



Agency		Official Project Title	
Address			
Agreement Number	Region	State Route Number	Control Section Number

THIS AGREEMENT, made and entered into between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter the "STATE" and the above named organization, hereinafter the "LOCAL AGENCY".

WHEREAS, the parties hereto have previously entered into a LOCAL AGENCY AGREEMENT, LA \_\_\_\_\_, dated \_\_\_\_\_, regarding the finance and development of the above project, hereinafter called the "PROJECT", and

WHEREAS, The LOCAL AGENCY has requested that the STATE advertise, award, execute and administer the construction of the PROJECT, and

WHEREAS, the STATE has agreed to perform the requested work on behalf of the LOCAL AGENCY.

NOW THEREFORE, by virtue of RCW 47.28.140 and in consideration of the provisions, covenants, terms, conditions and performance contained herein or attached and incorporated and made part hereof, the parties

MUTUALLY AGREE AS FOLLOWS:

**I. Term of Agreement**

**1.1** Unless otherwise provided herein, the term of this AGREEMENT shall commence on the day and year of the last signature below and shall continue until the PROJECT is accepted by the LOCAL AGENCY pursuant to Section 9, Project Acceptance, of this AGREEMENT.

**II. Design**

**2.1** The LOCAL AGENCY, (Check the Appropriate Box below):

Has prepared the plans, specifications and cost estimates (PS&E). The LOCAL AGENCY shall provide PROJECT support to the STATE for design changes at LOCAL AGENCY expense.

Has prepared the PS&E, by use of a Third Party. The LOCAL AGENCY shall identify and coordinate with the Third Party as needed. The LOCAL AGENCY will provide PROJECT support to the STATE for design changes at LOCAL AGENCY expense.

Had the STATE prepare the PS&E.

**2.2** Plans, specifications and cost estimates were prepared, as indicated in Section 2.1 under Section 2, Design, of this AGREEMENT, in accordance with the current State of Washington *Standard Specifications for Road, Bridge and Municipal Construction*, and amendments thereto and adopted design standards, unless otherwise noted (*Standard Specifications*).

**2.3** The LOCAL AGENCY has all of the necessary permits and shall provide copies to the STATE prior to advertisement.

**2.4** The STATE will review the PS&E and prepare the contract documents.

**2.5** If PS&E was not prepared by the STATE then the LOCAL AGENCY shall provide any plans or special provision revisions that the STATE needs to prepare all addenda to the PS&E. Furthermore, the LOCAL AGENCY shall assist the STATE in answering bid questions and resolving any design issues that may arise. All comments and clarifications must go through the STATE.

### III. Project Ad and Award

- 3.1 The STATE will advertise for construction bids in accordance with the appropriate *Standard Specifications*.
- 3.2 The PROJECT Estimate of Cost for plan review, contract document preparation, ad and award, construction, construction engineering and contingencies is shown in Exhibit "A", attached herein and by this reference made a part of this AGREEMENT.
- 3.3 Upon bid opening the STATE shall submit a list of bid tabulations and bid results to the LOCAL AGENCY prior to award of the PROJECT. The STATE shall have the right to award if the bids are within \_\_\_\_\_ percent of the engineer's estimate.
- 3.4 In the event bids exceed the amount allowed in Section 3.3 under Section 3, Project Ad and Award, of this AGREEMENT, the STATE shall request written concurrence in contract award or rejection from the LOCAL AGENCY prior to contract award. The LOCAL AGENCY shall provide written concurrence in contract award within 15 working days of receipt of the State's written request for concurrence. If the LOCAL AGENCY does not notify the STATE in fifteen (15) working days, or as mutually extended in writing, the STATE will reject all bids. The LOCAL AGENCY shall be responsible for all costs associated with rejection of bids.
- 3.5 If the PROJECT is to be re-advertised, this AGREEMENT will still apply between the LOCAL AGENCY and the STATE. All additional costs for re-advertisement of the PROJECT will be at LOCAL AGENCY expense.

