

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 1/27/2014

AGENDA ITEM: Interlocal Agreement Between Snohomish County and the City of Marysville Concerning the Completion of an Intersection Justification Report for a New Intersection at SR 529 and Interstate 5 South of the City of Marysville	
PREPARED BY: DEPARTMENT: Executive	DIRECTOR APPROVAL:
ATTACHMENTS: ILA Between Snohomish Co. and the City of Marysville for the Completion of an IJR for a New Intersection at SR529/I5 South	
BUDGET CODE:	AMOUNT:

SUMMARY:

SR 528 has been and continues to be a vital east/west connection for people traveling to and from the area. The continuous movement of the connection is challenged by the BNSF railroads main north/south track that runs through and bisects the City between I-5 and SR 529. The new rail terminal "Gateway Pacific Terminal Project" proposed in Whatcom County has the potential of severe backups for traffic that transits through the City.

To address this situation the City has determined the need for an additional connection to I-5 from the south end of the City at SR 529 and has identified it as the I-5/SR 529 Interchange Expansion Project. This new intersection would connect I-5 and SR 529 which would bypass the train tracks reducing the traffic backups caused by the existing BNSF trains.

The I-5/SR 529 Interchange Expansion Project identifies two additional ramp connections between I-5 and SR 529. The first ramp will provide a direct freeway to freeway connection from the northbound I-5 mainline to the northbound SR 529 via a new system interchange ramp. The second ramp will provide a direct freeway to freeway connection from southbound SR 529 to southbound I-5 via a new system interchange ramp.

The project will benefit both City and County Citizens and therefore the City has negotiated with Snohomish County to assist with phase one of the project. The ILA is for phase one of the project, which the City will complete a preliminary design to approximately the 30% level and the County will provide partial funding in the amount of \$500,000 (\$140,000 in 2014 and \$350,000 in 2015).

RECOMMENDED ACTION:

Staff recommends that Council authorize the Mayor to enter into an interlocal agreement with Snohomish County for the Completion of an Intersection Justification Report for a New Intersection at SR 529 and Interstate 5 South of the City of Marysville.

1 INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE CITY
2 OF MARYSVILLE CONCERNING THE COMPLETION OF AN INTERSECTION
3 JUSTIFICATION REPORT FOR A NEW INTERSECTION AT SR 529 AND
4 INTERSTATE 5 SOUTH OF THE CITY OF MARYSVILLE
5

6 This INTERLOCAL AGREEMENT concerning the completion of an Intersection
7 Justification Report for a new intersection at SR 529 and Interstate 5 (I-5) south of the
8 City of Marysville (the "Agreement"), is made and entered into by and between
9 SNOHOMISH COUNTY, a political subdivision of the State of Washington (the
10 "County"), and the CITY OF MARYSVILLE, a Washington municipal corporation (the
11 "City") pursuant to Chapter 39.34 RCW.

12 **RECITALS**

- 13 **A.** Due to the extensive critical areas between the City and the City of Everett, SR
14 528 (4th Street) within the City, is a vital east/west connection for people traveling
15 to and from the unincorporated County area east and northeast of the City to
16 southbound I-5 and SR 529.
- 17 **B.** The Burlington Northern Santa Fe (BNSF) main north/south track runs through
18 and bisects the City between I-5 and SR 529.
- 19 **C.** A new rail terminal project, commonly known as the "Gateway Pacific Terminal
20 Project," is proposed in Whatcom County, which will generate 18 daily one mile
21 plus trains hauling coal through the City and which will in turn create severe and
22 significant backups to City and County traffic that transits through the City .
- 23 **D.** The City has determined the need for an additional connection to I-5 south of the
24 City and has identified it as the I-5/SR 529 Interchange Expansion Project (the
25 "Interchange Expansion Project").
- 26 **E.** The Interchange Expansion Project is needed to alleviate the traffic backups at I-5
27 caused by existing BNSF trains transiting thorough the City. These traffic
28 backups will be significantly increased with the additional trains hauling coal to
29 the Gateway Pacific Terminal in Whatcom County.
- 30 **F.** Through the Interchange Expansion Project, the City is proposing to add two
31 additional ramp connections between I-5 and SR 529. The first ramp will provide
32 a direct freeway-to-freeway connection from northbound (NB) I-5 mainline to
33 northbound (NB) SR 529 via a new system interchange ramp. The second ramp
34 will provide a direct freeway to freeway connection from southbound (SB) SR
35 529 to SB I-5 via a new system interchange ramp. See Exhibit A for a complete
36 Interchange Expansion Project description.
- 37 **G.** The City, as phase one of the Interchange Expansion Project, will complete a
38 preliminary design to approximately the 30% level which will include
39 environmental review and completion of an Intersection Justification Report (the
40 "Project").

