ 260,000.00 |
| Construction | \$ 1,417,920.00 |
| TOTAL PROJECT COST | \$ 1,846,255.30 |

b. Timing of Payment. The County's contribution will be remitted to the City in one (1) lump sum payment of Two Hundred Seventy-Five Thousand Dollars (\$275,000.00), on or before February 28, 2023.

c. Refund of Payment.

- (i) Refund in the Event of Termination. In the event this Agreement is terminated in accordance with Section 4 prior to the physical commencement of work on the Project, the County shall be entitled to a full refund of its payment hereunder.
- (ii) Refund for Noncompliant Work. In the event the completed Project work is not substantially consistent with the specifications, drawings and other requirements set forth in the Taylor's Excavators Construction Contract, the County shall be entitled to a partial refund of its payment hereunder. The amount of such refund shall be reasonably proportionate to the extent of inconsistency between the completed Project work and the specifications, drawings and other requirements set forth in the Taylor's Excavators Construction Contract.
- (iii) No Other Refund Allowed. Except as expressly provided in this subsection (c), the County shall not be entitled to any refund of its payment hereunder.

d. Maintenance and Inspection of Financial Records. The City and its contractors, consultants and subcontractors shall maintain books, accounts, records, documents, and other evidence pertaining to the costs and expenses allowable and consideration paid under this Agreement in accordance with generally accepted accounting practices. All such books of account and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the County and/or of the Washington State Auditor upon twenty (20) calendar days written request, and the City shall afford the proper facilities for such inspection and audit. Such books of account and records may be copied by representatives of the County and/or of the Washington State Auditor where necessary to conduct or document an audit. The City shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement.

3. Term of Agreement.

The term of this Agreement shall commence upon full execution of this Agreement by the Parties and shall terminate on five (5) years thereafter unless sooner terminated by either Party, PROVIDED, HOWEVER, that the County's payment obligations after December 31, 2022, are contingent upon local legislative appropriation of necessary funds for this specific purpose in accordance with the County Charter and applicable law.

4. Termination of Agreement.

Either Party may terminate this Agreement upon thirty (30) days written notice to the other Party in the event that said other Party is in material default and fails to cure such material default within that thirty (30) day period, or such longer period as provided by the non-defaulting Party. The notice of termination shall state the reasons therefore and the effective date of the termination.

Termination hereunder shall not affect the rights of the non-defaulting Party as against the defaulting party provided under any other section or paragraph herein, and the non-defaulting Party shall have the right to exercise any or all rights and remedies available to it in law or equity

5. Status of the City.

The City shall not be deemed as an agent or employee of the County for purposes of this Agreement. The City shall furnish, employ, and/or otherwise have exclusive control of all persons to be engaged in performing the Project (collectively, the "City Personnel") and shall prescribe and control the means and methods of performing such the same by providing adequate and proper supervision. The City Personnel shall for all purposes be solely the employees or agents of the City and shall not be deemed to be employees or agents of the County for any purpose whatsoever. With respect to the City Personnel, the City shall be solely responsible for compliance with all rules, laws, and regulations relating to employment of labor, hours of labor, working conditions, payments of wages and payment of taxes, such as employment, social security, and other payroll taxes including applicable contributions from the City Personnel when required by law.

6. Amendments to the Agreement.

This Agreement may be amended only by a writing executed by both Parties. Any such amendment shall either be filed with the County Auditor or posted on the City's interlocal agreements website.

7. Interlocal Cooperation Act (RCW Chapter 39.34).

- a. The purpose of this Agreement is set forth in the recitals to this Agreement.

b. Each Party to this Agreement shall designate an individual ("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 individuals specified in Section 19 below. Either Party may change its Administrator at any time by delivering written notice of such Party's new Administrator to the other Party. The Parties agree that no separate legal or administrative entities are necessary to carry out this Agreement. Except as expressly provided to the contrary in this Agreement, any real or personal property used or acquired by any Party to this Agreement in connection with the performance of this Agreement will remain the sole property of such Party, and the other Parties shall have no interest therein.

c. In accordance with RCW 39.34.040, this Agreement shall either be filed with the County Auditor or posted on the City's interlocal agreements website.

8. Taxes and Assessments.

Each Party shall be solely responsible for compensating its employees, agents, and/or subcontractors and for paying all related taxes, deductions, and assessments, including but not limited to, applicable use and sales taxes, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either Party as a result of this Agreement.

9. Nondiscrimination Provision.

It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The City shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a certification by the City of the City's compliance with the requirements of Chapter 2.460 SCC. If the City is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the City's obligations under other federal, state, or local laws against discrimination.

10. Compliance With Law.

Each Party agrees to perform the work and services under and pursuant to this Agreement in full compliance with any and all applicable laws, rules, and regulations adopted or promulgated by any governmental agency or regulatory body, whether federal, state, local, or otherwise.

