

**INTERLOCAL AGREEMENT BETWEEN  
WHATCOM COUNCIL OF GOVERNMENTS  
AND  
WESTERN WASHINGTON UNIVERSITY  
FOR  
2015 BORDER OPERATIONS FREIGHT STUDY**

The Whatcom Council of Governments, a regional planning agency of the State of Washington (hereinafter referred to as "WCOG") with offices located at 314 E. Champion St, Bellingham, WA, 98225, and Western Washington University (hereinafter referred to as "WWU"), with offices located at 516 High St, Bellingham, WA, 98225-9038, in consideration of the mutual covenants herein, do hereby agree as follows:

**WHEREAS**, the WCOG and WWU desire to conduct a survey of cross-border freight flows, and

**WHEREAS**, the survey shall be known as the 2015 Border Freight Operations Study (hereinafter "Study"), and,

**WHEREAS**, the WCOG has secured funding from the Federal Highway Administration and the British Columbia Ministry of Transportation and Infrastructure to conduct the survey, and

**WHEREAS**, RCW 39.34 provides for interlocal cooperation between governmental entities and authorizes interlocal agreements to accomplish mutually beneficial purposes in the public interest.

**NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:**

1. **PURPOSE.** The purpose of this Agreement is to establish the roles and responsibilities of the WCOG and WWU as related to the provision of funding and services for the Project. This study will continue a regionally important time series of cross-border freight data adding a 2015 sample to 2009 and 2000. It will inform evaluation of investments and policy making; especially regarding east-west links between alternate cross-border routes, impact of changes in trusted trader program parameters, and scenarios under future legal and regulatory shifts such as adoption of a pre-clearance agreement under the U.S.-Canada Beyond the Border Action Plan.  
Enhanced data on vehicle-classification, empty-loaded status, and other operations variables will also benefit upcoming applications of recently acquired discrete event simulation modeling capabilities as part of IMTC's Dynamic Border Management Project.
2. **SCOPE OF WORK AND BUDGET.** The tasks and budget for the Project are set forth in the Scope of Work and Budget detailed in Exhibit A to this Agreement, which is attached hereto and incorporated by this reference.
3. **ADMINISTRATION.** WWU shall administer the planning and implementation of the Scope of Work. The parties are not creating any new or separate organization or entity to administer the provisions of this agreement.
4. **TERM OF AGREEMENT.** Notwithstanding the date of execution hereof, this Agreement shall terminate by its own terms on June 30, 2017, or upon completion of the project, whichever is

earlier, unless the Agreement is terminated or extended by the parties pursuant to the terms herein.

## 5. INVOICE AND PAYMENT PROCEDURES

- 5.1 Reimbursement of Eligible Expenses.** The WCOG shall reimburse WWU for a maximum of \$71,000 of expenses related to the Project, as outlined in the attached Scope and Budget.

WWU shall submit to the WCOG a voucher or invoice for services rendered upon completion of data collection. The request for payment shall be accompanied by a written report that details the progress of work during the period covered by the voucher or invoice. The WCOG shall initiate authorization for payment after receipt of said voucher or invoice and shall make payment to WWU within approximately 45 days of initial receipt.

- 5.2 Eligible Project Expenses.** Eligible project expenses are those costs that are incurred pursuant to this Agreement and the project descriptions in Exhibit A to this Agreement, and in accordance with 2 CFR, Part 230. Eligible costs on this project include overhead charges or indirect rates applied to direct charges.

## 6. FEDERAL REQUIREMENTS

- 6.1** This Agreement is subject to the Local Agency Agreement LA-8687 between the WCOG and the Washington State Department of Transportation, which is attached hereto as Exhibit B and incorporated herein by this reference. Agreement LA-8687 provides the Federal Highway Administration funding (CFDA #20.205) for the Project. WWU shall comply with all applicable federal laws, regulations, policies, procedures and directives included in Exhibit B.

