



**CLARK COUNTY
STAFF REPORT**

DEPARTMENT/DIVISION: Department of Public Works/Transportation Program

DATE: April 22, 2014

SPECIFIC REQUEST: Approval of grant funding for the Highway 99 Traffic Responsive Incident Management Project CRP# 340022, approval of Federal Aid Project Prospectus and Local Agency Agreement

CHECK ONE: X Consent _____ Chief Administrative Officer

PUBLIC WORKS GOALS:

- Provide safe and efficient transportation systems within Clark County
- Continue responsible stewardship of public funds
- Promote family-wage job creation and economic development to support a thriving community
- Maintain a desirable quality of life
- Improve environmental stewardship and protection of natural resources
- Increase partnerships and foster an engaged, informed community
- Make Public Works a great place to work

BACKGROUND Clark County has received notification from WSDOT Highways and Local Programs that the above project has been selected for Congestion Mitigation and Air Quality (CMAQ) grant funding. The attached Federal Aid Project Prospectus and Local Agency Agreement will start the process to receive this grant funding for the design and construction of the project.

This project will upgrade central traffic control hardware and software to enable automatic rules-based detection of changing traffic volumes and congestion. Consultant-developed pre-programmed rules will then dynamically change traffic signal timing to mitigate congestion. An audit of the county fiber-optic network will also be performed ensuring 'as built' records remain accurate.

COMMUNITY OUTREACH: This project is included in the adopted 2014-2019 Transportation Improvement Program (TIP). TIP development includes a wide array of public input, including public hearings, open house meetings, and an informational web page.

BUDGET AND POLICY IMPLICATIONS: There are no budget implications involved in this request. The project is listed and funded in the 2014 Annual Construction Program (Item 25).

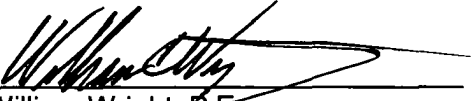
FISCAL IMPACTS: Yes (see Fiscal Impacts Attachment) No

ACTION REQUESTED: It is requested that the Board of County Commissioners sign both copies of the attached Federal Aid Project Prospectus and Local Agency Agreement to accept the awarded grant funds.

*my
OK
y/n*

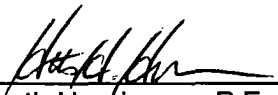
PW 14-032

DISTRIBUTION: Please return the following to the Department of Public Works Transportation Programming Section, attention Michael Derleth: a copy of the approved staff report, indicating the Board's action, one originally-signed copy of the Federal-Aid Project Prospectus, and both originally-signed Local Agency Agreements. The second originally-signed Federal-Aid Project Prospectus is for the Board's files. Upon receipt of a fully-executed Local Agency Agreement, a copy will be provided to the Board.



William Wright, P.E.
Transportation Programming Manager

APPROVED: April 29, 2014
CLARK COUNTY, WASHINGTON
BOARD OF COMMISSIONERS



Heath Henderson, P.E.
Public Works Director/County Engineer

SR 84-14

Attachments: Fiscal Impact Statement; (2) Project Prospectus, (2) Local Agency Agreements

c: PW Records, Michael Derleth, Susan Wilson

PW 14-032

FISCAL IMPACT ATTACHMENT

Part I: Narrative Explanation

I.A - Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information.

This project will upgrade central traffic control hardware and software to enable automatic rules-based detection of changing traffic volumes and congestion. Consultant-developed pre-programmed rules will then dynamically change traffic signal timing to mitigate congestion. An audit of the county fiber-optic network will also be performed ensuring 'as built' records remain accurate.

Total cost of the project is \$629,000 including \$420,000 in CMAQ grant funds and \$209,000 from County Road Fund.

This project is programmed in the 2014-2019 Transportation Improvement Program (TIP) and 2014 Annual Construction Program. The revenues and expenses for this project are currently included in the Road Fund 2013-2014 budget.

Part II: Estimated Revenues

Fund #/Title	Current Biennium ('13-'14)		Next Biennium ('15-'16)		Second Biennium	
	Road Fund	Total	Road Fund	Total	Road Fund	Total
1012 Road Fund	\$629,000	\$629,000	\$0	\$0	\$0	\$0
Total:	\$629,000	\$629,000	\$0	\$0	\$0	\$0

II.A - Describe the type of revenue (grant, fees, etc.)

Total cost of the project is \$629,000 including \$420,000 in CMAQ grant funds and \$209,000 from County Road Fund.

