RESOLUTION NO. 1858

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH PIERCE COUNTY REGARDING CANYON ROAD EAST NORTHERLY EXTENSION PROJECT RIGHT OF WAY ACQUISITION

WHEREAS, Pierce County is undertaking a project to establish a County arterial to extend the existing Canyon Road East from its existing northerly terminus at Pioneer Way East, across the Puyallup River, to 70th Avenue (the “Project”); and

WHEREAS, the Project improvements will benefit the City by providing a new arterial connection to 70th Avenue East by constructing a bridge across the Puyallup River (replacing the Milroy Bridge), allowing both vehicle and freight traffic increased mobility to the surrounding area; and

WHEREAS, the Project improvements extend beyond the existing right-of-way boundaries, and the County deems it necessary to acquire land from multiple property owners prior to the construction, including property within the municipal boundaries of the City; and

WHEREAS, the County is the Lead Agency in completing the Design Engineering, Right-of-Way, and Construction phases of the Project including acquiring all necessary property rights; and

WHEREAS, the purpose of the attached agreement is for the City to consent to and grant to the County the authority to pursue right-of-way acquisitions for the Project on tax parcels within the city limits including, but not limited to, the work of obtaining title reports and appraisals, making offers, conducting negotiations, preparing and executing closing documents, and initiating condemnation proceedings if property needed for the project cannot be acquired through voluntary negotiations; now therefore

BE IT RESOLVED that the Fife City Council hereby authorizes the City Manager to execute the Agreement between Pierce County and the City of Fife Regarding the Canyon Road East Northerly Extension Project for CRP 5498 Right of Way Acquisition substantially in the form attached hereto as Exhibit A. The City Manager is further authorized to make minor changes to the Agreement before signing that are consistent with scope and intent as set forth in Exhibit A.

ADOPTED by the City Council at an open public meeting held on the 12th day of February, 2019.

Kim Roscoe, Mayor

Attest:

Brodie Rota, City Clerk

RESOLUTION NO. 1858
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 AGREEMENT BETWEEN PIERCE COUNTY AND THE CITY OF FIFE REGARDING THE CANYON ROAD EAST NORTHERLY EXTENSION PROJECT FOR CRP 5498 RIGHT-OF-WAY ACQUISITION

THIS AGREEMENT is entered, pursuant to Revised Code of Washington (RCW) 36.89.010 through 36.89.050, this day by and between PIERCE COUNTY, a political subdivision of the State of Washington (herein referred to as “the COUNTY”), and the CITY OF FIFE, a municipal subdivision of the State of Washington (herein referred to as “the CITY”); it shall not be binding and effective unless and until it is approved by the respective legislative bodies of the COUNTY and the CITY.

WHEREAS, the Pierce County Council adopted the 2018-2023 Pierce County Transportation Improvement Plan (TIP) effective November 25, 2017, by passage of Ordinance 2017-63s, to identify transportation needs and services throughout the COUNTY, and the TIP recommends a new arterial connection in the north-central area of Pierce County and across the Puyallup River as “High Priority Project”; and

WHEREAS, the Pierce County Council established the Canyon Road East Northerly Extension (herein referred to as “the Corridor”) by passage of Ordinance 98-109S, effective February 4, 1999, thereby establishing a County arterial to extend the existing Canyon Road East from its existing northerly terminus at Pioneer Way East, across the Puyallup River, to 70th Avenue East; and

WHEREAS, the 2018-2023 TIP identifies County Road Project (CRP) 5498 as Canyon Road East – Northerly Extension from 52 Street East / 62 Avenue East to North Levee Road East / 70 Avenue East (herein referred to as “the Project”); and

WHEREAS, the Project improvements will benefit the CITY by providing a new arterial connection to 70th Avenue East by constructing a new bridge across the Puyallup River, replacing the Milroy Bridge, and allowing both vehicle and freight traffic increased mobility to the surrounding area; and

WHEREAS, Contract #09-77376 between the COUNTY and the CITY, establishes the rights, duties and responsibilities of the parties with regards to the repair and maintenance of the Milroy Bridge and provides that if the COUNTY determines to remove or replace the Bridge, the COUNTY shall be primarily responsible for the replacement and/or removal expense, but the CITY “shall pay a fair and equitable portion of any local government match required pursuant to subsequent negotiations between the CITY and the COUNTY and consistent with the terms of any Federal or State grant obtained for bridge replacement or removal;” and

