

Region Level Reimbursable H&LP Project Pre-construction Agreement

150 th Street SW and Murray Rd SW (Project Title)	JC-4019 (JC Account Number)
City of Lakewood (Local Agency Name)	Desiree Winkler (Project Contact)
\$10,000.00 (Estimated Cost)	(253) 983-7818 (Phone)
91-1698185 (Federal ID Number)	dwinkler@cityoflakewood.us (Email)
6000 Main Street SW (Billing Address)	
n/a (Suite or Office Number)	
Lakewood, WA 98499-5027 (City, State, Zip Code)	
OH-00199 (Reciprocal Overhead Agreement No. If any)	

This Agreement is made and entered into by and between the Washington State Department of Transportation, hereinafter "WSDOT," and the above named "LOCAL AGENCY,"

WHEREAS, the LOCAL AGENCY has a project, named above, hereinafter the "Project", that may use funds administered by WSDOT Highways and Local Programs in the future, and

WHEREAS, the Project is not currently using funds administered by WSDOT Highways and Local Programs, and

WHEREAS, the LOCAL AGENCY has requested that WSDOT provide Property Management Services to assist the LOCAL AGENCY in securing transfer of WSDOT properties to the LOCAL AGENCY for the purposes of Project construction and to update associated WSDOT Right-of-Way Plans as required,

WHEREAS, the LOCAL AGENCY is responsible for the costs associated with the required Property Management Services and Right-of-Way Plan updates,

NOW THEREFORE, pursuant to chapter 47.50 RCW, it is mutually agreed between the parties hereto as follows:

1. GENERAL

1.1 WSDOT agrees to perform assistance with Property Management Services and with Right-of-Way Plan updates, in support of the LOCAL AGENCY's project, using WSDOT labor, equipment and materials, as requested by the LOCAL AGENCY.

1.2 All WSDOT reviews and approvals provided for herein are solely for the benefit of WSDOT and not for the LOCAL AGENCY or any other third party.

2. PAYMENT

2.1 The LOCAL AGENCY agrees to reimburse WSDOT for the actual direct salary and direct non-salary costs associated with the work as described in Section 1 of this Agreement, provided that the Parties have a reciprocal overhead agreement in place effective as of the date of this Agreement.

2.2 If the Parties do not have a reciprocal overhead agreement in place effective as of the date of this Agreement, the LOCAL AGENCY agrees to reimburse WSDOT for the actual direct and related indirect costs, which includes WSDOT's overhead rate, associated with the review and/or approval of environmental, right of way or other Project documents submitted by the LOCAL AGENCY for the Project.

2.3 The LOCAL AGENCY agrees to make payment within thirty (30) days from receipt of an invoice from WSDOT.

2.4 The CITY agrees that if it does not make payment for 100% of the actual direct salary and direct non-salary costs of work within ninety (90) calendar days after receipt of a STATE invoice, the STATE may deduct and expend any monies to which the CITY is entitled to receive from the Motor Vehicle Fund as provided by RCW 47.24.050 until the invoice(s) is paid in full.

3. INCREASE IN COST

3.1 The parties agree that the estimated cost of the work may be exceeded by up to 25%. In the event costs exceed the estimated cost by more than 25% the parties agree to modify the estimated cost of work by written amendment, signed by both parties.

4. ASSIGNMENT

4.1 This Agreement, and any claim arising under this Agreement, shall not be assignable or delegable by either Party, either in whole or in part.

5. INDEMNIFICATION

5.1 The LOCAL AGENCY shall protect, defend, indemnify, and hold harmless WSDOT, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims or judgments resulting from WSDOT's review and/or approval of the LOCAL AGENCY Project documents pursuant to the provisions of this Agreement. The LOCAL AGENCY will not be required to indemnify, defend, or save harmless WSDOT if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of WSDOT. 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 a Party's own negligence. This indemnification will survive the termination or expiration of this Agreement.

6. AMENDMENT

6.1 This Agreement may be amended by the mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

7. TERMINATION

7.1 Either Party may terminate this Agreement by giving written notice to the other of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination. The LOCAL AGENCY will reimburse WSDOT for all charges up to the date of termination.

8. DISPUTES

8.1 The Parties shall work collaboratively to resolve disputes and issues arising out of, or related to this Agreement. Disagreements shall be resolved promptly and at the lowest level of hierarchy. To this end, following the dispute resolution process in Subsections 8.1.1 through 8.1.4 shall be a prerequisite to the filing of any litigation concerning any dispute between the Parties:

8.1.1 The WSDOT Region Local Programs Engineer and Project Contact shall use their best efforts to resolve disputes and issues arising out of, or related to this Agreement.

8.1.2 The WSDOT Region Local Programs Engineer or Project Contact shall notify the other Party in writing of any dispute or issue that the Representative believes may require formal resolution according to Subsection 8.1.4. The Representatives shall meet within five (5) business days of receiving the written notice and attempt to resolve the dispute.

8.1.3 In the event the WSDOT Region Local Programs Engineer and Project Contact cannot resolve the dispute or issue, the Chief Executive of the LOCAL AGENCY, and the WSDOT Region Administrator or their respective designees shall meet and engage in good faith negotiations to resolve the dispute.

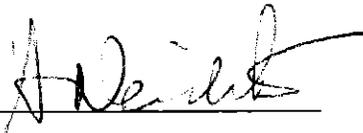
8.1.4 In the event the Chief Executive of the LOCAL AGENCY and the WSDOT Region Administrator or their respective designees cannot resolve the dispute or issue, the LOCAL AGENCY and WSDOT shall each appoint a member to a disputes board. Each Party shall be responsible for its own costs and fees. These two members shall then select a third member not affiliated with either Party. The three member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. All expenses for the third member of the Dispute Resolution board shall be shared equally by both Parties. The Parties shall be responsible for their costs, including attorney fees.

8.2 The Parties agree that any legal action to enforce any right or obligation under this Agreement may only be brought in Thurston County Superior Court.

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

LOCAL AGENCY

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION

By: 

By: 

Print: Andrew Neiditz
Title: City Manager

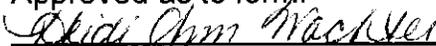
Print: RICHARD W. EGOLF
Title: ASST LOCAL PROG ENG

Date: 4-19-11

Date: 4/22/11

Attest: 

Alice M. Bush, City Clerk
Approved as to form: 7-20-11


Heidi Wachter, City Attorney