

**SR 522 FUNDING AGREEMENT BETWEEN THE STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION AND THE CITY OF BOTHELL**

**GCA 5685 - SR 522 / Multi-modal Corridor Projects**

This Agreement is entered into by and between the STATE OF WASHINGTON Department of Transportation (STATE) and the CITY OF BOTHELL, a Washington municipal corporation having its principal place of business at 18305 101<sup>st</sup> Ave NE, Bothell, WA 98011-3403 (CITY).

WHEREAS, the CITY is planning the construction of a two phase roadway improvement project, the individual phases of which are titled, "SR 522 WCL to NE 180<sup>th</sup> Street - Stage 1 Improvements (SR 522 Improvements at 96<sup>th</sup> Avenue NE)," M.P. 8.82 to M.P. 9.25, and "SR 522 WCL to NE 180<sup>th</sup> - Stage 2," M.P. 8.62 to M.P. 8.82 and M.P. 9.25 to M.P. 9.61 (collectively referred to as the "CITY PROJECT"), and

WHEREAS, the STATE has developed a roadway preservation project titled, "SR 522 / City Street to Hall Road - Paving," M.P. 8.91 to M.P. 9.59, hereinafter the "STATE PROJECT," which requires the performance of certain road work entirely within the physical boundaries of the CITY PROJECT, and

WHEREAS, the STATE agreed to allow the CITY to perform Hot Mix Asphalt ("HMA") resurfacing and other related work ("Work") that had originally been planned to be part of the STATE PROJECT, thereby relieving the STATE of any obligation to perform the Work, and to include performance of the Work in the scope of the CITY PROJECT in those locations within the CITY PROJECT where the CITY plans to widen and realign a section of SR 522, and

WHEREAS, the STATE agreed to contribute to the CITY PROJECT only those estimated funds that were allocated for the Work in the STATE PROJECT, and

WHEREAS, the CITY acknowledges that State Route 522 is part of the National Highway System, and as such, the CITY agrees that it shall comply with Federal regulations for asphalt testing and administer the CITY PROJECT in accordance with the STATE's Local Agency Guidelines (LAG),

NOW, THEREFORE, pursuant to RCW 47.28.140, RCW 47.24.020, and RCW 47.08.070, and in consideration of the provisions, covenants, terms, conditions, and performances contained herein or attached hereto and incorporated and made part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. GENERAL

1.1 The STATE shall contribute a maximum amount of Four Hundred Twenty Thousand Dollars (\$420,000.00) toward the Work to be performed by the CITY as part of the CITY PROJECT. The CITY agrees to perform the Work as herein described and in accordance with

45007

the Scope of Work described in Exhibit A, attached hereto and by this reference made part hereof.

1.2 The Parties agree that the CITY shall submit to the STATE for review and approval only those documents pertaining to the Work to be performed under this Agreement and that the STATE's review and approval of those documents shall be governed by the processes provided for in the STATE's LAG Manual (M36-63), which are incorporated herein by this reference as if fully set forth.

1.3 The Parties acknowledge that this Agreement does not contain funding for the STATE's direct salary costs and related direct non-salary costs for qualified asphalt testing. If the CITY elects to use the STATE to perform qualified asphalt testing, it is the intent of the Parties that they will enter into a separate agreement for payment of such costs incurred by the STATE.

1.4 The Parties agree that the STATE will only provide construction oversight of the Work funded by this Agreement. The direct salary and related direct non-salary costs for this oversight shall be reimbursed by the CITY in accordance with Reimbursable Agreement TA 2229. STATE payment requests shall not be more than once per month. CITY agrees to reimburse the STATE within thirty (30) days receipt of a STATE invoice for the construction oversight costs.

## 2. PAYMENT

2.1 The STATE agrees to reimburse the CITY for costs associated with performance of the Work in an amount not to exceed Four Hundred Twenty Thousand Dollars (\$420,000.00).

2.2 The CITY understands and agrees that Four Hundred Twenty Thousand Dollars (\$420,000.00) as shown in the cost estimate, Exhibit B, attached hereto and by this reference made a part hereof, is federally funded and is the maximum amount that the STATE will contribute to the Work to be performed by the CITY.