11. Indemnification and Hold Harmless.

a. City Indemnification of County.

i. The City shall indemnify, defend and hold harmless the County and its commissioners, officers, employees and agents from and against any and all liabilities, losses, claims, damages, costs, demands, fines, judgments, penalties, obligations and payments, together with any reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and out-of-pocket expenses and reasonable costs and expenses of investigation) (collectively referred to as "Damages") incurred in connection with any of the foregoing, to the extent they result from, relate to or arise out of or in connection with (i) any failure of the City, and its elected officials, officers, employees, agents, consultants, contractors and/or subcontractors to perform or observe any term, provision, covenant, agreement or condition hereunder to be performed or observed by or on behalf of the City or (ii) any wrongful and/or negligent act and/or omission of the City and its elected officials, officers, employees, agents, consultants, contractors and/or subcontractors.

ii. In no event shall the City be responsible for indemnifying the County for Damages caused by or resulting from the sole negligence of the County and its elected officials, officers, employees, agents, contractors and/or subcontractors.

iii. Solely and expressly for purposes of its duties to indemnify and hold harmless the County as set forth above, the City specifically waives any immunity it might have under the State Industrial Insurance law, RCW Title 51, or any similar worker's compensation act, in the event that a claim is made against the County for an injury to any employee of the City. THE CITY ACKNOWLEDGES THAT THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

b. County Indemnification of the City.

i. The County shall indemnify, defend and hold harmless the City and its officials, officers, employees and agents from and against any and all liabilities, losses, claims, damages, costs, demands, fines, judgments, penalties, obligations and payments, together with any reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and out-of-pocket expenses and reasonable costs and expenses of investigation) (collectively referred to as "Damages") incurred in connection with any of the foregoing, to the extent they result from, relate to or arise out of or in connection with (i) any failure of the County and its elected officials, officers, employees, agents, consultants, contractors and/or subcontractors to perform or observe any term, provision, covenant, agreement or condition hereunder to be performed or observed by or on behalf of the County or (ii) any wrongful and/or negligent act and/or omission of the County and its elected officials, officers, employees, agents, consultants, contractors and/or subcontractors.

ii. In no event shall the County be responsible for indemnifying the City for Damages caused by or resulting from the sole negligence of the City, and its elected officials, officers, employees, agents, contractors and/or subcontractors.

- iii. Solely and expressly for purposes of its duties to indemnify and hold harmless the City as set forth above, the County specifically waives any immunity it might have under the State Industrial Insurance law, Title 51 RCW, or any similar worker's compensation act, in the event that a claim is made against the City for an injury to any employee of the County. THE COUNTY ACKNOWLEDGES THAT THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

- iv. Solely and expressly for purposes of its duties to indemnify and hold harmless the County as set forth above, the City specifically waives any immunity it might have under the State Industrial Insurance law, Title 51 RCW, or any similar worker's compensation act, in the event that a claim is made against the County for an injury to any employee of the City. THE CITY ACKNOWLEDGES THAT THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

c. In the event that the City and the County are both negligent or otherwise at fault with respect to the proximate causation of any Damages, then each Party's liability for indemnification of the other shall be limited to the extent of the contributory negligence or fault for any resulting Damages that can be apportioned to that Party and its elected officials, officers, employees, agents, consultants, contractors and/or subcontractors.

d. Nothing contained in this section or Agreement shall be construed to create a liability or a right of indemnification by any third party.

e. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

12. Insurance.

The Parties mutually acknowledge the contractor and subcontractor insurance coverage requirements set forth in the Taylor's Excavators Construction Contract. Snohomish County, its officers, elected officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Taylor's Excavators Inc. in connection with this Agreement, including Products and Completed Operations. Such coverage shall be primary and non-contributory insurance as respects Snohomish County, its officers, elected officials, employees, and agents. The Parties further mutually acknowledge that the City is a member of the Washington Cities Insurance Authority risk pool.

13. Assignment.

This Agreement, or any interest herein or claim hereunder, shall not be assigned, or transferred in whole or in part by the City to any other person or entity without the prior written consent of the County. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of the City as stated herein.

14. Severability.

a. If a court of competent jurisdiction holds any part, term, or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions

shall not be affected, and the Parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

b. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict and shall be deemed modified to conform to such statutory provision.

15. Interpretation.

This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. 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 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.

16. Integration and Supersession.

This Agreement sets forth all of the terms, conditions, and agreements of the parties relative to the subject matter hereof and supersedes any and all such former agreements which are hereby declared terminated and of no further force and effect upon the execution and delivery hereof. There are no terms, conditions, or agreements with respect thereto except as herein provided, and no amendment or modification of this Agreement shall be effective unless reduced to writing and executed by the Parties.

17. Non-Waiver.

A waiver by either Party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay, or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

18. Survival.

Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the Parties to this Agreement.

19. Notices.

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties at their addresses as follows:

To the City: Scott Peterson, PE
City Engineer
806 W. Main Street
Monroe, WA 98272
360-863-4606

To the County: Sharon Swan, AICP
Division Director
Snohomish County Conservation & Natural Resources
Parks, Recreation, & Tourism
6705 Puget Park Drive, M/S 303
Snohomish, WA 98296
425-388-6616

or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

20. Third Parties.

The City and the County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any right or benefit, whether directly or indirectly or otherwise, to third persons.

21. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

22. Venue; Litigation.

The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Snohomish County, Washington. The substantially prevailing Party in any such action shall be entitled to an award of its reasonable attorneys' fees. Notwithstanding any other provision of this Agreement, in any such action each Party shall look solely to the corporate entity, estate and property of the other Party, and not to any official, officer or employee of said Party, for the collection of any judgment or other judicial process requiring the payment of any money by that Party.

23. Authority to Bind Parties and Enter into Agreement.

The undersigned represent that they have full authority to enter into this Agreement and to bind the Parties for and on behalf of the legal entities set forth below.


24. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement:

CITY OF MONROE

SNOHOMISH COUNTY

By: 

By: Lacey Harper Digitally signed by Lacey Harper
Date: 2023.01.18 12:55:20 -0800

Name: Jason Gamble

Name: _____

Title: Mayor Pro Tem

Title: Executive Director

Date: 12/6/22

Date: _____

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| <p align="center">COUNCIL USE ONLY</p> <p>Approved <u>1/18/2023</u></p> <p>ECAF # <u>2022-1311</u></p> <p>MOT/ORD <u>Motion 22-555</u></p> |
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