

**INTERLOCAL AGREEMENT BETWEEN SNOHOMISH  
COUNTY AND THE WASHINGTON STATE DEPARTMENT OF  
TRANSPORTATION RELATING TO POLICIES AND  
PROCEDURES FOR INTERJURISDICTIONAL REVIEW OF  
LAND DEVELOPMENT IMPACTS RELATED TO  
TRANSPORTATION, AND FOR RECIPROCAL IMPACT  
MITIGATION FOR INTERJURISDICTIONAL  
TRANSPORTATION SYSTEM IMPACTS**

**I. PARTIES**

This Interlocal Agreement (hereinafter "AGREEMENT") is entered into pursuant to Chapter 36.70A RCW (the Growth Management Act), Chapter 36.70B (Local Project Review), Chapter 36.75 RCW (Roads and Bridges), Chapter 43.21C RCW (SEPA), Chapter 39.34 RCW (the Interlocal Cooperation Act), Title 47 RCW (Public Highways and Transportation), Chapter 58.17 RCW (Subdivisions) and Chapter 82.02 RCW (Excise Taxes) by the Washington State Department of Transportation, hereinafter "STATE", and Snohomish County, hereinafter "COUNTY", a political subdivision of the State of Washington.

**II. PURPOSE AND RECITALS**

- 2.1 The COUNTY and the STATE enter in to this AGREEMENT to serve the citizens of Snohomish County. The AGREEMENT provides one means to construct and/ or fund improvements to State transportation facilities made necessary by traffic from new developments. The AGREEMENT helps provide balance in the bearing of costs for these improvements between existing residents and new residents. The AGREEMENT provides more predictability and equity to the residential and commercial developers providing the houses and places of business for citizens of Snohomish County. The AGREEMENT is an important step in the integration of

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Growth Management Act (GMA) regulations and State Environmental Policy Act (SEPA) regulations.

- 2.2 Within their own jurisdictions, The COUNTY and the STATE each have responsibility and authority derived from the Washington State Constitution, State laws, and any local charter 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.
- 2.3 The STATE 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 State of Washington Growth Management Act of 1990, as amended, to deal with impacts and opportunities which transcend local jurisdictional boundaries.
- 2.4 The COUNTY enacted Amended Ordinance No. 95-039 on June 28, 1995, Emergency Ordinance No. 95-065 on July 24, 1995, and Amended Ordinance No. 95-070 on August 23, 1995, amending Title 26B of the Snohomish County Code (SCC) to require mitigation of transportation impacts of County, City, and State transportation facilities by development proposals within Snohomish County. All references to Title 26B SCC are as amended by the above mentioned ordinances and any subsequent amendments. SCC 23.36.030(3) & (4) formally designates the Title 26B SCC road impact mitigation ordinance as a State Environmental Policy Act (SEPA) policy.
- 2.5 In the spirit of intergovernmental cooperation and pursuant to state environmental law, the COUNTY has imposed conditions on the approval of certain COUNTY development proposals at the request of the STATE to mitigate transportation impacts within the jurisdiction of the COUNTY in accordance with the Title 26B SCC road impact mitigation provisions.
- 2.6 The County Department of Public Works acts as agent of the STATE in recommending conditions of approval to COUNTY developments to mitigate impacts to State facilities, including developer mitigation payments to the STATE.

### **III. COUNTY'S RESPONSIBILITIES**

For every development application within the unincorporated COUNTY to which this agreement applies in accordance with Section VII, the following actions will be taken:

- 3.1 The COUNTY shall give the STATE notice and afford the STATE a timely opportunity for review, comment, staff consultation, and participation in the COUNTY's development review and approval process, related to the impacts the development may have on the STATE's transportation system. For all developments covered by this agreement in accordance with Section VII, the COUNTY shall request review by the STATE of applications for completeness as a part of the COUNTY's

determination of completeness pursuant to Chapter 32.50 SCC and shall provide a notice of application to the STATE in accordance with the requirements of Chapter 32.50 SCC for other agencies with jurisdiction, even though a development may not be subject to the provisions of Chapter 32.50 SCC. Chapter 32.50 implements the permit processing requirements of Chapter 347, Laws of 1995. Request for completeness review and notice shall be accompanied by a traffic study, when determined necessary by the STATE in accordance with Section 5.1. In addition, for those developments subject to the SEPA process, notice to the STATE shall also be provided in a form and manner pursuant to the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, for agencies with jurisdiction.