- 1 H. The County has reviewed the need for the Project and has determined it has
- 2 significant benefits to County citizens.
- 3 I. The City will be the lead Agency in completing the Project.
- 4 J. The County and the City anticipate that the Project will be completed by the end
- 5 of 2015.
- 6 K. Any additional costs or responsibilities exceeding the costs or responsibilities
- 7 established in this Agreement shall require either an amendment to this
- 8 Agreement or a new Interlocal Agreement.

9 **AGREEMENT**

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

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

14 1.1 Purpose of Agreement. This Agreement is authorized by and entered into
 15 pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW. The purpose and intent
 16 of this Agreement is for the County and the City to work together efficiently and
 17 effectively. This Agreement establishes the County’s responsibilities in assisting the City
 18 in completing the Project.

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

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

25 1.4 Administrators. Each party to this Agreement shall designate an
 26 individual (an “Administrator”), which may be designated by title or position, to oversee
 27 and administer such party’s participation in this Agreement. The parties’ initial
 28 Administrators shall be the following individuals:

29 County’s Initial Administrator:

City’s Initial Administrator:

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

Gloria Hirashima, City Administrator
 The City of Marysville
 1049 State Avenue
 Marysville, WA 98270
 360-363-8088
 ghirashima@marysvillewa.gov

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

4 **2. Effective Date and Duration**

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

13 **3. City Responsibilities**

14 3.1 Lead Agency. Pursuant to WAC 197-11-926(1), the City shall serve as
15 the lead agency for the Project and shall be responsible for all aspects of the Project.

16 3.2 Invoicing. The City shall invoice the County separately for each of the
17 two payments. Each invoice shall be submitted to the County no earlier than November
18 1st of 2014 and 2015. The City shall include in the November 2014 invoice
19 documentation that the City has approved a contract for a consultant and commenced
20 work on the Project. The City shall include in the November 2015 documentation that
21 the City has substantially completed work on the Project.

22 3.3 Records. The City shall maintain accurate records related to this Project
23 for a period of three (3) years following final payment.

24 **4. County Responsibilities**

25 4.1 Amount of Funds. The County's sole responsibility in the Project is to
26 provide partial funding to the City in the amount of Five Hundred Thousand and 00/100
27 Dollars (\$500,000.00). The funds shall be paid in two installments. The first payment
28 shall be One Hundred Forty Thousand and 00/100 Dollars (\$140,000.00) paid in 2014.
29 The second payment shall be Three Hundred Sixty Thousand and 00/100 Dollars
30 (\$360,000.00) paid in 2015.

31 4.2 Payment of invoice. Unless the County delivers written notice to the City
32 disputing the amount of an invoice, the County shall make payment on all invoices
33 submitted by the City within thirty (30) days following receipt by the County of said
34 invoices.
35

1 **5. Indemnification/Hold Harmless**

2 **5.1 City's Indemnification of County.** The City shall indemnify, defend and
3 hold the County harmless from and against all liabilities, suits, losses, costs, damages,
4 claims, expenses, penalties or charges, including, without limitation, reasonable
5 attorneys' fees and disbursements, that the County may incur or pay out by reason of: (i)
6 any accidents, damages or injuries to persons or property occurring in, on or around the
7 Project Area during the term of this Agreement, but only to the extent the same are
8 caused by any negligent or wrongful act of the City; or (ii) any breach or Default (as such
9 term is defined in Section 9.1 below) of the City under this Agreement.

