

**MAINTENANCE AGREEMENT BETWEEN
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
AND
CITY OF MCCLEARY
GMB-1037**

This Agreement is between the Washington State Department of Transportation (WSDOT) and the City of McCleary (CITY); hereinafter individually referred to as the "Party" and collectively referred to as the "Parties."

RECITALS

- A. The Parties are charged with the responsibility of maintaining their streets, roads, and highways and maintaining staff, equipment, and materials to perform the necessary work; and
- B. A Party may, from time to time, need labor, equipment, or materials or may have labor, equipment, and materials available in certain locations which could be used by the other Party; and
- C. RCW 47.28.140 authorizes the WSDOT to enter into a cooperative agreement with a public agency for the performance of, road maintenance and repair, so long as the costs and expenses are reimbursed by the Party whose responsibility it is for the work; and
- D. RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental service which each public agency is authorized to perform, provided that such contract shall be authorized by the governing body of each Party to the contract, so long as the full costs of the services and materials are reimbursed to the agency furnishing them pursuant to RCW 39.34.130; and
- E. The Parties agree that it is in the public interest to make the most efficient use of their labor, equipment, and materials by sharing them on a reimbursable basis when available and when doing so would assist the other Party.

NOW THEREFORE, Pursuant to RCW 47.08.00 and chapter 39.34 the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, and the attached Exhibit A, which are included herein by this reference,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. GENERAL

- 1.1 Each Party agrees to furnish the other Party with labor, equipment, and materials on a fully reimbursable basis when available, for roadway maintenance. The furnishing of labor,

equipment, and materials shall be subject to the procedures and compensation requirements set forth below and shall be at the option of the Party requested to perform the work or to supply labor, equipment, or material. The Parties understand and agree that the work of the Party possessing the labor, equipment, and materials takes priority.

- 1.2 When the WSDOT is requesting labor, equipment or materials, the provisions of RCW 47.28.030 shall apply.

2. PERIOD OF PERFORMANCE

- 2.1 The period of performance of this Agreement shall commence upon execution of this Agreement and extend for a term of one year unless terminated sooner, pursuant to Section 10, Termination. This Agreement shall automatically renew for successive one (1) year terms, unless terminated as provided herein, or for a maximum term of ten (10) years.

3. PROCEDURE FOR REQUESTING SERVICES

- 3.1 Each request for labor, equipment, or materials shall be submitted on behalf of the WSDOT by the Maintenance Supervisor, Assistant Area Maintenance Superintendent, or Area Maintenance Superintendent, and each request for labor, equipment, or materials shall be submitted on behalf of the CITY by the Public Works Foreman or position of higher authority on behalf of the CITY. Each request for labor, equipment or materials shall be submitted on a Task Order Form, which shall include the task location, program manager information, scope of work, task schedule and estimated cost, and be executed by the City Administrator on behalf of the CITY, or the Area Maintenance Superintendent or Assistant Area Maintenance Superintendent on behalf of the WSDOT. In the event of an emergency, work may be requested and agreed to verbally, but such Agreement must be documented by a Task Order within forty-eight (48) hours of the verbal Agreement. The Task Order Form is attached hereto as Exhibit A. All fully executed Task Order Forms shall be deemed automatically made a part of this Agreement.

4. PAYMENT

- 4.1 The Party receiving labor, equipment or materials under this Agreement shall fully reimburse the Party providing it for that Party's actual direct and related indirect costs. Actual direct costs with respect to labor includes the cost of salary and benefits but does not include overhead or administration.
- 4.2 The Party receiving labor, equipment or materials agrees to make payment for the labor, equipment, or materials within thirty (30) days from receipt of invoice. These payments are not to be more frequent than one (1) per month.

5. RECORDS MAINTENANCE

- 5.1 For a period of not less than six (6) years from the date of payment for the labor, equipment or materials, the Parties shall each maintain books, records, documents, and other evidence which sufficiently and properly reflect the labor, equipment or material expended for inspection, review, or audit by personnel of both Parties, other personnel duly authorized by either Party, the office of the State Auditor, and federal officials so authorized by law. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the 6-year retention period.
- 5.2 Records and other documents, in any medium, furnished by one Party to this Agreement to the other Party, will remain the property of the furnishing Party, unless otherwise agreed.

6. CARE AND MAINTENANCE OF EQUIPMENT

- 6.1 A Party requesting use of equipment from the other Party shall be solely responsible for the proper care, maintenance, and security of the equipment until the equipment is returned to the Party owning the equipment. Repair of damage, other than normal wear and tear, will be the responsibility of the Party in possession of the equipment at the time the equipment is damaged, including damages caused by a third party.

7. RIGHT OF ENTRY

- 7.1 The Parties hereto grant to each other the right of entry upon all land in which the Parties have an interest and which land is within or adjacent to the right-of-way of any highway, road or street upon which labor is being utilized by the other Party under this Agreement.

8. SUPERVISION AND INDEPENDENT CAPACITY

- 8.1 The employees of each Party who are engaged in the performance of this Agreement shall continue to be employees of that Party and shall not be considered for any purpose to be employees of the other Party. Each Party shall be solely responsible for the supervision of its own employees.

9. AGREEMENT ALTERATIONS AND AMENDMENTS

- 9.1 This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by

personnel authorized to bind each of the Parties.

10. TERMINATION

- 10.1 Either Party may terminate this Agreement or a Task Order upon thirty (30) day prior written notification to the other Party. If this Agreement or a Task Order is so terminated, the Parties shall be liable only for performance rendered or costs incurred prior to the effective date of termination. Termination of this Agreement shall likewise terminate any outstanding Task Orders.

11. DISPUTES

- 11.1 In the event that a dispute arises under this Agreement, it shall be resolved as follows: WSDOT and the CITY shall each appoint a member to a disputes board; these two members shall select a third member not affiliated with either agency. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with the aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the cost of the third disputes board member; however, each Party shall be responsible for its own costs and fees.

12. INDEMNITY

- 12.1 To the extent authorized by law, the Parties shall protect, defend, indemnify, and hold harmless each other and their employees and authorized agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, the Work to be performed or performed pursuant to the provisions of this Agreement. The Parties shall not be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) the CITY, its employees or authorized agents, and (b) WSDOT, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's, its employees', and/or authorized agents' own negligence.
- 12.2 The CITY agrees that its obligations under this section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents while performing construction, operation, and/or maintenance of the project. For this purpose, the CITY, by mutual negotiation, hereby waives, with respect to the WSDOT only, any immunity that would otherwise be available to it against such claims under the industrial insurance provisions in Chapter 51.12 RCW. 2
- 12.3 This indemnification and waiver shall survive the termination of this Agreement.

13. GOVERNANCE

- 13.1 This Agreement is entered into pursuant to and under the authority granted by the laws of the WSDOT of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.
- 13.2 In the event of an inconsistency in the terms of this Agreement, or between its terms and any Task Order entered into pursuant to Section 3, or any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:
- a. Applicable WSDOT and federal statutes and rules;
 - b. Any Task Order entered into pursuant to Section 3 and its Scope of Work and materials incorporated by reference.

14. ASSIGNMENT

- 14.1 This Agreement, and any Task Order entered into pursuant to Section 3, as well as any claim arising thereunder, is not assignable or delegable by either Party in whole or in part.

15. SEVERABILITY

- 15.1 If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

16. ALL WRITING CONTAINED HEREIN

- 16.1 This Agreement contains all the terms and conditions agreed upon by the Parties, except for Task Orders that have been entered into by the Parties pursuant to Section 3, which are incorporated herein by reference. No other understandings, oral or otherwise, regarding the subject matter of this Agreement or such Task Orders shall be deemed to exist or to bind the Parties hereto.

17. WARRANTY

- 17.1 Each Party, its employees, agents, and assigns warrant its (they) has/have the necessary training, skill and experience (and certification where applicable) necessary

to safely operate equipment and materials owned by the other Party and loaned for temporary use. Any injury or loss of life shall not be indemnified by the other Party if such injury or loss occurred as a result of the employee's negligence and/or misuse of equipment or materials.

18. CONTRACT MANAGEMENT

- 18.1 The program manager for each of the Parties shall be responsible for and shall be the contact person for all communications and invoices for Task Orders under this Agreement.

The Program Manager for the CITY is:

City of McCleary
Chad Bedlington
Public Works Director
100 S 3rd Street
McCleary, WA 98557
360-495-3667, ext 103
chadb@cityofmccleary.com

The Program Manager for WSDOT is:

Brent Schiller
Highway Maintenance Superintendent
4801 Olympic HWY
Aberdeen, WA 98520
360-538-8530
schilb@wsdot.wa.gov

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Party's date signed last below

City Of McCleary	Washington WSDOT Department of Transportation
By:	By:
Printed:	Printed: Troy Cowan
Title:	Title: Administrator for Maintenance and Operations
Date:	Date:
Approved as to Form	Approved as to Form
By:	By:
Printed:	Printed:
Title:	Title:
Date:	Date: