

**Interlocal Agreement
Between
Washington State Department of Transportation (GCB 3656)
And
City of Vancouver**

This Agreement is between the Washington State Department of Transportation (WSDOT) and the City of Vancouver (City); hereinafter individually referred to as the "Party" and collectively referred to as the "Parties."

Recitals

- A.** Substitute Senate Bill 5165, Section 215, 9(a), provides funding solely for WSDOT to address the risks to safety and public health associated with homeless encampments on or adjacent to WSDOT owned rights-of-way (ROW). WSDOT must coordinate and work with local government officials to provide services and direct people to housing alternatives that are not in highway ROW to help prevent future encampments from forming on highway ROW. WSDOT may reimburse local government officials that perform outreach assistance to transition people into treatment or housing that is not on the ROW and to reimburse local law enforcement to provide enhanced safety related activities along state highway ROW (Outreach Services).
- B.** WSDOT and the City desire to enter into an agreement to address homeless encampments on WSDOT ROW by providing local, targeted Outreach Services.

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, IT IS MUTUALLY AGREED AS FOLLOWS:

1. General

- 1.1 The City will provide Outreach Services, with assistance from local law enforcement as requested by the City, to connect at-risk populations taking shelter inside WSDOT ROW with critical wrap-around social services and resources that can aid and improve the circumstances of homeless persons ability to leave the ROW.
- 1.2 WSDOT routes inside the City subject to this Agreement shall include the following corridors: Interstate 5 (I-5), Interstate 205 (I-205), State Route 14 (SR 14), and State Route 500 (SR 500). If the City finds that Outreach Services are necessary on a WSDOT route not listed in this Section, the City may submit a request for approval to perform Outreach Services on said route per Section 1.3.
- 1.3 Prior to performing Outreach Services under this Agreement, the City representative shall request approval in writing, with email being acceptable, from the WSDOT representative. The request shall include the corridor, milepost, direction of travel, and any other relevant information. The WSDOT representative shall review the information and provide written approval or disapproval, with an explanation regarding disapproval, to the City within five (5) working days.
- 1.4 WSDOT hereby grants to the City, its agents, employees, contractors, and subcontractors, a right of entry upon all land in which WSDOT has an interest within or adjacent to the ROW of the highway, for all purposes contemplated by this Agreement.

1.5 While on WSDOT premises, the City, its agents, employees, contractors, and subcontractors shall comply with WSDOT safety, security policies, and regulations, per the WSDOT Safety Procedures and Guidelines Manual M 75-01, current edition, found at: (<https://www.wsdot.wa.gov/publications/manuals/fulltext/M75-01/Safety.pdf>), including requirements for the prevention of transmission of communicable diseases, such as COVID-19. All City personnel working in WSDOT ROW shall adhere to all City safety guidelines that are not superseded by WSDOT safety guidelines.

1.6 The period of performance for this Agreement shall commence on the date the last required signature is obtained and shall remain in effect until June 30, 2023, unless amended or terminated sooner as provided in this Agreement.

2. Payment

2.1 In consideration of the faithful performance of the work to be done by the City in accordance with this Agreement, WSDOT will pay the City for the actual direct and related indirect costs for Outreach Services in an amount not to exceed Four Hundred Thousand Dollars (\$400,000) over the term of this Agreement.

2.2 Payments shall be made by WSDOT upon receipt of an adequately documented invoice with supporting documentation from the City. Each invoice shall include the WSDOT Agreement number GCB 3656, an invoice number, the day, month, and year costs were incurred, total amount incurred to date, total amount of current invoice, and detailed information regarding the work performed.

2.3 The City shall submit invoices as work is completed but no more often than once per month. It is agreed that any partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of final invoice, all required adjustments will be made and reflected in a final payment. Should an audit be performed on the Agreement, additional adjustments may be required depending upon the outcome of the audit.

