

Congestion Mitigation and Air Quality Grant Reimbursable Agreement Between City of Battle Ground, City of Camas, and the City of Washougal

THIS AGREEMENT is made and entered into this 30th day of April, 2021, by and between the City of Battle Ground ("Battle Ground"), the City of Camas ("Camas"), and the City of Washougal ("Washougal"), each of which may be individually referred to as "City" or "Party" and collectively the "Cities" and "Parties";

WHEREAS, the Interlocal Cooperation Act, as amended and codified in RCW Chapter 39.34, provides for cooperative agreements between governmental agencies; and

WHEREAS, the Cities were joint applicants for a Congestion Mitigation And Air Quality (CMAQ) Grant in June of 2016 through the Regional Transportation Commission (RTC); and

WHEREAS, the purpose of the Grant was for the Cities to join up with Clark County's Advance Traffic Management System ("ATMS"); and

WHEREAS, at the time of the application it was decided that Battle Ground would be the lead agency for grant administration; and

WHEREAS, the Washington State Department of Transportation (WSDOT) is requiring that invoicing and reimbursement for the Grant run through Battle Ground alone rather than each City individually which necessitates this reimbursable agreement; and

NOW, THEREFORE, the Parties, having entered into this Agreement by their signature, agree with the following:

I. GENERAL TERMS AND OBJECTIVES

1. The Cities received a collective CMAQ Grant award in the amount of \$276,000.00. The grant funds are to be utilized for each City to join up with Clark County's ATMS system ("the Project"). WSDOT requires the invoicing for the Grant funds to be run through one City as opposed to each City individually. The breakdown of the individual award to each City was as follows:
 - a. Battle Ground = \$85,609.05 (31.02%)
 - b. Camas = \$119,050.08 (43.13%)
 - c. Washougal = \$71,340.87 (25.85%)
2. Camas and Washougal shall reimburse Battle Ground for all invoiced costs that are associated with each of their respective portions of expenses related to the CMAQ

Grant. The purpose of this Agreement is to detail the agreed-upon terms for reimbursement.

3. Per the approved Local Agency Agreement with WSDOT, which is attached as Exhibit A and incorporated herein by reference, eligible costs can be reimbursed at a rate of 86.5%, not to exceed the grant amount of \$276,000.00.
4. The Project has been Bid with five (5) schedules within the Bid Proposal, which is attached as Exhibit B and incorporated herein by reference, to distinguish the identification of costs associated with each City. The five (5) schedules are as follows:
 - Schedule 1A – work for the City of Battle Ground, which is not taxable
 - Schedule 1B – work for the City of Battle Ground, which is taxable
 - Schedule 2 – work for Camas, which is not taxable
 - Schedule 3A – work for Washougal, which is not taxable
 - Schedule 3B – work for Washougal, which is taxable
5. Per the approved Local Agency Agreement with WSDOT, the following costs are reimbursable from the Grant:
 - a. Construction Contract with the responsible, responsive low Bidder that will be selected for the project;
 - b. ATMS licensing, which will be purchased from Cubic/Trafficware;
 - c. Inspection/testing costs from Clark County for the Project; and
 - d. WSDOT's reimbursable expenses related to the Project.
6. Battle Ground will pay all costs as listed in Section (I)(5). After paying said costs, Battle Ground will request reimbursement from WSDOT for 86.5% of costs not to exceed \$276,000.00. Battle Ground will then invoice Camas and Washougal for their respective share of costs not reimbursed by WSDOT. Camas and Washougal shall remit payment in full to Battle Ground within thirty (30) days of receiving an invoice from Battle Ground.
7. Each City shall be responsible for the costs listed in Section (I)(5) as follows:
 - a. Battle Ground:
 - i. Section (I)(5)(a) = Schedules 1A and 1B of the Bid Proposal.
 - ii. Section (I)(5)(b) = Licensing fees as shown on Cubic/Trafficware's invoice allocated specifically to Battle Ground.
 - iii. Section (I)(5)(c) = Inspection/testing fees as shown on Clark County's invoice specific to Battle Ground. For any fees that are specific to the Project as a whole or not shown as being related to a specific City, Battle Ground will pay 31.02% of overall said costs.
 - iv. Section (I)(5)(d) = Battle Ground will pay 31.02% of the overall costs not attributed to a specific City and not otherwise reimbursed by WSDOT.
 - b. Camas:
 - i. Section (I)(5)(a) = Schedule 2 of the Bid Proposal.

