

**GCB 3315**  
**INTERLOCAL AGREEMENT BETWEEN**  
**WSDOT / City of Edgewood**

This Interlocal Agreement (Agreement) is entered into between the Washington State Department of Transportation (WSDOT) and the City of Edgewood (CITY), each individually referred to as a "Party" and collectively referred to as the "Parties."

**RECITALS**

- A.** The Parties desire to enter into an agreement with one another in order to jointly establish a mutual and cooperative system to carry out their respective obligations of this Agreement as part of the construction of the Puget Sound Gateway Program (PROGRAM).
- B.** In 2015 the Washington State Legislature funded the construction of the PROGRAM through the Connecting Washington revenue package.
- C.** The Legislature directed that \$130 million of the \$1.875 billion PROGRAM funding is to come through local funding sources.
- D.** The State Route (SR) 167 Completion Project (PROJECT) is part of the PROGRAM where WSDOT will construct a new highway from SR 161 to SR 509 as shown on Exhibit A.
- E.** The CITY has entered into a Local Funding and Phasing Memorandum of Understanding (MOU) with WSDOT (Exhibit B), commencing on July 1, 2018, acknowledging that the CITY is one of eighteen (18) Local Agency Partners committed to provide matching funds/contributions commensurate with the benefits accrued from the PROJECT at a local level. The City of Edgewood's contribution is identified therein as \$500,000 "(ROW in lieu)" towards the PROJECT, which may be met through conveyance of real property (i.e., Mortensen Farm and additional suitable property) needed by the PROJECT and/or cash contributions.
- F.** Herrera Environmental Consultants (Herrera) on behalf of WSDOT has performed hydraulic modeling at the request of the CITY as shown in Exhibit D titled *Mortensen Farm/Surprise Lake Tributary Hydraulic Capacity Analysis, July 12, 2018*. Herrera is a professional services firm with experience and expertise in hydraulic modeling and analysis. The analysis concludes that the stormwater improvements on the Mortensen Farm property and downstream properties will accommodate a maximum of 20 cubic feet per second (cfs) of stormwater runoff from developed areas in the City of Edgewood in a 100-year recurrence flood event in addition to PROJECT stormwater needs based on estimated 100-year recurrent runoff peak rate that occurs in the Surprise Lake Tributary creek in 2020 basin conditions. The 20 cfs of stormwater capacity retained by Edgewood represents 6.1% of 100-year peak flow of the future build out conditions per Exhibit D, Table 1. The 6.1% is the delta increase between 1) the estimated MGSFlood model results for the 100-year peak flow future build-out conditions (existing Surprise Lake Tributary flow for the existing drainage basin conditions and the increase flows associated with the new SR 167 project buildout) and 2) estimate MGSFlood model results for the 100-year peak flow for the future build-out conditions plus the 20 cfs associated with city planned future additions.

**NOW, THEREFORE**, pursuant to Chapter 39.34 RCW, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, and the attached Exhibits A, B, C, D and E, incorporated and made a part hereof, the Parties agree as follows:

## 1. General

- 1.1 This Agreement quantifies certain contributions (property conveyance and/or cash contributions) of the CITY to be applied towards the PROJECT component of the PROGRAM and defines the roles and responsibilities between the Parties with respect to such contributions.
- 1.2 The PROJECT consists of constructing two (2) lanes in each direction from SR 161 to 54<sup>th</sup> Avenue E. and one (1) lane in each direction from 54<sup>th</sup> Avenue E. to SR 509; a new interchange at SR 161; a new diverging diamond interchange at I-5; a one-half (½) interchange at 54<sup>th</sup> Avenue E; ramp connections to SR 509; new I-5 bridges for Hylebos Creek crossing; a shared-use path; riparian restoration and wetland mitigation along Hylebos Creek and Surprise Lake Tributary; and associated utility relocations and local street vacations, as generally shown in Exhibit A hereto.

