

# **SPECIAL TRANSPORTATION PLANNING STUDY AGREEMENT**

**Between**

**The CITY OF VANCOUVER**

**And**

**The STATE OF WASHINGTON**

**Department of Transportation**

**GCB 3544**

This Agreement, made and entered into between the State of Washington, Department of Transportation, hereinafter called "WSDOT", and The City of Vancouver, hereinafter called the "Planning Agency;" hereinafter referred to individually as the "Party" and collectively as the "Parties."

## **RECITALS**

1. WSDOT and ODOT have entered into a partnership for the I-5 Bridge Replacement Program, hereinafter called the "Program". The WSDOT/ODOT partnership is detailed in the executed *Funding and Administration Agreement for initial Project management, Organization and Staffing, Environmental Analysis, and Preliminary Engineering*, hereinafter called the "Interstate Agreement," ODOT Misc. Contracts and Agreements No. 34096 and WSDOT Agreement No. GCB 3342, which includes a requirement that equal funding be provided by WSDOT and ODOT for Program expenditures; and
2. The Interstate Agreement defines a leadership TEAM that consists of the Program Administrator and at least one designated employee from WSDOT and ODOT that together manage the Program as a bi-state team making decisions following federally accepted laws and procedures along with individual state laws for contracting, and the engineering consultant, contracted by WSDOT, agreement number Y-12435, functionally reports to the TEAM; and
3. The leadership TEAM, in consultation with the Planning Agency, recognize the need for the transportation planning project contemplated by this Agreement, which is briefly described as the Planning Agency's staff-level collaboration with the leadership TEAM in the areas of Program alternatives analysis, transportation planning, transit planning/engineering, financial structures, Program community messaging, and environmental documentation (Project); and
4. The leadership TEAM has determined that the Project is necessary to implement the Program; and
5. It is deemed in the best interest of WSDOT and ODOT to equally participate in funding the Project as the Project work is for the mutual benefit of local and state roadway planning in the area of the Project; and
6. WSDOT and the Planning Agency now wish to define responsibility for preparation of the transportation planning project contemplated by this Agreement.

Now Therefore, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, covenants, conditions, and performances contained herein, and the attached Exhibit A and Exhibit B, that are incorporated herein by this reference,

IT IS MUTUALLY AGREED AS FOLLOWS:

### **TERMS OF AGREEMENT**

#### **1. SCOPE OF WORK**

- 1.1** The Planning Agency shall undertake the Project described above, which shall include the tasks and cost estimates set forth in Exhibit "A," annexed hereto and made a part hereof. This agreement is between the Planning Agency and WSDOT, with management of the Project performed by the leadership TEAM pursuant to terms of the Interstate Agreement.
- 1.2** Prior to execution of this Agreement, WSDOT issued a Limited Notice to Proceed (LNTP) to the Planning Agency, authorizing the Planning Agency to begin some of the early design activities outlined in Exhibit "A". Any work done by the Planning Agency pursuant to the LNTP is included as part of the overall work under this Agreement.
- 1.3** WSDOT considers the Planning Agency to be a vendor under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205, title Highway Planning and Construction, although any federal fund received under this Agreement should not be reported as pass-throughs of federal funds to subrecipients in any audit report.

#### **2. SCHEDULE**

- 2.1** The Project period shall commence upon execution of this Agreement and shall expire on December 31, 2025.
- 2.2** The LNTP covers activities performed by the Planning Agency beginning January 1, 2021 up until execution of this Agreement.

#### **3. PAYMENT**

- 3.1** WSDOT agrees to reimburse the Planning Agency's actual direct and related indirect costs of the Project. The maximum amount that WSDOT shall reimburse the Planning Agency shall not exceed the "Total Amount Authorized", as indicated in Exhibit A. Payment by task shall be made as set forth in Exhibit "A." ~~All costs must be consistent with the Federal cost principles contained in 2 CFR, Part 225.~~
- 3.2** The work activities covered under the LNTP will be reimbursed up to \$285,000860.02. Billing for work described in the LNTP shall occur upon execution of this Agreement.

