CLARK COUNTY
STAFF REPORT

DEPARTMENT: Public Works, Transportation Division

DATE: June 2, 2020

REQUESTED ACTION: Approve funding contracts (Project Prospectus and Local Agency Agreement) for the Northeast 10th Avenue (Northeast 149th Street to Northeast 154th Street) Project. Project No. 323322.

✓ Consent ____ Hearing ____ County Manager

BACKGROUND

The Southwest Washington Regional Transportation Council has notified Clark County that the Northeast 10th Avenue (Northeast 149th Street – Northeast 154th Street) project has been awarded $3,000,000 in grant funding from the Highway Infrastructure Program ($1,362,393) and the Surface Transportation Block Grant Program ($1,637,607). $1,500,000 of the $3,000,000 is going through their parallel approval process. The attached Prospectus and Local Agency Agreement will begin the process to receive the federal funds.

This project will upgrade a gap section of the Northeast 10th Avenue corridor by widening the roadway to include two travel lanes, a center left-turn lane, sidewalks and bicycle lanes; replacing a crossing over a tributary of Whipple Creek with a culvert and constructing stormwater improvements; and installing a traffic signal at the Northeast 10th Avenue / Northeast 149th Street intersection equipped with SMART signal technology. This project will complete this gap section of the 10th Avenue corridor from Northeast 139th Street north to Northeast 164th Street and will connect with previously completed projects on Northeast 10th Avenue (10th Avenue Bridge project to the north and the Salmon Creek Interchange project to the south).

Clark County will close Northeast 10th Avenue north of Northeast 149th Street and south of Northeast 154th Street to through traffic for the duration of the project, a period of approximately 12-14 months, for the safety of workers and the traveling public. In addition, the intersection of Northeast 149th Street and Northeast 10th Avenue will be closed during the project for a period of about six weeks. Specific closure dates and notices will be provided to the public in accordance with RCW 47.48.020, and a road closure resolution will be brought before the council when the project is ready for advertisement later in the fall.

COUNCIL POLICY IMPLICATIONS

None. This project supports the council's policy of providing a safe and efficient transportation system for all county residents.

ADMINISTRATIVE POLICY IMPLICATIONS

None. The project is included in the adopted 2020-2025 Transportation Improvement Program, adopted 2020 Annual Construction Program (No. 2) and adopted 2020 budget.

COMMUNITY OUTREACH

Outreach for the Transportation Improvement Program included two work sessions and a hearing with the Clark County Council, and presentations to the Clark County Planning Commission, the Development and Engineering Advisory Board, and neighborhood associations. The TIP was also displayed and discussed at several public open houses, at the Clark County Fair and on the county website. A State Environmental Policy Act review provided an additional opportunity for public comment.

BUDGET IMPLICATIONS

YES	NO	
✓		Action falls within existing budget capacity.
	✓	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	✓	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

BUDGET DETAILS: Total CN Budget = $ 11,325,000

Local Fund Dollar Amount	County Road Fund @ $101,000 Traffic Impact Fees @ $2,937,000 Real Estate Excise Tax 2 (REET 2) @ $4,127,000 Total Local Fund Dollar Amount = $7,165,000
Utility Reimbursable	$1,160,000
Federal Grant	$3,000,000
Account	1012 / County Road Fund/ Traffic Impact Fee Districts: 3061 and 3167

DISTRIBUTION:
Council staff will post all staff reports to the county website, www.clark.wa.gov/council-meetings.

Please return to Public Works, attention Chris Carle, both signed original copies of the Federal-Aid Project Prospectus and both signed original copies of the Local Agency Agreement.

ATTACHEMENTS: (1) Local Agency Federal Aid Project Prospectus – 2 originals; (2) Local Agency Agreements – 2 originals; and (3) PowerPoint Vicinity Map Exhibit

Robert D. Klug, PE
Transportation Division Manager

Ahmad Qayoumi, PE
Public Works Director/County Engineer

Cherie Sabug
Interim Finance Division Manager

Primary staff contact: Susan Wilson, ext. 4330 or Chris Carle, ext. 4523

APPROVED: _____
CLARK COUNTY, WASHINGTON
CLARK COUNTY COUNCIL

DATE: 6-2-2020

SR# 076-20

CLARK COUNTY, WASHINGTON 1844

PW20-085

BUDGET IMPLICATIONS

YES	NO	
✓		Action falls within existing budget capacity.
	✓	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
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CLARK COUNTY, WASHINGTON
CLARK COUNTY COUNCIL

DATE: _____

SR#_____

Washington State Department of Transportation

Local Agency Federal Aid Project Prospectus

	Prefix	Route	( )
Federal Aid Project Number			
Local Agency Project Number	323322	(WSDOT Use Only)	

Date	6/2/2020
DUNS Number	030783757
Federal Employer Tax ID Number	91-6001299

Agency	CA Agency	Federal Program Title
Clark County	☑ Yes ☐ No	☑ 20.205 ☐ Other

Project Title	Start Latitude N / End Latitude N	Start Longitude W / End Longitude W
NE 10th Avenue	45.728964 / 45.732907	-122.661624 / -122.661641

Project Termini From-To	Nearest City Name	Project Zip Code (+4)
NE 149th Street NE 154th Street	Vancouver	98685-1363

Begin Mile Post	End Mile Post	Length of Project	Award Type
0.70	1.00	0.34	☑ Local ☐ Local Forces ☐ State ☐ Railroad

Route ID	Begin Mile Point	End Mile Point	City Number	County Number	County Name
			N/A	6	Clark

WSDOT Region	Legislative District(s)	Congressional District(s)	Urban Area Number
Southwest Region	18	3	3

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.	$1,662,000	$1,662,000	$0	9/2012
R/W	$1,240,000	$1,240,000	$0	11/2018
Const.	$11,325,000	$8,325,000	$3,000,000	7/2020
Total	$14,227,000	$11,227,000	$3,000,000	

Description of Existing Facility (Existing Design and Present Condition)

Roadway Width	Number of Lanes
20'	2

NE 10th Avenue is an obsolete two-lane rural roadway, with no bike lanes or sidewalks.

Description of Proposed Work

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

Construct a two-lane collector with center turn lane, bike lanes, and sidewalks.

Local Agency Contact Person	Title	Phone
Christopher Carle	Capital Program Engineer	564-397-4523

Mailing Address	City	State	Zip Code
1300 Franklin Street	Vancouver	WA	98666-9810

Project Prospectus

By _____ Approving Authority

Title Public Works Director/County Engineer

Date 5/26/20

Agency	Project Title	Date
Clark County	NE 10th Avenue	6/2/2020

Type of Proposed Work

Project Type (Check all that Apply)			Roadway Width	Number of Lanes
☐ New Construction	☐ Path / Trail	☐ 3-R	20'	2
☑ Reconstruction	☐ Pedestrian / Facilities	☐ 2-R		
☐ Railroad	☐ Parking	☐ Other		
☐ Bridge				

Geometric Design Data

Description	Through Route	Crossroad
Federal Functional Classification	☑ Urban ☐ Rural ☐ NHS ☐ Principal Arterial ☐ Minor Arterial ☐ Collector ☑ Major Collector ☐ Minor Collector ☐ Local Access	☑ Urban ☐ Rural ☐ NHS ☐ Principal Arterial ☐ Minor Arterial ☐ Collector ☑ Major Collector ☐ Minor Collector ☐ Local Access
Terrain	☐ Flat ☑ Roll ☐ Mountain	☑ Flat ☐ Roll ☐ Mountain
Posted Speed	35	35
Design Speed	35	35
Existing ADT	1,762	8,300 (NE 10th Av, S of 139th St.)
Design Year ADT	N/A	N/A
Design Year	2024	N/A
Design Hourly Volume (DHV)	6,366	N/A

Performance of Work

Preliminary Engineering Will Be Performed By	Consultant/Agency	Others	45 %	Agency 55 %
Construction Will Be Performed By	Contract/Agency	Contract	12 %	Agency 88 %

Environmental Classification

☐ Class I - Environmental Impact Statement (EIS)

☐ Project Involves NEPA/SEPA Section 404 Interagency Agreement

☑ Class II - Categorically Excluded (CE)

☑ Projects Requiring Documentation (Documented CE)

☐ Class III - Environmental Assessment (EA)

☐ Project Involves NEPA/SEPA Section 404 Interagency Agreements

Environmental Considerations

Failing culvert will be replaced.
In Water Work Window.