- 6.2** Debarment & Suspension. WWU certifies and agrees to ensure during the term of this Agreement that neither it nor its principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or otherwise excluded from or ineligible for participation in this Agreement by any governmental department or agency or in any Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

- 6.3** 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:

**6.3.1** 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.

**6.3.2** 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.

**6.3.3** 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 is 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

**6.4** Title VI. WWU shall comply with provisions found in Title 6, the Civil Rights Act of 1964, as follows:

**6.4.1** WWU will comply with the Regulations of the U.S. Department of Transportation ("USDOT" hereafter) relative to nondiscrimination in federally-assisted programs of the USDOT, Title 49, CFR Part 21, hereinafter referred and made a part of this Agreement.

**6.4.2** WWU, with regard to the work performed by it after award and prior to completion of the Project, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors including procurements of materials and leases of equipment. WWU will not participate either directly or indirectly in the discrimination prohibited by Section 8.4 of the Regulations, including employment practices when the contract covers a program set forth in Appendix A-11 of the Regulations.

**6.4.3** In all solicitations either by competitive bidding or negotiation made by WWU for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by WWU of WWU's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin

6.4.4 WWU will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Washington State Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information required of WWU is in the exclusive possession of another who fails or refuses to furnish this information, WWU shall so certify to the Washington State Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

6.4.5 In the event of WWU's noncompliance with the nondiscrimination provisions of this Agreement, the Washington State Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

6.4.5.1 Withholding of payment to WWU under the Agreement until WWU complies, and/or

6.4.5.2 Cancellation, termination or suspension of the Agreement, in whole or in part.

6.4.6 WWU will include the provisions of sub-sections 6.4.1 through 6.4.6 of section 5.4 of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. WWU will take such action with respect to any subcontract or procurements as the Washington State Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event that WWU becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, WWU may request the State of Washington to enter into such litigation to protect the interest of the United States.

7. **PROPERTY.** No real property shall be acquired or held under this Agreement. Any and all plans, drawings, notes, and other documents drafted by either party shall be shared jointly among the parties.

8. **MODIFICATION AND TERMINATION.**

8.1 *Modification.* Any change, addition or other modification to this Agreement shall not be valid or binding upon any party hereto unless such change, addition or modification is in writing and executed by an authorized representative of the parties hereto.

8.2 *Termination.* The parties hereto may terminate this Agreement by written agreement of all parties hereto, which shall be executed by an authorized representative of each party.

9. **REDUCTION IN FUNDING.** In the event that funding is withdrawn, reduced or limited in any way after the effective date of this Agreement due to WCOG budgetary constraints, and prior to the Agreement's normal completion, the WCOG may reduce its payment due hereunder in proportion to the funds withdrawn, reduced or limited. If the level of funding withdrawn, reduced or limited is so great that the parties jointly deem the continuation of this Agreement is no longer desirable, the parties may summarily terminate this Agreement and any funds paid by the WCOG, which have not been obligated to pay for the project will be refunded to the WCOG.

10. **ASSIGNMENT.** The parties hereto shall not assign or delegate any or all duty, obligation, right or interest in this Agreement.

11. **MISCELLANEOUS PROVISIONS.**

11.1 *Entire Agreement.* This document is the complete and exclusive agreement among the parties. It supersedes all oral or written proposals and/or other communications among the parties regarding this project.

11.2 *Severability.* If any provision of this Agreement is held to be invalid, illegal or unenforceable for whatever reason, that shall not affect or impair, in any manner, the validity, legality or enforceability of the remainder of this Agreement.

11.3 *Status of Employees.* This Agreement shall not create any employment or worker's compensation rights, duties or obligations. No agent, employee or other representative of the parties shall be deemed an employee of any other party hereto for any reason.

11.4 *Status of Agreement.* This interlocal agreement is in addition to, and is not intended to replace, substitute, modify or otherwise amend any other agreement between the parties. Those other agreements continue in effect according to the terms of those agreements.

11.5 *Rights and Remedies.* The rights and remedies provided in this Agreement are in addition to any other rights and remedies that may be provided by law.

11.6 *Third Parties.* The parties do not intend to create any rights or benefits in any entity, organization or person that is not a party hereto.

