

200608010244
08/01/2006 10:34am \$0.00
SNOHOMISH COUNTY, WASHINGTON

CONFORMED COPY
13 PGS

**INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY
AND THE CITY OF MILL CREEK
REGARDING INTERJURISDICTIONAL REVIEW AND MITIGATION
FOR DEVELOPMENT IMPACTS ON THEIR RESPECTIVE
TRANSPORTATION INFRASTRUCTURE**

I. PARTIES

This Interlocal Agreement (hereinafter "Agreement") is entered into pursuant to Chapter 36.70A RCW (the Growth Management Act ("GMA")), Chapter 43.21C RCW (the State Environmental Policy Act ("SEPA")), and Chapter 39.34 RCW (the Interlocal Cooperation Act ("ICA")) by the City of Mill Creek, a Washington municipal corporation (hereinafter "City") having its principal place of business at 15728 Main Street, Mill Creek, Washington 98012, and Snohomish County, a political subdivision of the State of Washington (hereinafter "County") having its principal place of business at the County Administration Building, 3000 Rockefeller Avenue, Everett, Washington 98201.

II. PURPOSE AND RECITALS

2.1 Within their own jurisdictions, the County and the City each have responsibility and authority derived from the Washington State Constitution, state laws, local charters and ordinances to plan for and regulate uses of land and resultant environmental impacts, and by law must consider the impacts of governmental actions on adjacent jurisdictions.

2.2 The City and the County recognize that planning and land use decisions can have extra-jurisdictional impacts and that intergovernmental cooperation is an effective manner prescribed in the ICA and GMA, as amended, to mitigate impacts and facilitate interjurisdictional cooperation to address issues and opportunities that transcend local jurisdictional boundaries.

2.3 The City and County desire to work together to utilize their existing regulations, plans, codes, and mitigation policies, as designated in Sections V and VI

below, to implement the requirements of the ICA, GMA and SEPA for the purpose of mitigating interjurisdictional impacts on transportation infrastructure in a manner that is consistent with law. For purposes of this Agreement, "impacts on transportation infrastructure" means and includes all impacts caused by or attributable to a development on the transportation infrastructure. "Transportation infrastructure" means and includes all streets, roads, transportation facilities, related parts and systems, and levels of service.

2.4 The regulations, plans, codes, and mitigation policies designated in section V below shall be collectively referred to in this Agreement as the City's mitigation policies. The regulations, plans, codes, and mitigation policies designated in Section VI below shall be collectively referred to in this Agreement as the County's mitigation policies.

2.5 This Agreement is intended to provide for consideration and evaluation of interjurisdictional impacts to transportation infrastructure that result from development and to allow for coordinated governmental actions to mitigate those impacts based upon the parties' designated mitigation policies. The City and County intend this Agreement to supersede the interlocal agreement previously entered into between the City and the County relating to interjurisdictional mitigation of transportation impacts.

2.6 In the spirit of intergovernmental cooperation and as authorized by law, the City has imposed conditions on the approval of certain City development proposals at the request of the County to mitigate impacts on transportation infrastructure within the jurisdiction of the County in accordance with the required Chapter 30.66B SCC road impact mitigation provisions and the required transportation impact identification and mitigation process described in the County's 164th Street Corridor Master Road Improvement Program (MRIP), adopted by Resolution No. 86-045 and amended by Motion No. 89-360 (where the MRIP was still applicable pursuant to Amended Motion No. 91-021 and Chapter 30.66B SCC).

2.7 In the spirit of intergovernmental cooperation and as authorized by law, the County has imposed conditions on the approval of certain County development proposals at the request of the City to mitigate impacts on transportation infrastructure within the City, which conditions include the required payment of City transportation mitigation payments.

2.8 It is in the best interest of both jurisdictions to continue reciprocal imposition of mitigation requirements and improvements needed to address impacts on the transportation infrastructure of each jurisdiction.