3.2 At the presubmittal conference the COUNTY shall:

- a) provide the developer with information about the requirements for traffic analysis and mitigation of impacts on STATE facilities; and,
- b) provide the developer with information consistent with Section 5.1 of this Agreement about the criteria for determining whether or not the STATE may require a comprehensive traffic study; and,
- c) assist the developer in completing Section One (1) of the attached Traffic Analysis Checklist, Exhibit A; and,
- d) where appropriate, inform the developer of the criteria for preparation of comprehensive traffic studies as outlined in Section Two (2) of the Traffic Analysis Checklist.

3.3 The COUNTY will recommend imposing the mitigation measures requested by the STATE in accordance with Subsection 4.1 and Section V as a condition of the COUNTY's development approval to the extent that such requirements are reasonably related to the impact of the development, and shall include such condition in the COUNTY's development approval where applicable and in accordance with SCC 26B.55.070.

- a) It is the parties' understanding and intent that prior to the issuance of any decisions regarding the STATE's requested mitigation measures, any developer may, pursuant to SCC 26B.57.005, appeal to the COUNTY's Director of Public Works for deviations from the requirements.
- b) The parties further understand and intend that any person aggrieved by a decision imposing mitigation measures in accordance with this AGREEMENT may appeal such a decision pursuant to the procedures of SCC 26B.57.015, except that appeals dealing with permits for access on STATE highways shall be made to the STATE consistent with Section 5.9(d).

c) In cases where the COUNTY, upon reviewing the STATE's requested mitigation, believes that the COUNTY's recommendation may differ from the STATE's request, the COUNTY will work with the STATE to attempt to resolve the differences.

d) In cases where the COUNTY is not recommending the imposition of mitigation measures requested by the STATE, The COUNTY will notify the STATE as soon as possible prior to any decisions by the approving authority.

- 3.4 Any and all mitigation payments collected from a developer for the STATE shall be held by the COUNTY in a separate account, and subsequently transferred to the STATE through a "Local Agency Participating Agreement" when requested by the STATE. A sample of such agreement is depicted in "Exhibit B". The COUNTY shall provide quarterly reports to the STATE on payments held.

#### **IV. STATE'S RESPONSIBILITIES**

- 4.1 a) The STATE shall provide notification to the COUNTY as to whether an application is complete or incomplete for STATE review purposes, based on the attached Traffic Analysis Checklist depicted as "Exhibit A", within fourteen (14) days of the date of the request for review for completeness in accordance with Section 3.1. The STATE's review of applications for completeness shall be limited to whether all items required by the Traffic Analysis Checklist depicted as "Exhibit A" are included as part of the application, not whether the analysis provided is correct or incorrect.
- b) If it is determined by the STATE that a development application within the unincorporated county will impact the STATE's transportation infrastructure and system, the STATE will notify the COUNTY in writing of specific measures reasonably necessary to mitigate said impacts in accordance with the STATE's designated mitigation policies referenced in Section V. Notification of the specific mitigation measures shall be provided by the STATE within twenty-one (21) days of the date of notice of application provided in accordance with Section 3.1, except where notice is for review of an environmental impact statement in which case the review period shall be as established in accordance with WAC 197-11-502. The impact mitigation measures may include, but are not limited to, voluntarily negotiated construction of improvements, voluntarily negotiated payment in lieu of construction, assessment of any adopted mandatory impact mitigation fees, or a transfer of land from the developer to the STATE. The STATE will determine any applicable credits for construction and right of way transfer consistent with Section 5.10 of this Agreement.
- c) If the COUNTY does not receive from the STATE, for a development application, the notification of completeness consistent with 4.1(a) above, then the COUNTY shall assume that the application is complete. If the COUNTY does not receive the STATE's notification of mitigation measures consistent with 4.1(b) above, the

COUNTY shall assume that the STATE has no comments or information relating to potential impacts of the development on STATE facilities and shall not require any mitigation from the development for impacts on STATE facilities. In addition, if the STATE fails to provide comments on the development application consistent with 4.1(b) above, then the STATE shall not file a SEPA appeal for that development application. The provisions of this section do not apply if the COUNTY fails to provide the STATE with notice of the development consistent with Section 3.1 above.