Agency	Project Title	Date
Clark County	NE 10th Avenue	6/2/2020

Right of Way

☐ No Right of Way Needed * All construction required by the contract can be accomplished within the exiting right of way.	☑ Right of Way Needed ☐ No Relocation	☑ Relocation Required

Utilities	Railroad
☐ No utility work required	☑ No railroad work required
☐ All utility work will be completed prior to the start of the construction contract	☐ All railroad work will be completed prior to the start of the construction contract
☑ All utility work will be completed in coordination with the construction contract	☐ All the railroad work will be completed in coordination with the construction contract

Description of Utility Relocation or Adjustments and Existing Major Structures Involved in the Project

Minor utility work may be required.

FAA Involvement

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

Remarks

N/A

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

Date 6-2-20

Agency By _____ Mayor/Chairperson

CLARK COUNTY WASHINGTON 1844

Washington State Department of Transportation

Local Agency Agreement

Agency Clark County

Address 1300 Franklin Street
Vancouver, WA 98666-9810

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 NE 10th Avenue Length 0.34

Termini NE 149th Street - NE 154th Street

Description of Work

Construct a two-lane collector with center turn lane, bike lanes, and sidewalks.

Project Agreement End Date 12/31/2026

Proposed Advertisement Date 10/1/2020

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 Participation Ratio for PE	c. Other			
	d. State			
	e. Total PE Cost Estimate (a+b+c+d)	0.00	0.00	0.00
Right of Way	f. Agency			
%	g. Other			
Federal Aid Participation Ratio for RW	h. Other			
	i. State			
	j. Total R/W Cost Estimate (f+g+h+i)	0.00	0.00	0.00
Construction	k. Contract	1,575,021.00	212,628.00	1,362,393.00
86.5 %	l. Other Contract - STP-UL	1,893,187.00	255,580.00	1,637,607.00
	m. Other Contract - Elig. (Non-fed)	4,924,792.00	4,924,792.00	0.00
Federal Aid Participation Ratio for CN	n. Other Utilities - Reimbursable	1,160,000.00	1,160,000.00	0.00
	o. Agency	1,742,000.00	1,742,000.00	0.00
	p. State	30,000.00	30,000.00	0.00
	q. Total CN Cost Estimate (k+l+m+n+o+p)	11,325,000.00	8,325,000.00	3,000,000.00
	r. Total Project Cost Estimate (e+j+q)	11,325,000.00	8,325,000.00	3,000,000.00

Agency Official

By

Title Council Chair, Clark County Council

Washington State Department of Transportation

By

Director, 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 coast (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 June 2, 2020, Resolution/Ordinance No. 2020-06-03

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 Admin 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

Northeast 10th Avenue Funding Contracts

Northeast 149th Street to Northeast 154th Street

Clark County Public Works

NE 10th Avenue (NE 149th Street – NE 154th Street)

- This project will:
  - Widen the roadway to include two travel lanes, a center left-turn lane, sidewalks and bicycle lanes.
  - Replace a crossing over a tributary of Whipple Creek with a culvert and construct stormwater improvements.
  - Complete a gap section of 10th Avenue corridor from Northeast 139th Street north to Northeast 164th Street.
  - Connect with previously completed projects on NE 10th Avenue including 10th Avenue Bridge to the north and the Salmon Creek Interchange project to the south.
  - Install a traffic signal at the Northeast 10th Avenue / Northeast 149th Street intersection equipped with SMART signal technology which is being deployed throughout Clark County.

NE 10th Avenue (NE 149th Street – NE 154th Street)
Council District 2