### IV. Construction

- 4.1 The STATE will be the LOCAL AGENCY'S representative during construction and will act as lead agency in the administration of the construction PROJECT. A description of the work to be accomplished on the PROJECT and location of the PROJECT is attached as Exhibit "B" and by this reference is made a part of this AGREEMENT. The PROJECT Contract Plans and Provisions are by this reference made a part of this AGREEMENT as if fully attached herein. The STATE has designated a STATE Project Engineer to provide all necessary services and tools, including but not limited to construction administration, inspection, materials testing, and the representation necessary to administer and manage the construction contract for the PROJECT to ensure work is constructed in accordance with the contract plans and specifications.
- 4.2 The STATE will allow the LOCAL AGENCY to consult with and inquire of the project engineer, attend all meetings, and have access to all documentation as to all matters concerning the PROJECT. The LOCAL AGENCY shall not provide direction, directly or indirectly to the contractor. All formal contacts between said LOCAL AGENCY and the STATE'S contractor shall be through the STATE'S representative.
- 4.3 The STATE will prepare the final construction documentation in general conformance with the STATE *Construction Manual*. The LOCAL AGENCY shall provide the STATE with one reproducible copy of construction plans. The STATE will maintain one set of plans as the official "as-built" set, then make notations in either red ink or red pencil of all plan revisions typically recorded per standard STATE practices, as directed by the *Construction Manual*. Once final acceptance of the contract has occurred, the STATE will submit one reproducible set of as-built plans to the LOCAL AGENCY within an agreed time.

## **V. Termination**

- 5.1** This AGREEMENT shall terminate upon completion of the work and acceptance of the PROJECT pursuant to Section 9, Project Acceptance, of this AGREEMENT, or if the Parties determine that PROJECT continuation is no longer feasible pursuant to Section 8.8 under, Section 8, Change Orders, of this AGREEMENT.
- 5.2** The Secretary of Transportation (Secretary) may terminate the contract in whole, or from time to time in part, for public convenience, whenever:
  - 5.2.1** The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President of the United States of America (President) with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State of Washington with respect to the preservation of energy resources.
  - 5.2.2** The contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.
  - 5.2.3** The Secretary determines that such termination is in the best interests of the STATE.
- 5.3** If this AGREEMENT is terminated, any claim by the Contractor for costs associated with the termination shall be processed and resolved pursuant to Section 10, Claims, of this AGREEMENT.

## **VI. Compensation**

- 6.1** The LOCAL AGENCY in consideration of the faithful performance of the work to be done by the STATE agrees to reimburse the STATE for all direct and related indirect costs associated with the PROJECT. Construction and construction management costs shall commence on the day of advertisement and shall include all costs associated with change orders and change ordered work.
- 6.2** An itemized Estimate of the Cost for construction of the PROJECT is set forth in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT. The cost of the construction includes items set forth in the bid documents. Construction contingencies shall be used for cost increases, including any change orders. Construction engineering shall include all appropriate STATE costs incurred in advertising, awarding and administering of the PROJECT construction.
- 6.3** The STATE will hold progress estimate review meetings with the Contractor as needed. The STATE will invite the LOCAL AGENCY to participate in these reviews. The LOCAL AGENCY may audit the STATE'S payment applications and all costs in connection with the PROJECT.
- 6.4** During the construction phase and upon request of partial payment by the STATE, the LOCAL AGENCY shall make partial payment to the STATE to cover the required match cost and any noneligible cost that has incurred. Partial payments are not to be more frequent than one (1) per month. The LOCAL AGENCY shall provide its payments to the STATE within thirty (30) days after its receipt of the STATE'S monthly invoice billings, except for final payment.
- 6.5** Partial payments paid by the LOCAL AGENCY shall not constitute the LOCAL AGENCY'S acceptance of the appropriateness of any item. At the time of final audit, all required adjustments will be made and reflected in the final payment. In the event that such final audit reveals overpayment to the STATE or under billings to the LOCAL AGENCY, the STATE agrees to refund any overpayment to the LOCAL AGENCY within thirty (30) days after the STATE'S receipt of an invoice and the LOCAL AGENCY agrees to reimburse the under billed amount to the STATE within thirty (30) days after the LOCAL AGENCY'S receipt of an invoice.
- 6.6** During construction of the PROJECT and for a period of not less than three (3) years from the date of final payment to the STATE, the records and accounts pertaining to the construction of the PROJECT will be maintained and shall be kept available by the STATE for inspection and audit by the LOCAL AGENCY and for use in the event of a litigation, claim or any other purpose. The STATE shall supply the LOCAL AGENCY with a set of As-Built plans upon acceptance of the work from the LOCAL AGENCY.