- 4.2 The STATE shall provide to the COUNTY by March 31st of each year a list of current intersection level of service conditions on state intersections where known, and the locations of any safety problems identified in the STATE High Accident Location (HAL) log. This information will be used by the COUNTY to identify known conditions on state facilities at the presubmittal conference for a development. The STATE shall provide periodic updates as more current information becomes available. The STATE may contract with the COUNTY to provide level of service data and analysis by an addendum to this agreement.
- 4.3 The STATE is responsible for reviewing and approving access permits for developments with direct access to state highways, and may condition such developments to correct any safety, operational and standards deficiencies resulting from that access. The STATE will not issue any access permits until the appropriate development approvals have been granted by the COUNTY.
- 4.4 The STATE shall be responsible for individualized analysis, documentation, testimony at COUNTY hearings, and legal review (including the private property protection process of RCW 36.70A.370) related to mitigation requested by the STATE, as appropriate to the development. The STATE shall be responsible for all accounting, administration and compliance with RCW 82.02.020 for mitigation payments collected on behalf of and reported to the STATE in accordance with Section 3.4.
- 4.5
  - a) The STATE shall not use any mitigation received through this agreement to supplant revenues from other sources (including, but not limited to State fuel tax revenues, Federal ISTEAs revenues, State TIA revenues, revenues from mitigation by developments in cities, or any other revenues secured by the State), resulting in resources that would have been allocated to improvements on STATE facilities in unincorporated Snohomish County being allocated instead to STATE facilities in other jurisdictions.
  - b) The STATE will provide the COUNTY with information on development mitigation through regular reports to the COUNTY. An annual report to the COUNTY, due by March 31 of each year, will summarize development mitigation that has occurred through this AGREEMENT. A biennial report, due by March 31, 1998 and every two years thereafter, will summarize for King, Skagit, and Snohomish counties the numbers and kinds of mitigation agreements in place, the jurisdictions

that have and do not have agreements, the amounts and kinds of development mitigation that has occurred, the extent of mitigation in jurisdictions with agreements compared to those without, and the effects of development mitigation on overall allocations of resources.

- 4.6 The STATE will be available to developers to provide technical assistance and explanations of recommendations regarding the mitigation measures for impacts on STATE facilities imposed under this AGREEMENT.
- 4.7 By December 31st of each calendar year, the State shall be responsible for paying bills that have been invoiced by the County for Surface Water Management fees (Watershed Management Area utility fees and Clean Water District utility fees) pursuant to RCW 90.03.525.

## **V. THE STATE’S DESIGNATED REGULATIONS, CODES, MITIGATION POLICIES AND PROCEDURES**

This agreement constitutes the policies and procedures of the STATE under SEPA in accordance with SCC 23.36.030(4), and under Chapter 58.17 RCW, for review and mitigation of the transportation impacts on state highways that are a part of the road system, as defined in SCC 26B.51.100, of any new development that is located within the unincorporated COUNTY. “Road system”, as defined in 26B.51.100 means those existing or proposed public roads whether state, county or city (including freeway interchanges with county roads or city streets and the ramps for those interchanges but excluding freeway mainlines), within: (1) The transportation service area, as defined by the Snohomish county transportation needs report, in which a development is located, except that instead an adjacent transportation service area may apply if determined by the director [of Snohomish county department of public works] to be more appropriate where a development has a greater impact on public roads in an adjacent transportation service area than in the transportation service area in which the development is located; or (2) The area of another county which is adjacent to the transportation service area in which the development is located.

For most developments, determination and mitigation of impacts on the road system of the development as defined in SCC 26B.51.100, in accordance with this agreement, will satisfy the requirements of SEPA for mitigation of development impacts on state highways, recognizing that particular development circumstances may require variation due to development type, location, and proximity to Transportation Service Area boundaries, and other direct, indirect or cumulative impacts.

Sections 5.1 through 5.9 below define the traffic analysis and mitigation requirements of this AGREEMENT. Section 5.1 defines the traffic analysis requirements for developments. Traffic analysis is used to determine a developments impacts and possible mitigation measures. Following the traffic analysis, the STATE may request

proportionate share impact mitigation (Section 5.2), or mitigation for impacts on level-of-service or safety (Section 5.3). As mitigation for level-of-service or safety impacts the STATE may request installation of traffic signals (Section 5.4) or channelization improvements (Section 5.5). Sections 5.6 through 5.9 apply only to developments located adjacent to STATE highways. For developments located adjacent to a STATE highway, the STATE may request frontage improvements (Section 5.6) and/ or transfer of right-of-way (Section 5.7). Setbacks for developments located adjacent to STATE highways will be required consistent with Section 5.8. In addition, access permits from the STATE are required for developments located adjacent to STATE highways consistent with Section 5.9. The STATE will not request, nor will the COUNTY recommend, any mitigation measures falling outside the scope of Sections 5.2 through 5.9.

