

AGREEMENT TO PERFORM GOVERNMENTAL ACTIVITIES
Between
THURSTON COUNTY
And
CITY OF LACEY

THIS AGREEMENT is entered into duplicate originals between Thurston County, hereinafter "County," and the City of Lacey, hereinafter "City."

WHEREAS, the County is planning a road project entitled Pacific Ave Pavement Preservation, CP# 98408, hereinafter "County Project;" and

WHEREAS, the County Project will include improvements to the roadway corridor along Pacific Ave SE within the City Right of Way (between Carpenter Rd SE and Kinwood St SE) and a portion of the City of Lacey property, hereinafter "City Road Work"; and

WHEREAS, the City Road Work shall include all materials, equipment, labor, administration and any other efforts required to perform the construction of the City Road Work; and

WHEREAS, the City is solely responsible for all costs associated with the City Road Work beyond the \$1,337,700 funded through Washington State Department of Transportation (WSDOT) Local Programs; and

WHEREAS, the County and the City have negotiated the Scope of Work and Cost Estimate for the City Road Work to be included in the County Project as set forth in this Agreement; and

WHEREAS, it is to the mutual advantage of the County and the City to cooperate in the County Project, as described herein, in order to make the most efficient use of their powers to provide services and facilities needed by the citizens residing within their respective jurisdictions; and

WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental activity that each public agency is authorized by law to perform; and

WHEREAS, it is deemed to be in the best public interest for the County to include the items of the City Road Work in the County's Project;

NOW, THEREFORE, pursuant to chapter 39.34 RCW and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof,

IT IS MUTUALLY AGREED BY THE COUNTY AND THE CITY AS FOLLOWS:

1. PLANS AND SPECIFICATIONS

- 1.1. The County, through its selected Contractor, agrees to perform the City Road Work, in accordance with the Scope of Work set out in Exhibit A, Cost Estimate set out in Exhibit B, and Plans and

Specifications set out in Exhibit C, all of which are attached hereto and by this reference incorporated into this Agreement.

- 1.2. The plans and specifications for the County Project have been prepared by the County and approved by the County Engineer and include the plans and specifications for the City Road Work which has been reviewed and approved by the City.

2. CONSTRUCTION, INSPECTION, AND WORK ACCEPTANCE

- 2.1. The County shall contract with a contractor to provide equipment, staff and materials to perform the work in accordance with the included City approved and County Engineer approved plans and specifications for Pacific Ave Pavement Preservation, CP# 98408.
- 2.2. The County shall provide for all materials testing and inspection per the approved project specifications. The Contractor and the County will not provide the City with any warranty. Acceptance of the work is based on preapproval of the source of materials, laboratory testing and field testing of placement of materials.
- 2.3. The County shall follow all industry standards for safe work practices in the performance of County responsibilities for performing the work set forth in the Contract, both for its employees and for the traveling public.
- 2.4. The County shall promptly notify the City in writing when the City Road Work is started and completed.
- 2.5. The City shall, within twenty-eight (28) calendar days of being notified that the City Road Work is completed perform a final walkthrough of the City Road Work and (a) deliver a letter of acceptance to the County which shall include a release and waiver of all future claims or demands, of any nature, resulting from the County's performance of the City Road Work under this Agreement, or (b) deliver to the County a written punch list of items to be completed and/or fixed prior to issuance of the letter of acceptance listed above.
- 2.6. If the City does not respond within twenty-eight (28) calendar days, the City Road Work will be deemed accepted by the City, and the County shall be released from all future claims and demands resulting from its performance of the City Road Work under this Agreement.
- 2.7. The City and the County will respond in writing within five (5) business days to each other's written inquiries and requests, unless otherwise specified in Exhibit A.

3. COST LIABILITY AND PAYMENT

- 3.1. The City agrees that it shall be responsible for the actual direct and related indirect costs, including contract administration and overhead costs, associated with the City Road Work that are not covered by the federal grant. The cost for the City Road Work as shown in the attached Plans is 100% federally funded up to the current Cost Estimate of **\$1,337,700**, as provided in Attachment A. The County and the City agree to comply with all federal, state and local laws, ordinances, regulations, and rules applicable to the tasks to be performed under this Agreement.

- 3.2. The City agrees that it is responsible for the bid price for the City Road Work beyond that covered by the federal funds, including, but not limited to, any increased costs resulting from differing site conditions, delays, inaccurate utility location information, and other circumstances beyond the control of either the County or the Contractor. If the Contractor has a right to additional compensation under the Contract as it relates to the City Road Work, the City is responsible for payment of the additional compensation not covered by the federal funds.
- 3.3. The City agrees to pay 100% of costs incurred for the City Road Work beyond the estimated \$1,337,700, including unanticipated bid prices, change orders and any increased costs.
- 3.4. The County shall invoice the City on a monthly basis and provide supporting documentation therefore, and the City agrees to make payment to the County within thirty (30) days of receipt of an invoice. The Parties agree that any payment will not constitute agreement as to the appropriateness of any item and that, at the time of final invoice, the Parties will resolve any discrepancies.
- 3.5. Should bid prices come in above the anticipated costs, both the City and County reserve the right to reject bids and proceed as deemed necessary. The City will provide written notification after the bid opening authorizing the County to proceed with the City work included in the plans and specifications using contract unit bid prices. If either Party decides to reject the bids, formal notice in writing shall be received by the other Party within 5 business days of opening of the bids.
- 3.6. Should the City fail to make payment according to the terms of this Agreement, the County has the right to terminate this Agreement and charge the City for all associated costs of termination, including non-cancellable items, associated Project delays, and Contractor claims.

4. RIGHT OF ENTRY; OWNERSHIP, OPERATION, MAINTENANCE AND REPAIR

- 4.1. The City hereby grants to the County and its Contractor a right of entry upon all land in which the County has an interest for the purposes of performing the City Road Work.
- 4.2. Upon physical completion of the County Project, all ownership, operation, maintenance, and repair of the City's facilities (roadway improvements) shall be the sole responsibility of the City at the sole cost of the City and without expense to the County.
- 4.3. The County shall ensure the City has access to the City Road Work during construction.

5. RELATIONSHIP OF THE PARTIES

- 5.1. 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. This agreement is for the benefit of the Parties, and no third party beneficiary relationship is intended unless specifically set forth herein. No separate legal entity is created by this Agreement. No joint organization is created. No common budget is to be established. No personal or real property is to be jointly acquired or held.

6. DURATION

- 6.1. This Agreement shall commence upon its date of execution and shall continue until the County Project is completed and the City Road Work is completed and accepted, unless terminated sooner by the City or the County.

7. INDEMNIFICATION AND HOLD HARMLESS

- 7.1. The City and the County shall indemnify and hold harmless one another and their officers, officials, and employees from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or costs, of whatsoever kind or nature, brought against the one Party arising out of, in connection with, or incident to the other Party's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the City and (b) the County, their officers, officials, and/or employees, or involves those actions covered by RCW 4.24.115, this indemnity and hold harmless provision shall be valid and enforceable only to the extent of the negligence of the City or the County; and provided further, that nothing herein shall require the City or the County to hold harmless or defend the other or its officers, officials, and/or employees from any claims arising from that Party's sole negligence or that of its officers, officials, and/or employees. The terms of this section shall survive the termination of this Agreement and completion of the City Road Work. This indemnification and hold harmless provision only applies to third party claims.