10 **5.2 Waiver of Immunity Under Industrial Insurance Act.** The indemnification
11 provisions of Section 5.1 and Section 5.2 above are specifically intended to constitute a
12 waiver of each party's immunity under Washington's Industrial Insurance Act, Title 51
13 RCW, as respects the other party only, and only to the extent necessary to provide the
14 indemnified party with a full and complete indemnity of claims made by the indemnitor's
15 employees. The parties acknowledge that these provisions were specifically negotiated
16 and agreed upon by them.

17 **5.3 Survival.** The provisions of this Section 5 shall survive the expiration or
18 earlier termination of this Agreement.

19 **6. Insurance**

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

25 **7. Compliance with Laws**

26 In the performance of its obligations under this Agreement, each party shall comply with
27 all applicable federal, state, and local laws, rules and regulations.
28

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

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

1 **9. Default and Remedies**

2 9.1 Default. If either the County or the City fails to perform any act or
3 obligation required to be performed by it hereunder, the other party shall deliver written
4 notice of such failure to the non-performing party. The non-performing party shall have
5 thirty (30) days after its receipt of such notice in which to correct its failure to perform
6 the act or obligation at issue, after which time it shall be in default (“Default”) under this
7 Agreement; provided, however, that if the non-performance is of a type that could not
8 reasonably be cured within said thirty (30) day period, then the non-performing party
9 shall not be in Default if it commences cure within said thirty (30) day period and
10 thereafter diligently pursues cure to completion.

11 9.2 Remedies. In the event of a party’s Default under this Agreement, then
12 after giving notice and an opportunity to cure pursuant to Section 8.1 above, the non-
13 Defaulting party shall have the right to exercise any or all rights and remedies available
14 to it in law or equity.

15 **10. Early Termination**

16 10.1 Notice of Termination. Except as provided in Section 9.2 below, either
17 party may terminate this Agreement at any time, with or without cause, upon providing
18 not less than thirty (30) days advance written notice to the other party pursuant to Section
19 10 of this Agreement. The termination notice shall specify the date on which the
20 Agreement shall terminate.

21 10.2 Lack of Funding. This Agreement is contingent upon governmental
22 funding and local legislative appropriations. In the event that funding from any source is
23 withdrawn, reduced, limited, or not appropriated after the effective date of this
24 Agreement, this Agreement may be terminated by either party by delivering not less than
25 thirty (30) days advance written notice to the other party pursuant to Section 10 of this
26 Agreement. The termination notice shall specify the date on which the Agreement shall
27 terminate.

28 10.3 No further payment. In the event this Agreement is terminated no
29 payment shall be made by the County following the effective date of termination unless
30 authorized in writing by the County.

31 **11. Notices**

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

1 delivered by email shall be deemed given as of the date and time received by the
2 recipient.

3 **12. Miscellaneous**

4 12.1 Entire Agreement; Amendment. This Agreement constitutes the entire
5 agreement between the parties regarding the subject matter hereof, and supersedes any
6 and all prior oral or written agreements between the parties regarding the subject matter
7 contained herein. This Agreement may not be modified or amended in any manner
8 except by a written document signed by the party against whom such modification is
9 sought to be enforced.

10 12.2 Governing Law and Venue. This Agreement shall be governed by and
11 enforced in accordance with the laws of the State of Washington. The venue of any
12 action arising out of this Agreement shall be in the Superior Court of the State of
13 Washington, in and for Snohomish County. In the event that a lawsuit is instituted to
14 enforce any provision of this Agreement, the prevailing party shall be entitled to recover
15 all costs of such a lawsuit, including reasonable attorney's fees.