In order to determine and mitigate the impacts of the traffic generated by a new development, the STATE may request any of the following mitigation measures:

#### 5.1 Traffic Analysis.

a) Traffic analysis, consistent with Exhibit A of this AGREEMENT, for impacts on STATE facilities, will be submitted to the COUNTY as part of the initial development applications for all developments subject to this Agreement. At minimum, traffic analysis will consist of Section One (1) of the Traffic Analysis Checklist, completed and signed by the developer. Comprehensive traffic studies, consistent with Section Two (2) of the Traffic Analysis Checklist, may only be required by the STATE if one of the following two conditions is met: One, the development generates more than fifty (50) PM peak-hour trips; or two, if it is determined that it is likely that the development will add ten or more PM peak hour trips to an LOS F intersection or HAL location. The STATE may waive requirements for comprehensive traffic studies if the STATE determines that all information necessary to assess the impact of the development is available. Any developer may choose to submit a comprehensive traffic study to determine impacts and propose mitigation under this Agreement.

Note, that to obtain STATE access permits, developments located adjacent to STATE highways may have requirements for additional, separate traffic analysis.

b) Trip reduction credits for TDM measures approved by the COUNTY will be used by the STATE in determining traffic impacts on STATE facilities.

c) Following review of the traffic study, the STATE may request supplemental information and analysis as necessary to determine the impacts of the development in accordance with this agreement. Supplemental information may include explanatory

information, detailed documentation or further analysis to clarify or expand on data provided in the traffic study. The requests for supplemental information will be made by the STATE to the COUNTY. The COUNTY will determine if the requested information is reasonably necessary to fairly and accurately determine the development's impacts, and if so, the COUNTY will then request the supplemental information from the developer.

d) Consistent with Section 4.2, the STATE will attempt to identify all LOS F intersections and HAL locations. There may be cases, however, in which the STATE's analysis of a suspected LOS F or HAL location(s) is not complete at the time of the presubmittal conference. In such cases, consistent with section 5.1(a) above, a developer may be required to analyze conditions and impacts at the suspected LOS F or HAL location(s). In such cases the STATE shall provide a credit against the developer's proportionate-share mitigation obligation for the traffic count(s), level-of-service, and/or HAL analysis produced by the developer for the "suspected" intersection(s). The amount of any such credit will be a set rate determined by the STATE based on the STATE's costs in performing comparable analysis.

5.2 Proportionate Share Impact Mitigation: The STATE may ask a development to contribute a proportionate share of programmed capacity improvements to mitigate development impacts .

a) The STATE has determined a rate schedule which is attached hereto as "Exhibit C" and incorporated herein by this reference, based on Average Daily Trip (ADT), for STATE facilities which are identified for capacity improvement, i.e., widening, new signalization or interchange, channelization improvements, etc. This schedule may be updated periodically through amendments to this Agreement. Based on a comprehensive traffic study, a development's proportionate share obligation may be calculated by multiplying the rate by the number of development generated ADTs impacting each STATE capacity improvement and may be satisfied by payment in lieu of construction.

b) Alternatively, a development may choose to have its proportionate share obligation based on an amount determined by the COUNTY and the STATE to fairly represent the average impacts of COUNTY developments on the capacity of STATE facilities. The COUNTY has determined that thirty-six dollars (\$36) per development-generated ADT was the average proportionate share mitigation obligation for capacity impacts to STATE facilities between 1991 and 1996 for COUNTY developments that mitigated capacity impacts to STATE facilities. Any development may satisfy its obligations under this section to contribute a proportionate share of STATE capacity improvements, by making a voluntarily-offered payment in lieu of construction equal to thirty-six dollars (\$36) multiplied by the number of development generated ADTs.

c) The time of payments shall be in accordance with SCC 26B.55.070(5).

d) The STATE will notify the COUNTY of the date that projects identified in Exhibit C have been advertised for bids for construction (i.e., "Ad Date"). The STATE will not request proportionate-share mitigation for a development's impacts to any STATE project whose Ad date comes before the development's regulatory completeness date. Likewise, The COUNTY will not recommend as a condition of development approval, proportionate share obligations for impacts to any STATE projects whose Ad Date comes before the development's regulatory completeness date.

e) In cases in which the Regional Transit Authority (or other transit agency) funds a portion of a STATE improvement listed in Exhibit C, that portion will be excluded from the total cost of the project as shown in Exhibit C and thus, will not be included in the determination of proportionate shares.

f) The list of STATE projects identified in Exhibit C shall not include any projects inside an incorporated city unless that city also has an interlocal agreement with the STATE that has equivalent requirements for proportionate share mitigation for capacity impacts.