The Parties acknowledge there is sufficient capacity in the planned stormwater improvements that WSDOT will make to the Mortensen Farm property and the downstream Surprise Lake tributary channel to accommodate the City's future need for up to 20 cfs of stormwater runoff capacity. WSDOT agrees that it shall provide the CITY the right to discharge up to 20 cfs of stormwater runoff from developed areas within the City into the improvements that WSDOT will make to the Mortensen Farm property and the downstream Surprise Lake tributary channel.

- 1.3 The Parties agree to formalize the CITY's right to discharge stormwater runoff into the planned stormwater improvements and the CITY's obligations to manage said stormwater discharges into the planned stormwater improvements in a subsequent agreement.
- 1.4 This Agreement is effective upon the last date of execution of both Parties and will terminate December 31, 2037, and/or 10 years after PROJECT Completion, whichever is sooner, unless mutually agreed to extend by the Parties.

## 2. Payment

- 2.1 For wetland mitigation purposes in support of the PROJECT, the CITY agrees to convey to WSDOT certain real property identified as Pierce County Tax Parcel Numbers 0420084019, 0420084024, and 0420084081, all lying northerly of Westridge Parkway E and 25<sup>th</sup> Street E (e.g., Mortensen Farm property), and shown on Exhibit C hereto (the "Property"). The value of the Property appraised at \$187,500 as shown in Exhibit E. WSDOT and the City agree to a reduction in the appraised value of the property of minus 6.1% for the City's retained stormwater capacity referenced in Recital F. The value of the Property or \$187,500 less the value of the retained stormwater capacity of \$11,500 for a total of \$176,000 shall constitute a

portion of the City's contribution toward the \$500,000 local funding commitment in the MOU.

- 2.2 The City's remaining contribution of \$324,000 shall be made by either 1) in-kind value as set by appraisal for future property conveyance(s) in support of the PROJECT or 2) cash payment, where the total amount is not to exceed the \$500,000 City local funding commitment in the MOU.
- 2.3 The Parties agree that WSDOT will retain the Property for approximately 10 years after the PROJECT is completed in order to meet the permit requirements from the US Army Corps of Engineers (ACOE) and Washington State Department of Ecology (Ecology). Upon final acceptance from the ACOE and Ecology, WSDOT will convey the Property and any improvements back to the CITY by Quitclaim Deed, and/or any other form of conveyance agreed to by the Parties, as full (or part) consideration in exchange for the CITY assuming all future maintenance and operation obligations and costs required to maintain and operate the Property as an environmental mitigation site in perpetuity in accordance with RCW 47.12.370 and the Long-Term Management (LTM) Plan developed by WSDOT.
- 2.4 The agreed-upon Quitclaim Deed, or other conveyance document, transferring the Property back to the CITY will be recorded pursuant to RCW 65.08.095, will incorporate GCB 3315 by reference, and will identify the CITY'S obligations of ownership, operation, maintenance, and preservation in perpetuity of the Property in accordance with RCW 47.12.370 and the LTM Plan, and will contain a reversionary clause that restricts the use of the Property as a mitigation site consistent with the preservation and management of said lands to ensure the long-term sustainability of the natural resource.
  - 2.4.1 The LTM Plan will be developed by WSDOT, as required by the permitting agencies, for the Property to ensure that the established mitigation site is managed to protect the natural condition of the site. WSDOT will develop a draft LTM Plan that will be submitted to the US Army Corps of Engineers and Ecology for approval before the end of WSDOT's mitigation site compliance monitoring period, or by 2037, whichever is sooner. The approved LTM Plan will specify the duration of the LTM period and the frequency of site inspections and qualitative assessments of the Property. The CITY will be responsible for implementing the LTM Plan beginning at the end of WSDOT's mitigation site compliance monitoring period, or by 2037, whichever is sooner. The CITY will submit the results of the LTM inspections and assessments to the US Army Corps of Engineers and Ecology as identified in the approved LTM Plan schedule. The results of the LTM reports will include summaries of management activities the CITY has implemented as part of the on-going LTM of the Property.
  - 2.4.2 If the CITY fails to maintain the Property as required under the approved LTM Plan, WSDOT will confer with the City to remedy the situation/issue of said Property. If after 30 days' written notice by WSDOT, the City fails to remedy the issue, the City agrees to quitclaim said Property back to WSDOT.