- 3.3** The Planning Agency shall submit to WSDOT requests for funds as they are expended on the project, but not to exceed one such request every month. Such requests for reimbursement shall document the amount of funds that have been expended during the period for the total project, as well as for the current billing period. WSDOT shall review and approve each request for payment in an expeditious manner and shall make payment within 30 days after approval of the payment request.

#### **4. REPORTS**

- 4.1** The Planning Agency shall prepare and present to WSDOT a progress report to accompany each invoice. The report(s) must include a summary of work progress during the period of each invoice, costs incurred in accordance with the approved scope of work and budget, and progress to date, including any problems or work delays. WSDOT may delay reimbursement of billings if the requested report(s) is not submitted with each invoice.

#### **5. MODIFICATIONS**

- 5.1** Either Party to this Agreement may request changes in these provisions. Such changes which are mutually agreed upon shall be incorporated as written amendments to this Agreement. No variation or alteration of the terms of this Agreement shall be valid unless made in writing and signed by all authorized representatives of both of the parties hereto.

#### **6. AUDITS, INSPECTION, AND RETENTION OF RECORDS**

- 6.1** All project records in support of all costs incurred and actual expenditures kept by the Planning Agency are to be maintained in accordance with procedures prescribed by the Division of Municipal Corporations of the State Auditor's Office, the U.S. Department of Transportation, and WSDOT.
- 6.2** WSDOT, ODOT, the Oregon Secretary of State's Office, the Federal Highway Administration, Federal Transit Administration, the Comptroller General of the United States, and their duly authorized representatives, shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all of the Planning Agency's records with respect to all matters covered by this Agreement. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and other matters covered by this Agreement. All documents, papers accounting records, and other material pertaining to costs incurred in connection with the project shall be retained by the Planning Agency for six years after WSDOT's written notice that the project is complete and the Agreement is terminated. Copies thereof shall be furnished if requested.

~~**6.3** In accordance with 2 CFR Part 200 regulations, the Planning Agency is required to arrange for audit of funds expended.~~

## 7. TERMINATION

- 7.1 If it is considered in the best interest of WSDOT, WSDOT may terminate this Agreement upon giving ten (10) days notice in writing to the Planning Agency. If this Agreement is so terminated prior to fulfillment of the terms stated herein, the Planning Agency shall be reimbursed only for actual expenses and noncancelable obligations, both direct and indirect, incurred to the date of termination, in accordance with Section 3, Payment, above.

## 8. LEGAL RELATIONS

- 8.1 The ~~Planning Agency~~Parties, and ~~its~~their contractors, consultants, subconsultants and sub-contractors, shall comply with all Federal, State and Local Laws and Ordinances applicable to the work to be done under this Agreement.
- 8.2 Each party to this Agreement shall be responsible for damage to persons or property resulting from the negligence on the part of itself, its employees, its agents, or its officers. Neither party assumes any responsibility to the other party for the consequences of any act or omission of any person, firm, or corporation not a party to this Agreement.
- 8.3 ~~The Planning Agency~~WSDOT and its successors and assigns shall protect, save, defend, indemnify, and hold ~~WSDOT~~the Planning Agency and its elected officials, officers, agents and employees and the State of Oregon, the Oregon Transportation Commission and its members, the Oregon Department of Transportation (ODOT) and its elected officials, officers, agents, and employees harmless from and against all claims, actions, costs, damages (both to persons and/or/property), or expenses, demands, or suits at law or equity of any nature whatsoever by reason of the acts or omissions, or from the negligence of, or the breach of any obligation under this Agreement by, ~~WSDOT~~the Planning Agency or ~~the Planning Agency~~WSDOT'sAgency's agents, invitees, officers, employees, consultants, subconsultants, contractors, subcontractors or vendors, of any tier, or any other persons for whom ~~the Planning Agency~~WSDOT may be legally liable related to its work in connection with the Project and this Agreement; provided that nothing herein shall require ~~the Planning Agency~~WSDOT to defend or indemnify ~~WSDOT~~the Planning Agency, the State of Oregon, the Oregon Transportation Commission and its members, ODOT and their respective elected officials, officers, agents, and employees from all claims, demands or suits based solely upon the willful misconduct, negligence of, or breach of any obligation under this Agreement by the party seeking defense and indemnification, or their respective elected officials, agents, officers, employees, consultants, sub-consultants, contractors, subcontractors or vendors, of any tier, or any other persons for whom the party seeking defense and indemnification may be legally liable; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) ~~the Planning Agency~~WSDOT or ~~the Planning Agency~~WSDOT'sAgency's elected officials, agents, invitees, officers, employees, consultants, subconsultants, contractors, subcontractors or vendors, of any tier, or any other persons for whom ~~the Planning Agency~~WSDOT is legally liable, and (b) the party seeking defense and indemnification, its agents, officers, employees, sub-consultants,

subcontractors and or vendors, of any tier, or any other persons for whom the party seeking defense and/or indemnity may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of ~~the Planning Agency~~ WSDOT's Agency's negligence or the negligence of ~~the Planning Agency~~ WSDOT's Agency's elected officials, agents, employees, consultants, sub-consultants, contractors, subcontractors or vendors, of any tier, or any other persons for whom ~~the Planning Agency~~ WSDOT may be legally liable. This provision shall be included in any Agreement between ~~Planning Agency~~ WSDOT and any sub-consultant, subcontractor and vendor, of any tier. ~~Planning Agency~~ WSDOT shall also agree that its obligations under this section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents while performing work in connection with the Program.

**8.4** The Planning Agency and its successors and assigns shall protect, save, defend, indemnify, and hold WSDOT and its elected officials, officers, agents and employees and the State of Oregon, the Oregon Transportation Commission and its members, the Oregon Department of Transportation (ODOT) and its elected officials, officers, agents, and employees harmless from and against all claims, actions, costs, damages (both to persons and/or/property), or expenses, demands, or suits at law or equity of any nature whatsoever by reason of the acts or omissions, or from the negligence of, or the breach of any obligation under this Agreement by, the Planning Agency or the Planning Agency's agents, invitees, officers, employees, consultants, subconsultants, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Planning Agency may be legally liable related to its work in connection with the Project and this Agreement; provided that nothing herein shall require the Planning Agency to defend or indemnify WSDOT, the State of Oregon, the Oregon Transportation Commission and its members, ODOT and their respective elected officials, officers, agents, and employees from all claims, demands or suits based solely upon the willful misconduct, negligence of, or breach of any obligation under this Agreement by the party seeking defense and indemnification, or their respective elected officials, agents, officers, employees, consultants, sub-consultants, contractors, subcontractors or vendors, of any tier, or any other persons for whom the party seeking defense and indemnification may be legally liable; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Planning Agency or the Planning Agency's elected officials, agents, invitees, officers, employees, consultants, subconsultants, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Planning Agency is legally liable, and (b) the party seeking defense and indemnification, its agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom the party seeking defense and/or indemnity may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of the Planning Agency's negligence or the negligence of the Planning Agency's elected officials, agents, employees, consultants, sub-consultants, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Planning Agency may be legally liable. This provision shall be included in any Agreement between Planning Agency and any sub-consultant, subcontractor and vendor, of any tier. Planning Agency shall also agree that its obligations under this section extend to any claim, demand and/or cause of

action brought by, or on behalf of, any of its employees or agents while performing work in connection with the Program.