5.3 Level of Service (LOS) and Safety: The provisions of this section (5.3) shall apply to safety problem locations or state highway intersections that are located within an unincorporated county area. The provisions of this section (5.3) shall apply to safety problem locations or state highway intersections that are located within an incorporated city only if the city also has an interlocal agreement with the STATE that has equivalent requirements.

a) Any development which will add ten or more PM peak hour trips to an identified safety problem location as identified in the STATE High Accident Location (HAL) log, or to an existing LOS "F" condition at state highway intersections with a county road or another state highway, according to their traffic impact studies; or developments generating more than 50 PM peak hour trips which will cause a LOS "F" condition at state highway intersections with a county road or another state highway according to their traffic impact studies, will be subject to the following conditions:

b) The STATE will request that a condition of development approval be a requirement that improvements to remedy the LOS "F" condition be completed and accepted by the STATE in accordance with the timing requirements of SCC 26B.55.070(6), and if the development will cause a LOS "F" condition at a state highway intersection that it not be approved unless the developer offers to fund or provide the intersection improvements needed to achieve LOS "E", or better. Where the LOS prior to development is "F", the STATE will request that the estimated delay for signalized intersections, or unsignalized intersections with the project be no worse than the pre-development condition. If, through an administrative appeal consistent with SCC 26B.57.005, the COUNTY Public Works Director determines, after

consultation with the STATE, that for reasons beyond the control of the developer, construction of improvements under this section can not be completed prior to approval for occupancy or final inspection, then the Director may allow the developer to bond for the required improvements.

c) The STATE may designate intersections as being at ultimate capacity where the STATE determines that excessive expenditure of funds is not warranted for the purpose of maintaining level of service, or where the only solution to a level of service problem is signalization and traffic signal spacing requirements or other criteria are not met. Where the STATE has designated an intersection as being at ultimate capacity the state will not require improvements to maintain level of service but may instead request improvements reasonably related to the impact of the development to address intersection operational and safety issues and/or improvement of alternate routes.

d) The STATE may request, on a case by case basis, due to the impacts of a development on an identified safety problem location as identified in the STATE High Accident Location (HAL) log and the severity of the safety problem at the HAL location, that a condition of development approval be a requirement that improvements to remedy the safety problem be completed and accepted by the STATE in accordance with the timing requirements of SCC 26B.55.070(6).

e) When an intersection has been designated as LOS "F," and there is absolutely no additional improvement that can be made, the STATE will not object to a development which impacts that intersection.

f) When an intersection has been designated as a HAL, and there is absolutely no additional improvement that can be made, the STATE will not object to a development which impacts that intersection.

5.4 Installation of Traffic Signal: As mitigation of impacts on level of service or safety in accordance with Section 5.3, or at an access connection, the STATE may ask one or a group of developers for signalization of a state highway intersection to mitigate traffic impacts identified by the development's traffic study. Request for signalization may also be submitted by a developer or the COUNTY. Prior to request or approval of any signalization, the guidelines for desirable spacing which are addressed in chapter 468-52 of the Washington Administrative Code (WAC) and at least one of the MUTCD signal warrants must be met.

5.5 Channelization Revisions: The State may ask a development for channelization improvements at a STATE intersection, e.g., addition of left-turn or right-turn lanes, as mitigation of impacts on LOS or HALs in accordance with Section 5.3, or at an access connection, or if warranted according to the WSDOT Design Manual referenced in Section 5.13. Improvements shall be constructed according to the standards in the WSDOT Design Manual. Request for channelization may also be submitted by a developer or the COUNTY. A channelization plan for such revisions must be

prepared and submitted for STATE's approval. Exhibit D, the Channelization Plan Checklist, attached hereto and incorporated herein by this reference, provides guidelines on the preparation of an adequate channelization plan.

