

AGREEMENT

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THIS AGREEMENT entered into this 27th day of January, 1938, by and between the State of Washington, by and through its duly appointed, authorized and acting Director of Highways, party of the first part, and the State of Idaho, by and through its duly appointed, authorized, and acting Commissioner of Public Works and its Director of Highways, party of the second part;

WITNESSETH:

WHEREAS, it is the purpose of the State of Washington and the State of Idaho to cooperate financially and structurally in the construction, maintenance, and operation of a bridge structure crossing the Snake River at a feasible point to be determined, between the City of Clarkston, State of Washington, and the City of Lewiston, State of Idaho, where the said Snake River forms a common boundary between the State of Washington and the State of Idaho, and to this end it is practicable, convenient, and necessary that the cooperative rights, duties and responsibilities of the respective cooperating states be defined, agreed upon and contracted, now, therefore,

IT IS HEREBY MUTUALLY AGREED by and between the State of Washington and the State of Idaho, in consideration of the mutual promises and agreements herein contained, and the cooperative expenditures and services to be rendered by each party hereto, as follows:

1. That for the purpose of this agreement the bridge construction project shall be divided into three units to be herein referred to as the "Washington approach unit", the "Idaho

approach unit", and the "bridge unit," and that all such units combined shall be herein referred to as the "bridge project."

2. That plans and specifications for the construction of the bridge project shall be prepared by the Director of Highways of the State of Washington at Olympia, State of Washington, and shall be submitted to the Director of Highways of the State of Idaho, and shall be subject to the concurrent approval of the Director of Highways of the State of Washington and the Director of Highways of the State of Idaho and consistent with the requirements of the Bureau of Public Roads of the United States, or its duly authorized representative.

3. That no material or substantial change or alteration shall be made in the plans and specifications as finally adopted for such bridge project unless and until such change or alteration has the concurrent approval of the Director of Highways of the State of Washington and the Director of Highways of the State of Idaho.

4. That copies of plans and specifications together with bid proposal forms and contract forms will be made available to the Director of Highways of the State of Washington and the Director of Highways of the State of Idaho in sufficient number and in proper form to meet the demand therefor in each state and the legal requirements therefor of both the State of Washington and the State of Idaho.

5. That plans and specifications for such bridge project shall be prepared in such form and manner as shall comply with the legal requirements of both the State of Washington and the State of Idaho and as will best conform to the bridge construction

standards of both the State of Washington and the State of Idaho and in the event that any conflict or material variation appears between the bridge construction standards of the two states, the more rigid of the conflicting or varying standard specifications shall control and become a part of the plans and specifications unless the Director of Highways of the State of Washington and the Director of Highways of the State of Idaho shall agree otherwise.

6. That the call for bid proposals upon plans and specifications for the construction of such bridge project shall be issued jointly by the Director of Highways of the State of Washington and the Director of Highways of the State of Idaho and shall be published both in the State of Washington and the State of Idaho, in each according to the law of such State relating thereto, and such publications shall commence at such times that the date of the last publication in each state will be as near as possible on the same date. The call for bid proposals on such bridge project shall set a date and time up to which all bid proposals will be received in the office of the Director of Highways of the State of Washington, at Olympia, Washington. Such bid proposals shall be publicly opened and read according to bid items by both the Director of Highways of the State of Washington and the Director of Highways of the State of Idaho in the Board Room of the Highway Building, Olympia, Washington.

7. That the bridge project consisting of the Washington approach unit, the Idaho approach unit and the bridge unit shall be advertised, bid, awarded, and constructed as one complete project and under a single contract and shall in no event be bid, awarded or constructed as separate units or projects.

8. That there shall be included as a bid item and as a part of the contract for the construction of such bridge project, the wrecking, removal, and disposition of the existing bridge structure crossing the common boundary between the State of Washington and the State of Idaho, adjacent to the site of the bridge project proposed to be constructed under this agreement. With the authority and consent of the Director of Highways of the State of Washington and of the State Board of Examiners of the State of Idaho is hereby granted for the wrecking, removal, and disposal of such existing bridge structure at such a time and in such a manner as shall be determined practicable and necessary in the concurrent opinion of the Director of Highways of the State of Washington and the Director of Highways of the State of Idaho.