2.4 WSDOT Fiscal Year End Closure Requirements (chapter 43.88 RCW): Any invoices for work performed between July 1 and June 30 of any given year must be submitted to WSDOT no later than July 6th (or the first business day after the July 4th holiday) of the same calendar year. If the City is unable to provide an invoice for such work by this date, an estimate of all remaining payable costs owed by WSDOT for work performed by the City prior to July 1 must be submitted to WSDOT no later than July 19th of the same year in order for WSDOT to accrue the amount necessary for payment. The City will thereafter submit any remaining invoices to WSDOT for such work as soon as possible. Failure to comply with these requirements may result in delayed payment. WSDOT shall not be required to pay to City late payment fees, interest, or incidental costs incurred by the City or any other costs related to a delayed payment if the City fails to comply with the invoice requirements of this Section.

2.5 Invoices for work performed by the City shall be mailed or emailed to WSDOT's representative:

By Mail:
WSDOT – Southwest Region
Attn: Bill Morrison, Maintenance Manager
11018 NE 51st Circle
Vancouver, WA 98682

By Email:
Morribi@wsdot.wa.gov

2.6 WSDOT will review monthly invoices and associated information and will notify the City of any

unallowable/disapproved costs within fifteen (15) calendar days of receiving the invoice. WSDOT will specify the reason for any unallowable/disapproved costs regarding the invoiced amounts it believes it is not responsible for and/or may request justification from the City for the unallowable/disapproved costs. If the City provides justification for the cost(s) and WSDOT approves the cost(s), the City may resubmit the unallowable/disapproved costs in a subsequent invoice, noted as a resubmittal and within sixty (60) calendar days' notice of WSDOT's notification to the City of the initial unallowable/ disapproved cost.

If not resubmitted by the City within 60 calendar days, the Parties may enter into the dispute resolution process (all unallowable/disapproved costs shall be subject to the dispute resolution process unless otherwise agreed to by the Parties) as noted in Section 3.

3. Dispute Resolution

3.1 The Parties shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this Agreement. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this Agreement.

3.2 Informal Resolution. The informal resolution process begins at the staff level and is raised to the higher organizational levels, if necessary. The levels of resolution are described below:

3.2.1 Upon receipt of a written notice of request for dispute resolution, WSDOT and the City Representatives shall meet within ten (10) working days and attempt to resolve the dispute. Any resolution of the dispute requires the agreement of all designated representatives attending the meeting who requested to attend the meeting.

3.2.2 If unresolved, the Southwest Region Regional Administrator and the City's counterpart shall jointly cooperate to informally resolve any dispute as quickly and efficiently as possible.

3.2.3 If the Parties have not resolved the dispute within five (5) working days after the second level meeting, at any time thereafter either Party may seek relief under this Agreement in a court of law. The Parties agree that they have no right to relief in a court of law until they have completed the dispute resolution process outlined in this section.

4. Modification

4.1 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.

5. Indemnification and Insurance

5.1 To the extent permitted by law, WSDOT and the City shall protect, defend, indemnify, and save harmless each other, their respective officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, indemnifying Party's negligent acts or omissions. Neither WSDOT nor the City will be required to indemnify, defend, or save harmless each other if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from concurrent negligence of WSDOT and the City, the indemnity provisions provided herein shall be valid and enforceable only to the extent of WSDOT's or the City's own negligence. WSDOT and the City agree that their respective obligations under this subsection extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or 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. If 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.

- 5.2 The City warrants that it is self-insured up to Two Million Dollars (\$2,000,000) and also has additional excess insurance policies. The City's insurance coverage includes (i) general liability coverage for bodily injury, property damage, and personal injury of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence, with a general aggregate amount of not less than Five Million Dollars (\$5,000,000) per policy period; coverage under policies shall be triggered on an "occurrence basis," not on a "claims made" basis; and (ii) commercial automobile liability coverage providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the operations under this Agreement, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. The City shall promptly provide a certificate of insurance from an insurer licensed to conduct business in the State of Washington, evidencing the procurement of the required insurance coverages. WSDOT shall be named as an additional insured by endorsement of the liability policy required, utilizing ISO Form 2026 (Additional Insured – Designated Person or Organization) or its equivalent without modification on any such general liability policies.