2.3 The Parties acknowledge that Reciprocal Overhead Agreement OH00020 is applicable to this Agreement.

2.4 Upon completion of the Work, the CITY shall submit one (1) inclusive first and final itemized billing invoice to the STATE's representative, **Ed Conyers, NWR Local Programs Engineer, PO Box 33010, Seattle, WA 98133-97010**, for costs associated with performance of the Work not to exceed \$420,000.00. The STATE shall provide payment in full within thirty (30) days upon receipt of an itemized invoice from the CITY. The invoice shall be clearly labeled "First and Final." If the STATE objects to all or any portion of the invoice, the STATE shall notify the CITY within twenty (20) days upon receipt of the CITY invoice. If only a portion of the invoice is disputed, the STATE agrees to pay the undisputed portion of the invoice. The Parties shall immediately make every effort to settle the disputed portion of any invoice.

2.5 The CITY may choose to submit itemized progress billing invoices to the STATE for the actual direct salary and related direct non-salary costs of the Work up to but not to exceed \$420,000.00. The STATE shall provide payment in full to the CITY within thirty (30) days of

receipt of an itemized invoice. No more than one invoice per month shall be submitted to the STATE by the CITY. It is agreed that any such partial payment shall not constitute agreement as to the appropriateness of any item and that, at the time of final payment, all required adjustments will be made and reflected in a final payment.

2.6 The CITY understands and agrees that all itemized billing invoices shall be received by the STATE on or before June 30, 2010.

### 3. MAINTENANCE AND OPERATIONS

3.1 The CITY agrees to assume responsibility for all maintenance and operations for the roadway surface within that portion of SR 522 between M.P. 8.62 and M.P. 9.61 that is used for state highway purposes, from the date of execution of this Agreement until the STATE accepts the CITY's Work, as set forth in Section 10.

### 4. DEFAULT

4.1 Should the CITY default on the terms of this Agreement, the STATE may assume responsibility for and perform the Work.

### 5. TERMINATION

5.1 This Agreement shall terminate, except for those provisions otherwise provided herein, when the Work is completed, acceptance of the Work has been provided by the STATE, and payment is received. Neither the STATE nor the CITY may request termination of this Agreement without cause and without the concurrence of the other Party. Termination shall be in writing and signed by both Parties.

### 6. NOTICE

6.1 All communications regarding this Agreement shall be sent to the Parties at the addresses listed below, or at such other address as given pursuant to this Section, and shall be effective on the next business day if sent by registered or certified mail or deposited with an overnight delivery service.

City of Bothell  
Department of Public Works  
Attention: Eddie Low  
9654 NE 182<sup>nd</sup> St.  
Bothell, WA 98011

Washington State Department of Transportation  
Local Programs  
Attention: Ed Conyers  
P.O. Box 330310 NB82-121  
Seattle, WA 98133-9710

## 7. TERM OF AGREEMENT

7.1 This Agreement shall begin on the date this Agreement is entered into and terminate upon completion of all obligations by the Parties pursuant to the provisions of this Agreement. Termination, pursuant to Section 5, shall not relieve the Parties of their respective obligations up to the date of termination.

## 8. AUDIT

8.1 During construction of the CITY PROJECT and for a period of not less than three (3) years from the date of final payment by the STATE, the records and accounts pertaining to the construction of the Work shall be maintained and made available by the CITY for inspection and audit by the state and federal government and for use in the event of any litigation, claim or other necessary purpose.

## 9. LEGAL RELATIONS

9.1 The CITY shall protect, defend, indemnify, and hold harmless the STATE, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from the CITY's construction, operation and/or maintenance of the CITY PROJECT pursuant to the provisions of this Agreement. The CITY will not be required to indemnify, defend or save harmless the STATE if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the STATE. Where such claims, suits, or actions result from the concurrent negligence of both Parties, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's own negligence.

9.2 The State shall protect, defend, indemnify, and hold harmless the CITY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from the STATE's performance under this Agreement. The STATE will not be required to indemnify, defend or save harmless the CITY if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the CITY. Where such claims, suits, or actions result from the concurrent negligence of both Parties, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's own negligence.