9. The contract executed by the contractor to whom award is made for the construction of the bridge project shall be a joint contract between the State of Washington and the State of Idaho as parties of the first part, and the contractor as party of the second part. Any person, firm or corporation desiring to propose a bid for the construction of the bridge project shall both be prequalified as a contractor as required by law in the State of Washington and be registered for a period of thirty days as a contractor as required by law in the State of Idaho.

10. That the contractor shall be required to furnish for the benefit of the State of Washington and the State of Idaho, jointly and severally, a performance bond, with corporate surety qualified in both the State of Washington and the State of Idaho, in the full amount of the total contract price, conditioned on the full and faithful performance of the terms of such contract

for the construction of the bridge project.

11. That the construction of such bridge project shall be under the direct and active supervision and control of the Director of Highways of the State of Washinton, and wherever, in the plans and specifications of the contract, reference is made to the "engineer", the term shall mean the Director of Highways of the State of Washington, or his agent or representative assigned to the bridge project and having the immediate and direct supervision of the construction work on such bridge project; provided, that the Director of Highways of the State of Idaho shall act in a supervising and consulting capacity and shall designate an agent or representative who shall be assigned to the bridge project to represent the Director of Highways of the State of Idaho in such capacity during the construction of such bridge project. No deviation shall be made from the plans and specifications adopted by the Director of Highways of the State of Washington and the Director of Highways of the State of Idaho and made a part of the contract for the construction of such bridge project, unless such deviation has the concurrent consent and approval of the Director of Highways of the State of Washington and the Director of Highways of the State of Idaho, or that of their duly authorized agents or representatives assigned to the bridge project.)

12. That neither the Director of Highways of the State of Washington nor the Director of Highways of the State of Idaho, nor any agent or representative of either, shall have the power to make final approval or acceptance of the construction of such bridge project, or any unit thereof, or waive any liability upon the contractor's performance bond, but the same shall be ac-

completed only by the concurrent and joint action of the Director of Highways of the State of Washington and the Director of Highways of the State of Idaho, and the contract for the construction of such bridge project shall specifically provide that no approval or acceptance of the construction of such bridge project, or any unit thereof, nor exoneration of the contractor's performance bond, may be effected excepted that it be done in writing by the concurrent and joint action of the Director of Highways of the State of Washington and the Director of Highways of the State of Idaho.

13. That all estimates of work performed on such bridge project upon which payments therefor are to be made shall in the first instance be approved by both the immediate and direct supervising engineer assigned to the bridge project representing the Director of Highways of the State of Washington, and the supervising and consulting engineer assigned to the bridge project representing the Director of Highways of the State of Idaho.

14. That in the preparation of estimates upon which payments are to be made to the contractor for the construction of such bridge project, segregation of items of construction shall be made in such a manner that there may be readily determined that portion of each estimate covering separately the Washington approach unit, the Idaho approach unit, and the bridge unit.

15. That the contract shall provide for the retention from funds found owing the contractor upon estimates in an amount equal to fifteen per cent (15%) of each thereof; provided, that in the event that either the State of Washington or the State of

Idaho may not legally retain a sum equal to fifteen per cent (15%) of the amount payable on estimates, each such state shall retain such a percentage as it may legally do so from that portion of each of such estimate payments which is payable by the State of Washington and the State of Idaho, respectively, under the provisions of this agreement. In any event, the contractor shall be required to pledge the entire and aggregate amount of the retained percentage held by both states to secure the payment of just claims for materials, equipment, labor, provisions and supplies used in the prosecution of work on the bridge project. In the event of any action commenced for the enforcement of any lien where a claim of lien has been filed against the retained percentage, the contractor will be required to waive non-resident bond and waive objection to the jurisdiction of any court of record, located either at Olympia, Washington, or at Boise, Idaho.