## **VII. Extra Work**

- 7.1** This AGREEMENT provides an allowable construction contingency of \_\_\_\_\_ percent in the event an increase is needed that exceeds the Estimate of Costs as shown on Exhibit "A". In the event conditions exist that will cause the PROJECT costs to exceed the allowable construction contingency percent, this AGREEMENT will be modified by a supplement to this AGREEMENT.

## **VIII. Change Orders**

- 8.1** Changes to the contract will be documented by change order as defined in the current edition of the *Standard Specifications*.
- 8.2** Required change orders involve such changes in quantities or alterations in the work as are necessary to satisfactorily complete the PROJECT as determined by the STATE. All other change orders shall be considered elective.
- 8.3** The LOCAL AGENCY has authorized the STATE to initiate, negotiate, document and execute all required change orders.
- 8.4** The STATE will advise the LOCAL AGENCY of any proposed required change order and provide it with an opportunity to review the change order before execution. The STATE will determine the length of the review time based upon the need to expedite the change order to avoid delay to the PROJECT.
- 8.5** Any elective change order shall require the written approval of the LOCAL AGENCY. A decision to execute an elective change order shall be made by mutual agreement of the STATE and LOCAL AGENCY.
- 8.6** The LOCAL AGENCY may request additions to the contract through the STATE. The STATE will comply with the requested change providing that change complies with state and/or federal law and applicable rules and/or regulations.
- 8.7** The STATE will make available to the LOCAL AGENCY and STATE'S Local Programs Engineer all change order documentation.
- 8.8** In the event a new construction contingency amount cannot be determined to cover said increases due to financial constraints of the LOCAL AGENCY, the STATE and the LOCAL AGENCY shall negotiate to determine the future of the project. If it is determined that the project cannot proceed, the project shall be brought to a level that is safe for public use and the STATE will terminate the contract. In the event the contract is terminated under this section, Section 9, Project Acceptance of this AGREEMENT shall apply for that portion of the project up to the time of termination. All costs associated with termination will be the responsibility of the LOCAL AGENCY.

## **IX. Project Acceptance**

- 9.1** Prior to PROJECT acceptance, the STATE and LOCAL AGENCY will perform a joint final inspection. The LOCAL AGENCY agrees, upon satisfactory completion of the work involved and receipt of Notice of Physical Completion, as determined by the STATE, to deliver a letter of acceptance which shall include a release of the STATE from all future claims or demands of any nature resulting from the performance of the work under this AGREEMENT, subject to any Contractor claims caused by the negligent acts or omissions of the STATE in administering the PROJECT pursuant to Section 10.1, Claims for Additional Payment, of this AGREEMENT.
- 9.2** If a letter of acceptance is not received by the STATE within 90 days following Notice of Physical Completion of the work, the work shall be considered accepted by the LOCAL AGENCY and shall release the STATE from all future claims and demands of any nature resulting from the performance of the work under this AGREEMENT, subject to any Contractor claims caused by the negligent acts or omissions of the STATE in administering the PROJECT pursuant to Section 10.1, Claims for Additional Payment, of this AGREEMENT.
- 9.3** The LOCAL AGENCY may withhold this acceptance of work by submitting written notification to the STATE within 90 days following Notice of Physical Completion of the work. This notification shall include the reason(s) for withholding the acceptance.