- ii. Section (I)(5)(b) = Licensing fees as shown on Cubic/Trafficware's invoice allocated specifically to Camas.
 - iii. Section (I)(5)(c) = Inspection/testing fees as shown on Clark County's invoice specific to Camas. For any fees that are specific to the Project as a whole or not shown as being related to a specific City, Camas will pay 43.13% of overall said costs.
 - iv. Section (I)(5)(d) = Camas will pay 43.13% of the overall costs not attributed to a specific City and not otherwise reimbursed by WSDOT.
 - c. Washougal:
 - i. Section (I)(5)(a) = Schedules 3A and 3B of the Bid Proposal.
 - ii. Section (I)(5)(b) = Licensing fees as shown on Cubic/Trafficware's invoice specific to Washougal.
 - iii. Section (I)(5)(c) = Inspection/testing fees as shown on Clark County's invoice specific to Washougal. For any fees that are specific to the Project as a whole or not shown as being related to a specific City, Washougal will pay 25.85% of overall said costs.
 - iv. Section (I)(5)(d) = Washougal will pay 25.85% of the overall costs not attributed to a specific City and not otherwise reimbursed by WSDOT.
8. The reimbursement due to each City by WSDOT shall be limited to the respective maximum amount attributed to each city in Section (I)(1) except as otherwise provided in this Section (I)(8). If one city is reimbursed all of its eligible costs by WSDOT and the reimbursements do not exceed the maximum amount attributed to that city as listed in Section (I)(1), then the remaining amount attributed to that city shall be equally split amongst the other two (2) Cities with each receiving fifty percent (50%) of the remaining amount to be applied to their eligible costs. If two Cities are reimbursed all of their eligible costs by WSDOT and the reimbursements do not exceed either of their maximum individual amounts attributed to those Cities in the Section (I)(1), then the total remaining amount may be used by the remaining City to be applied to their eligible costs.
 9. Any Project costs incurred by an individual City that are not specifically listed in Section (I)(5) herein are the sole responsibility of the individual City that incurred them and that City shall be individually invoiced and solely responsible for payment.
 10. Each City shall be solely responsible for inspecting the work that occurs in furtherance of the Project that benefits their individual interest in the Project.
 11. The City Council of the City of Battle Ground shall be responsible for awarding or not awarding the Contract to the responsible/responsive low Bidder. Battle Ground's Public Works Director will request concurrence from Camas and Washougal via their respective staff members as listed in Section (XI) herein, or their designees, but the ultimate authority for the decision shall lie exclusively with the City Council of the City of Battle Ground.

12. Battle Ground's City Engineer will be responsible for negotiating and approving Change Orders on behalf of each City. For optional change orders, the Battle Ground City Engineer will not approve the change order without first receiving concurrence from the City or Cities that are impacted, via the respective staff members listed in Section (XI) herein, or their designees. The Battle Ground City Engineer will not approve the optional change order if concurrence is not received from the impacted City or Cities within 48 hours, or other timeframe as may be specified by the Battle Ground City Engineer, of submitting the request for concurrence. For purposes of this Section (I)(12), an "optional change order" shall be defined as any change order that may benefit the Project, but isn't necessary or required to complete the Project as determined by the Battle Ground City Engineer.

For mandatory change orders, the Battle Ground City Engineer will seek concurrence from the City or Cities that are impacted, via the respective staff members listed in Section (XI) herein, or their designees. If an impacted City elects to deny, contest, or further negotiate a mandatory change order related to their City then that City shall be solely responsible for any claim, delay costs, or any other damages that may arise related to their challenge. If the Battle Ground City Engineer does not receive concurrence or confirmation of an impacted City's intent to deny, contest, or further negotiate a mandatory change order within 48 hours, or other timeframe as specified by the Battle Ground City Engineer, of submitting the request for concurrence then the Battle Ground City Engineer shall have the sole authority to approve the mandatory change order. For purposes of this Section (I)(12), a "mandatory change order" shall be defined as any change order that is necessary or required to complete the Project as determined by the Battle Ground City Engineer.

For any optional or mandatory change order that solely impacts the City of Battle Ground, the Battle Ground City Engineer shall have the authority to approve or deny said change orders without concurrence from the other City or Cities that may be impacted.