## 5.6 Frontage Improvements

- a) The STATE may ask for frontage improvements, and associated roadway widening, along a development's frontage on a state highway.
- b) The frontage improvements shall be based upon identified impacts to the state highway system by the developer's project. The frontage improvements shall conform to state highway design standards. The time of construction shall be in accordance with SCC 26B.55.070(6).
- c) Full standard frontage improvements conform to "urban" standards (i.e., curb, gutter, and sidewalk) inside the COUNTY's adopted urban growth areas and to "rural" standards (i.e., paved shoulder) outside the COUNTY's adopted urban growth areas. The STATE may determine, based on engineering reasons, that a development shall construct full standard, interim, or minimum frontage improvements. When an engineering reason, as described below, precludes the construction of full standard frontage improvements, interim or minimum frontage improvements may be required. Interim frontage improvements shall consist of improvements less than full frontage improvements and shall be determined on a case-by-case basis by the STATE to address the specific needs of the situation. Minimum frontage improvements shall consist of paved driveway aprons at each access point along the development's frontage. In addition, where determined necessary by the STATE to provide a refuge area for pedestrians and/or pullout area for service vehicles, a shoulder shall be constructed for ten feet along the departure side of the driveway. The shoulder shall be constructed up to eight feet wide (as determined by the STATE) and shall include a 3:1 paved transition taper which, where necessary, will be constructed beyond the development's frontage as right-of-way allows.
- d) Engineering reasons which may preclude the construction of full standard frontage improvements may include the following:
  - i) The probability of horizontal realignment of the road precludes the building of full frontage improvements in their ultimate horizontal location.
  - ii) The probability of vertical realignment precludes the building of full frontage improvements in their ultimate vertical location.
  - iii) The parcel abuts an arterial road which will ultimately include four or more lanes and construction of full frontage improvements at their ultimate location would create a severe discontinuity along the roadway.
  - iv) The road is scheduled for construction within the next two years and hence it would be more efficient for the STATE to construct the full frontage improvements as part of its construction project for the entire road.
  - v) The parcel abuts a road in the rural area with less than one half (1/2) of a mile of frontage, and no other full standard frontage improvements exist within one half

(1/2) of a mile of the development, nor are anticipated to be constructed within one half (1/2) of a mile of the development within the next two years, and the frontage is not within one half (1/2) mile of an existing or proposed public facility such as a school, park, bus stop or walkway, or other attractor such as a neighborhood business, to which pedestrian access should be provided.

vi) The parcel abuts a road in the urban area with less than one quarter (1/4) of a mile of frontage, and no other full standard frontage improvements exist within one quarter (1/4) of a mile of the development, and 90% of parcels within one quarter (1/4) of a mile of the development are built out with little potential of infill development or redevelopment within the next six years, except for construction of accessory apartments, and the frontage is not within one quarter (1/4) mile of an existing or proposed public facility such as a school, park, bus stop or walkway, or other attractor such as a neighborhood business, to which pedestrian access should be provided.

vii) There are other significant reasons as determined by the STATE which may also preclude the construction of full standard frontage improvements at the time of development.

#### 5.7 Right of Way Requirements

a) In situations where a property is located adjacent to a state highway programmed for capacity or safety improvements or additional right of way is required for improvements in accordance with Section 5.3, 5.4, 5.5 or 5.6, the STATE may request transfer to the STATE of right of way along the highway to conform the development site to the ultimate width or design of that highway where such transfer is found to be reasonably necessary as a direct result of the proposed development. Documents transferring property interests to the STATE shall be submitted by the developer to the STATE for review and recording. The time of transfer shall be in accordance with SCC 26B.55.070(7).

b) Where transfer of right of way cannot be reasonably required as a direct result of the proposed development but such right of way is necessary for future expansion of the state highway system, the STATE will provide the developer with information about the STATE's plans and designs for the future highway expansion. However, the STATE may not require transfer of additional right-of-way for future highway expansions when it is not reasonably required as a direct result of the development. Nothing in this Agreement precludes the STATE and the developer from executing a separate agreement for the transfer of right of way needed by the STATE for future highway expansion.

#### 5.8 Setback Requirements: Setbacks shall be established with respect to the right of way line after any right-of-way transfer to the STATE.

## 5.9 Access Connections

- a) An access connection permit from the STATE shall be required for any development's proposed access onto a state highway in accordance with RCW 47.32.150 and Chapter 47.50 RCW. All access connections to state highways shall conform to the STATE's Highway Access Management regulations stated in RCW 47.50 and chapters 468-51 and 468-52 of the Washington Administrative Code (WAC).
- b) Any request from the COUNTY or a development for an access connection to a state highway established as a limited access or partial limited access area, shall be processed according to the regulations listed under section 1420.09 of the State Design Manual. As addressed under this section of the Design Manual, such requests, if approved, may require compensation payment to purchase back the access rights of that property from the STATE.
- c) Review of access permits shall be coordinated with STATE requested mitigation, the access and transportation circulation requirements of SCC 26B.52.085 and SCC 26B.55.055, and permits of other agencies with jurisdiction over transportation issues in accordance with SCC 26B.52.170. In cases where STATE access requirements conflict with COUNTY or other access requirements the COUNTY will coordinate a meeting between affected parties to help resolve the issues.
- d) Appeals of decisions on access permits for STATE highways shall be through the STATE consistent with WAC-468 51-150.