Part III: Estimated Expenditures

III.A - Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		Road Fund	Total	Road Fund	Total	Road Fund	Total
1012 Road Fund		\$629,000	\$629,000	\$0	\$0	\$0	\$0
Total:		\$629,000	\$629,000	\$0	\$0	\$0	\$0

III.B = Expenditure by object category

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	Road Fund	Total	Road Fund	Total	Road Fund	Total
Salary/Benefits	\$124,000	\$124,000				
Consultant	\$60,000	\$60,000				
Supplies						
Travel						
Other controllables						
Capital Outlays	\$445,000	\$445,000				
Inter-fund Transfers						
Debt Service						
Total:	\$629,000	\$629,000	\$0	\$0	\$0	\$0

Handwritten signature and date: 4/18/14

Prefix	Route	()	Date	3/31/2014
Federal Aid Project Number			Central Contractor Registration Exp. Date	1/17/2015
Local Agency Project Number	340022	(WSDOT Use Only)	Federal Employer Tax ID Number	91-6001299

Agency Clark County		Federal Program Title <input checked="" type="checkbox"/> 20.205 <input type="checkbox"/> Other			
Project Title Highway 99 Traffic Responsive Incident Management		Start Latitude	N 45.664	Start Longitude	W -122.665
		End Latitude	N 45.718	End Longitude	W -122.653
Project Termini From - To Ross Rd NE 134th St		Nearest City Name Vancouver		Project Zip Code 98665-9015	
From: Varies	To: Varies	Length of Project 7.20 mi	Award Type <input checked="" type="checkbox"/> Local <input type="checkbox"/> Local Forces <input type="checkbox"/> State <input type="checkbox"/> Railroad		
Federal Agency <input checked="" type="checkbox"/> FHWA <input type="checkbox"/> Others		City Number N/A	County Number 6	County Name Clark	WSDOT Region Southwest Region
Congressional District 3	Legislative Districts 49	Urban Area Number 3	TMA / MPO / RTPO SW WA RTC		

Phase	Total Estimated Cost (Nearest Hundred Dollar)	Local Agency Funding (Nearest Hundred Dollar)	Federal Funds (Nearest Hundred Dollar)	Phase Start Date	
				Month	Year
P.E.	\$114,000	\$42,000	\$72,000	04	2014
R/W					
Const.	\$515,000	\$167,000	\$348,000	12	2014
Total	\$629,000	\$209,000	\$420,000		

Description of Existing Facility (Existing Design and Present Condition)

Roadway Width 80	Number of Lanes 4
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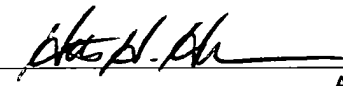
County traffic engineers are unable to continuously monitor real-time congestion information. Responses to continually changing traffic congestion or an emergency traffic situation are currently decided on-the-spot, instead of being predefined to speed implementation. (Project includes multiple roads with different mileposts, see attachment. Total length of project including all roadways is 7.20 miles)

Description of Proposed Work

Description of Proposed Work (Attach additional sheet(s) if necessary)

Upgrade central traffic control hardware and software to enable automatic rules-based detection of changing traffic volumes and congestion. Consultant will develop rules and update/audit of fiber-optic inventory in OSP InSight software to reflect as-built network.

Local Agency Contact Person Michael Derleth	Title Capital Program Specialist	Phone 360-397-6118 x5794
Mailing Address 1300 Franklin St, P.O. Box 9810	City Vancouver	State WA
		Zip Code 98666-9810

By 

Project Prospectus Approval Approving Authority

Title County Engineer / Dir. Public Works Date 4/14/14

Agency Clark County	Project Title Highway 99 Traffic Responsive Incident	Date 3/31/2014
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Type of Proposed Work		
Project Type (Check all that Apply)	Roadway Width	Number of Lanes
<input type="checkbox"/> New Construction <input type="checkbox"/> Path / Trail <input type="checkbox"/> 3-R <input type="checkbox"/> Reconstruction <input type="checkbox"/> Pedestrian / Facilities <input type="checkbox"/> 2-R <input type="checkbox"/> Railroad <input type="checkbox"/> Parking <input checked="" type="checkbox"/> Other <input type="checkbox"/> Bridge	80	4