For any change orders that are specific to a City, that City will be responsible for all associated costs. For any change orders that are specific to the Project as a whole or not shown as being related to a specific City, the Cities will pay their proportionate share based on the percentages shown in Section (I)(1). For change orders that may benefit the Cities differently than previously described, the change order will specifically list which costs belong to each City.

II. ASSIGNMENT/SUBCONTRACTING

No Party to this Agreement shall transfer or assign, in whole or in part, its respective rights or obligations under this Agreement without the prior written consent of the other Parties. Consent for assignment or transfer shall not be unreasonably withheld.

III. INDEPENDENT CAPACITY

Employees or agents of a Party engaged in the performance of projects under this Agreement shall continue to be employees or agents of that Party and shall not be considered employees or agents of any other Party to this Agreement.

IV. ALTERATIONS AND AMENDMENTS

This Agreement may only be amended by written agreement between the Cities that is signed by personnel authorized to bind each City.

V. DISPUTES

The principal executive or their designee of each City shall attempt to resolve all disputes regarding the terms of this Agreement in good faith. In the event the dispute is not resolved by the Cities, the matter will be referred to the Superior Court of the State of Washington in and for Clark County.

Cities shall bear their own legal fees, costs, and expenses related to enforcing rights and responsibilities of this Agreement.

VI. RECORDS MAINTENANCE

The Cities shall retain project records that sufficiently and properly reflect all direct and indirect costs incurred for the performance of services in this Agreement. Records shall be subject to inspection, review, or audit by each Party and the Office of the Washington State Auditor. All records shall be retained in accordance with the State of Washington records retention schedule.

VII. GOVERNANCE

This Agreement is entered into under the authority granted by the State of Washington and provisions of the Agreement shall be construed to conform to Washington State laws.

VIII. WAIVER AND SEVERABILITY

Failure by any Party to this Agreement to exercise rights under this Agreement shall not preclude that Party from subsequent exercise of those rights and shall not constitute a waiver of those rights or any other right under this Agreement. Waiver of any rights under this Agreement requires a written statement signed by an authorized representative of the Party waiving such rights.

If any provision of this Agreement or provision of a document incorporated by reference to this Agreement is found invalid, the invalidity shall not affect other provisions of this Agreement if the other provisions can be given effect without the

invalid provision. The provisions of this Agreement are declared severable. In the event that certain language or a section of this Agreement is invalidated, the Parties will negotiate alternative terms to effectuate the Parties' intent. If the Parties are unable to reach agreement on alternative terms within 30 days of the invalidity determination, this Agreement will terminate.

IX. ENTIRE AGREEMENT

This Agreement together with all listed Exhibits contains all the terms and conditions agreed upon by the Parties on the subject of this Agreement. No other understandings, oral or otherwise, exist or bind the Parties.

X. INDIRECT OR THIRD-PARTY BENEFICIARIES

The Parties do not intend, by this Agreement, to assume contractual obligations to any other party than the Parties named in this Agreement. There are no indirect or third-party beneficiaries to this Agreement.

XI. DURATION.

This Agreement shall become effective upon its execution by the Parties and recording on each party's website or recording with the Clark County Auditor, and shall continue until completion of its stated goals.

XII. ADMINISTRATION.

No new or separate legal or administrative entity is created to administer the provisions of this Agreement. The Parties shall administer the performance of the Agreement.

XIII. MANNER OF FINANCING.

Each city shall finance their respective shares as set forth in Section I, above.

XIV. NO PROPERTY.

No property will be acquired, held, used, or disposed of in connection with this Agreement.

XV. TERMINATION. The parties to this agreement rely on the continued participation of all the parties. No party shall unilaterally terminate their participation in this agreement without consent of all the remaining parties and the granting authority.

XVI. NOTICES

Any notices given under this Agreement shall be delivered and addressed to:

City of Battle Ground

Attn: Public Works Director
109 SW 1st Street, Suite 122
Battle Ground, WA 98604

City of Camas

Attn: Jamal Fox, City Administrator
616 NE 4th Avenue
Camas, WA 98607
JFox@cityofcamas.us

City of Washougal

Attn: City Manager
1701 C Street
Washougal, WA 98671

The undersigned Parties agree to all of the terms and conditions contained in this Agreement.

IN WITNESS WHEREOF, the Parties execute this Agreement by their duly authorized officers as of the 4th day of May, 2021.

