

GCA-6476
City of Edgewood
SR 161, 24th St. E to Milton Way

This Agreement is made and entered into between the STATE OF WASHINGTON, Department of Transportation, hereinafter the "STATE," and the City of Edgewood, 2224 104th Avenue East, Edgewood, WA 98372, hereinafter the "CITY."

WHEREAS, the STATE is planning an improvement project on State Route (SR) 161 titled, "SR 161, 24th ST E to Milton Way – Widening," STATE project C16118A, hereinafter the "State Project," and

WHEREAS, non-motorized transportation enhancements and context sensitive elements are part of the State Project, and

WHEREAS, at the request of the CITY, the 2006 Washington State Legislature appropriated Five Million Dollars (\$5,000,000.00) to the State Project to be used for expanded transportation enhancements and context sensitive elements, hereinafter "Enhancements," along the corridor within the CITY's corporate limits, and

WHEREAS, the CITY applied for and received a federal grant, which federal funds will be held by the STATE, for a CITY project titled, "SR-161 Widening Project (Non-Motorized Portion)," to provide bicycle and pedestrian facilities within the limits of the State Project, and

WHEREAS, Puget Sound Energy (PSE) has a power distribution system within the limits of the State Project and the CITY has elected to require PSE to underground the power distribution system, and

WHEREAS, the CITY and PSE have executed a schedule 74 construction agreement for the undergrounding of the PSE power distribution system, and

WHEREAS, in accordance with the schedule 74 construction agreement with PSE, the CITY is responsible for the costs of trenching and forty percent (40%) of the costs of the installation of vaults and conduit for the power distribution system undergrounding, and

WHEREAS, the CITY has requested and the STATE has agreed to include into the State Project, the trenching and the installation of vaults and conduit, for the undergrounding of PSE's power distribution system, hereinafter "Utility Undergrounding," at the CITY's sole cost and not at the STATE's expense, and

WHEREAS, the CITY and STATE have entered into a separate standard Local Agency funding agreement, LA 6827, executed April 17, 2009, and Supplement 1 to LA 6827, executed January 6, 2011, together hereinafter "Funding Agreement," to provide for federal reimbursement for the eligible costs associated with undergrounding the power

distribution system and the remaining federal funds to be applied toward the Enhancements, and

WHEREAS, the CITY is responsible for all costs associated with the Utility Undergrounding that are not eligible for reimbursement from federal funds under the Funding Agreement, and the STATE has no legal authority to cover any such costs, and

WHEREAS, costs of Enhancements are to be funded in the following sequence: 1) by any remaining balance of the \$5,000,000.00 in the 2006 Washington State Legislative appropriations identified for Enhancements, remaining balance available for Enhancements is Two Million Ninety-Two Thousand Six Hundred Fifty-Nine Dollars (\$2,092,659.00); 2) federal funds allocated under the Funding Agreement not required for undergrounding the power distribution system; 3) other STATE and CITY funds made available for Enhancements before the State Project contract is advertised; and 4) any remaining balance shall be at CITY expense, and

WHEREAS, Enhancements and Utility Undergrounding are hereinafter the "City Work," and the State Project and City Work combined are hereinafter the "PROJECT,"

NOW, THEREFORE, pursuant to RCW 47.28.140 and/or chapter 39.34 RCW, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, and performances contained herein, and the attached Exhibits A and B which are incorporated and made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. ENHANCEMENTS

- 1.1 The PROJECT Enhancements are shown in Exhibit A. Exhibit A includes location, details, and estimates of the Enhancements and will include the following:
 - A. Retaining Wall 3N: A retaining wall required by Enhancements.
 - B. Concrete Pavement: Concrete pavement within intersections and intersection crosswalks.
 - C. Sidewalk Width Over 6 ft.: Eight (8) and ten (10) foot wide sidewalks. Standard sidewalk widths for state projects are six (6) feet. Part of the CITY Enhancements will be for the extra two (2) or four (4) foot of sidewalk width.
 - D. Additional Illumination: Illumination installed on the PROJECT that is above and beyond STATE standards.