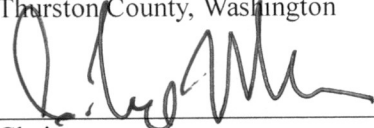
8. GENERAL PROVISIONS

- 8.1. Dispute Resolution: Should disputes arise between the County and the City, the County Engineer and the City Engineer shall meet to resolve said disputes. This dispute resolution clause is not intended to waive any right either Party may have to pursue redress in the courts.
- 8.2. Governance: This Agreement is entered into pursuant to and under the authority granted by the laws of the State of Washington. The provisions of this Agreement shall be construed to conform to those laws and shall be governed by those laws as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County, Washington. Each Party shall be responsible for its own attorneys' fees and costs.
- 8.3. Termination: This Agreement may be terminated upon sixty (60) days written notice given by either the City or the County. If this Agreement is so terminated prior to the fulfillment of the terms stated herein, the County shall be reimbursed for all actual direct and related indirect expenses and costs, including construction engineering, contract administration and overhead costs incurred up to the date of termination, as well as the cost of non-cancellable obligations and/or Contractor claims relating to the termination of the City Road Work incurred by the County or its Contractor.
- 8.4. Records and Audit: During the progress of the City Road Work and for a period of not less than seven (7) years from the date of final payment, both Parties shall maintain the records and accounts pertaining to the City Road Work and shall make them available for inspection and audit by the other Party and/or Federal Government, and copies of all records, accounts, documents or other data pertaining to the City Road Work will be furnished upon request. If any litigation, claim or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past the seven-year retention period.

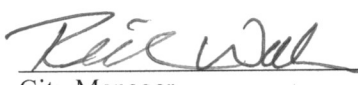
- 8.5. Amendment: This Agreement may be amended by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless put in writing and signed by persons authorized to bind each of the Parties.
- 8.6. Waiver: A failure by either Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the Party.
- 8.7. Severability: If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.
- 8.8. Entire Agreement: This Agreement, together with those documents incorporated herein by reference, sets forth all terms and conditions agreed upon by the City and the County and supersede any prior agreements oral or otherwise with respect to the subject matter addressed herein.
- 8.9. Recording: Prior to its entry into force, this Agreement shall be filed in accordance with RCW 39.34.040.
- 8.10. Notice: Any notice required under this Agreement shall be to the Party at the address listed below and shall become effective three (3) days following the date of deposit in the United States Postal Service:
- | | |
|---|--|
| <p>CITY OF LACEY
Attention: City Engineer
420 College St SE
Lacey, WA 98503</p> | <p>THURSTON COUNTY
Attention: County Engineer
9605 Tilley Rd Suite C
Olympia, WA 98512</p> |
|---|--|
- 8.11. Preamble: The preamble to this Agreement is not a mere recital of facts but consists of binding and agreed upon statements that form the basis of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date of the last authorizing signature below.

Board of County Commissioners
Thurston County, Washington


Chair

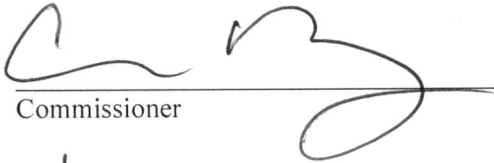
City of Lacey

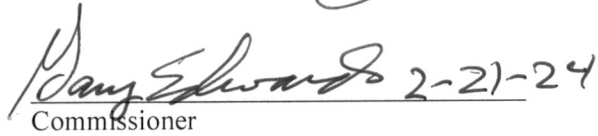

City Manager

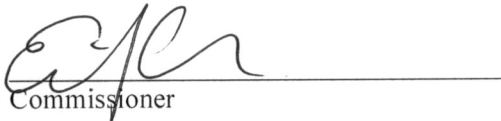


Date: 1/16/2024

Vice-Chair


Commissioner

 2-21-24
Commissioner


Commissioner

Date: February 20, 2024

ATTEST:

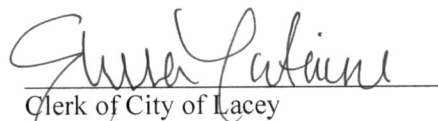

Clerk of the Board

Approved as to Form:

JON TUNHEIM
PROSECUTING ATTORNEY

By: 
Deputy Prosecuting Attorney

ATTEST:


Clerk of City of Lacey

Approved as to form:

By: 
City Attorney

EXHIBIT A – SCOPE OF WORK

CITY ROAD WORK

The City Road Work shall consist of the roadway improvement work shown and detailed in the project plans and specifications between Carpenter Rd SE and Kinwood St SE. Work includes the planning and paving of asphalt along the roadway corridor, sidewalk, driveway, and curb ramp replacement, as well as additional associated improvements shown on the County Project plans.