Whatcom Council of Governments

Western Washington University

Robert H. Wilson 6/30/15  
SIGNED DATE

Kathleen Kitto 6/29/2015  
SIGNED DATE

ROBERT H. WILSON  
TYPED NAME

Kathleen Kitto  
TYPED NAME

EXECUTIVE DIRECTOR  
TITLE

Vice Provost for Research  
TITLE

APPROVED AS TO LEGAL FORM:

Jim Wochow 6-26-15  
Assistant Attorney General Date

## EXHIBIT A – Scope of Work and Budget

### Scope of Work:

Western Washington University (WWU) will:

- Provide administrative support throughout the Project, including, but not limited to:
  - Coordination of Project with any and all cooperating agencies, including: U.S. Customs; Canada Border Services Agency; WA Dept of Transportation; BC Ministry of Transportation; the WCOG.
  - Assist in the development of the design, schedule, and budget of the Project, including preparation of written materials describing the Project.
- Over the course of two field seasons (2015 and 2016), provide a trained field crew of 9 persons (including 1 supervisor). The estimated budget reflects the cost of providing a variable crew for 20 field days in 2015 and 19 field days in 2016. Should the WCOG specify a lesser crew size or reduced number of field days, the cost charged by WWU shall be proportionally reduced, based upon the unit costs identified below. To provide the trained crew, WWU shall:
  - HIRING. Prepare and post job descriptions; interview and select applicants; hire persons as student employees of WWU.
  - TRAINING. Conduct on-site training with field crew.
  - SUPERVISION. Ensure that a trained field supervisor is on site at the beginning of each weekend of data collection.
- Provide one rental van, together with necessary fuel, for transport of the field crew to the field site. WWU's obligation with respect to this task is limited to the number of days and the number of miles identified in below.
- Allow WCOG to use 9 device-licenses for the Pendragon Forms VI software suite that are owned by WWU. WWU will allow WCOG to use the 9 licenses for the duration of the Project.
- With respect to all of the above tasks, WWU acknowledges that the field effort is anticipated to occur over the course of four weeks.
- Assist in the analysis of data and in the design and preparation of a final Project report.

## Budget

		2015	2016	Total
<b>SENIOR PERSONNEL AND OTHER PERSONNEL</b>				
Trautman 1.39 months per year	\$5,166.66	\$7,160	\$7,160	\$14,320
Davidson .3 month per year		\$2,320	\$2,320	\$4,640
Staff				\$0
Staff		\$0		\$0
Intern UGRAD 47 day/8hrs/\$15		\$5,640	\$3,840	\$9,480
Ugrads 8/\$11/16.5 days/8hrs		\$11,616	\$11,616	\$23,232
<b>Subtotal, salaries</b>		<b>\$26,736</b>	<b>\$24,936</b>	<b>\$51,672</b>
				\$0
<b>C. FRINGE BENEFITS</b>				
				\$0
PI & Co-PI	25%	\$2,370	\$2,370	\$4,740
Staff	45%	\$0	\$0	\$0
Grads and Ugrads	10%	\$1,726	\$1,546	\$3,272
<b>Subtotal, fringe</b>		<b>\$4,096</b>	<b>\$3,916</b>	<b>\$8,012</b>
<b>Total personnel (Salaries &amp; Fringe)</b>		<b>\$30,832</b>	<b>\$28,852</b>	<b>\$59,684</b>
				\$0
Transportation				\$0
Rental 2 vans/\$65 day/16 days	\$2,080	\$2,080	\$2,080	\$4,160
Fuel 1600 miles/ 18mpg/\$2.6 gal	\$231	\$231	\$231	\$462
MATCH		-\$3,750	-\$3,750	-\$7,500
<b>Subtotal, Equipment</b>		<b>-\$1,439</b>	<b>-\$1,439</b>	<b>-\$2,878</b>
				\$0
				\$0
<b>TOTAL DIRECT COSTS</b>		<b>\$29,393</b>	<b>\$27,413</b>	<b>\$56,806</b>
WWU-DHHS Negotiated rate				\$0
25% of TDC Local Gov't	25.00%	\$7,348	\$6,853	\$14,201
<b>Total Costs</b>		<b>\$36,741</b>	<b>\$34,266</b>	<b>\$71,007</b>





**Washington State  
Department of Transportation**

Lynn Peterson  
Secretary of Transportation

June 11, 2015

Transportation Building  
310 Maple Park Avenue S.E.  
P.O. Box 47300  
Olympia, WA 98504-7300  
360-705-7000  
TTY: 1-800-833-6388  
www.wsdot.wa.gov

Mr. Robert Wilson  
Executive Director  
Whatcom Council of Governments  
314 East Champion Street  
Bellingham, Washington 98225-4502

**WCOG  
Western Washington Commercial  
Vehicle Origin/Destination Study  
HRD-2037(105)  
FUND AUTHORIZATION**

Dear Mr. Wilson:

We have received FHWA fund authorization, effective June 9, 2015, for this project as follows:

<b>PHASE</b>	<b>TOTAL</b>	<b>FEDERAL SHARE</b>
Preliminary Engineering	\$150,000	\$120,000


As a condition of authorization you must show continuous project progress through monthly billings, until your project is complete. Failure to show continuous progress may result in your project becoming inactive per 23 CFR 630.106(a) (5) and subject to de-obligation of all federal funds and agreement closure.

FHWA requires projects utilizing federal funds for preliminary engineering or right of way to advance to construction. If this project is unable to proceed to construction, any expended federal funds must be repaid.

Enclosed for your information and file is a fully executed copy of Local Agency Agreement LA-8687 between the state and your agency. All costs exceeding those shown on this agreement are the sole responsibility of your agency.

All future correspondence relating to the project is to be submitted to your Region Local Programs Engineer, Ed Conyers at (206) 440-4734.

Sincerely,

  
*Fed:* Stephanie Tax  
Manager, Program Management  
Local Programs

ST:ds:jg

Enclosure

cc: Ed Conyers, Northwest Region Local Programs Engineer, MS NB82-121



AGENCY

# Menu Local Agency Agreement

Agency Whatcom Council of Governments  
 Address 314 E Champion St  
Bellingham WA 98225

CFDA No. 20.205  
 (Catalog of Federal Domestic Assistance)  
 Project No. HRD-2037(105)  
 Agreement No. LA 8681  
 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) the policies and procedures promulgated by the Washington State Department of Transportation, and (5) 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 Western Washington Commercial Vehicle Origin/Destination Study Length n/a  
 Termini n/a

### Description of Work

This study will continue a regionally important time series of cross-border freight data adding a 2015 sample to 2009 and 2000. It will inform evaluation of investments and policy making; especially regarding east-west links between alternate cross-border routes, impact of changes in trusted trader program parameters, and scenarios under future legal and regulatory shifts such as adoption of a pre-clearance agreement under the U.S.-Canada Beyond the Border Action Plan

Project Agreement End Date: December 31, 2017  
 Proposed Advertisement Date: n/a

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 80 %	150,000.00	30,000.00	120,000.00
a. Agency			
b. Other			
c. Other			
Federal Aid Participation Ratio for PE			
d. State			
e. Total PE Cost Estimate (a+b+c+d)	150,000.00	30,000.00	120,000.00
Right of Way %			
f. Agency			
g. Other			
h. Other			
Federal Aid Participation Ratio for RW			
i. State			
j. Total R/W Cost Estimate (f+g+h+i)			
Construction %			
k. Contract			
l. Other			
m. Other			
n. Other			
Federal Aid Participation Ratio for CN			
o. Agency			
p. State			
q. Total CN Cost Estimate (k+l+m+n+o+p)			
r. Total Project Cost Estimate (e+j+q)	150,000.00	30,000.00	120,000.00

Agency Official  
 By B. Wilson  
 Title Executive Director

Washington State Department of Transportation  
 Kathleen B. Davis  
 By Kathleen B. Davis  
 Director, Local Programs

Date Executed 6-8-15

**Construction Method of Financing** (Check Method Selected)

**State Aid 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 Aid 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

\_\_\_\_\_, \_\_\_\_\_, Resolution/Ordinance No. \_\_\_\_\_

**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 of 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 90 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**