III. CITY REQUEST FOR MITIGATION OF IMPACTS

For every development application proposed outside the corporate limits of the City but within the City's planning influence area, which is the area described by Exhibit A, as now existing or hereafter amended, attached and incorporated herein by this reference, the County and City will take the following actions:

3.1 Upon receiving a development application, the County shall determine whether the proposal is within the City's planning influence area. If the development application is within the City's planning influence area, the County shall promptly give the City written notice and afford the City a timely and reasonable opportunity for review, comment, staff consultation, and, where applicable, participation in the County's SEPA process, related to the impacts that the development may have on the City's transportation infrastructure under the City's designated mitigation policies. When determined necessary by the City, the applicant will be required to submit a traffic study, a copy of which will be forwarded to the City.

3.2 If the City determines that a County development application will impact the City's transportation infrastructure, the City will notify the County in writing of specific measures that should be imposed on the development proposal and are reasonably necessary to mitigate said impacts in accordance with the City's designated mitigation policies. For purposes of this Agreement, the impact mitigation measures shall be limited to construction of improvements, voluntarily negotiated payment in lieu of construction, dedication, voluntarily negotiated payment in lieu of dedication, impact mitigation payments or other payments provided or allowed by State law, City ordinance or regulations, or other payments which are determined, voluntary or otherwise, between the development applicant and the City. For purposes of this Agreement, written notice between the parties shall include notice sent via e-mail or other electronic means if the recipient confirms receipt through means other than a computer-generated automatic message.

3.3 In determining the impacts to the City's transportation infrastructure, the City shall use the City's designated mitigation policies referenced in Section V below, as now existing or hereafter amended.

3.4 The City shall apply its designated mitigation policies to developments located within the unincorporated County in the same manner that it applies its designated mitigation policies to developments located within the City. Impact mitigation measures proposed by the City for developments within the unincorporated County will be consistent with impact mitigation measures imposed on City developments that have similar impacts to the City's transportation infrastructure.

3.5 If the County determines that the mitigation measures requested by the City are reasonably related to the impact of the development, the County shall (a) recommend imposing the mitigation measures requested by the City as a condition

of the County's development approval; (b) include such condition in the County's administrative determination for the project, and if necessary (c) authorize the Hearing Examiner or other approving official, as appropriate, to include the measure as a condition of development approval.

3.6 If the County determines that the mitigation measures requested by the City are not reasonably related to the impact of the development, the County shall promptly give written notice of its determination to the City, specifying what mitigation measures the County intends to recommend. After providing such notice to the City, and before the County makes its recommendations to the Hearing Examiner or other approving official, as appropriate, representatives from the County and City shall meet to discuss the City's requested mitigation. If the parties cannot agree upon appropriate mitigation, the County will proceed with its recommendation, but the City shall be granted an opportunity to formally address the Hearing Examiner at the public hearing on the project to propose the requested mitigation and to explain its consistency with City mitigation policies and state law.

3.7 City staff will be available at any public hearing as necessary to explain recommended mitigation measures.

IV. COUNTY REQUEST FOR MITIGATION OF IMPACTS

For every development application proposed within the City, the County and City will take the following actions:

4.1 Upon receiving a development application, the City shall promptly give the County written notice and afford the County a timely and reasonable opportunity for review, comment, staff consultation, and, where applicable, participation in the City's SEPA process, related to the impacts that the development may have on the County's transportation infrastructure under the County's designated mitigation policies. For purposes of this Agreement, the County will determine the transportation impact of a development in the City on the County road system in the appropriate County Transportation Service Area (TSA).

4.2 If the County determines that a City development application will impact the County's transportation infrastructure, the County will notify the City in writing of specific measures that should be imposed on the development proposal and are reasonably necessary to mitigate the impacts in accordance with the County's designated mitigation policies. For purposes of this Agreement, the impact mitigation measures shall be limited to construction of improvements, voluntarily negotiated payment in lieu of construction, dedication, voluntarily negotiated payment in lieu of dedication, impact mitigation payments or other payments provided or allowed by State law, County ordinance or regulations, or other payments which are determined, voluntary or otherwise, between the development applicant and the County. For

purposes of this Agreement, written notice between the parties shall include notice sent via e-mail or other electronic means, if the recipient confirms receipt through means other than a computer-generated automatic message.

4.3 In determining the impacts on the County's transportation infrastructure, the County shall use the County's designated mitigation policies referenced in Section VI below, as now existing or hereafter amended.

