

**LOCAL AGENCY PARTICIPATING AGREEMENT
WORK BY STATE – ACTUAL COST**

Agreement Number: GCA 6374
Organization and Address: Community Transit
7100 Hardeson Road
Everett, WA 98203

State Route Number: I-5
Control Section Number: 3120
Section/Location: I-5, Mountlake Terrace Freeway Station
Northwest Region
Description of Work: Modify Chain Link Fence Type 1 to Chain Link Fence Type
3. Station LR 344+00 to LR 348+95.85

This Agreement is made and entered into between the STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION (STATE) and the above named governmental entity (LOCAL AGENCY).

WHEREAS, the STATE is currently constructing improvements to a section of the state route as shown above, and in connection therewith, the LOCAL AGENCY has requested that the STATE perform certain work for the LOCAL AGENCY as described above under Description of Work and/or further described in Exhibit A, (Work), and

WHEREAS, it is deemed to be in the public's best interest for the STATE to include the requested Work in the STATE's construction contract for the state route improvement,

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

IT IS MUTUALLY AGREED AS FOLLOWS:

1. PLANS, SPECIFICATIONS, AND COST ESTIMATES

1.1 The STATE, on behalf of the LOCAL AGENCY, agrees to perform the Work, as further provided herein and pursuant to the attached Exhibit A.

1.1.1 The PS&E has been prepared by the STATE for the STATE's contract in accordance with the current state of Washington Standard Specifications for Road, Bridge and Municipal Construction, and its amendments thereto (Standard Specifications), mutually acceptable design standards, or the LOCAL AGENCY's standards, if applicable and specified by the LOCAL AGENCY. The STATE will incorporate the Work, as shown in Exhibit A, into the STATE's contract.

1.1.2 The LOCAL AGENCY may, if it desires, furnish an inspector for the Work. Any costs for such inspection will be borne solely by the LOCAL AGENCY. Any contact between LOCAL AGENCY's inspector and the STATE's contractor shall be through the STATE's Project Engineer or designee.

1.1.3 The STATE will be the LOCAL AGENCY's representative during construction and will act as owner in the administration of the contract for the Work. The STATE will designate a STATE Project Engineer to provide all services and tools, including but not limited to construction administration, inspection, materials testing, and representation, necessary to administer and manage the contract to ensure that the Work is constructed in accordance with the contract.

2. ACCEPTANCE

- 2.1 Prior to LOCAL AGENCY Work acceptance, the STATE and LOCAL AGENCY will perform a joint final inspection. The LOCAL AGENCY agrees, upon satisfactory completion of the Work, to deliver a letter of acceptance to the STATE which shall include a release of the STATE from all future claims or demands of any nature resulting from the performance of the Work and STATE administration thereof, subject to any contractor claims (Section 4) caused by the negligent acts or omissions of the STATE in administering the Work.
- 2.2 If a letter of acceptance is not received by the STATE within thirty (30) calendar days following the joint inspection, the Work and STATE administration thereof shall be considered accepted by the LOCAL AGENCY, and the STATE shall be released from all future claims and demands of any nature resulting from the performance of the Work and the STATE's administration thereof, subject to any contractor claims (Section 4) caused by the negligent acts or omissions of the STATE in administering the Work.
- 2.3 The LOCAL AGENCY may withhold its acceptance of the Work by submitting written notification to the STATE within thirty (30) calendar days following the joint inspection. This notification shall include the reason(s) for withholding acceptance.

3. PAYMENT

- 3.1 The LOCAL AGENCY, in consideration of the faithful performance of the Work performed by the STATE and its contractor, agrees to reimburse the STATE for the actual direct and related indirect costs of the Work, as estimated in Exhibit A.
- 3.2 The STATE shall provide detailed invoices to the LOCAL AGENCY for the Work performed by the STATE and its contractor or for costs incurred and the LOCAL AGENCY agrees to make payment within thirty (30) calendar days from receipt of an invoice. Invoices may not be submitted more often than once per

month. A payment will not constitute agreement as to the appropriateness of any item. At the time of the final invoice, the Parties will resolve any discrepancies.

- 3.3 Increase in Cost: In the event unforeseen conditions require an increase in the cost of the Work above the cost estimate (including sales tax, engineering, and contingencies) by more than twenty-five (25) percent, the Parties agree to modify this Agreement by executing a written amendment to address the increase pursuant to Section 5.1.

4. CLAIMS

4.1 Claims for Additional Payment

4.1.1 In the event the contractor makes claims for additional payment associated with the Work, the STATE will immediately notify the LOCAL AGENCY of such claims. Such claims shall be made in the manner and form as provided for in the Standard Specifications.

4.1.2 The LOCAL AGENCY shall not be obligated to pay such claims or their cost of defense to the extent that the claims are caused by the negligent acts or omissions of the STATE in administering the Work.