CITY RESPONSIBILITIES

1. Any direction the City wishes to give the Contractor shall be relayed only to the County Project Manager or County inspector. The County will consult with the City to determine the appropriate action to be taken with the Contractor.
2. The City agrees it shall be responsible for all costs associated with City Road Work if ineligible for reimbursement by Washington State Department of Transportation (WSDOT) Local Programs Office, including, but not limited to:
 - A. Accessibility Improvements along pedestrian corridors to meet the current Public Right of Way Accessibility Guidelines (demolition and replacement of existing driveway accesses, curb ramps, and crossings) and all associated work to complete such improvements and repair impacted locations back to existing conditions.
 - B. Planing and Paving of the existing asphalt roadway approximately 2.5" below existing grade and all associated work to complete such improvements.
 - C. Construction of roadway delineation and channelization improvements required to meet City standards.
 - D. All costs for materials and compaction testing and acceptance attributable to the installation of the City Road Work together with all compaction and materials testing.
3. The City shall work with the County on the City Road Work to establish dates of "substantial completion," "physical completion," and "completion date" as defined in the County Project contract documents.
4. The City shall prepare punch list items for all walk throughs in a timely manner.
5. The City shall provide a direct contact for responding to citizens' questions and requests for information that is related to the City Road Work.

COUNTY RESPONSIBILITIES

1. The County will seek instruction from the City Inspector on any questions the Contractor or County may have on the City Road Work. The County will apprise the City Inspector of any issue involving the City Road Work upon the County becoming aware of the issue.

2. The County will prepare a single bid packet for the County Project that includes the City Road Work and will be responsible for bidding and award of the County Project.
3. The County will submit the County Project Plans, Specifications, and the Cost Estimate to the City for review and approval prior to finalizing the bid documents.
4. The County will enter into a Contract with a Contractor for construction of the County Project that includes the City Road Work and will administer the Contract with the Contractor.
5. The County will invite the City to all construction meetings and to all substantial completion and final completion walk throughs. The County will incorporate City punch list comments in an overall County Project punch list, as appropriate for each schedule of the County Project.
6. The County will include in the bid documents that the Contractor will be responsible for obtaining all applicable permits.

GENERAL PROVISIONS APPLICABLE TO BOTH CITY AND COUNTY

1. Change Orders

The County will advise the City of any proposed change order to City Road Work as soon as possible and will provide the City with an opportunity to review and approve the change order as provided below. The City and County recognize two types of change orders: (A) Required and (B) Elective.

A. *Required* change orders involve such changes in the work, work methods, working days, or quantities necessary to satisfactorily complete the scope of the advertised Project. All other change orders shall be considered elective. The County reserves the right to direct the Contractor prior to City approval of a required change order when, in the opinion of the County, direction is needed to address an emergency, there is a safety issue, or when the failure to make an immediate decision will result in undue added Contract costs. Required change orders require the prior written approval of the City before execution unless one or more of the conditions listed above apply. In such cases written concurrence from the City may be obtained after execution.

B. *Elective* change orders are anything other than required change orders that impact City costs and/or City Road Work. Elective change orders require the prior written approval of the City before execution.

2. Progress Reports, Pay Estimates, and Invoicing

A. Monthly Progress Updates. The County will provide the City with three week look ahead updates to the construction schedule.

B. Monthly Pay Estimates/Review. The County will prepare a monthly Pay Estimate and will provide a copy to the City Inspector for review. For City Road Work, the Pay Estimate will identify the estimated costs attributed to City Road Work and County Project. The Pay Estimate will show the estimated material quantities and the actual material quantities. The City will have five (5) business days to review the Pay Estimate before the County processes it. If the City

and/or Contractor have issues with the City's portion of the Pay Estimate, the County will facilitate a discussion. Any dispute shall be resolved according to the Dispute Resolution provision of the Agreement.

C. Monthly Invoicing. The County shall invoice the City on a monthly basis and provide supporting documentation if there are any costs deemed ineligible for reimbursement by WSDOT Local Programs Office. Supporting documentation shall include a breakdown of City costs, County costs to be reimbursed by the City, and costs reimbursable through Local Programs. The City agrees to make payment to the County within thirty (30) days of receipt of an approved invoice.

Exhibit B

Thurston County Public Works ENGINEER'S ESTIMATE

PROJECT: Pacific Ave Pavement Preservation

CP #: 98408
DATE: 08/09/2023

Schedule A

ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL
PREPARATION					
1	MOBILIZATION	L.S.	1.00	\$202,600.00	\$202,600.00
2	REMOVING CEMENT CONC. PAVEMENT	S.Y.	34.00	\$80.00	\$2,720.00
3	REMOVING CEMENT CONC. SIDEWALK	S.Y.	700.00	\$75.00	\$52,500.00
4	REMOVING CEMENT CONC. CURB AND GUTTER	L.F.	1,050.00	\$30.00	\$31,500.00
5	REMOVING ASPHALT CONC. PAVEMENT	S.Y.	510.00	\$30.00	\$15,300.00
6	PAVEMENT REPAIR EXCAVATION INCL. HAUL	S.Y.	100.00	\$100.00	\$10,000.00
7	CRACK SEALING - FA	EST.	1.00	\$30,000.00	\$30,000.00
8	SAWCUT ASPHALT AND CONC. PAVEMENT	L.F.	1,700.00	\$170.00	\$289,000.00
GRADING					
9	ROADWAY EXCAVATION INCL. HAUL	C.Y.	73.00	\$200.00	\$14,600.00
STORM SEWER					
10	ADJUST MANHOLE	EACH	15.00	\$1,000.00	\$15,000.00
STRUCTURE					
11	SEALING ASPHALT JOINT	L.F.	400.00	\$60.00	\$24,000.00
SURFACING					
12	CRUSHED SURFACING TOP COURSE	TON	25.00	\$70.00	\$1,750.00
HOT MIX ASPHALT					
13	PLANING BITUMINOUS PAVEMENT	S.Y.	30,200.00	\$5.00	\$151,000.00
14	HMA CL. 1/2 IN. PG 58V-22 - FIBER REINFORCED	TON	5,000.00	\$130.00	\$650,000.00
15	ASPHALT COST PRICE ADJUSTMENT	CALC	1.00	\$50,000.00	\$50,000.00
16	COMMERCIAL HMA	TON	89.00	\$350.00	\$31,150.00
EROSION CONTROL AND PLANTING					
12	SEEDING, FERTILIZING, AND MULCHING	S.Y.	78.00	\$50.00	\$3,900.00
18	INLET PROTECTION	EACH	38.00	\$140.00	\$5,320.00
19	EROSION/WATER POLLUTION CONTROL	EST.	1.00	\$10,000.00	\$10,000.00