4.4 The County shall apply its designated mitigation policies to developments located within the City in the same manner that it applies its designated mitigation policies to developments located within the County. Impact mitigation measures proposed by the County for developments within the City will be consistent with impact mitigation measures imposed on County developments that have similar impacts to the County's roads and transportation infrastructure.

4.5 The City shall (a) recommend imposing the mitigation measures requested by the County as a condition of the City's development approval to the extent that such requirements are reasonably related to the impact of the development, and shall (b) include such condition in the City's administrative determination for the project forwarded to the Planning Commission.

4.6 In the event that the City does not recommend imposition of the mitigation measures requested by the County, the City shall give timely advance written notice to the County that the requested mitigation measures will not be recommended to the Planning Commission. After providing such notice to the County, and before the City makes its recommendations to the Planning Commission, representatives from the County and City shall meet to discuss the County's requested mitigation. If the parties cannot agree upon appropriate mitigation, the County shall be granted an opportunity to formally address the Planning Commission at the public hearing on the project to propose the requested mitigation and to explain its consistency with County mitigation policies and state law.

4.7 County staff will be available at any public hearing as necessary to explain recommended mitigation measures.

V. COUNTY RECOGNITION OF CITY'S DESIGNATED REGULATIONS, PLANS, CODES AND MITIGATION POLICIES

This Agreement addresses the procedures for identification, documentation, and mitigation of interjurisdictional impacts on transportation infrastructure. The County recognizes the following designated mitigation policies of the City as a basis for the County's exercise of environmental review and mitigation authority pursuant to SEPA and the Chapter 30.66B SCC road impact mitigation provisions and the transportation infrastructure impact identification and mitigation process described in the County's 164th Street Corridor Master Road Improvement Program (MRIP),

adopted by Resolution No. 86-045 and amended by Motion No. 89-360 (where the MRIP was still applicable pursuant to Amended Motion No. 91-021 and Chapter 30.66B SCC).

1. Chapter 17.48 MCMC (Mill Creek Ordinance No. 90-221), as now existing or hereafter amended.
2. Chapter 18.04 MCMC (Mill Creek Ordinance No. 84-25), as now existing or hereafter amended.
3. The City of Mill Creek Comprehensive Plan adopted by Ordinance 94-338 (the "City Plan") specifically including, but not limited to, the Capital Facilities Element, the Transportation Element, and the Streetscape Element of the City Plan, as now existing or hereafter amended; and
4. All City ordinances, codes, chapters, resolutions, regulations, plans or reports incorporated by reference or applicable to Chapters 17.48 and 18.04 MCMC, as now existing or hereafter amended.

VI. CITY RECOGNITION OF COUNTY'S DESIGNATED REGULATIONS, PLANS, CODES, AND MITIGATION POLICIES

This Agreement addresses the procedures for identification, documentation, and mitigation of interjurisdictional impacts on transportation infrastructure. Pursuant to Chapter 17.48 and Title 18, MCMC, as now or hereafter amended, the City recognizes the following designated mitigation policies of the County as a basis for the City's exercise of environmental review and mitigation authority pursuant to Chapter 17.48, Title 18, MCMC and SEPA:

1. Chapter 30.66B SCC, as now existing or hereafter amended.
2. The 164th Street Corridor Master Road Improvement Program (MRIP), adopted by Resolution No. 86-045 and Amended by Motion No. 890-360, where applicable pursuant to Amended Motion No. 91-021.
3. The Snohomish County *Road Needs Report* originally adopted by Amended Motion No. 90-279 and the Snohomish County Transportation Needs Report originally adopted 9/10/95; and as hereafter amended.
4. Title 13 SCC, as now existing or hereafter amended.
5. The Snohomish County GMA Comprehensive Plan adopted by Ordinance 94-125 in June 1995 (the "County Plan") specifically including, but not limited to, the General Policy Plan, Capital Facilities Element and the Transportation Element of the County Plan, as now existing or hereafter amended.
6. Snohomish County Code and adopted documents related to environmental policy, including Chapter 30.61 SCC, as now existing or hereafter amended.

7. All County codes, ordinances, motions, regulations, plans or reports incorporated by reference or applicable to Title 13 or Chapter 30.66B SCC, as now existing or hereafter amended.

VII. SCOPE OF AGREEMENT

This Agreement applies to all developments for which applications are filed with the City or County on or after the effective date of this Agreement and which are subject to review under the laws, ordinances and policies identified in Sections V and VI above.

Pursuant to the terms of this Agreement, developments occurring in one jurisdiction may be required to proportionally mitigate impacts upon the other jurisdiction's transportation infrastructure, including but not limited to capacity, safety, access, circulation, and/or level of service. Developments which front on the right-of-way of the other jurisdiction may also be required to provide frontage improvements, dedicate or deed right-of-way, and/or meet access, circulation and/or safety requirements.

The parties intend that the mitigation imposed pursuant to this Agreement will consist of (a) assessment and payment of fees necessary to proportionally mitigate the transportation infrastructure impacts that arise from development subject to this Agreement, and/or (b) other reasonable and proportional mitigation measures (including without limitation dedication of land). This Agreement is not intended to authorize either the City or County to prohibit a specific development in the other party's jurisdiction.

VIII. RELATIONSHIP TO EXISTING LAWS AND STATUTES

This Agreement in no way modifies or supersedes existing laws and statutes. In meeting the commitments encompassed in this Agreement, all parties will comply with the requirements of the Open Public Meetings Act, SEPA, GMA, annexation statutes and other applicable state or local law. The ultimate authority for land use and development decisions is retained by the County and City within their respective jurisdictions. By executing this Agreement, the County and City do not purport to abrogate the decision making responsibility or police power vested in them by law.

IX. RELATIONSHIP TO FUTURE PLANNING AND RECIPROCAL IMPACT MITIGATION AGREEMENTS

The City and County understand that many multi-jurisdictional planning and growth management issues will need to be addressed as growth continues. Both parties also understand that joint planning agreements will be required to accomplish the planning and plan implementation requirements of the GMA, as amended. Such agreements may focus on particular issues and delineate specific responsibilities that are beyond the scope of this Agreement.

X. DEVELOPMENT AND REVIEW OF ENVIRONMENTAL STANDARDS

The parties agree to notify one another in the event of any material change in the laws, mitigation policies and regulations affecting this Agreement, and may at that point agree to amend or terminate this Agreement.

XI. FILING

A fully executed copy of this Agreement shall be filed with the Snohomish County Auditor's Office.

XII. EFFECTIVE DATE, DURATION AND TERMINATION

This Agreement shall be effective following the approval of the Agreement by the official action of the governing bodies of each of the parties and the signing of the Agreement by the duly authorized representative of each party, and the recording of the Agreement with the County Auditor. Any amendments and/or joint termination shall be in writing and executed in the same manner as provided by law for the execution of this Agreement. The Agreement shall remain in full force and effect until the end of the calendar year 2015.

Prior to January 31, 2015, the Agreement Administrators will each initiate review of the Agreement in order to decide whether to recommend renewal, termination, or modification of the Agreement to their respective governing bodies. If no renewal, termination, or modification is made, the Agreement will expire at the end of that calendar year. If the Agreement is renewed, it will be reviewed again during, and subject to expiration at the conclusion of each of the following ten-year periods thereafter, unless the parties have agreed to differing provisions for periodic review.

XIII. TERMINATION

Either party may terminate its obligations under this Agreement upon sixty (60) days advance written notice to the other party. The parties shall participate in professional mediation if requested by the non-terminating party within thirty (30) days of receipt of the written notice from the terminating party. The parties shall share equally in the expense of such mediation. Following any amendment or termination, the parties are mutually responsible for fulfilling any outstanding obligations under this Agreement incurred prior to the effective date of the amendment or termination. The parties agree to follow the terms of this Agreement for any development applications submitted and pending prior to the effective date of the amendment or termination.

XIV. SEVERABILITY

If any provision of this Agreement or its application to any person or circumstance is held invalid, the remainder of the provisions and/or the application of the provisions to other persons or circumstances shall not be affected.

XV. INDEMNIFICATION AND LIABILITY

The City shall protect, hold harmless, and indemnify, at its own expense, the County, its elected and appointed officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever, arising out of the City's performance of this Agreement, including claims by the City's employees or third parties, except for and to the extent of damages solely caused by the acts, omissions, negligence or willful misconduct of the County, its elected and appointed officials, officers, employees or agents, as judicially determined by a court of competent jurisdiction.