Geometric Design Data		
Description	Through Route	Crossroad
Federal Functional Classification	<input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural <input type="checkbox"/> NHS	<input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural <input type="checkbox"/> NHS
	<input checked="" type="checkbox"/> Principal Arterial <input type="checkbox"/> Minor Arterial <input type="checkbox"/> Collector <input type="checkbox"/> Major Collector <input type="checkbox"/> Minor Collector <input type="checkbox"/> Local Access	<input checked="" type="checkbox"/> Principal Arterial <input type="checkbox"/> Minor Arterial <input type="checkbox"/> Collector <input type="checkbox"/> Major Collector <input type="checkbox"/> Minor Collector <input type="checkbox"/> Local Access
Terrain	<input type="checkbox"/> Flat <input checked="" type="checkbox"/> Roll <input type="checkbox"/> Mountain	<input checked="" type="checkbox"/> Flat <input type="checkbox"/> Roll <input type="checkbox"/> Mountain
Posted Speed	40	35
Design Speed	45	40
Existing ADT	20510	25135
Design Year ADT	Unknown	Unknown
Design Year	Unknown	Unknown
Design Hourly Volume (DHV)	1061	1053

Performance of Work		
Preliminary Engineering Will Be Performed By Agency	Others 40 %	Agency 60 %
Construction Will Be Performed By Contractor	Contract 60 %	Agency 40 %

Environmental Classification	
<input type="checkbox"/> Class I - Environmental Impact Statement (EIS) <input type="checkbox"/> Project Involves NEPA/SEPA Section 404 Interagency Agreement <input type="checkbox"/> Class III - Environmental Assessment (EA) <input type="checkbox"/> Project Involves NEPA/SEPA Section 404 Interagency Agreement	<input checked="" type="checkbox"/> Class II - Categorical Excluded (CE) <input checked="" type="checkbox"/> Projects Requiring Documentation (Documented CE)

Environmental Considerations None at present.
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Agency Clark County	Project Title Highway 99 Traffic Responsive Incident	Date 3/31/2014
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Right of Way

<input checked="" type="checkbox"/> No Right of Way Required * All construction required by the contract can be accomplished within the existing right of way.	<input type="checkbox"/> Right of Way Required <input type="checkbox"/> No Relocation	<input type="checkbox"/> Relocation Required
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Description of Utility Relocation or Adjustments and Existing Major Structures Involved in the Project
None at Present.

FAA Involvement
Is any airport located within 3.2 kilometers (2 miles) of the proposed project? Yes No

Remarks
None

This project has been reviewed by the legislative body of the administration agency or agencies, or it's designee, and is not inconsistent with the agency's comprehensive plan for community development.

Agency Board of County Commissioners

Date 4/29/14

By Tom Mielke
Mayor/Chairperson

Local Agency Agreement

Agency Clark County
Address 1300 Franklin St.
P.O. Box 9810
Vancouver, WA 98666-9810

CFDA No. 20.205
 (Catalog of 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 225, (4) Office of Management and Budget Circulars A-102, and A-133, (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 Highway 99 Traffic Responsive Incident Management **Length** 7.20 mi
Termini Ross Rd to NE 134th St.

Description of Work

Upgrade central traffic control hardware and software to enable automatic rules-based detection of changing traffic volumes and congestion. Consultant will develop rules and update/audit of fiber-optic inventory in OSP InSight software to reflect as-built network.

Type of Work	Estimate of Funding		
	(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE			
<u>86.5</u> %			
a. Agency	24,277.00	4,177.00	20,100.00
b. Other Eligible Non-Federal	24,723.00	24,723.00	
c. Other Consultant (OSP Fiber)	60,000.00	8,100.00	51,900.00
d. State	5,000.00	5,000.00	
e. Total PE Cost Estimate (a+b+c+d)	114,000.00	42,000.00	72,000.00
Federal Aid Participation Ratio for PE			
Right of Way			
_____ %			
f. Agency			
g. Other			
h. Other			
i. State			
j. Total R/W Cost Estimate (f+g+h+i)			
Construction			
_____ %			
k. Contract			
l. Other			
m. Other			
n. Other			
o. Agency			
p. State			
q. Total CN Cost Estimate (k+l+m+n+o+p)			
r. Total Project Cost Estimate (e+j+q)	114,000.00	42,000.00	72,000.00
Federal Aid Participation Ratio for CN			

Agency Official
 By Tom Melke
 Title Chair, Board of County Commissioners

Washington State Department of Transportation
 By _____
 Director of Highways and Local Programs
 Date Executed _____

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 4, 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

April 29, 2014, Resolution/Ordinance No. 2014-04-18

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.

In the event that right of way acquisition, or actual construction of the road, for which preliminary engineering is undertaken is not started by the closing of the tenth fiscal year following the fiscal year in which the agreement is executed, 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 225 and Office of Management and Budget circulars A-102 and A-133. 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 225 - Cost Principles for State, Local, and Indian Tribal Government, 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 Office of Management and Budget Circular A-133.

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 Office of Management and Budget (OMB) Circular A-133 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$500,000 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 OMB Circular A-133. Upon conclusion of the A-133 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 the Director of Highways and Local Programs.

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 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.

Additional Provisions