E. City Identity Features: gateway walls, concrete seating walls, planter railing, up lighting, illumination identity panels, transit shelter art panels, benches, landscaping and irrigation, and powder coat on base illumination and signal systems.

2. UTILITY UNDERGROUNDING

2.1 The STATE agrees to perform the Utility Undergrounding as part of the PROJECT. The locations of the Utility Undergrounding and a cost estimate are shown in Exhibit B.

3. PLANS, SPECIFICATIONS, AND ESTIMATES

3.1 The STATE has incorporated the City Work into the State Project Plans Specifications, and Cost Estimates (PS&E), resulting in the PS&E for the PROJECT. The CITY has reviewed and concurs with the STATE's PS&E with respect to the City Work.

4. BID, AWARD, AND COST ADJUSTMENTS

4.1 The CITY and STATE have identified certain Enhancements that may or may not be awarded for construction, depending upon the amount bid by contractors, and have grouped them into several additive alternatives. The additive alternatives are identified in Exhibit A.

4.2 Before the PROJECT is advertized, the STATE will determine the funding available for the PROJECT contract (Available Funds), contingencies and construction engineering based on the available STATE funding and federal funding provided by the Funding Agreement. The STATE will disclose the amount of the Available Funds to the CITY's City Manager and Public Works Director. The CITY agrees to and shall not divulge this amount to any other entity before bid opening except to the extent required by law.

4.3 The STATE will advertise the PROJECT for bids. The STATE will be the CITY's representative during the Ad and PROJECT contract award period. When requested by the STATE, the CITY shall timely assist the STATE in answering bid questions and resolving any design issues that may arise that are associated with the City Work. All comments and clarifications must go through the STATE. The CITY agrees to and shall not provide information on this PROJECT directly to potential contractors and sub-contractors except to the extent required by law.

4.4 If the lowest responsive bid, without additive alternatives, does not exceed the Available Funds, the STATE will award as many additive alternatives as possible in the order previously established by the CITY and STATE.

4.5 If the lowest responsive bid, without additive alternatives, exceeds the Available Funds, the STATE will reject all bids and this Agreement shall then terminate.

5. CONSTRUCTION

5.1 The STATE will be the CITY's representative for the City Work during construction and will act as owner in the administration of the awarded PROJECT contract. The STATE will designate a STATE Project Engineer to provide and oversee all services including but not limited to construction administration, inspection, materials testing, and representation necessary to administer and manage the contract to ensure that the PROJECT is constructed in accordance with the contract.

5.2 The CITY may consult with and inquire of the STATE Project Engineer, attend all meetings, and have access to all documentation concerning the City Work. The CITY shall not provide direction, directly or indirectly, to the STATE's contractor. All contacts between the CITY and the STATE's contractor shall be through the STATE's Project Engineer or designee.

5.3 When it becomes known that quantities for a unit bid item will exceed plan quantity for the City Work by ten (10) percent or result in a cost increase for the City Work exceeding the plan amount for the City Work by twenty-five (25) percent, the STATE shall consult with the CITY on possible courses of action within three (3) working days in accordance with Section 6.

5.4 In accordance with the CITY's schedule 74 construction agreement with Puget Sound Energy (PSE), PSE will inspect the Utility Undergrounding work. Further, the CITY may inspect the City Work on the PROJECT. The STATE shall not be responsible for any costs for such inspections. All contact between CITY and/or PSE inspector(s) and the STATE's contractor shall be only through the STATE's Project Engineer or designee.

5.5 After execution of the PROJECT contract, the STATE will provide the CITY with a monthly progress report, which includes:

- A. Details of costs associated with the City Work,
- B. Estimated cost to complete the City Work
- C. Current Balance of the state funds identified for City Work, Progress of the City Work, contract time, and schedule,
- D. Contract changes (change orders) associated with the City Work, and
- E. Comparison of quantities (planned vs. actual quantities) associated with the City Work.

5.6 The STATE will prepare construction documentation in general conformance with the STATE's Construction Manual. The STATE will provide one (1) copy of "as-built" plans of the PROJECT to the CITY including drainage, landscaping and irrigation systems within ninety (90) calendar days of acceptance by the CITY pursuant to Section 7.

6. CONTRACT CHANGES

6.1 Changes to the PROJECT contract will be documented by change order in accordance with the Standard Specifications for Road, Bridge, and Municipal Construction, current edition (Standard Specifications). The STATE shall process change orders for all changes affecting the City Work in the manner set forth in subsection 1-2.4C (3), Approval of Changes/Checklist, STATE Construction Manual, current edition.

6.2 Required change orders are change orders that involve any or a combination of the following:

- A. Changes in the work, work methods, working days, or quantities that if not changed would prevent the satisfactorily completion of the scope of the PROJECT.
- B. Changes due to unanticipated subsurface conditions or utilities affecting the City Work.
- C. Mitigating an emergency or safety threat to the traveling public.

All other changes affecting the City Work shall be considered elective changes.

6.3 The CITY authorizes the STATE to initiate all required changes affecting the City Work and to negotiate, document and execute the associated change orders. The CITY agrees to reimburse the STATE for the increases in cost, if any, for such changes affecting the City Work in accordance with Section 9.

6.4 The STATE will advise the CITY of any proposed required changes affecting the City Work as soon as possible, but no longer than 3 working days, and provide the CITY with an opportunity, if time permits, to review and approve the change before implementation. The STATE will determine the length of the review time based upon the need to expedite the change to avoid delay to its contractor.

6.5 If the CITY disagrees with a required change and/or associated change order, the CITY shall notify the STATE in writing, explaining the issue(s) and disputed costs. The issue(s) shall be resolved in accordance with Section 14.8, Disputes.

6.6 The CITY may request additions or revisions to the City Work within the scope of the federal grant and Funding Agreement, through the STATE in writing. The STATE will implement the requested changes as elective changes, provided that funding is available and the change does not negatively impact the STATE's

transportation system and complies with the Standard Specifications, PROJECT permits, state and/or federal law, applicable rules and/or regulations, and/or STATE design policies, and does not unreasonably delay critically scheduled PROJECT contract activities.

- 6.7 All elective changes to the City Work must be approved in writing by the CITY before the STATE directs its contractor to implement the changes, even if an executed change order is not required by the PROJECT contract. The CITY agrees to reimburse the STATE for the increases in cost, if any, for such elective changes approved by the CITY in accordance with Section 9.
- 6.8 The STATE will make available to the CITY all change order documentation related to the City Work.

7. ACCEPTANCE OF ENHANCEMENTS

- 7.1 Prior to acceptance of the Enhancements, the STATE and CITY will perform a joint final inspection. The CITY agrees, upon satisfactory completion of the Enhancements in accordance with the approved plans and specifications and receipt of a "Notice of Physical Completion for the Enhancements," to deliver a letter of acceptance to the STATE which shall include a release of the STATE from all future claims or demands of any nature resulting from the construction and performance of the Enhancements and STATE administration thereof subject to any contractor claims (Section 11) caused by the negligent acts or omissions of the STATE in administering the Enhancements. The CITY shall have complete discretion in determining whether the Enhancements have been satisfactorily completed in accordance with the approved plans and specifications for the purpose of this section.
- 7.2 If a letter of acceptance or notice pursuant to Section 7.3 is not received by the STATE within thirty (30) calendar days following delivery of a Notice of Physical Completion for the Enhancements to the CITY, the Enhancements and STATE administration of the construction thereof shall be considered accepted by the CITY, and the STATE shall be released from all future claims and demands of any nature resulting from the construction and performance of the Enhancements and the STATE's administration thereof subject to any contractor claims (Section 11) caused by the negligent acts or omissions of the STATE in administering the construction of the Enhancements.
- 7.3 The CITY may withhold its acceptance of the Enhancements by submitting written notification to the STATE within thirty (30) calendar days following delivery of a Notice of Physical Completion of the Enhancements. This notification shall include the reason(s) for withholding acceptance. Withholding acceptance shall be based solely on failure to construct the Enhancements in accordance with the approved plans and special provisions.

8. CONTACTS

8.1 The STATE and the CITY have designated representatives for a formal point of contact and coordination of the STATE's contract administration as follows:

STATE:

WA State Department of Transportation
Jeff Cook, Project Engineer
8293 Spring Creek RD SE
Port Orchard, WA 98367-8192
(360) 874-3050
FAX (360) 874-3053
CookJD@wsdot.wa.gov

CITY:

City of Edgewood Public Works Department
Joe Seet, Public Works Director
2224 104th Ave E
Edgewood, WA 98372
(253) 952-3299
FAX (253) 952-3537
joe@cityofedgewood.org

The STATE's designated Local Programs Engineer is:

WA State Department of Transportation
Neal Campbell, Local Programs Engineer
5720 Capitol Boulevard
Tumwater, WA 98501
(360) 357-2666
FAX (360) 704-3250
campben@wsdot.wa.gov

8.2 Unless otherwise specified, all notification under this Agreement shall be in writing by mail or email to the representatives.

9. PAYMENT

9.1 The CITY agrees to reimburse the STATE for the actual direct labor and related direct non-labor costs associated with the Utility Undergrounding, including construction, construction engineering and administration costs in accordance with the terms of the Funding Agreement, and from the federal funds allocated. The CITY reserves the right to contest any and all of the STATE charges, actual direct labor and related direct non-labor costs associated with the Utility Undergrounding, including construction, construction engineering and administration costs, in writing to the STATE. The STATE shall have control over these federal funds prior to work being performed on the Utility Undergrounding.

9.2 No state funds subject to the limitations of Art. 2, Sec. 40, Amendment 18 of the Washington State Constitution will be used for the Utility Undergrounding. The CITY agrees that any costs not reimbursed with federal funds in accordance with the Funding Agreement will be reimbursed with CITY funds in accordance with the Funding Agreement.

9.3 The CITY agrees to reimburse the STATE for the actual direct labor and direct non-labor construction and construction engineering and administration costs associated with the Enhancements. The CITY reserves the right to contest any and all of the STATE charges, actual direct labor and related direct non-labor costs associated with the Enhancements, including construction, construction engineering and administration costs, in writing to the STATE. The Parties agree that the payment process will be the process identified in the Funding Agreement and are to be paid for from the identified funds in the sequence following:

- 1) the Two Million Ninety-Two Thousand Six Hundred Fifty-Nine Dollars (\$2,092,659.00) remaining from the Five Million Dollars (\$5,000,000.00) appropriation from the 2006 Washington State Legislative appropriation identified for Enhancements;
- 2) federal funds allocated under the Funding Agreement not required for Utility Undergrounding;
- 3) other STATE and CITY funds made available for Enhancements before the PROJECT contract is advertised; and
- 4) the CITY agrees that any remaining balance shall be at CITY expense.

9.4 No administrative overhead shall be charged to the CITY for work performed by the STATE under this Agreement per Overhead Agreement OH-00254.

9.5 Written contests shall be sent via United States Postal Service and the postmark shall be deemed the STATE's receipt date. The CITY agrees to reimburse uncontested portions of the STATE charges. The Parties will diligently work to resolve the contested portions of the charges. If the Parties are unable to resolve contested portions of an invoice within ninety (90) calendar days after receipt of the written contest by the STATE, the contest shall be resolved in accordance with Section 14.

10. RIGHT OF ENTRY

10.1 To the extent of the CITY's interest, the CITY hereby grants to the STATE and its authorized agents, contractors, subcontractors, and employees, a right of entry upon all land in which the CITY has an interest for the purpose of constructing the PROJECT.

11. CLAIMS

11.1 Claims for Additional Payment:

A. In the event the contractor makes claims for additional payment associated with the City Work, the STATE will immediately notify the CITY of such claims. Such claims shall be made in the manner and form as provided for in the Standard Specifications.

- B. The CITY shall not be obligated to reimburse the STATE for such claims or their cost of defense to the extent that the claims are caused by the negligent acts or omissions of the STATE in administering the City Work.
- C. The CITY shall have the right to review and comment on any settlement for claims associated with the City Work. However, the STATE shall have the ultimate right to settle such claims. In the event the CITY does not agree with the claim settlement as negotiated by the STATE, the CITY shall reserve the right to not financially participate in the negotiated claim settlement. If agreement cannot be reached between the CITY and the STATE on a claim settlement, the Parties agree to follow the dispute resolution procedure in Section 14.8.
- D. If the STATE agrees, the CITY may defend contractor claims associated with the City Work at its own cost, and in doing so, the CITY agrees to pay any resulting settlement, court judgment or arbitration award. The STATE will cooperate with the CITY in the CITY's defense of the claims. The CITY agrees to reimburse any STATE cost, including attorneys fees, incurred in providing such assistance in accordance with the Funding Agreement.

12. OWNERSHIP, OPERATION, AND MAINTENANCE

- 12.1 Upon acceptance of the City Work as provided in Section 7 and completion of the PROJECT, ownership, operation and maintenance responsibilities for the PROJECT shall be per RCW 47.24.020 and the City Streets as Part of State Highways guidelines dated April 30, 1997 except as otherwise provided by maintenance agreement GM-1546 between the Parties and except for the Undergrounded Utilities which are owned, operated and maintained by PSE under City of Edgewood Franchise Ordinance No. 08-0300

13. COORDINATION WITH UTILITIES

- 13.1 The CITY has elected to underground the PSE distribution system under a schedule 74 construction agreement with PSE, at no cost to the STATE.
- 13.2 The STATE will provide thirty (30) calendar days prior notice of the anticipated start of Utility Undergrounding to the CITY and PSE. Said notice will specify the location within the PROJECT site for delivery of materials. The CITY will require PSE to deliver all conduit and vaults to the PROJECT site location not less than five (5) working days prior to the anticipated start of Utility Undergrounding, at no cost to the STATE. The CITY shall require PSE to provide vaults that include no foreign made steel or iron products. The STATE's contractor and PSE may, by mutual agreement, make alternative arrangements for material delivery at no cost to the STATE or CITY.

- 13.3 The STATE will inspect and verify materials delivery and condition of the conduit and vaults. The STATE or its contractor will offload the materials and will be responsible for the condition of the materials until the Utility Undergrounding has been completed and accepted by PSE.
- 13.4 The STATE will provide fourteen (14) calendar days prior written notice of the expected date of physical completion of the Utility Undergrounding north of the 16th Street substation (Substation) and the expected date of physical completion of the Utility Undergrounding south of the Substation to the CITY, PSE, Comcast, and Qwest. The STATE will also provide a Notice of Physical Completion for the Utility Undergrounding north of the Substation and a Notice of Physical Completion for the Utility Undergrounding south of the Substation, as determined by the STATE, to the CITY, PSE, Comcast, and Qwest within one (1) working day of their respective physical completions.
- 13.5 In accordance with the CITY's schedule 74 construction agreement with PSE, PSE will install its underground facilities north of the Substation, energized and ready for connection to customers within forty-five (45) working days after receipt of a Notice of Physical Completion and acceptance by PSE for the Utility Undergrounding north of the Substation as determined by the STATE.
- 13.6 In accordance with the CITY's schedule 74 construction agreement with PSE, PSE will install its underground facilities south of the Substation, energized and ready for connection to customers within fifty-five (55) working days after receipt of a Notice of Physical Completion and acceptance by PSE for the Utility Undergrounding south of the Substation as determined by the STATE.
- 13.7 In accordance with the CITY's schedule 74 construction agreement with PSE, PSE will provide fourteen (14) calendar days prior written notice of the expected date of energizing its undergrounded facilities north of the Substation and the expected date of energizing its undergrounded facilities south of the Substation to the CITY and STATE. PSE will also provide written notice of having energized its undergrounded facilities north of the Substation and having energized its undergrounded facilities south of the Substation to the CITY and STATE within one (1) working day of energizing them.
- 13.8 The CITY will connect all customers north of the Substation to underground power within fifteen (15) working days of the receipt of written notice that the underground power is energized north of the Substation.
- 13.9 The CITY will connect all customers south of the Substation to underground power within twenty (20) working days of the receipt of written notice that the underground power is energized south of the Substation.
- 13.10 The CITY will provide fourteen (14) calendar days prior written notice of the expected date of completion of connecting all customers north of the Substation to underground power and the expected date of completion of connecting all

customers south of the Substation to underground power to the STATE and PSE. The CITY will also provide written notice of the completion of connecting all customers north of the Substation to underground power and the completion of connecting all customers south of the Substation to underground power to the STATE and PSE within one (1) working day of their respective completions.

- 13.11 In accordance with the CITY's schedule 74 construction agreement with PSE, PSE will remove its overhead facilities north of the Substation, including poles, from the SR 161 right of way before the later of (a) fifteen (15) working days after receipt of written notice from the CITY of completion of connections to underground power north of the Substation, OR (b) five (5) working days after receipt of written notice from the STATE of completion of the removal of Comcast and Qwest equipment from PSE's poles north of the Substation.
- 13.12 In accordance with the CITY's schedule 74 construction agreement with PSE, PSE will remove its overhead facilities south of the Substation, including poles, from the SR 161 right of way before the later of (a) twenty-two (22) working days after receipt of written notice from the CITY of completion of connections to underground power south of the Substation, OR (b) five (5) working days after receipt of written notice from the STATE of completion of the removal of Comcast and Qwest equipment from PSE's poles south of the Substation.
- 13.13 The CITY will reimburse the STATE for additional PROJECT costs resulting from PSE not delivering conduit and vaults, completing relocation, energizing or overhead facilities removal, or providing notifications in accordance with Sections 13.2, 13.5, 13.6, 13.7, 13.11 and 13.12 and for not completing customer connections to underground power, or providing notifications in accordance with Sections 13.8, 13.9 and 13.10. In order to request reimbursement under this section, the STATE must submit a comprehensive report documenting the impacts of the CITY or PSE's failure to perform on the PROJECT. Reimbursement to the STATE will be in accordance with Section 9.2. If the Parties cannot agree upon the amount of additional costs under this Section 13.13, the issue will be resolved in accordance with Section 14.8, Disputes, provided that nothing herein shall be construed as limiting the CITY's right of recovery against PSE or other third parties.
- 13.14 Written notices under Section 13 will be by email, followed by mail, to the following contacts:

Puget Sound Energy
Andy Lowrey
3130S 38th S. TAC-ANX
Tacoma, WA 98409
253-372-5360
andy.lowrey@pse.com

Qwest Communications

Scott Slater
2510 S. 84th St S Suite 18
Lakewood, WA 98499
253-597-5289
smslate@qwest.com or

City of Edgewood
Joe Seet
2221 Meridian Avenue East
Edgewood, WA 98371-1010
253-952-3299
joe@cityofedgewood.org

Comcast Cable Communications, Inc.
Aaron Cantrell
410 Valley Ave. NW, Suite 9-Bldg C
Puyallup, WA 98371
253-864-4281
Aaron_Cantrell@cable.comcast.com

Washington State Department of Transportation
Jeff Cook, Project Engineer
8293 Spring Creek RD SE
Port Orchard, WA 98367-8192
(360) 874-3050
CookJD@wsdot.wa.gov

14. GENERAL PROVISIONS

14.1 Amendment: This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

14.2 Termination: Neither the STATE nor the CITY may terminate this Agreement without the written concurrence of the other Party, except as otherwise provided under Section 4.5.

A. If this Agreement or Funding Agreement is terminated by the CITY prior to the fulfillment of the terms stated herein, the CITY agrees to reimburse the STATE for the costs it has incurred for the Utility Undergrounding up to the date of termination through the Funding Agreement, as well as the costs of non-cancelable obligations and costs to the STATE for the restoration of utilities affected by the Utility Undergrounding. The STATE shall invoice the CITY for such costs, providing a detailed accounting, and the CITY agrees to make payment within forty-five (45) calendar days after receipt of the invoice.

B. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

14.3 Independent contractor: The STATE shall be deemed an independent contractor for all purposes, and the employees of the STATE or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the CITY.

14.4 Indemnification: The Parties shall protect, defend, indemnify, and hold harmless each other and their employees, authorized agents, and/or contractors, 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, each Party's obligations to be 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 negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) the STATE, its employees, authorized agents, or contractors and (b) the CITY, 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 the negligence of each Party, its employees, authorized agents, and/or contractors.