CITY OF BATTLE GROUND

BY: [Signature]

TITLE: City Manager

DATE: 5/4/21

CITY OF CAMAS

BY: [Signature]

TITLE: MAYOR PRO TEM

DATE: 4/5/2021

Approved as to form:

[Signature]
Christine Hayes, City Attorney

Approved as to form:

[Signature]
Shawn MacPherson, City Attorney

CITY OF WASHOUGAL

BY: David Scott

TITLE: David Scott, City Manager

DATE: April 27, 2021

Approved as to form:

Kenneth Woodrich
Kenneth B. Woodrich, City Attorney

EXHIBIT "A"


**Washington State
Department of Transportation**

Agency City of Battle Ground

 Address 109 SW 1st Street
 Suite 122
 Battle Ground, WA 98604

Local Agency Agreement

CFDA No. 20.205

(Catalog or Federal Domestic Assistance)

Project No.

Agreement No.

For OSC WSDOT Use Only

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) 2 CFR Part 200, (4) 2 CFR Part 180 — certifying that the local agency is not excluded from receiving Federal funds by a Federal suspension or debarment, (5) the policies and procedures promulgated by the Washington State Department of Transportation, and (6) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

Project Description

Name Small Cities ATMS

Length varies

Termini city-wide to city-wide

Description of Work

Expansion of Clark County's ATMS now license, update traffic controllers, installation of wireless radios to connect to existing fiber systems, and installation of cameras within Battle Ground, Camas, and Washougal.

Project Agreement End Date 12/31/2022

Proposed Advertisement Date 1/31/2021

Claiming Indirect Cost Rate

☐ Yes ☒ No

Type of Work		Estimate of Funding		
		(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE	a. Agency			
%	b. Other			
Federal Aid	c. Other			
Participation	d. State			
Ratio for PE	e. Total PE Cost Estimate (a+b+c+d)	0.00	0.00	0.00
Right of Way	f. Agency			
%	g. Other			
Federal Aid	h. Other			
Participation	i. State			
Ratio for RW	j. Total R/W Cost Estimate (f+g+h+i)	0.00	0.00	0.00
Construction	k. Contract	318,075.00	42,940.00	275,135.00
86.5 %	l. Other Contract (Non-Federal)	52,325.00	52,325.00	0.00
	m. Other			
Federal Aid	n. Other			
Participation	o. Agency			
Ratio for CN	p. State	1,000.00	135.00	865.00
	q. Total CN Cost Estimate (k+l+m+n+o+p)	371,400.00	95,400.00	276,000.00
	r. Total Project Cost Estimate (e+j+q)	371,400.00	95,400.00	276,000.00

Agency Official

 By
 Title City Manager

Washington State Department of Transportation

 By
 Director, Local Programs

Date Executed

DEC 22 2020

Construction Method of Financing (Check Method Selected)

State Ad and Award

Method A - Advance Payment - Agency Share of total construction cost (based on contract award)

Method B - Withhold from gas tax the Agency's share of total construction cost (line 5, column 2) in the amount of

\$ _____ at \$ _____ per month for _____ months.

Local Force or Local Ad and Award

✓ Method C - Agency cost incurred with partial reimbursement

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will comply with the applicable provisions set forth below. Adopted by official action on

_____, Resolution/Ordinance No. _____

Provisions

I. Scope of Work

The Agency shall provide all the work, labor, materials, and services necessary to perform the project which is described and set forth in detail in the "Project Description" and "Type of Work."

When the State acts for and on behalf of the Agency, the State shall be deemed an agent of the Agency and shall perform the services described and indicated in "Type of Work" on the face of this agreement, in accordance with plans and specifications as proposed by the Agency and approved by the State and the Federal Highway Administration.

When the State acts for the Agency but is not subject to the right of control by the Agency, the State shall have the right to perform the work subject to the ordinary procedures of the State and Federal Highway Administration.

II. Delegation of Authority

The State is willing to fulfill the responsibilities to the Federal Government by the administration of this project. The Agency agrees that the State shall have the full authority to carry out this administration. The State shall review, process, and approve documents required for federal aid reimbursement in accordance with federal requirements. If the State advertises and awards the contract, the State will further act for the Agency in all matters concerning the project as requested by the Agency. If the Local Agency advertises and awards the project, the State shall review the work to ensure conformity with the approved plans and specifications.