The County shall protect, hold harmless, and indemnify, at its own expense, the City, its elected and appointed officials, officers, employees and agents from any loss or claim for damages of any nature whatsoever, arising out of the County's performance of this Agreement, including claims by the County's employees or third parties, except for and to the extent of damages solely caused by the acts, omissions, negligence or willful misconduct of the City, its elected and appointed officials, officers, employees or agents, as judicially determined by a court of competent jurisdiction.

In the event of liability for damages of any nature whatsoever arising out of the performance of this Agreement by the City and the County, including claims by the City's or the County's own officers, officials, employees, agents, volunteers, or third parties, caused by or resulting from the concurrent negligence of the County and the City, their officers, officials, employees and volunteers, each party's liability hereunder shall only be to the extent of that party's acts, omissions, negligence or willful misconduct, as judicially determined by a court of competent jurisdiction.

No liability shall be attached to the City or the County by reason of entering into this Agreement except as expressly provided herein. The City shall hold the County harmless and defend at its expense any legal challenges to the City's requested mitigation and/or any failure by the City to comply with any provision of local, state, and/or federal law. The County shall hold the City harmless and defend at its expense any legal challenges to the County's requested mitigation and/or any failure by the County to comply with any provision of local, state, and/or federal law.

XVI. COMPLIANCE WITH THE LAW

The County and the City shall comply with all applicable federal, state and local laws in performing this Agreement.

XVII. EXERCISE OF RIGHTS OR REMEDIES

Failure of either party to exercise any rights or remedies under this Agreement shall not be a waiver of any obligation by either party and shall not prevent either party from pursuing that right at any future time.

XVIII. REVIEW OF RECORDS

Subject to the restrictions, exceptions, and exemptions on public disclosure, both parties shall have the right to review the other party's records with regard to the subject matter of this Agreement, upon reasonable written notice. Such rights shall continue for a period of three (3) years after the effective date of termination of this Agreement.

XIX. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the reciprocal mitigation of transportation infrastructure impacts.

XX. GOVERNING LAW AND STIPULATION OF VENUE

This Agreement shall be governed by the laws of the State of Washington. Any action hereunder must be brought in the Superior Court of Washington for Snohomish County.

XXI. ADMINISTRATORS OF AGREEMENT

As required by the ICA, the Administrators of this agreement shall be:

a) For the City of Mill Creek, Scott Smith, or his replacement or equivalent in the position of Assistant City Engineer.

b) For Snohomish County John Davis, or his replacement or equivalent in the position of County Transportation Specialist, Department of Public Works.

XXII. NO THIRD PARTY BENEFICIARIES

This Agreement is for the benefit only of the City and County and is not intended to confer any benefit on any other person or entity, and no person or entity not a party to this Agreement shall be construed to be a third-party beneficiary nor shall said third party have any other rights whatsoever hereunder. This Agreement is not intended to and shall not be construed to benefit a particular class of persons or individuals.

XXIII. MUTUAL NEGOTIATIONS

This Agreement has been mutually drafted and negotiated between the parties. No ambiguity shall be construed against either party based upon a claim that the party drafted the ambiguous language. The parties each acknowledge, represent, and agree that they have read this Agreement; that they fully understand the terms

thereof; that they have been fully advised by their legal counsel; and that the Agreement has been executed with the approval as to form by their legal counsel.

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

Dated this 24th day of July 2006.

CITY OF MILL CREEK

SNOHOMISH COUNTY

By Mike Caldwell
Mike Caldwell
City Manager

By [Signature]
for Aaron Reardon
County Executive

ATTEST:

Kelly Hennessey
Kelly Hennessey
City Clerk

ATTEST: **MARK SOINE**
Deputy Executive

Cora E. Palmer

Approved as to form:
Office of the City Attorney

Approved as to form:
Snohomish County Prosecutor

[Signature]
Scott M. Missall
Attorney for the City of
Mill Creek

Millie Judge
Millie M. Judge
Deputy Prosecuting Attorney for
Snohomish County

Recorded by County Auditor: Aug 1, 2006
Date

Auditor's File No. 200608010244