14.5 City Liability: The CITY agrees and accepts full liability for (1) the design and information provided for the City Work to the STATE; and (2) for any City Work the CITY has provided direction to the STATE to design and/or construct outside the STATE's jurisdiction that does not meet STATE standards.

14.6 State Liability: The STATE agrees and accepts fully liability for (1) the advertisement, bidding process and selection of the contractor(s) who will complete the PROJECT; (2) the administration, oversight, and management of the PROJECT; and (3) the physical completion of the PROJECT.

14.7 Survivability: Sections 14.4, 14.5 and 14.6 shall survive the termination of this Agreement.

14.8 Disputes: The Parties shall work collaboratively to resolve disputes and issues arising out of, or related to this Agreement. Disagreements shall be resolved promptly and at the lowest level of hierarchy. To this end, following the dispute resolution process in Sections 14.8 A through 14.8 D shall be a prerequisite to the filing of any litigation concerning any dispute between the Parties:

A. The Parties shall use their best efforts to resolve disputes and issues arising out of, or related to this Agreement at the lowest level possible. The Parties shall communicate regularly to discuss the status of the tasks to be performed hereunder and to resolve any disputes or issues related to

the successful performance of this Agreement. The Parties shall cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any disputes or issues arising during the term of this Agreement.

- B. A Party's representative shall notify the other Party in writing of any dispute or issue that the representative believes may require formal resolution according to Section 14.8.D. The representatives shall meet within five (5) working days of receiving a written notice and attempt to resolve the dispute.
- C. In the event the Parties' representatives cannot resolve the dispute or issue, the City Manager, and the STATE's Regional Administrator, or their respective designees, shall meet and engage in good faith negotiations to resolve the dispute.
- D. In the event the City Manager and Regional Administrator, or their respective designees, cannot resolve the dispute or issue, the CITY and the STATE shall each appoint a member to a disputes board. These two members shall then select a third member not affiliated with either Party. The three member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. All expenses for the third member of the Dispute Resolution board shall be shared equally by both Parties. The Parties shall be responsible for their own costs, including attorney fees.

14.9 Venue: In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in Thurston County Superior Court. Further, the Parties agree that the Prevailing Party's attorneys' fees, witness fees, and other related costs shall be paid by the other Party.

14.10 Audits/Records: All PROJECT records in support of all costs incurred shall be maintained by the STATE for a period of six (6) years. The CITY shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. Should the CITY require copies of any records, it agrees to pay the costs thereof. The Parties agree that the PROJECT performed herein is subject to audit by either or both Parties and/or their designated representatives, and/or the state of Washington, and/or the federal government.

14.11 Term of Agreement: Unless otherwise provided herein, the term of this Agreement shall commence as of the date this Agreement is fully executed and shall continue until the City Work is accepted by the CITY pursuant to Section 7, or as otherwise provided herein, and all obligations for reimbursement have been met.

14.12 Working Days: Working days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050, CITY observed

holidays and any days defined by the City Council or State as a non-working day, i.e. furlough days, etc. For Sections 13.5, 13.6, 13.8, 13.9, 13.11 and 13.12 working days shall be determined by the STATE in accordance with the Standard Specifications.

14.13 **No Third-Party Beneficiary:** This Agreement is executed for the exclusive benefit of the signatory parties and their respective successors and assign. Nothing herein shall be construed as creating any enforceable right, claim or cause of action in or for any third party.

14.14 **Force Majeure:** Neither Party shall be considered in default in the performance of its obligations under this Agreement, or otherwise incur liability with respect to the other Party, to the extent that the performance of said obligation is prevented or delayed by any cause, existing or future, which is unforeseen and beyond the reasonable control of the affected Party, specifically including without limitation labor strikes, floods, earthquakes and similar events or occurrences.

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

CITY OF EDGEWOOD

By: Mark D. Bauer
Mark Bauer
City Manager

Date: 2/2/11

APPROVED AS TO FORM:

By: _____

Printed Name: _____
City Attorney

Date: _____

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION

By: Steve Roark
Steve Roark, P.E.
Asst. Region Administrator for Construction

Date: 2/7/2011

APPROVED AS TO FORM:

By: Ann E. Salay
Printed Name: _____
Assistant Attorney General

Date: 2-2-11