## 5.10 Credits Against Proportionate-Share Obligations

- a) Where the value of any improvements required in accordance with Section 5.3, 5.4, 5.5 or 5.6, or the value of any right of way to be transferred to the STATE in accordance with Section 5.7, is part of the cost of a capacity improvement included in Exhibit C of this Agreement, developers shall receive credit against their proportionate share obligations.
- b) The STATE will determine credits for construction and right-of-way transfer as follows:
  - i) The developer's proportionate share obligation shall be determined based on Section 5.1 of this Agreement.
  - ii) The STATE will document that the developer has offered to transfer right-of-way or construct improvements that are part of the STATE's improvements identified in Exhibit C.
  - iii) The value of any right-of-way to be transferred is documented by the STATE based on recent comparable transfers and consistent with the values used by the STATE to estimate the costs of the improvements included in Exhibit C. Where

provided by the developer, however, the value of right-of-way will be based on an appraisal no more than two years old, performed by a professional appraiser, licensed in the State of Washington.

iv) The value of any construction will equal the costs of actual expenditures by the developer and shall be documented with copies of receipts or contracts.

v) The documented values for right-of-way and construction shall be subtracted from the development's total proportionate share obligation.

vi) Values for right-of-way transfers are subtracted first. Then, if a balance remains, values for construction are subtracted.

vii) If the values for right-of-way and construction equal or exceed the development's total proportionate share obligation, then the total proportionate share obligation shall be zero.

viii) In cases where the values of right-of-way transfers exceed the proportionate share obligations, the STATE shall document that the right-of-way transfer is reasonably necessary as a direct result of the development.

ix) Uncredited costs incurred by developments for construction may be eligible for latecomers agreements.

5.11 Voluntary Agreements and Developer Agreements: Any proportionate share impact mitigation payment to be made in accordance with Section 5.2 shall be the subject of a voluntary agreement between the developer and the STATE. The STATE shall provide developers with a standardized form which developers may use for these voluntary agreements. A sample of such agreement is attached as Exhibit E. Any improvements to be constructed within the right of way of a state highway shall be the subject of a two party developer agreement between the developer and the STATE, or a three party agreement between the developer, the COUNTY and the STATE.

5.12 Determination of Developer Obligations: The requirements of SCC 26B.55.010(1), (2), (3), (4) and (7) shall apply in the determination of developer obligations. These provisions address time of determination, developer proposal of mitigation, validity of mitigation measures imposed, reinvestigation of traffic impacts and requests to amend a proposed development.

5.13 References: Policies, standards and criteria for access, mitigation and construction include the documents listed below. The edition used for review of an application shall continue to apply for the duration of any approval or permit to the extent that it is an element of the approval or permit. Any proposed work by a developer within the STATE right of way must be approved by the STATE and comply with the latest edition of the following state and federal manuals, standards and codes:

MS22-01, Washington State Department of Transportation (WSDOT) Design Manual.

MS22-87, WSDOT Utilities Manual.  
MS23-03, WSDOT Hydraulics Manual.  
M21-01, WSDOT Standard Plan.  
M41-01, WSDOT Construction Manual.  
M51-02, WSDOT Traffic Manual.  
M26-01, WSDOT Right-Of-Way Manual.  
Highway Capacity Manual (Special Report 209), Transportation Research Board.  
MUTCD, Federal Highway Administration Manual On Uniform Traffic Control Devices.  
WAC 468-51 & WAC 468-52, Washington Administrative Codes - Highway Access Management.

## **VI. REVIEW AND INSPECTION COST**

The COUNTY shall inform the developer that the STATE shall be imposing fees reflecting the actual cost of reviewing and inspecting the development plans and the STATE shall bill the developer directly for those review cost. Developers may contact the STATE to establish the approximate cost of the review.

## **VII. SCOPE OF AGREEMENT - DEVELOPMENTS COVERED**

This Agreement applies to all developments as defined by SCC 26B.51.040 that are determined by the COUNTY to be a complete application on or after 90 days after the effective date of this AGREEMENT.