9.3 The indemnifications shall survive the termination of this Agreement.

## 10. WORK ACCEPTANCE

10.1 Prior to STATE's acceptance of the Work the CITY and the STATE will perform a joint final inspection of the Work performed by the CITY within the mile post limits of the STATE PROJECT which are within the physical boundaries of the CITY PROJECT. The STATE

agrees, upon satisfactory completion of the Work to deliver a letter of acceptance to the CITY for the Work performed by the CITY. The letter of acceptance shall not waive any potential claims against the CITY and its contractor for defective work or materials. The STATE reserves the right to require the CITY to remedy and all Work deficiencies.

10.2 The STATE may reasonably withhold acceptance of the Work by submitting written notification to the CITY within ninety (90) days following final inspection of the Work. This notification shall include specific reason(s) for withholding the acceptance.

10.3 If a letter of acceptance is not received by the CITY within 90 days following the joint final inspection, the Work shall be considered accepted by the STATE, but such acceptance shall not act to release the CITY from or waive any right or claim of the STATE for defective work or materials.

## 11. AMENDMENT

11.1 This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

## 12. ASSIGNMENT

12.1 Neither Party to this Agreement shall transfer or assign any right or obligation hereunder without the prior written consent of the other Party.

## 13. DISPUTE RESOLUTION

13.1 In the event that a dispute arises under this Agreement, it shall be resolved as follows: The CITY and the STATE shall each appoint a member to a disputes resolution board (Board). These two members shall then select a mutually agreeable third member, not affiliated with either Party to be part of the Board. The Board shall review all pertinent facts, data, contentions, and so forth to make a determination within thirty (30) calendar days of such referral. The Parties shall be responsible for their own costs, including attorneys fees, and shall share equally the costs of the selected third Board member. No civil action on any claim, counterclaim, or dispute may be commenced until thirty (30) days following a determination by the Board.

## 14. SEVERABILITY

14.1 Should any part, term or provision of this Agreement be determined to be invalid, the remainder of this Agreement shall not be affected, and the same shall continue in full force and effect.

## 15. CHOICE OF LAW; VENUE

15.1 This Agreement shall be interpreted in accordance with the laws of the State of Washington. In the event either Party deems it necessary to institute legal action or proceedings

to enforce any right or obligation under this Agreement, the STATE and the CITY agree that the Superior Court of Thurston County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

16. WAIVER

16.1 A waiver of any breach by either Party shall not constitute a waiver of any subsequent breach.

17. AUTHORIZED SIGNATURES

17.1 By their signatures below each Party represents that they have taken all necessary steps and are fully authorized to sign for and on behalf of the named principal above.

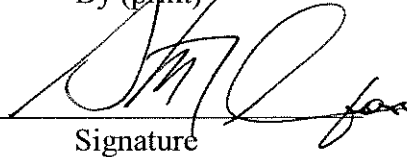
IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the Party's date last signed below.

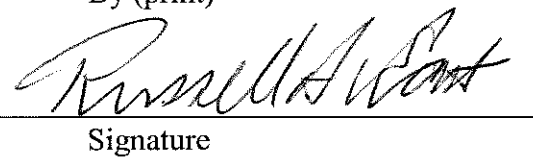
CITY OF BOTHELL

STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION

Robert S. Stowe  
By (print)

Russell S. East, P.E.  
By (print)

  
Signature

  
Signature

City Manager

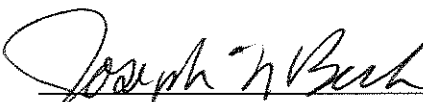
Assistant Regional Administrator


11/17/08  
Date

12/3/08  
Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

  
City Attorney

  
Assistant Attorney General

11.7.08  
Date

10-23-08  
Date

**GCA 5685**  
**EXHIBIT A**  
**Scope of Work**

An overlay of HMA Class ½ Inch PG 64-22 at a compacted depth of 0.15 feet and other associated work from city street, M.P. 8.91, to Hall Road, M.P. 9.59 as approximated by the cost estimate, Exhibit B.