- 8.54** The Parties agree that each of their obligations under this Defense and Indemnity Provision extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents while performing work arising out of this AGREEMENT, for any purpose. For this purpose, each Party, by MUTUAL NEGOTIATION, hereby waives with respect to each other only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions chapter 51.12 RCW.
- 8.65** ~~The Planning Agency~~WSDOT shall also defend, indemnify, and hold harmless ~~WSDOT the Planning Agency~~ and ODOT and their elected officials, officers, agents and employees from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by ~~the Planning Agency~~WSDOT or ~~the Planning Agency~~WSDOT's agents, employees, consultants, sub-consultants, contractors, subcontractors or vendors, of any tier, or any other persons for whom ~~the Planning Agency~~WSDOT may be legally liable, in performance of the Work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or communicated to ~~WSDOT the Planning Agency~~ or ODOT, their elected officials, officers, agents and employees pursuant to the Agreement; provided that this defense and indemnity obligation shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from ~~WSDOT's the Planning Agency's~~ or ODOT's, their agents', officers' and employees' failure to comply with specific written instructions regarding use provided to ~~WSDOT the Planning Agency~~ and ODOT, their agents, officers and employees by ~~the Planning Agency~~WSDOT, its agents, employees, consultants, sub-consultants, contractors, subcontractors or vendors, of any tier, or any other persons for whom ~~the Planning Agency~~WSDOT may be legally liable.
- 8.76** The Planning Agency shall also defend, indemnify, and hold harmless WSDOT and ODOT and their elected officials, officers, agents and employees from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the Planning Agency or the Planning Agency's agents, employees, consultants, sub-consultants, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Planning Agency may be legally liable, in performance of the Work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or communicated to WSDOT or ODOT, their elected officials, officers, agents and employees pursuant to the Agreement; provided that this defense and indemnity obligation shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade

secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from WSDOT's or ODOT's, their agents', officers' and employees' failure to comply with specific written instructions regarding use provided to WSDOT and ODOT, their agents, officers and employees by the Planning Agency, its agents, employees, consultants, sub-consultants, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Planning Agency may be legally liable.

**8.8** The Washington Attorney General, the Vancouver City Attorney, and the Oregon Attorney General must give written authorization to any legal counsel purporting to act in the name of, or represent the interests of, either the State of Washington, the City of Vancouver, or the State of Oregon (respectively) or ~~its~~their officers, members, employees and agents prior to such action or representation. Either the State of Washington, City of Vancouver, or the State of Oregon, acting by and through their ~~Attorneys~~Attorney Generals ~~or City Attorney~~, may assume its own defense, including that of its officers, employees and agents, at any time when in either ~~state's government's~~ sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending or able to defend the interests of that ~~state~~governmental entity, its officers, members, employees and/or agents; (iii) important governmental interests are at stake; or (iv) the best interests of that state ~~or agency~~ are served thereby; and, ~~Planning Agency~~each party's Agency's obligation to pay for all costs and expenses shall include those incurred by either the State of Washington, City of Vancouver, or the State of Oregon in assuming its own defense or that of its officers, members, employees, or agents under (i) and (ii) above.

**8.97** WSDOT and Planning Agency agree and intend that ODOT is a Third Party beneficiary to this Agreement. WSDOT and Planning Agency are the only parties to this Agreement and, with the exception of ODOT as a Third Party beneficiary, are the only parties entitled to enforce its provisions. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to any other third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the provisions of this Agreement.

**8.108** The defense, indemnification and WAIVER provisions contained in this Section 8 shall survive the termination or expiration of this Agreement.

**8.119** The Planning Agency shall obtain and keep in force during the term of this Agreement, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW as follows:

- a. Worker's compensation and employer's liability insurance as required by the STATE OF WASHINGTON.
- b. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of two million dollars (\$2,000,000.00) per



occurrence and four million dollars (\$4,000,000.00) in the aggregate for each policy period.

- c. Business auto liability insurance written under ISO Form CG 00 01 10 01 or equivalent providing coverage for any "Auto" (Symbol 1) used in an amount not less than a one million dollar (\$1,000,000.00) combined single limit for each occurrence.

**8.12010** Excepting the Worker's Compensation Insurance and any Professional Liability Insurance, WSDOT, ODOT, their Transportation Commissions and members, their officers, employees, and agents will be named on policies issued for the Program of Planning Agency and any sub-consultant and/or subcontractor as an endorsed additional insured (the "AIs") with respects to ongoing operations and completed operations. This coverage shall be primary coverage and non-contributory and any coverage maintained by the AIs shall be excess over, and shall not contribute with, the additional insured coverage required hereunder. The Planning Agency's and the sub-consultant's and/or subcontractor's insurer shall waive any and all rights of subrogation against the AIs. The Planning Agency shall furnish WSDOT with verification of insurance and endorsements required by this Agreement. WSDOT reserves the right to review complete, certified copies of all required insurance policies at any time.