III. Project Administration

Certain types of work and services shall be provided by the State on this project as requested by the Agency and described in the Type of Work above. In addition, the State will furnish qualified personnel for the supervision and inspection of the work in progress. On Local Agency advertised and awarded projects, the supervision and inspection shall be limited to ensuring all work is in conformance with approved plans, specifications, and federal aid requirements. The salary of such engineer or other supervisor and all other salaries and costs incurred by State forces upon the project will be considered a cost thereof. All costs related to this project incurred by employees of the State in the customary manner on highway payrolls and vouchers shall be charged as costs of the project.

IV. Availability of Records

All project records in support of all costs incurred and actual expenditures kept by the Agency are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the Agency. Copies of said records shall be furnished to the State and/or Federal Government upon request.

V. Compliance with Provisions

The Agency shall not incur any federal aid participation costs on any classification of work on this project until authorized in writing by the State for each classification. The classifications of work for projects are:

1. Preliminary engineering.
2. Right of way acquisition.
3. Project construction.

Once written authorization is given, the Agency agrees to show continuous progress through monthly billings. Failure to show continuous progress may result the Agency's project becoming inactive, as described in 23 CFR 630, and subject to de-obligation of federal aid funds and/or agreement closure.

If right of way acquisition, or actual construction of the road for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which preliminary engineering phase was authorized, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

If actual construction of the road for which right of way has been purchased is not started by the close of the tenth fiscal year following the fiscal year in which the right of way phase was authorized, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

The Agency agrees that all stages of construction necessary to provide the initially planned complete facility within the limits of this project will conform to at least the minimum values set by approved statewide design standards applicable to this class of highways, even though such additional work is financed without federal aid participation.

The Agency agrees that on federal aid highway construction projects, the current federal aid regulations which apply to liquidated damages relative to the basis of federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, 2 CFR Part 200. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR Part 200 - Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

1. Project Construction Costs

Project construction financing will be accomplished by one of the three methods as indicated in this agreement.

Method A - The Agency will place with the State, within (20) days after the execution of the construction contract, an advance in the amount of the Agency's share of the total construction cost based on the contract award. The State will notify the Agency of the exact amount to be deposited with the State. The State will pay all costs incurred under the contract upon presentation of progress billings from the contractor. Following such payments, the State will submit a billing to the Federal Government for the federal aid participation share of the cost. When the project is substantially completed and final actual costs of the project can be determined, the State will present the Agency with a final billing showing the amount due the State or the amount due the Agency. This billing will be cleared by either a payment from the Agency to the State or by a refund from the State to the Agency.

Method B - The Agency's share of the total construction cost as shown on the face of this agreement shall be withheld from its monthly fuel tax allotments. The face of this agreement establishes the months in which the withholding shall take place and the exact amount to be withheld each month. The extent of withholding will be confirmed by letter from the State at the time of contract award. Upon receipt of progress billings from the contractor, the State will submit such billings to the Federal Government for payment of its participating portion of such billings.

Method C - The Agency may submit vouchers to the State in the format prescribed by the State, in duplicate, not more than once per month for those costs eligible for Federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

The State shall reimburse the Agency for the Federal share of eligible project costs up to the amount shown on the face of this agreement. At the time of audit, the Agency will provide documentation of all costs incurred on the project. The State shall bill the Agency for all costs incurred by the State relative to the project. The State shall also bill the Agency for the federal funds paid by the State to the Agency for project costs which are subsequently determined to be ineligible for federal participation (see Section IX).

VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and 2 CFR Part 200.501 - Audit Requirements.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation (see Section IX).

VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal regulations outlined in 2 CFR Part 200.501 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$750,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of 2 CFR Part 200.501. Upon conclusion of the audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed by the Director, Local Programs.

Project Agreement End Date - This date is based on your projects Period of Performance (2 CFR Part 200.309).

Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 60 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

X. Traffic Control, Signing, Marking, and Roadway Maintenance

The Agency will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The Agency will not install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and MUTCD. The Agency will, at its own expense, maintain the improvement covered by this agreement.

XI. Indemnity

The Agency shall hold the Federal Government and the State harmless from and shall process and defend at its own expense all claims, demands, or suits, whether at law or equity brought against the Agency, State, or Federal Government, arising from the Agency's execution, performance, or failure to perform any of the provisions of this agreement, or of any other agreement or contract connected with this agreement, or arising by reason of the participation of the State or Federal Government in the project, PROVIDED, nothing herein shall require the Agency to reimburse the State or the Federal Government for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Federal Government or the State.

XII. Nondiscrimination Provision

No liability shall attach to the State or Federal Government except as expressly provided herein.

The Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Agency of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The Agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor in 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee or understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

The Agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Agency also agrees:

- (1) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.
- (2) To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.
- (3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.
- (4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the Agency agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:

- (a) Cancel, terminate, or suspend this agreement in whole or in part;
- (b) Refrain from extending any further assistance to the Agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Agency; and
- (c) Refer the case to the Department of Justice for appropriate legal proceedings.

XIII. Liquidated Damages

The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 635, Subpart 127, as supplemented, relative to the amount of Federal participation in the project cost, shall be applicable in the event the contractor fails to complete the contract within the contract time. Failure to include liquidated damages provision will not relieve the Agency from reduction of federal participation in accordance with this paragraph.

XIV. Termination for Public Convenience

The Secretary of the Washington State Department of Transportation may terminate the contract in whole, or from time to time in part, whenever:

- (1) The requisite federal funding becomes unavailable through failure of appropriation or otherwise.
- (2) The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the 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 with respect to the preservation of energy resources.
- (3) 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.
- (4) The Secretary is notified by the Federal Highway Administration that the project is inactive.
- (5) The Secretary determines that such termination is in the best interests of the State.

XV. Venue for Claims and/or Causes of Action

For the convenience of the parties to this contract, it is agreed that any claims and/or causes of action which the Local Agency has against the State of Washington, growing out of this contract or the project with which it is concerned, shall be brought only in the Superior Court for Thurston County.

XVI. Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The approving authority certifies, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification as a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

XVII. Assurances

Local agencies receiving Federal funding from the USDOT or its operating administrations (i.e., Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration) are required to submit a written policy statement, signed by the Agency Executive and addressed to the State, documenting that all programs, activities, and services will be conducted in compliance with Section 504 and the Americans with Disabilities Act (ADA).

Additional Provisions

EXHIBIT "B"

SMALL CITIES ATMS – BID PROPOSAL

Schedule 1A – Battle Ground – City ROW

Item Number	Item	Quantity	Unit	Unit Cost	Total Cost
1A-1	Minor Change	1	CALC	\$1,000.00	\$1,000.00
1A-2	Record Drawings	1	LS		
1A-3	Mobilization	1	LS		
1A-4	Project Temporary Traffic Control	1	LS		
1A-5	Communication Cables And Interfaces	1	LS		
1A-6	Traffic Control System	1	LS		
1A-7	CCTV Camera System	2	EA		
Schedule 1A Total					

Schedule 1B – Battle Ground – State ROW

Item Number	Item	Quantity	Unit	Unit Cost	Total Cost
1B-1	Minor Change	1	LS		
1B-2	Record Drawings	1	LS		
1B-3	Mobilization	1	LS		
1B-4	Project Temporary Traffic Control	1	LS		
1B-5	Communication Cables And Interfaces	1	LS		
Schedule 1B Subtotal					
Sales Tax – 8.4%					
Schedule 1B Total					

Schedule 2 – Camas – City ROW					
Item Number	Item	Quantity	Unit	Unit Cost	Total Cost
2-1	Minor Change	1	CALC	\$1,000.00	\$1,000.00
2-2	Record Drawings	1	LS		
2-3	Mobilization	1	LS		
2-4	Project Temporary Traffic Control	1	LS		
2-5	Communication Cables And Interfaces	1	LS		
2-6	Traffic Control System	1	LS		
2-7	CCTV Camera System	1	EA		
Schedule 2 Total					

Schedule 3A – Washougal – City ROW					
Item Number	Item	Quantity	Unit	Unit Cost	Total Cost
3A-1	Minor Change	1	CALC	\$1,000.00	\$1,000.00
3A-2	Record Drawings	1	LS		
3A-3	Mobilization	1	LS		
3A-4	Project Temporary Traffic Control	1	LS		
3A-5	Communication Cables And Interfaces	1	LS		
3A-6	Traffic Control System	1	LS		
3A-7	CCTV Camera System	1	EA		
Schedule 3A Total					

Schedule 3B – Washougal – State ROW					
Item Number	Item	Quantity	Unit	Unit Cost	Total Cost
3B-1	Minor Change	1	LS		
3B-2	Record Drawings	1	LS		
3B-3	Mobilization	1	LS		
3B-4	Project Temporary Traffic Control	1	LS		
3B-5	Communication Cables And Interfaces	1	LS		
				Schedule 3B Subtotal	
				Sales Tax – 8.4%	
				Schedule 3B Total	
				Project Total	