

1 INTERLOCAL AGREEMENT  
2 BETWEEN  
3 SNOHOMISH COUNTY AND THE CITY OF ARLINGTON CONCERNING  
4 SNOHOMISH COUNTY PROVIDING THE CITY OF ARLINGTON FUNDING FOR  
5 ROAD PROJECTS WITHIN THE CITY OF ARLINGTON  
6

7 This INTERLOCAL AGREEMENT (the "Agreement"), is made and entered into  
8 by and between SNOHOMISH COUNTY, a political subdivision of the State of  
9 Washington (the "County"), and the CITY OF ARLINGTON, a Washington municipal  
10 corporation (the "City") pursuant to Chapter 39.34 RCW, concerning the County  
11 providing the City partial funding for road projects within the City.

12 **RECITALS**

- 13 **A.** On April 24, 2014 the Puget Sound Regional Council (PSRC) awarded the  
14 County an additional Five Million Dollars (\$5,000,000) in Federal Highway  
15 Administration (FHWA) funds for the County's North Road project.
- 16 **B.** The additional Five Million Dollars (\$5,000,000) in FHWA funds resulted in a  
17 corresponding amount of non-targeted or non-project specific County funds  
18 becoming available to fund additional road projects within Snohomish County to  
19 help with the economic recovery from the March 2014 SR 530 flooding and  
20 mudslide event.
- 21 **C.** The City has requested one million dollars (\$1,000,000) towards reimbursement for  
22 several transportation related capital improvement projects within the City,  
23 hereinafter collectively the "Projects", or singularly as a "Project".
- 24 **D.** The County desires to provide the City with the requested reimbursement.

25 **AGREEMENT**

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

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

30 1.1 Purpose of Agreement. This Agreement is authorized by and entered into  
31 pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW. The purpose and intent  
32 of this Agreement is to facilitate the City's construction of transportation improvements  
33 in order to foster economic recovery.

34 1.2 No Separate Entity Necessary. The parties agree that no separate legal or  
35 administrative entity is being created hereunder.

36 1.3 Ownership of Property. Except as expressly provided to the contrary in  
37 this Agreement, any real or personal property used or acquired by either party in

1 connection with the performance of this Agreement will remain the sole property of such  
2 party, and the other party shall have no interest therein.

3 1.4 Administrators. Each party to this Agreement shall designate an  
4 individual (an "Administrator"), which may be designated by title or position, to oversee  
5 and administer such party's participation in this Agreement. The parties' initial  
6 Administrators shall be the following individuals:  
7

County's Initial Administrator:

City's Initial Administrator:

Steven E Thomsen, PE,  
Public Works Director  
Snohomish County  
3000 Rockefeller Avenue M/S 607  
Everett, Washington 98201  
425-388-6652  
Steven.thomsen@snoco.org

James X. Kelly, PE  
Public Works Director  
City of Arlington  
154 West Cox Ave.  
Arlington, WA 98223  
360-403-3505  
JKelly@arlingtonwa.gov

8  
9 Either party may change its Administrator at any time by delivering written notice  
10 pursuant to Section 10 of this Agreement, of such party's new Administrator to the other  
11 party.

12 **2. Effective Date and Duration**

13 As provided by RCW 39.34.040, this Agreement shall not take effect unless and  
14 until it has (i) been duly executed by both parties, and (ii) either filed with the County  
15 Auditor or posted on the County's Interlocal Agreements website. This Agreement shall  
16 remain in effect until all obligations of the parties are discharged, unless earlier  
17 terminated pursuant to the provisions of Sections 9 or 10 below, PROVIDED, that the  
18 parties obligations after December 31<sup>st</sup> of the year in which this Agreement is approved  
19 and becomes effective, are contingent upon each parties local legislative appropriation of  
20 necessary funds in accordance with applicable laws.

21 **3. City Responsibilities**

22 3.1 Lead Agency. Pursuant to WAC 197-11-926(1), the City shall serve as  
23 the lead agency for the Project(s) and shall be responsible for all aspects of the Project(s),  
24 including but not limited to, permitting, design, construction, record keeping and  
25 complying with all applicable local, state and federal requirements.

26 3.2 Invoicing. The City shall invoice the County for each Project, as agreed to  
27 between the County and City pursuant to Section 3.3 below, on a reimbursable expense  
28 incurred basis. The City shall submit a request for reimbursement to the County for  
29 actual expenses incurred in the completion of a Project; supporting documentation shall  
30 accompany each request for payment. The forms used to request reimbursement shall be

1 WSDOT approved forms, or other forms and recordkeeping agreed to by the project  
2 administrators.

3       3.3 Identification of Project(s). In order to qualify for reimbursement  
4 hereunder, the Projects shall: (1) be identified through the Stillaguamish Valley  
5 Economic Redevelopment study, as fostering economic development in the Stillaguamish  
6 Valley; and (2) be consented to by the City and County, which consent shall not be  
7 unreasonably withheld. Each Project qualifying for reimbursement hereunder shall be  
8 specifically identified by separate written addendum summarizing the Project scope and  
9 agreed to by the parties' Administrators identified in Section 1.4.

10       3.4 Records. The City shall maintain accurate records related to all Projects  
11 contemplated by this Agreement and any addenda thereto for a period of three (3) years  
12 following final payment.

#### 13 **4. County Responsibilities**

14       4.1 Amount of Funds. The County's sole responsibility is to provide the City  
15 reimbursement, on an expense incurred basis, of the Project's construction costs in an  
16 amount not to exceed One Million Dollars (\$1,000,000.00).

17       4.2 Payment of invoice. Unless the County delivers written notice to the City  
18 disputing the amount of an invoice, the County shall make payment on all invoices  
19 submitted by the City within thirty (30) days following receipt by the County of said  
20 invoices.

21       4.3 Selection of Project(s). The County shall assist the City in selecting and  
22 identifying the Projects.

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

24       5.1 City's Indemnification of County. The City shall indemnify, defend and  
25 hold the County harmless from and against all liabilities, suits, losses, costs, damages,  
26 claims, expenses, penalties or charges, including, without limitation, reasonable  
27 attorneys' fees and disbursements, that the County may incur or pay out by reason of: (i)  
28 any accidents, damages or injuries to persons or property occurring in, on or around the  
29 Project area during the term of this Agreement, but only to the extent the same are caused  
30 by any negligent or wrongful act of the City; or (ii) any breach or Default (as such term is  
31 defined in Section 9.1 below) of the City under this Agreement.

32       5.2 Waiver of Immunity Under Industrial Insurance Act. The indemnification  
33 provisions of Section 5.1 above are specifically intended to constitute a waiver of the  
34 City's immunity under Washington's Industrial Insurance Act, Title 51 RCW, as respects  
35 the County only, and only to the extent necessary to provide the indemnified party with a  
36 full and complete indemnity of claims made by the indemnitor's employees. The parties  
37 acknowledge that these provisions were specifically negotiated and agreed upon by them.

38       5.3 Survival. The provisions of this Section 5 shall survive the expiration or  
39 earlier termination of this Agreement.

1     **6. Insurance**

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

7     **7. Compliance with Laws**

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

10  
11     **8. Liability Related to City Ordinances, Policies, Rules and Regulations.**

12  
13             In executing this Agreement, the County does not assume liability or  
14 responsibility for or in any way release the City from any liability or responsibility which  
15 arises in whole or in part from the existence or effect of City ordinances, policies, rules or  
16 regulations. If any cause, claim, suit, action or administrative proceeding is commenced  
17 in which the enforceability and/or validity of any such City ordinance, policy, rule or  
18 regulation is at issue, the City shall defend the same at its sole expense and, if judgment  
19 is entered or damages are awarded against the City, the County, or both, the City shall  
20 satisfy the same, including all chargeable costs and reasonable attorney's fees.

21     **9. Default and Remedies**

22             9.1     Default. If either the County or the City fails to perform any act or  
23 obligation required to be performed by it hereunder, the other party shall deliver written  
24 notice of such failure to the non-performing party. The non-performing party shall have  
25 thirty (30) days after its receipt of such notice in which to correct its failure to perform  
26 the act or obligation at issue, after which time it shall be in default ("Default") under this  
27 Agreement; provided, however, that if the non-performance is of a type that could not  
28 reasonably be cured within said thirty (30) day period, then the non-performing party  
29 shall not be in Default if it commences cure within said thirty (30) day period and  
30 thereafter diligently pursues cure to completion.

31             9.2     Remedies. In the event of a party's Default under this Agreement, then  
32 after giving notice and an opportunity to cure pursuant to Section 8.1 above, the non-  
33 Defaulting party shall have the right to exercise any or all rights and remedies available  
34 to it in law or equity.

35     **10. Early Termination**

36             10.1    Notice of Termination. Except as provided in Section 10.2 below, either  
37 party may terminate this Agreement at any time, with or without cause, upon providing  
38 not less than thirty (30) days' advance written notice to the other party pursuant to

1 Section 11 of this Agreement. The termination notice shall specify the date on which the  
2 Agreement shall terminate.