TRAFFIC					
20	CEMENT CONC. TRAFFIC CURB AND GUTTER	L.F.	1,050.00	\$80.00	\$84,000.00
21	CEMENT CONC. PEDESTRIAN CURB	L.F.	65.00	\$75.00	\$4,875.00
22	EXTRUDED CURB	L.F.	35.00	\$75.00	\$2,625.00
23	PAINT LINE	L.F.	16,800.00	\$1.00	\$16,800.00
24	PLASTIC CROSSHATCH MARKING	L.F.	580.00	\$25.00	\$14,500.00
25	PLASTIC CROSSWALK LINE	S.F.	1,744.00	\$15.00	\$26,160.00
26	PLASTIC STOP LINE	L.F.	285.00	\$30.00	\$8,550.00
27	PLASTIC TRAFFIC ARROW	EACH	26.00	\$300.00	\$7,800.00
28	PLASTIC BICYCLE LANE SYMBOL	EACH	10.00	\$225.00	\$2,250.00
29	PLASTIC DRAINAGE MARKING	EACH	59.00	\$75.00	\$4,425.00
30	PLASTIC TRAFFIC LETTER	EACH	8.00	\$150.00	\$1,200.00
31	PAINTED WIDE LANE LINE	L.F.	200.00	\$3.00	\$600.00
32	RAISED PAVEMENT MARKER TYPE 2	HUND	27.00	\$400.00	\$10,800.00
33	RECESSED PAVEMENT MARKER	HUND	1.00	\$2,000.00	\$2,000.00
34	TEMPORARY PAVEMENT MARKING	L.F.	25,100.00	\$0.60	\$15,060.00
35	PORTABLE CHANGEABLE MESSAGE SIGN	EACH	5.00	\$5,000.00	\$25,000.00
36	OTHER TEMPORARY TRAFFIC CONTROL DEVICES	L.S.	1.00	\$5,000.00	\$5,000.00
37	FLAGGERS	HR	720.00	\$75.00	\$54,000.00
38	TRAFFIC CONTROL SUPERVISOR	L.S.	1.00	\$40,000.00	\$40,000.00
39	CONSTRUCTION SIGNS CLASS A	S.F.	505.00	\$30.00	\$15,150.00
40	OTHER TRAFFIC CONTROL LABOR	HR	360.00	\$75.00	\$27,000.00
41	CONTRACTOR PROVIDED UNIFORMED POLICE OFFICER	HR	400.00	\$140.00	\$56,000.00
OTHER ITEMS					
42	SURVEY MONUMENT	EACH	8.00	\$500.00	\$4,000.00
43	CEMENT CONC. SIDEWALK	S.Y.	130.00	\$150.00	\$19,500.00
44	CEMENT CONC. CURB RAMP TYPE PARALLEL A	EACH	4.00	\$9,000.00	\$36,000.00
45	CEMENT CONC. CURB RAMP TYPE PERPENDICULAR	EACH	1.00	\$10,000.00	\$10,000.00
46	CEMENT CONC. DRIVEWAY ENTRANCE TYPE 1	S.Y.	490.00	\$100.00	\$49,000.00
47	ADJUST CATCH BASIN	EACH	3.00	\$710.00	\$2,130.00
48	ADJUST VALVE BOX	EACH	29.00	\$830.00	\$24,070.00
49	TRAINING	HR	400.00	\$10.00	\$4,000.00
50	MINOR CHANGE	CALC	1.00	\$60,000.00	\$60,000.00
51	SPCC PLAN	L.S.	1.00	\$500.00	\$500.00
52	MAILBOX SUPPORT TYPE	EACH	5.00	\$1,000.00	\$5,000.00
53	WORK ZONE SAFETY CONTINGENCY	F.A.	1.00	\$25,000.00	\$25,000.00
TOTAL/SUBTOTAL					\$2,253,335.00

Contingency	10%	\$225,615.00
Total after Contingency		\$2,478,950.00
Construction Management	10%	\$250,000.00
Total after Construction Management		\$2,728,950.00
State		\$10,000.00
TOTAL		\$2,738,950.00
TOTAL PROJECT COST		\$2,738,950.00
Total Project Length (miles)		0.81
City Road Work Length (miles)		0.40
City Road Work Length (percentage)		49%
ESTIMATED CITY ROAD WORK COST (nearest \$100)		<u>\$1,337,700.00</u>

EXHIBIT C: PLANS AND SPECIFICATIONS

The final approved project plans and specifications will be kept in the office of the Thurston County Engineer.