## **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 Meetings Act, State Environmental Policy Act, Annexation Statutes and other applicable State or local law.

## **IX. RELATIONSHIP TO FUTURE PLANNING AND RECIPROCAL IMPACT MITIGATION AGREEMENTS**

The STATE 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 Growth Management Act of 1990 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 STANDARDS AND POLICIES**

The COUNTY and the STATE will continue to work toward the establishment of coordinated transportation system development standards and development mitigation policies and requirements as required by State law. Regional level-of-service standards have not been adopted in accordance with RCW 47.80.030 and are the subject of the Legislative Transportation Committee level-of-service study completed in February 1995. The COUNTY and the STATE will periodically review their existing mitigation policies for consistency and coordination in the implementation of this Agreement, and will promptly notify the other in the event of any material change in such policies. In that event, the parties agree to amend this Agreement as appropriate.

## **XI. EFFECTIVE DATE, DURATION AND TERMINATION**

This Agreement shall be effective five (5) days after approval by the STATE and signature by the Snohomish County Executive. The agreement may be modified by written amendment to the agreement executed by both parties, or may be terminated in whole or in part by thirty (30) days advance written notice provided by either party. Any amendments and termination shall be executed in the same manner as provided by law for the execution of this Agreement.

## **XII. LEGAL RELATIONS**

The provisions of this Agreement shall be administered by the Washington State Department of Transportation for the STATE and the Departments of Public Works and Planning and Development Services for the COUNTY. All real and personal property and funds shall be acquired, held, administered, and disposed by the STATE or the COUNTY in their own name in accordance with applicable laws.

Each party shall be responsible for their own administrative determinations, quasi-judicial decisions, and legislative determinations arising out of the performance of this Agreement. The STATE is responsible for compliance with RCW 36.70A.370 and RCW 82.02.020, et seq., for STATE-requested development conditions or mitigation. The STATE assumes the risk and responsibility for any liability and damages arising in whole or in part from STATE actions in processing land development applications, requesting impact mitigation or conditions, and administering the STATE's mitigation program, including funds paid to the STATE. The fact that conditions were imposed or funds collected pursuant to a permit, approval, or document issued by the COUNTY

shall not constitute an intervening or superseding cause relieving the STATE of responsibility or liability. The performance of services pursuant to this Agreement shall not constitute an assumption by the COUNTY of any STATE responsibility for planning, environmental review, design, construction, operation, or maintenance of any STATE facilities.

The STATE agrees to make STATE staff and experts available for support in any challenges to STATE-requested mitigation and/or compliance with RCW 82.02.020. The STATE agrees to cooperate in the defense of challenges to any land development conditions, mitigation or other decisions based on STATE review or recommendation.

In the event of liability or damages of any nature whatsoever arising out of the performance of this Agreement by the COUNTY and the STATE caused by or resulting from the concurrent actions or negligence of the COUNTY and the STATE, their officers, officials, employees, and agents, each party shall provide their own defense and be liable for damages, costs, fees or other amounts to the extent that the party's actions or negligence are the basis for imposition of liability or damages.


### XIII. SEVERABILITY

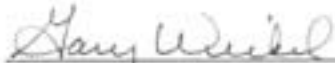
If any provision of this agreement or its application to any person or circumstance is held invalid, the remainder of the provisions and/or the application of the provisions to other persons or circumstances shall not be affected.

IN WITNESS WHEREOF, the parties have signed this Agreement, effective on the date established in Section XI of this Agreement.

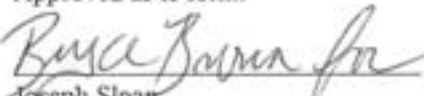
Washington State Department  
of Transportation (WSDOT)

Snohomish County

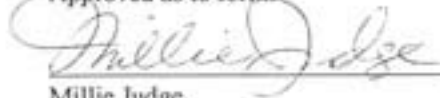
  
John Okamoto  
WSDOT Regional Administrator  
Dated this 5 day of July, 1997.

  
for Robert J. Drewel  
Snohomish County Executive  
Dated this 17<sup>th</sup> day of Sept., 1997.  
**GARY WEIKEL**  
Executive Director

Approved as to form:

  
Joseph Sloan  
Office of the State Attorney General  
Attorney for the WSDOT

Approved as to form:

  
Millie Judge  
Deputy Prosecuting Attorney  
Attorney for Snohomish County

7/23/97 D-11