6. Governing Law and Venue

- 6.1 This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington. If 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. Further, the Parties agree that each will be solely responsible for payment of their own attorneys' fees, witness fees, and costs.

7. Independent Capacity

- 7.1 The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.

8. Representatives

- 8.1 The representative for each Party shall be responsible for and shall be the contact person for all communications regarding work performed under this Agreement. The Parties agree if there is a change in representatives, they will promptly notify the other Party in writing, with email being acceptable, of such change. Such a change will not require an amendment to this Agreement.
- 8.2 WSDOT's representative is Bill Morrison, SWR Maintenance Manager, 11018 NE 51st Circle, Vancouver, WA 98682, direct phone (360) 619-0603, email: Morribi@wsdot.wa.gov.
- 8.3 The City's representative is Aaron Lande, Policy and Program Development Manager, City of Vancouver, 415 W. 6th Street, Vancouver, WA 98668, direct line (360) 487-8612, email: Aaron.Lande@cityofvancouver.us.
- 8.4 All amendments or terminations regarding this Agreement, on behalf of WSDOT, will be processed by Traci Fleming, Agreements Specialist/Area Consultant Liaison – SWR Utilities Office, 11018 NE 51st Circle, Vancouver, WA 98682, direct line (360) 905-2102, email: FleminT@wsdot.wa.gov.

8.5 All amendments or terminations regarding this Agreement, on behalf of the City, will be processed by Aaron Lande, Policy and Program Development Manager, City of Vancouver, 415 W. 6th Street, Vancouver, WA 98668, direct line (360) 487-8612, email: Aaron.Lande@cityofvancouver.us.

9. Severability

9.1 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.

10. Termination

10.1 Neither WSDOT nor the City may terminate this Agreement without the concurrence of the other Party. Termination shall be in writing and signed by both Parties. If this Agreement is so terminated prior to the fulfillment of the terms stated herein, the City shall be reimbursed for actual direct and related indirect expenses and costs incurred up to the date of termination, as well as the costs of non-cancelable obligations.

11. No Third-Party Beneficiaries

11.1 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.

12. Audits and Records

12.1 The Parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended for the performance of the service(s) described herein. These records shall be subject to inspection, review or audit by personnel of both Parties, other personnel duly authorized by either Party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six (6) years after expiration of this Agreement. The Office of the State Auditor, federal auditors, and any persons duly authorized by the Parties shall have full access and the right to examine any of these materials during this period.

12.2 If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

12.3 Records and other documents, in any medium, furnished by one Party to this Agreement to the other Party, will remain the property of the furnishing Party, unless otherwise agreed. The Parties understand that such records and documents related to this Agreement are subject to public release through state public disclosure requests. The receiving Party will not disclose or make available this material to any third parties without first giving notice to the furnishing Party and giving it a reasonable opportunity to respond. Each Party will utilize reasonable security procedures and protections to assure that records and documents provided by the other Party are not erroneously disclosed to third parties.

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. Counterparts

14.1 This Agreement may be executed in multiple counterparts or in duplicate originals. Each counterpart or each duplicate original shall be deemed an original copy of this Agreement signed by each Party, for all purposes. Electronic signatures or signatures transmitted by email in a "pdf" may be used in place of original signatures on this Agreement. Each Party intends to be bound by its electronic or "pdf" signature on this Agreement and is aware that the other Party is relying on its electronic or "pdf" signature.

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

City of Vancouver	Washington State Department of Transportation
By:	By:
Printed: Eric Holmes	Printed: Bart Gernhart
Title: City Manager	Title: ARA - Maintenance
Date:	Date:
Approved as to Form - City	Approved as to Form - WSDOT
By:	By:
Printed:	Printed:
Title:	Title:
Date:	Date: