# AGREEMENT GCA-4849

## SR 509
## MARINE VIEW DRIVE CULVERT REPLACEMENT
## PROJECT OVERRUN FUNDING

**THIS AGREEMENT** is entered into by and between the **CITY OF DES MOINES,** a municipal corporation, hereinafter referred to as the "CITY", and the **STATE OF WASHINGTON, DEPARTMENT OF TRANSPORTATION,** acting by and through the Secretary of the Department of Transportation, hereinafter referred to as the "STATE", collectively referred to as the "PARTIES" and individually referred to as the "PARTY".

**WHEREAS,** the PARTIES, in addition to King County, the Port of Seattle, and the City of SeaTac, under the authority of RCW 39.34.030(4)(a), are members of the joint board of the Des Moines Creek Basin Committee, hereinafter referred to as the "COMMITTEE", and

**WHEREAS,** the COMMITTEE entered into Agreement GCA 3921 on June 11, 2004, for the purpose of constructing and operating several projects to implement the Des Moines Creek Basin Plan, hereinafter referred to as the "PLAN", and

**WHEREAS,** one of the projects identified in Agreement GCA 3921 as part of the PLAN is the construction of the Marine View Drive Culvert Replacement, hereinafter referred to as the "PROJECT", and

**WHEREAS,** the PROJECT is experiencing greatly increased construction costs due to the increase of the price of oil and other factors, and

**WHEREAS,** the COMMITTEE has acknowledged the need for an amendment to GCA 3921 to address cost overruns associated with all projects included in the PLAN, and

**WHEREAS,** all COMMITTEE members will be contributing funds to assist in addressing cost overruns associated with all projects included in the PLAN, and

**WHEREAS,** the CITY is the lead agency for administration of the contract for construction of the PROJECT, and

**WHEREAS,** the STATE has agreed to provide additional funds to cover said increased construction costs of the PROJECT, and

**WHEREAS,** the PARTIES acknowledge the extensive period of time it will take the COMMITTEE to prepare and execute an amendment to GCA 3921, wherein the STATE would contribute said funds to the COMMITTEE for disbursement to the CITY, and

**WHEREAS,** the PARTIES acknowledge the need for additional PROJECT funding will occur before an amendment to Agreement GCA 3921 is executed, and

**WHEREAS,** to ensure funding is available to cover PROJECT cost overruns, the PARTIES desire to enter into an agreement whereby the STATE will provide the additional funds for said PROJECT overruns directly to the CITY instead of the COMMITTEE, and

**WHEREAS,** the PARTIES agree that the terms, stipulations, conditions, covenants and performance of this AGREEMENT shall be incorporated into the future amendment to Agreement GCA 3921, and

**WHEREAS,** the terms, stipulations, conditions, covenants and performance of Agreement GCA 3921 are incorporated into this AGREEMENT by this reference, and

**WHEREAS,** pursuant to RCW Chapter 39.34, the Interlocal Cooperation Act, the PARTIES are each authorized to enter into an agreement for cooperative action, and

**NOW THEREFORE,** the PARTIES agree as follows:

## 1. GENERAL

The purpose of this AGREEMENT is to provide a mechanism whereby the STATE can contribute Four Hundred Seventy Five Thousand Dollars ($475,000.00) for the PROJECT directly to the CITY.

## 2. PAYMENT

The STATE will make a lump sum payment to the CITY of Four Hundred Seventy Five Thousand Dollars ($475,000.00) for PROJECT cost overruns. Said payment will be made upon receipt of an invoice from the CITY.

The STATE agrees to make payment within thirty (30) days from receipt of invoice from the CITY. The CITY agrees to use these funds solely for the PROJECT, including the construction cost overruns.

## 3. AMENDMENT

Either PARTY may request changes to the provisions contained in this AGREEMENT. Such changes shall be mutually agreed upon and incorporated by written amendment to this AGREEMENT. No variation or alteration of the terms of this AGREEMENT shall be valid unless made in writing and signed by authorized representatives of the PARTIES hereto.

## 4. DISPUTES

The designated representatives herein under section 6, NOTIFICATION, shall use their best efforts to resolve disputes between the PARTIES. If these individuals are unable to resolve a dispute, the responsible project directors of each PARTY shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the

department directors of each PARTY or his or her designee. The PARTIES agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

## 5. EFFECTIVENESS AND DURATION

This AGREEMENT is effective upon execution by both PARTIES and will remain in effect until June 30, 2007, unless otherwise supplemented or terminated.

## 6. NOTIFICATION

Any notice required or permitted to be given pursuant to this AGREEMENT shall be in writing, and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the following addresses unless otherwise indicated by the PARTIES to this AGREEMENT:

| | |
|---|---|
| To the STATE: | Project Engineer, SR 509<br>Washington State Dept. of Transportation<br>Urban Corridors Office<br>6431 Corson Avenue South<br>Seattle, WA 98108 |
| To the CITY: | Director of Public Works/Engineering<br>City of Des Moines<br>21650 – 11th Avenue South<br>Des Moines, WA 98198 |

## 7. TERMINATION

This AGREEMENT may be terminated by either PARTY upon 30 days advanced written notice. In the event of termination, payment will be made by the STATE, to the CITY, for PROJECT cost overruns up to the effective date of termination.

## 8. NONDISCRIMINATION

The CITY agrees to comply with all applicable Washington state and federal laws, rules, and regulations pertaining to nondiscrimination and agrees to require the same of all subcontractors providing services or performing any work using funds provided under this AGREEMENT.

## 9. RECORDS RETENTION AND AUDIT

During the progress of the work and for a period not less than three (3) years from the date of final payment by the STATE, the records and accounts pertaining to the project and accounting therefore are to be kept available for inspection and audit by Washington state and/or the Federal Government and copies of all records, accounts, documents, or other data pertaining to the project will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until said litigation,

claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the 3-year retention period.

## 10. INDEMNIFICATION AND HOLD HARMLESS

The PARTIES agree to the following:

Each PARTY 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, the indemnifying PARTY's own negligent acts or omissions. Neither 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 indemnified PARTY. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the indemnifying 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 provision of Title 51 RCW. In any action to enforce the provisions of this Section, the prevailing PARTY shall be entitled to recover its reasonable attorney's fees and costs incurred from the other PARTY. The obligations of this Section shall survive termination of this AGREEMENT.

## 11. VENUE

In the event that either 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 proceeding shall be brought in the superior court situated in Thurston County, Washington.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the latest date written below.

CITY OF DES MOINES

As approved in open public meeting by Des Moines City Council 4/20/06

By

Bob Sheckler Anthony A. Piasecki
Mayor City Manager

Date 6/14/06

APPROVED AS TO FORM:

LINDA A. MAROUSEK
By (print)

Linda A. Marousek
Signature

City Attorney
Title

6/14/06
Date

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION

By

for Craig J. Stone
Deputy Administrator, Urban Corridors

JUNE 24, 2006
Date

APPROVED AS TO FORM:

Deborah L. Cade
By (print)

Deborah L. Cade
Signature

Assistant Attorney General
Office of the Attorney General

5-19-06
Date