That provision shall be made for the filing of claims of lien against the retained percentage in such a manner that record thereof will be made in both the State of Washington and the State of Idaho sufficient to constitute a valid claim of lien against the retained percentage held by each state but payment from or enforcement against the retained percentage of either state shall release the claims of lien against the retained percentage held by the other.

16. That the cost of the construction of the Washington approach unit, together with any cost for engineering and supervision, and together with any cost of right-of-way therefor, and any cost by reason of the exercise of the right of eminent domain shall be provided entirely by the State of Washington, upon the

basis of the full construction cost of such Washington approach unit and without regard for the amount of reimbursement or participation by the federal government or any political subdivision of the State of Washington. That the cost of the construction of the Idaho approach unit, together with any cost for engineering and supervision, and together with any cost of right of way therefor, and any cost by reason of the exercise of the right of eminent domain, shall be provided entirely by the State of Idaho, upon the basis of the full construction cost of such Idaho approach unit and without regard for the amount of reimbursement or participation by the federal government or any political subdivision of the State of Idaho. That the cost of the construction of the bridge unit, together with any cost for the engineering and supervision thereof, and together with any cost of right of way therefor, and any cost by reason of the exercise of the right of eminent domain shall be provided, one-half by the State of Washington and one-half by the State of Idaho, upon the basis of the full construction cost of such bridge unit and without regard for the amount of reimbursement or participation on behalf of either state by the federal government or any political subdivision of either state.

17. That the cost of the maintenance, care, upkeep, and repair of the Washington approach unit when completely constructed and accepted shall be entirely provided by the State of Washington, either at its own expense or by or through such political subdivision or agency of the State of Washington as the State of Washington may designate. That the cost of the maintenance, care, upkeep, and repair of the Idaho approach unit when completely constructed and accepted, shall be entirely provided by

the State of Idaho, either at its own expense or by or through such political subdivision or agency of the State of Idaho as the State of Idaho may designate. That the maintenance, care, upkeep and repair of both the Washington approach unit and the Idaho Approach Unit shall be sufficient to maintain each thereof reasonably consistent with their original construction and to a standard in accordance with traffic demand and consistent with the degree of maintenance accorded the state highways of the States of Washington and Idaho which such bridge project serves to connect and consistent with the degree of maintenance accorded the public ways which terminate at and connect with the respective approaches of such bridge project.

also bridge unit

18. That the cost of the maintenance, care, upkeep, repair, and operation of the bridge unit when completely constructed and accepted shall be provided, one-half by the State of Washington and one-half by the State of Idaho; provided, that the State of Idaho shall be responsible in the first instance for the performance of the operation and maintenance of the movable span of such bridge unit and shall provide for the furnishing of the lighting of such bridge unit and it is agreed that the State of Idaho may contract the operation of the movable span and the lighting of such bridge unit to the City of Lewiston, Idaho.

19. That this contract is premised upon the legal right of the State of Washington and the State of Idaho, under the respective statutory provisions of each thereof, to join and cooperate with each other, and with the political subdivisions of either of such states, and with the Government of the United States in the construction, maintenance, operation, and financing of a bridge structure across navigable waters forming a common boundary between the

State of Washington and the State of Idaho.

20. That the provisions of this contract dividing the cost of the construction, maintenance, care, upkeep, repair and operation of the bridge unit equally between the State of Washington and the State of Idaho are agreed to without regard for the actual location of the interstate boundary line on such proposed bridge project and that the division of such cost as provided herein is solely as the basis for allocating cooperative expenditures upon such bridge project and is intended to avoid any controversy with respect to interterritorial jurisdiction regarding the construction, maintenance and operation of such bridge project.

21. That in all matters of correspondence, estimates, reports, costs, claims, disbursements, and all other matters relating to the construction, maintenance, and operation of such bridge project, the state receiving or having the same shall cause to be prepared and forwarded to the other state, a copy of each thereof, to the end that the State of Washington and the State of Idaho shall each have a complete file record of all matters and proceedings in any wise pertaining to the construction, maintenance and operation of such bridge project or incidental thereto.

22. That the Director of Highways of the State of Washington shall cause to be prepared, filed, and provided, all records and reports pertaining to the construction of such bridge project and the maintenance, care, upkeep and repair of the Washington approach unit as may from time to time be required on behalf of the United States by the Bureau of Public Roads and provide the

Director of Highways of the State of Idaho with a copy thereof. That the Director of Highways of the State of Idaho shall cause to be prepared, filed, and provided, all records and reports pertaining to the maintenance, care, upkeep, repair and operation of the bridge unit and the Idaho approach unit as may be required on behalf of the United States by the Bureau of Public Roads and provide the Director of Highways of the State of Washington with a copy thereof.

25. That neither the State of Washington nor the State of Idaho shall be liable for any personal injury or property damage resulting from any act or omission of the contractor, his agents or employees, in the prosecution of work under his contract for the construction of such bridge project, and the contractor to whom award for such construction has been made shall be required in his contract to hold harmless both the State of Washington and the State of Idaho, from loss by reason of any claim, action or proceeding arising out of any personal injury or property damage occasioned by the contractor, his agents or employees in the prosecution of work under his contract for the construction of the bridge project.

24. That there shall be incorporated in the contract between the State of Washington and the State of Idaho, and the contractor, for the construction of the bridge project, the following provisions:

(a) That the contractor will comply with the legal requirements of the State of Washington and the State of Idaho relating to Workman's Compensation, Medical Aid, Accident and Industrial Insurance and immediately upon entering into the contract for the construction of such bridge project the contractor, shall notify

the Department of Labor and Industries of the State of Washington at Olympia, Washington, and the Industrial Accident Board of the State of Idaho at Boise, Idaho, that those state agencies may determine the jurisdiction of each thereof with respect to such bridge project and the method of administering and applying the matters under their jurisdiction to such bridge project;

(b) That the contractor shall consult with the respective cognizant state agencies or representative agencies of the United States with reference to the administration of Unemployment Insurance and Social Security as the same applies to the construction of such project;

(c) That the contractor shall immediately consult with the State Tax Commission of the State of Washington and make such provision as the State Tax Commission may consider necessary for the administration of the Sales Tax and Compensating Tax upon equipment, materials, provisions, and supplies, and other taxable articles and commodities employed in the construction of the bridge project, and also such provision as the State Tax Commission may consider necessary for the administration of the Business Tax in so far as the same applies to the contractor in the construction of the bridge project;

(d) In the employment of persons for the execution of the bridge project, the contract let shall provide for, and the contractor shall render obedience to the laws of both states in giving employment to resident persons, dividing the apportionment of said labor equally so far as practicable.

(e) Such other provisions as may be necessary and convenient to effect the completion of the construction of the bridge project in compliance with the laws both of the State of Washington and the State of Idaho.

25. That the contract for the construction of such bridge project shall provide, and it is the purpose of this agreement to provide, that the Director of Highways of the State of Washington, the Commissioner of Public Works and the Director of Highways of the State of Idaho, and the State of Washington and the State of Idaho, as sovereign states of the United States, do reserve and do not relinquish any of the rights, privileges, and immunities to which they are otherwise entitled unless any of such rights, privileges and immunities shall be expressly waived or relinquished.

26. That by and through the Director of Highways of the State of Washington, and by and through the Commissioner of Public Works and Director of Highways of the State of Idaho, as signatories to this agreement, the full faith of the State of Washington and the State of Idaho is pledged to carry out the provisions of this agreement and accomplish the purpose for which this agreement is executed.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the day and year first above written.

STATE OF WASHINGTON

Department of Highways

By *Irish Davis*
Assistant Director of Highways

STATE OF IDAHO
STATE BOARD OF EXAMINERS

By *Paula W. Clark*
Governor
Ira H. Masters
Secretary of State

STATE OF IDAHO

Department of Public Works

By *Wm. Taylor*
Commissioner of Public Works
and
J. H. Stemmer
Director of Highways.

Approved as to form
27th day of January 1938.
[Signature]
Notary Public