4.1.3 The LOCAL AGENCY shall have the right to review and comment on any settlement for claims associated with the Work. However, the STATE shall have the ultimate right to settle such claims. In the event the LOCAL AGENCY does not agree with the claim settlement as negotiated by the STATE, the LOCAL AGENCY shall reserve the right to not financially participate in the negotiated claim settlement. If agreement cannot be reached between the LOCAL AGENCY and the STATE on a claim settlement, the Parties agree to follow the dispute resolution procedure in Section 5.6.

4.1.4 If the STATE agrees, the LOCAL AGENCY may defend contractor claims associated with the Work at its own cost, and in doing so, the LOCAL AGENCY agrees to pay any resulting settlement, court judgment or arbitration award. The STATE will cooperate with the LOCAL AGENCY in the LOCAL AGENCY's defense of the claims. The LOCAL AGENCY agrees to reimburse any STATE costs, including attorneys fees, incurred in providing such assistance in accordance with Section 3.

5. GENERAL PROVISIONS

- 5.1 Amendment: 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.

- 5.2 Termination: Neither the STATE nor the LOCAL AGENCY may terminate this Agreement without the written concurrence of the other Party.
- 5.2.1 If this Agreement is terminated prior to the fulfillment of the terms stated herein, the LOCAL AGENCY agrees to reimburse the STATE for the actual direct and related indirect expenses and costs it has incurred for the Work up to the date of termination, as well as the costs of non-cancelable obligations.
- 5.2.2 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- 5.3 Independent contractor: The STATE shall be deemed an independent contractor for all purposes, and the employees of the STATE or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the LOCAL AGENCY.
- 5.4 Indemnification: The Parties shall protect, defend, indemnify, and hold harmless each other and their employees, authorized agents, and/or contractors, 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, each Party's obligations to be performed pursuant to the provisions of this Agreement. The Parties shall not be required to indemnify, defend, or hold harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) the STATE, its employees, authorized agents, or contractors and (b) the LOCAL AGENCY, its employees or authorized agents, 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 the negligence of each Party, its employees, authorized agents, and/or contractors. This indemnification shall survive termination of this Agreement.
- 5.5 Survivability: Section 5.4 shall survive the termination of this Agreement.
- 5.6 Disputes: In the event that a dispute arises under this Agreement, it shall be resolved as follows: The STATE and the LOCAL AGENCY shall each appoint a member to a disputes board, these two members shall select a third board member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the cost of the third disputes board member; however, each Party shall be responsible for its own costs and fees.
- 5.7 Venue: In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties

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 its own attorneys fees, witness fees, and costs.

5.8 Audits/Records: All records for the Work in support of all costs incurred during the contract shall be maintained by the STATE for a period of three (3) years. The LOCAL AGENCY shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. Should the LOCAL AGENCY require copies of any records, it agrees to pay the costs thereof. The Parties agree that the Work performed herein is subject to audit by either or both Parties and/or their designated representatives, and/or state of Washington and/or the federal government.

5.9 Term of Agreement: Unless otherwise provided herein, the term of this Agreement shall commence as of the date this Agreement is fully executed and shall continue until the Work is accepted by the LOCAL AGENCY pursuant to Section 2, or as otherwise provided herein, and all obligations for payment have been met.

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

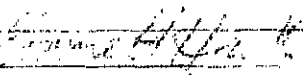
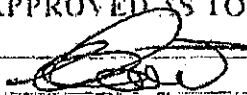
LOCAL AGENCY	STATE OF WASHINGTON
	DEPARTMENT OF
	TRANSPORTATION
By <i>Emmett Heath</i>	By <i>Russell S. East</i>
Name Emmett Heath, Director of Administration	Name Russell S. East
Title	Title ARR - Sno King
Date 11-18-09	Date 11/23/09

APPROVED AS TO FORM	APPROVED AS TO FORM
	<i>Ann E. Salay</i>
Name	Name: Ann E. Salay
Title	Title: Assistant Attorney General
Date	Date: 10-12-09

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 its own attorney's fees, witness fees, and costs.