16 12.3 Interpretation. This Agreement and each of the terms and provisions of
17 it are deemed to have been explicitly negotiated by the parties, and the language in all
18 parts of this Agreement shall, in all cases, be construed according to its fair meaning and
19 not strictly for or against either of the parties hereto. The captions and headings in this
20 Agreement are used only for convenience and are not intended to affect the interpretation
21 of the provisions of this Agreement. This Agreement shall be construed so that wherever
22 applicable the use of the singular number shall include the plural number, and vice versa,
23 and the use of any gender shall be applicable to all genders.

24 12.4 Severability. If any provision of this Agreement or the application
25 thereof to any person or circumstance shall, for any reason and to any extent, be found
26 invalid or unenforceable, the remainder of this Agreement and the application of that
27 provision to other persons or circumstances shall not be affected thereby, but shall instead
28 continue in full force and effect, to the extent permitted by law.

29 12.5 No Waiver. A party's forbearance or delay in exercising any right or
30 remedy with respect to a Default by the other party under this Agreement shall not
31 constitute a waiver of the Default at issue. Nor shall a waiver by either party of any
32 particular Default constitute a waiver of any other Default or any similar future Default.

33 12.6 No Assignment. This Agreement shall not be assigned, either in whole
34 or in part, by either party without the express written consent of the other party, which
35 may be granted or withheld in such party's sole discretion. Any attempt to assign this
36 Agreement in violation of the preceding sentence shall be null and void and shall
37 constitute a Default under this Agreement.

38 12.7 Warranty of Authority. Each of the signatories hereto warrants and
39 represents that he or she is competent and authorized to enter into this Agreement on
40 behalf of the party for whom he or she purports to sign this Agreement.

1 12.8 No Joint Venture. Nothing contained in this Agreement shall be
2 construed as creating any type or manner of partnership, joint venture or other joint
3 enterprise between the parties.

4 12.9 No Third Party Beneficiaries. This Agreement and each and every
5 provision hereof are for the sole benefit of the City and the County. No other persons or
6 parties shall be deemed to have any rights in, under or to this Agreement.

7 12.10 Execution in Counterparts. This Agreement may be executed in two or
8 more counterparts, each of which shall constitute an original and all of which shall
9 constitute one and the same agreement.

10
11 *[The remainder of this page is intentionally left blank.]*
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1 IN WITNESS WHEREOF, the parties have executed this Agreement as of the last
2 date written below.

3
4
5 **SNOHOMISH COUNTY:**

CITY OF MARYSVILLE:

6
7
8 By: _____
9 John Lovick Date
10 Snohomish County Executive

By: _____
Jon Nehring Date
Mayor

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14 Approved as to Form:

Approved as to Form:

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17 _____ 01-24-14
18 Deputy Prosecuting Attorney

City Attorney

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EXHIBIT A

**INTERCHANGE EXPANSION PROJECT DESCRIPTION
AS PROVIDED BY THE CITY**

This Interchange Expansion Project proposes to add two additional ramps connections between I-5 and SR 529. The first ramp will provide a direct freeway to freeway connection from northbound (NB) I-5 mainline to northbound (NB) SR 529 via a new system interchange ramp. The second ramp will provide a direct freeway to freeway connection from southbound (SB) SR 529 to SB I-5 via a new system interchange ramp. Both ramps will include all physical and safety improvements necessary on both I-5 and SR 529 required to meet current WSDOT design requirements and standards (unless otherwise deviated). These additional improvements include lighting, ITS, signing, and all required bridge and roadway widening associated with WSDOT channelization plan requirements. In addition, this project proposed to include an added northbound SR 529 deceleration/left turn lane upstream of the existing SR 529 Ebey Slough bridge in order to provide for a NB 529 to SB I-5 connection.

See Figure 1 below represents a graphical sketch of proposed interchange revision.



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Figure 1