3 10.2 Lack of Funding. This Agreement is contingent upon governmental  
4 funding and local legislative appropriations. In the event that funding from any source is  
5 withdrawn, reduced, limited, or not appropriated after the effective date of this  
6 Agreement, this Agreement may be terminated by either party by delivering not less than  
7 thirty (30) days advance written notice to the other party pursuant to Section 10 of this  
8 Agreement. The termination notice shall specify the date on which the Agreement shall  
9 terminate.

10 10.3 No further payment. In the event this Agreement is terminated no  
11 payment shall be made by the County following the effective date of termination unless  
12 authorized in writing by the County.

### 13 **11. Notices**

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

### 23 **12. Miscellaneous**

24 12.1 Entire Agreement; Amendment. This Agreement constitutes the entire  
25 agreement between the parties regarding the subject matter hereof, and supersedes any  
26 and all prior oral or written agreements between the parties regarding the subject matter  
27 contained herein. This Agreement may not be modified or amended in any manner  
28 except by a written document signed by the party against whom such modification is  
29 sought to be enforced.

30 12.2 Governing Law and Venue. This Agreement shall be governed by and  
31 enforced in accordance with the laws of the State of Washington. The venue of any  
32 action arising out of this Agreement shall be in the Superior Court of the State of  
33 Washington, in and for Snohomish County. In the event that a lawsuit is instituted to  
34 enforce any provision of this Agreement, the prevailing party shall be entitled to recover  
35 all costs of such a lawsuit, including reasonable attorney's fees.

36 12.3 Interpretation. This Agreement and each of the terms and provisions of  
37 it are deemed to have been explicitly negotiated by the parties, and the language in all  
38 parts of this Agreement shall, in all cases, be construed according to its fair meaning and  
39 not strictly for or against either of the parties hereto. The captions and headings in this  
40 Agreement are used only for convenience and are not intended to affect the interpretation

1 of the provisions of this Agreement. This Agreement shall be construed so that wherever  
2 applicable the use of the singular number shall include the plural number, and vice versa,  
3 and the use of any gender shall be applicable to all genders.

4 12.4 Severability. If any provision of this Agreement or the application  
5 thereof to any person or circumstance shall, for any reason and to any extent, be found  
6 invalid or unenforceable, the remainder of this Agreement and the application of that  
7 provision to other persons or circumstances shall not be affected thereby, but shall instead  
8 continue in full force and effect, to the extent permitted by law.

9 12.5 No Waiver. A party's forbearance or delay in exercising any right or  
10 remedy with respect to a Default by the other party under this Agreement shall not  
11 constitute a waiver of the Default at issue. Nor shall a waiver by either party of any  
12 particular Default constitute a waiver of any other Default or any similar future Default.

13 12.6 No Assignment. This Agreement shall not be assigned, either in whole  
14 or in part, by either party without the express written consent of the other party, which  
15 may be granted or withheld in such party's sole discretion. Any attempt to assign this  
16 Agreement in violation of the preceding sentence shall be null and void and shall  
17 constitute a Default under this Agreement.

18 12.7 Warranty of Authority. Each of the signatories hereto warrants and  
19 represents that he or she is competent and authorized to enter into this Agreement on  
20 behalf of the party for whom he or she purports to sign this Agreement.

21 12.8 No Joint Venture. Nothing contained in this Agreement shall be  
22 construed as creating any type or manner of partnership, joint venture or other joint  
23 enterprise between the parties.

24 12.9 No Third Party Beneficiaries. This Agreement and each and every  
25 provision hereof are for the sole benefit of the City and the County. No other persons or  
26 parties shall be deemed to have any rights in, under or to this Agreement.

27 12.10 Execution in Counterparts. This Agreement may be executed in two or  
28 more counterparts, each of which shall constitute an original and all of which shall  
29 constitute one and the same agreement.

30  
31  
32  
33 *[The remainder of this page is intentionally left blank.]*  
34  
35

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

4  
5 **SNOHOMISH COUNTY:**

6  
7 **CITY OF ARLINGTON:**

8 By: John Lovick 1-30-15  
9 John Lovick Date  
10 Snohomish County Executive

8 By: Barbara Tolbert 10/30/14  
9 Barbara Tolbert Date  
10 Mayor

11  
12  
13  
14 Approved as to Form:

14 Approved as to Form:

15 [Signature] 10/7/14  
16  
17 Deputy Prosecuting Attorney

15 [Signature]  
16  
17 City Attorney

18  
19  
20  
21  
22  
23 *[The remainder of this page is intentionally left blank.]*  
24

COUNCIL USE ONLY	
Approved:	<u>1-28-15</u>
Docfile:	<u>D-3</u>