SR 522 Corridor Improvement in Bothell City Limits

HMA OVERLAY, STA. 416+20 TO STA. 452+26

MP 9.91 TO MP 9.59

LENGTH = 3606 FT

WIDTH = 5.3 LANES

TOTAL LANE MILES = 3.60

ITEM NAME	UNIT	PRICE	QUANTITY	TOTAL
<b>PREPARATION</b>				
MOBILIZATION	LS	\$24,300.00	1	\$24,300.00
PLANING ASPHALT CONC. PAVEMENT	SY	\$8.00	6310	\$50,480.00
REMOVING ASPHALT CONC. PAVEMENT	SY	\$12.00	640	\$7,680.00
<b>SURFACING</b>				
CSBC	TON	\$28.00	150	\$5,200.00
<b>ASPHALT CONCRETE PAVEMENT</b>				
CRACK SEALING	EST	\$3,000.00	1	\$3,000.00
HMA FOR PRELEVELING CL. 1/2 IN. PG 64-22	TON	\$38.00	1080	\$41,040.00
HMA FOR PAVEMENT REPAIR CL. 1/2 IN. PG 64-22	TON	\$75.00	280	\$21,300.00
HMA CL. 1/2 IN. PG 64-22	TON	\$38.00	2380	\$90,440.00
JOB MIX COMPLIANCE PRICE ADJUSTMENT	CALC.	\$2,700.00	1	\$2,700.00
COMPACTION PRICE ADJUSTMENT	CALC.	\$1,500.00	1	\$1,500.00
<b>EROSION CONTROL AND PLANTING</b>				
ESC LEAD	DAY	\$50.00	20	\$1,000.00
STREET CLEANING	HR	\$60.00	40	\$2,400.00
INLET PROTECTION	EACH	\$30.00	16	\$480.00
TEMPORARY WATER POLLUTION/EROSION CONTROL	EST	\$2,000.00	1	\$2,000.00
<b>TRAFFIC</b>				
TYPE C PRECAST TRAFFIC CURB	LF	\$10.00	200	\$2,000.00
FORCE ACCOUNT REPAIR TMA	DOI.	\$2.00	1	\$2.00
TRAFFIC CONTROL SUPERVISOR	HR	\$40.00	40	\$1,600.00
TRAFFIC CONTROL LABOR	HR	\$36.00	320	\$11,520.00
TRAFFIC CONTROL VEHICLE	DAY	\$45.00	20	\$900.00
TEMPORARY TRAFFIC CONTROL DEVICES	LS	\$1,000.00	1	\$1,000.00
TRUCK MOUNTED IMPACT ATTENUATOR	EACH	\$3,000.00	2	\$6,000.00
OPERATION OF TRUCK MOUNTED IMPACT ATTENUATOR	HR	\$30.00	320	\$9,600.00
PAINT LINE	LF	\$0.30	19800	\$5,940.00
PLASTIC CROSSWALK LINE	SF	\$2.00	720	\$1,440.00
PLASTIC TRAFFIC ARROW	EACH	\$70.00	10	\$700.00
PLASTIC DRAINAGE MARKING	BACH	\$15.00	44	\$660.00
LOOP REPLACEMENT TYPE R1	EACH	\$400.00	2	\$800.00
TEMPORARY PAVEMENT MARKING	LF	\$0.15	7200	\$1,080.00
SEQUENTIAL ARROW SIGN	HR	\$7.00	160	\$1,120.00
CONSTRUCTION SIGNS CLASS A	SF	\$20.00	128	\$2,560.00
<b>OTHER ITEMS</b>				
ROADWAY SURVEYING	LS	\$10,000.00	1	\$10,000.00
ADJUST MONUMENT CASE AND COVER	EACH	\$150.00	2	\$300.00
ADJUST MANHOLE	EACH	\$200.00	28	\$5,600.00
ADJUST CATCH BASIN	EACH	\$200.00	16	\$3,200.00
ADJUST VALVE BOX	EACH	\$200.00	17	\$3,400.00
ADJUST JUNCTION BOX	EACH	\$200.00	12	\$2,400.00
SPCC PLAN	LS	\$2,000.00	1	\$2,000.00

CONSTRUCTION SUBTOTAL = \$327,542.00

SALES TAX @ 8.56 % = \$28,365.14

CONSTRUCTION ENGINEERING @ 14 % = \$49,827.00

CONTINGENCIES @ 4 % = \$14,236.29

CONSTRUCTION TOTAL = \$419,970.42

PRELIMINARY ENGINEERING @ 0 % OF CONSTRUCTION SUBTOTAL = \$0.00

TOTAL ESTIMATE FOR HMA OVERLAY = \$419,970.42

SAY ---> \$420,000.00

COST PER LANE MILE 3.60 LANE MILES \$ 116,583 PER LANE MILE