**8.13010** All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The Planning Agency shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this Agreement to:

Manager, Contract Services Office  
Washington State Department of Transportation  
PO BOX 47408  
Olympia, WA 98504-7408  
Email: [wsdotcso@wsdot.wa.gov](mailto:wsdotcso@wsdot.wa.gov)

**8.14111** No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to WSDOT's Contract Services Office.

## **9. SUBCONTRACTING**

**9.1** The services of the Planning Agency are to be directed by the Project Manager identified under Section 17. The Planning Agency shall not assign, sublet, or transfer any of the work provided for under this Agreement without prior written approval from WSDOT. WSDOT shall review and approve the Planning Agency's consultant agreement prior to execution. The Planning Agency, and its consultants, subconsultants, contractors and sub-contractors, shall comply with all Federal and State laws and regulations governing the selection and employment of consultants. WSDOT reserves the right to appoint a representative to serve on any consultant selection committee. Subcontracts greater than \$10,000 must contain all the required provisions of this contract.



## **10. TRAVEL**

- 10.1** Any out-of-state travel from which Planning Agency seeks reimbursement (exclusive of travel between Washington and Oregon) must have prior written approval of WSDOT to be eligible for reimbursement. Current WSDOT travel regulations and rates shall apply to all in-state and out-of-state travel for which reimbursement is claimed during the term of this Agreement.

## **11. LIABILITY**

- 11.1** No liability shall attach to WSDOT, ODOT or the Planning Agency by reason of entering into this Agreement except as expressly provided herein.

## **12. INDEPENDENT CONTRACTOR**

- 12.1** The Planning Agency shall be deemed an independent contractor for all purposes and the employees of the Planning Agency or any of its contractors, subcontractors, and the employees thereof, shall not in any manner be deemed to be employees of WSDOT or ODOT.

## **13. EQUAL EMPLOYMENT OPPORTUNITY**

- 13.1** The Planning Agency agrees to abide by all State and Federal regulations with respect to employment. This includes, but is not limited to, equal opportunity employment, nondiscrimination assurances, project record keeping, audits, inspection, and retention of records and will adhere to all of the nondiscrimination provisions set forth in Exhibit "B" attached hereto.

## **14. SEVERABILITY**

- 14.1** If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform to the terms and requirements of applicable law and the intent of this Agreement.

## **15. EQUIPMENT**

- 15.1** All equipment to be purchased under this Agreement shall be listed in the Scope of Work. ~~All equipment must be purchased, managed, and disposed of in accordance with 2 CFR, Part 200.~~

## **16. MERGER**

- 16.1** This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations,

oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind any Party unless in writing and signed by all Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of any party or intended beneficiary to enforce any provision of this Agreement shall not constitute a waiver by any party or intended beneficiary of that or any other provision.

## 17. NOTICE

- 17.1** This Agreement identifies the following individuals as the primary contact person for each organization.

**WSDOT:**

Frank Green  
Assistant Program Administrator, Interstate Bridge Replacement Program  
11018 NE 51<sup>st</sup> Circle  
Vancouver, WA 98682  
frank.green@interstatebridge.org  
360-905-1562

**City of Vancouver:**

Katherine Kelly  
Senior Policy Advisor  
415 W 6<sup>th</sup> Street, P.O. Box 1995  
Vancouver, WA 98660  
[Katherine.Kelly@cityofvancouver.us](mailto:Katherine.Kelly@cityofvancouver.us)  
360-644-4446 (cell)

IN WITNESS WHEREOF, the PARTIES hereby execute this Agreement as of the day and year last written below.

**PLANNING AGENCY**

\_\_\_\_\_  
Eric Holmes, City Manager

\_\_\_\_\_  
Date

**WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (WSDOT)**

\_\_\_\_\_  
Frank Green, Assistant Program Administrator

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

By: \_\_\_\_\_  
WSDOT Assistant Attorney General

\_\_\_\_\_  
Date