### **3. Contract Administration**

3.1 By this Agreement, the Parties do not create any separate legal or administrative entity. The WSDOT and the CITY shall be responsible for working with each other to administer the terms of this Agreement. The Parties do not intend to jointly own any real or personal property as part of this undertaking. The Parties will cooperatively work together to further the intent and purpose of this Agreement.

### **4. Dispute Resolution**

4.1 In the event that a dispute arises under this Agreement, it shall be resolved as follows: WSDOT and the City agree to negotiate to resolve any issues. Should such negotiations fail to produce a mutually satisfactory resolution then WSDOT and the City shall each appoint a member to a disputes board; these two members shall select a third board member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. At the conclusion of the hearing, the disputes board shall issue a nonbinding decision on the resolution of the Parties' dispute. Each Party shall be responsible for its own costs and fees incurred in the dispute resolution process, and the Parties agree to share equally in the cost of the third disputes board member. An attempt at such dispute resolution in compliance with the aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute, provided, that if the nonbinding dispute resolution hearing does not result in a mutually satisfactory resolution of the dispute, either Party may institute a legal action or proceedings in accordance with Section 6.1.

### **5. Indemnification**

5.1 To the extent permitted by law, WSDOT and the CITY shall protect, defend, indemnify, and save harmless the other Party, their respective officers, officials, employees, and/or authorized agents, while acting within the scope of their official duties as such, from any and all costs, claims, judgment, and/or awards of damages ("Claims") arising out of, or in any way resulting from, Indemnifying Party's negligent or other wrongful acts or omissions, or the negligent or other wrongful acts or omissions of its employees, agents, contractors, consultants, licensees, or invitees, while acting within the scope of their official duties, contract, license, or invitation, related to this Agreement. No Party shall be required to indemnify, defend, or hold 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) WSDOT, its employees and authorized agents and (b) the City, its employees, contractors, consultants, 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 the other Party, its employees, contractors, consultants, and authorized agents. For this purpose, WSDOT and the CITY, by mutual negotiation, hereby waive, with respect to the other party only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. In the event that WSDOT or the CITY incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this section, all such fees, expenses, and costs shall be

recoverable by the prevailing party. This indemnification shall survive the termination of this Agreement.

## **6. Venue**

- 6.1 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 hereto agree that any such action or proceedings shall be brought in Thurston County Superior Court.

## **7. Contacts and Notices**

- 7.1 Contact between the Parties, including but not limited to agreement administration and notices, will be directed to the below identified contacts as follows or his/her designee or such other addresses as either Party may, from time to time, designate in writing:

### **City of Edgewood**

Jeremy Metzler, Public Works Director  
2224 104th Avenue E  
Edgewood, WA 98372-1513  
Phone: (253) 952-3299 x114  
Email: [jeremy@cityofedgewood.org](mailto:jeremy@cityofedgewood.org)

### **WSDOT**

Steve Fuchs, Project Manager  
PO Box 47440  
Olympia, WA 98504  
Phone (360) 701-9413  
Email: [fuchss@wsdot.wa.gov](mailto:fuchss@wsdot.wa.gov)

## **8. Amendment**

- 8.1 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.

## **9. No Third-Party Beneficiaries**

- 9.1 This Agreement is executed for the sole and exclusive benefit of the signatory Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any right, remedy or other entitlement upon any person other than the Parties hereto, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third-party, nor shall any provision herein give any third-party any right of action against any party hereto.

## **10. Audits/Records:**

- 10.1 All records for the PROJECT in support of all costs incurred shall be maintained by WSDOT for a period of six (6) years after the termination of this Agreement. 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 work performed herein is subject to audit by either or both Parties and/or their designated representatives, and/or the federal/state government.

## **11. Signature Authority**

11.1 The CITY Mayor or his designee was authorized to execute this agreement by the CITY Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, at a regularly scheduled meeting.

## **12. Recording**

12.1 A copy of this agreement shall be filed with the Office of the Pierce County Auditor by the City of Edgewood, and/or posted on their web sites.

## **13. Working Days**

13.1 Working days for this Agreement are defined as Monday through Friday, excluding Washington State furlough days or state holidays pursuant to RCW 1.16.050.

## **14. Termination**

14.1 As part of its commitment in entering into the Local Funding and Phasing Memorandum of Understanding with WSDOT, the CITY will convey the Property towards the required local contribution for the PROJECT. However, if for some reason WSDOT no longer needs the Property for the PROJECT [e.g., WSDOT cancels the PROJECT], the CITY or WSDOT may terminate this Agreement by written concurrence of the other Party, and the Property shall be transferred back to the CITY.

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

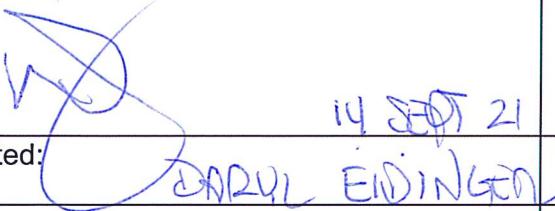
## **15. Applicable Law**

15.1 This Agreement does not relieve either Party of any obligation under applicable law.

## **16. Severability**

16.1 Should any clause, phrase, sentence or paragraph of this Agreement or its application be declared invalid or void by a court of competent jurisdiction, the remaining provisions of this Agreement or its applications of those provisions not so declared shall remain in full force and effect.

In Witness Whereof, the Parties hereto have executed this Agreement as of the date last written below.

CITY OF EDGEWOOD	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
Signature and Date:  14 SEPT 21	Signature and Date:
Printed: DARYL EISINGER	Printed:
Title: Mayor	Title:
APPROVE TO FORM CITY OF EDGEWOOD	APPROVE TO FORM WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
Signature and Date:  9/14/2021	Signature and Date:
Printed: Ann Marie Soto	Printed:
Title: City Attorney	Title: Assistant Attorney General

## RESOLUTION NO. 21-0560

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION RELATED TO THE PUGET SOUND GATEWAY PROGRAM AND PROPERTY CONVEYANCE FOR THE SR 167 COMPLETION PROJECT.

**WHEREAS**, as part of the Washington State Department of Transportation (“WSDOT”) Puget Sound Gateway Program, WSDOT is undertaking the State Route (“SR”) 167 Completion Project which entails construction of a new highway from SR 161 to SR 509; and

**WHEREAS**, the City, as a local agency partner, has committed to providing matching funds or other contributions commensurate with the benefits received by the City as a result of the project; and

**WHEREAS**, as part of its commitment, the City will convey the property known as Mortensen Farm towards the required local contribution for the project, identified as Pierce County Tax Parcel Numbers 0420084019, 0420084024, and 0420084081, with said property ultimately being reconveyed to the City for continued maintenance and preservation after completion of the project; and

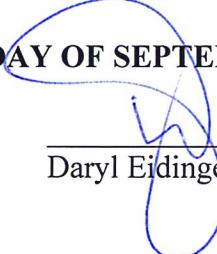
**WHEREAS**, the Parties desire to memorialize the terms and conditions related to said property conveyance;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

**Section 1.** Agreement Authorized. Upon concurrence by WSDOT, the Mayor is authorized to execute the interlocal agreement with the Washington State Department of Transportation related to property conveyance for the SR 167 Completion Project, as set forth in Exhibit A, attached hereto and incorporated herein.

**Section 2.** Effective Date. This resolution will take effect immediately upon passage by the City Council.

ADOPTED THIS 14<sup>TH</sup> DAY OF SEPTEMBER, 2021

  
Daryl Eidinger, Mayor

ATTEST:

  
\_\_\_\_\_  
Rachel Pitzel, CMC  
City Clerk

**Exhibit A**

Interlocal Agreement Between WSDOT / City of Edgewood