WHEREAS, development of the environmental documents, right-of-way plans, and construction plans for the Corridor projects are currently underway; and

WHEREAS, the project improvements extend beyond the existing right-of-way boundaries, and the COUNTY deems it necessary to acquire land from multiple property owners prior to the construction of CRP 5498; and

WHEREAS, the northern portion of the Project beyond the Puyallup River is outside unincorporated Pierce County and within the municipal boundaries of the CITY; and

WHEREAS, some of the land needed for the proposed right-of-way includes property owned by the CITY; and
WHEREAS, the COUNTY is the Lead Agency in completing the Design Engineering, Permitting, Right-of-Way, and Construction phases of the Project including acquiring all necessary property rights as set forth in this Agreement; and

WHEREAS, the CITY and COUNTY understand and agree that additional Agreements will be necessary for the engineering, permitting and construction of the Project; and

WHEREAS, the CITY is one of the Project stakeholders, and the CITY and COUNTY will be jointly responsible for reaching concurrence on design engineering, right-of-way, and construction;

NOW, THEREFORE, in consideration of the terms and conditions hereinafter contained, it is mutually agreed by and between the COUNTY and the CITY as follows:

SECTION 1.0 PURPOSE
The purpose of this Agreement is for the CITY to consent to and grant to the COUNTY the authority to pursue right-of-way acquisitions for the Project on tax parcels within the city limits including, but not limited to, the work of obtaining title reports and appraisals, making offers, conducting negotiations, preparing and executing closing documents, and initiating condemnation proceedings if property needed for the project cannot be acquired through voluntary negotiations. This consent and grant of authority is made pursuant to RCW 36.89.010-050.

SECTION 2.0 DEFINITIONS
2.1 Right-of-Way: Comprised of the property and property rights the COUNTY needs to construct improvements for the Project.

2.2 Right-of-Way Costs: Include but are not limited to administrative costs, appraisal, and other consultant fees, negotiation costs, condemnation costs, legal fees (internal and/or external), attorney’s fees and costs if awarded, damages or cost to cure, easements, or other construction rights.

SECTION 3.0 COUNTY RESPONSIBILITIES
3.1 The COUNTY shall act as the Lead Agency to complete right-of-way acquisitions for the Project, including those within the municipal boundaries of the CITY. Acquisitions shall be governed by applicable local, state, and federal guidelines including the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Such acquisition authorization includes making offers to, negotiating agreements with, and commencing any actions under eminent domain to acquire the property necessary for the Project.

3.2 The COUNTY, in its sole discretion, may authorize condemnation proceedings through action by the Pierce County Council. For condemnation proceedings involving land within the city limits, the COUNTY shall notify the CITY and may request that the CITY Council also make findings that the property rights to be condemned are necessary for the Project.

3.3 The COUNTY shall coordinate with the Washington State Department of Transportation (WSDOT) for Right-of-Way Certification.
3.4 The COUNTY shall bear its agreed share of costs for acquisitions required for the Project as shown on the County-approved Right-of-Way Plans, including the costs associated with any acquisition or condemnation proceeding, or in accordance with other financial partnership agreements.

3.5 Upon completion of the portion of the Project located within CITY boundaries, the COUNTY shall dedicate and/or convey to the CITY all real property under its ownership within the city limits necessary for rights-of-way and easements as indicated in the approved Right-of-Way Plans for the Project. This dedication and/or conveyance shall be in a form approved by both the COUNTY and the CITY, and shall be made at the time the Project construction is completed.

SECTION 4.0 CITY RESPONSIBILITIES

4.1 The CITY authorizes the COUNTY, as the Lead Agency, to complete right-of-way acquisitions for the Project, including those within the municipal boundaries of the CITY. Acquisitions shall be governed by applicable local, state, and federal guidelines including the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Such acquisition authorization includes making offers to, negotiating agreements with, and commencing any actions under eminent domain to acquire the property necessary for the Project.

4.2 When requested by the COUNTY, the CITY Council shall respond in a timely manner in making independent findings of public use and necessity for condemnation proceedings involving land within the city limits.

4.3 The CITY shall convey any land identified on the approved Right-of-Way Plans shown as needed for the Project construction which is owned by the CITY. In lieu of monetary compensation, the amount determined to be just compensation for the conveyance shall be credited toward the CITY’s fair and equitable share of any required local government match for the Project and/or the Milroy Bridge replacement. Just compensation shall be determined by an appraisal prepared by an appraiser on WSDOT’s approved appraiser list. The parties shall agree on the appraiser, and the COUNTY shall pay all costs of the appraisal.

4.4 The CITY shall accept the dedicated and/or conveyed property within the city limits necessary for rights-of-way and easements as indicated in the approved Right-of-Way Plans for the Project at the time the Project construction is completed. Upon completion of that part of the Project within the CITY boundaries, the completed highway shall become part of the CITY’s highway system and the CITY shall be solely responsible for all maintenance and operation of the highway within its boundaries; provided, maintenance responsibilities for the new bridge over the Puyallup River shall be determined by a separate agreement to be negotiated by the CITY and COUNTY. Notwithstanding the foregoing, the COUNTY shall continue to enforce any contractor warranties for the Project during the applicable warranty period.

SECTION 5.0 DURATION

This Agreement shall remain effective until the responsibilities specified in SECTION 3 and SECTION 4 are completed, and the Agreement shall terminate on that date.
SECTION 6.0 REGULATIONS AND REQUIREMENTS
This Agreement shall be subject to applicable laws, rules, and regulations of the United States of America, the State of Washington, and of the CITY and COUNTY.

SECTION 7.0 INDEMNIFICATION AND DEFENSE
To the extent of its comparative liability, each Party agrees to indemnify, defend and hold the other Party, its elected and appointed officials, employees, agents, and volunteers, harmless from and against any and all claims, damages, losses, and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any injury or damage of any kind which are alleged or proven to be caused by an act or omission, negligent or otherwise, of the Party, its elected and appointed officials, employees, agents, or volunteers.

A Party shall not be required to indemnify, defend, or hold the other Party harmless if the claim, damage, loss, or expense for any injury or damage of any kind is caused by the sole act or omission of the other Party.

The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the Parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.

SECTION 8.0 INSURANCE COVERAGE
The COUNTY shall maintain at all times during the course of this Agreement a general liability insurance policy or other comparable coverage with a self-insured retention of no more than $2,000,000.00 and a policy limit of no less than $5,000,000.00.

SECTION 9.0 NON-DISCRIMINATION
The COUNTY and the CITY certify that they are Equal Opportunity Employers.

SECTION 10.0 ASSIGNMENT
Neither the COUNTY nor the CITY shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

SECTION 11.0 NOTICE
Any formal notice or communication to be given by the COUNTY to the CITY under this Agreement shall be deemed properly given if delivered or if mailed postage prepaid and addressed to:

City of Fife
5411 23rd Street East
Fife, WA 98424
Attention: Deputy City Manager

Any formal notice or communication to be given by the CITY to the COUNTY under this Agreement shall be deemed properly given if delivered or if mailed postage prepaid and addressed to:

Pierce County Planning & Public Works
4301 South Pine Street, Suite 628
Tacoma, WA 98409
Attention: Transportation Improvement Manager
The name and address to which notices and communications shall be directed may be changed at any time, and from time to time, by either the CITY or the COUNTY, by giving notice thereof to the other as herein provided.

SECTION 12.0 COUNTY AS INDEPENDENT CONTRACTOR
The COUNTY is, and shall at all times be deemed to be an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the CITY and the COUNTY or any of the COUNTY's agents or employees. The COUNTY shall each retain all authority for services rendered, standards of performance, control of personnel, and other matters incident to the performance of services by the COUNTY pursuant to this Agreement.

SECTION 13.0 WAIVER
Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

SECTION 14.0 ENTIRE AGREEMENT
This written Agreement represents the entire Agreement between the parties regarding the specific topic of right-of-way acquisition for CRP 5498 and supersedes any prior oral statements, discussions, or understandings between the parties.

SECTION 15.0 AMENDMENT
Either party may request changes in the Agreement. No such modification, however, shall be effective unless in writing and signed by duly authorized agents of both Parties.

SECTION 16.0 SEVERABILITY
If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of __________, 20____.

CITY OF FIFE

____________________________________
CITY MANAGER                                           Date

____________________________________
CITY ATTORNEY                                          Date
(approve as to form)

PIERCE COUNTY

____________________________________
DEPARTMENT DIRECTOR                           Date

____________________________________
DEPUTY PROSECUTING ATTORNEY            Date

____________________________________
FINANCE                                                        Date

____________________________________
PIERCE COUNTY EXECUTIVE                      Date
($250,000 or more)