## **X. Claims**

### **10.1 Claims for Additional Payment**

- 10.1.1 In the event the Contractor makes a claim for additional payment, the STATE will notify the LOCAL AGENCY immediately of such claims. Such claims shall be made in the manner and form as provided for in the *Standard Specifications*.
- 10.1.2 The LOCAL AGENCY shall have the right to review and discuss the settlement of all claims. The ultimate decision to pay a claim will be by mutual agreement of the LOCAL AGENCY and the STATE. In the event such claims are not resolved, the LOCAL AGENCY shall defend such claims at its own cost and shall pay any court judgment or arbitration award resulting from such claims, provided that the LOCAL AGENCY shall not be obligated to pay such claims or the cost of defense to the extent that the claims are caused by the negligent acts or omissions of the STATE in administrating the contract. The STATE will cooperate with the LOCAL AGENCY in the LOCAL AGENCY'S defense of the claim. Any STATE costs incurred in providing such assistance shall be reimbursed by the LOCAL AGENCY.

### **10.2 Claims for Damages**

- 10.2.1 After PROJECT acceptance, in the event of claims for damages or loss attributable to bodily injury, sickness, death, or injury to or destruction of property that occurs within the PROJECT limits, the LOCAL AGENCY shall defend such claims and hold the STATE harmless there from and the STATE shall not be obligated to pay any such claim or the cost of defense. Nothing in this Section, however, shall remove from the STATE any responsibilities defined by the current laws of the State of Washington or from any liabilities for damages caused by the STATE'S own negligent acts or omissions independent of the work performed under this AGREEMENT.

## **XI. Disputes**

### **11.1** In the event that a dispute arises under this AGREEMENT, it shall be resolved as follows:

- 11.1.1 The LOCAL AGENCY and the STATE shall each appoint a member to a disputes board, these two members shall select a third member not affiliated with either Agency. The decision made by this board shall be final and binding on the parties to this AGREEMENT.

## **XII. General Provisions**

### **12.1 Rights of Entry**

- 12.1.1 The LOCAL AGENCY hereby grants and conveys to the STATE the right of entry upon all land which the LOCAL AGENCY has an interest, within or adjacent to the right of way of the highway for the purpose of construction and if necessary maintaining the improvements described in this AGREEMENT.

### **12.2 Modification**

- 12.2.1 No modification of this AGREEMENT is valid unless evidence in writing by supplement to this AGREEMENT and signed by both parties. No verbal agreement may supersede, replace or amend this section.

### **12.3 Assignment**

- 12.3.1 Neither PARTY to this AGREEMENT shall transfer or assign any right or obligation hereunder without the prior written consent of the other PARTY.

### **12.4 Severability**

- 12.4.1 Should any part term or provision of this AGREEMENT be determined to be invalid, the remainder of this AGREEMENT shall not be affected and the same shall continue in full force and effect.

**12.5 Legal Relations**

12.5.1 Each of the PARTIES to this AGREEMENT shall protect, defend, indemnify and save harmless the other PARTY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment and/or awards of damages arising out of, or in any way resulting from, each of the PARTY'S negligent acts or omissions. No PARTY will be required to indemnify, defend or save harmless the other PARTY if the claim, suit or action for injuries, death or damages is caused by the sole negligence of the PARTY. Where such claims, suits, or actions result from concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the PARTY'S own negligence.

Each of the PARTIES agrees that its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the PARTIES, by mutual negotiation, hereby waives with respect to each of the other PARTY only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

In the event that any of the PARTIES or combination of the PARTIES incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this Section all such fees, expenses and costs shall be recoverable from the responsible PARTY or combination of the PARTIES to the extent of that PARTY'S/those PARTIES culpability.

This indemnification shall survive the termination of this AGREEMENT.

In the event that any PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT the PARTIES hereto agree that any such action or proceedings shall be brought in a court of competent jurisdiction situated in Thurston County, Washington.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day, month, and year last below written.

<b>LOCAL AGENCY</b>	<b>STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION</b>
By: _____ Print Name	By: _____ Print Name
Signature: _____	Signature: _____
Title: _____	Title: _____
Date: _____	Date: _____