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

LOCAL AGENCY	STATE OF WASHINGTON
	DEPARTMENT OF
	TRANSPORTATION
By 	By
Name <u>Matthew K. Hendrick</u>	Name
Title <u>Attorney</u>	Title
Date <u>11-17-09</u>	Date
APPROVED AS TO FORM	APPROVED AS TO FORM
	
Name <u>Matthew K. Hendrick</u>	Name: <u>Ann E. Salay</u>
Title <u>Attorney</u>	Title: <u>Assistant Attorney General</u>
Date <u>11-17-2009</u>	Date:

**WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION
CHANGE ORDER**

DATE: 10/01/09
Page 1 of 2

CONTRACT NO: 007649 FEDERAL AID NO:
 CONTRACT TITLE: I-5, MOUNTLAKE TERRACE FREEWAY STATION
 CHANGE ORDER NO: 7 MODIFY CHAIN LINK FENCE
 PRIME CONTRACTOR: 911264403 MIDMOUNTAIN CONTRACTORS, INC.
 825 5TH AVE
 KIRKLAND WA 98033-6391

- Ordered by Engineer under the terms of Section 1-04.4 of the Standard Specifications
 Change proposed by Contractor

ENDORSED BY:	SURETY CONSENT:
CONTRACTOR	ATTORNEY IN FACT
DATE	DATE

ORIGINAL CONTRACT AMOUNT: 17,747,153.15
 CURRENT CONTRACT AMOUNT: 17,882,334.30
 ESTIMATED NET CHANGE THIS ORDER: 3,734.66
 ESTIMATED CONTRACT TOTAL AFTER CHANGE: 17,886,068.96

Approval Required: Region Olympia Service Center Local Agency

<input type="checkbox"/> APPROVAL RECOMMENDED	<input type="checkbox"/> EXECUTED	EXECUTED:
PROJECT ENGINEER		STATE CONSTRUCTION ENGINEER
DATE		DATE
<input type="checkbox"/> APPROVAL RECOMMENDED	<input type="checkbox"/> EXECUTED	OTHER APPROVAL WHEN REQUIRED
REGIONAL ADMIN:		
BY:		SIGNATURE
DATE		DATE

CG02v04 (revised Feb 2005)

**GCA 6374
Exhibit A
Sheet 1 of 4**

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION
CHANGE ORDER

DATE: 10/01/09
Page 2 of 4

CONTRACT NO: 007649

CHANGE ORDER NO: 7

All work, materials, and measurements to be in accordance with the provisions of the Standard Specifications and Special Provisions for the type of construction involved.

This contract is revised as follows:

Description:

The Contractor shall update the existing Chain Link Fence Type 1 to Chain Link Fence Type 3 as shown on page 4 of this change order, from Sta. LR 344+00 to LR 348+95.85.

Materials & Construction Requirements:

Materials and construction shall be in accordance with Standard Plan I-20.10-00.

Measurement & Payment:

Payment will be made in the agreed amount of \$3,734.66 under the new lump sum item "C.O. 7 Modify Chain Link Fence", and shall include markups and all direct and indirect costs.

Contract Time:

This change order will not affect contract time.

GCA 6374
Exhibit A
Sheet 2 of 4

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION
CHANGE ORDER

DATE: 10/01/09
Page 3 of 4

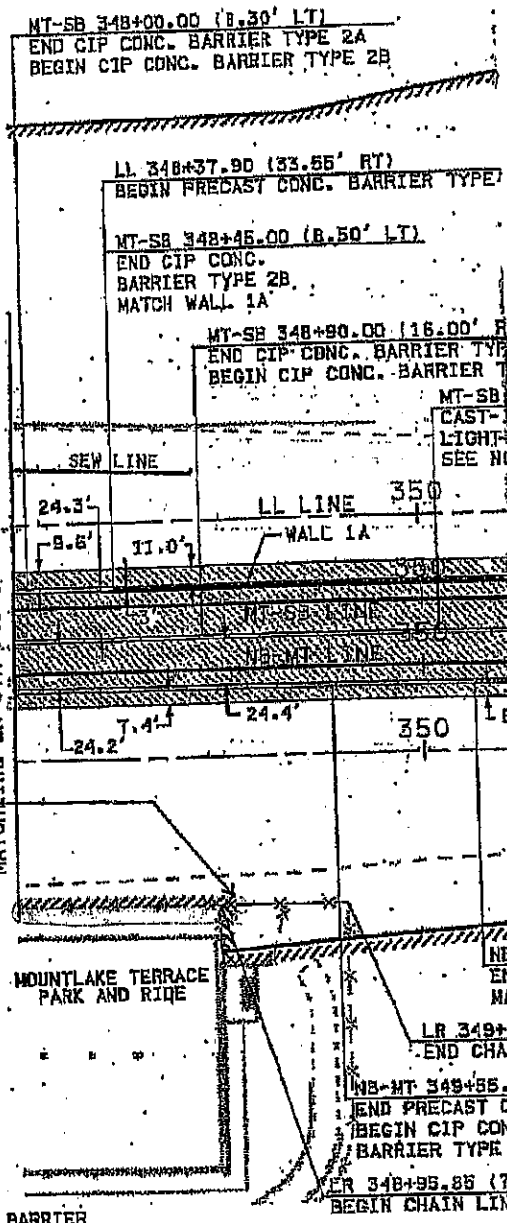
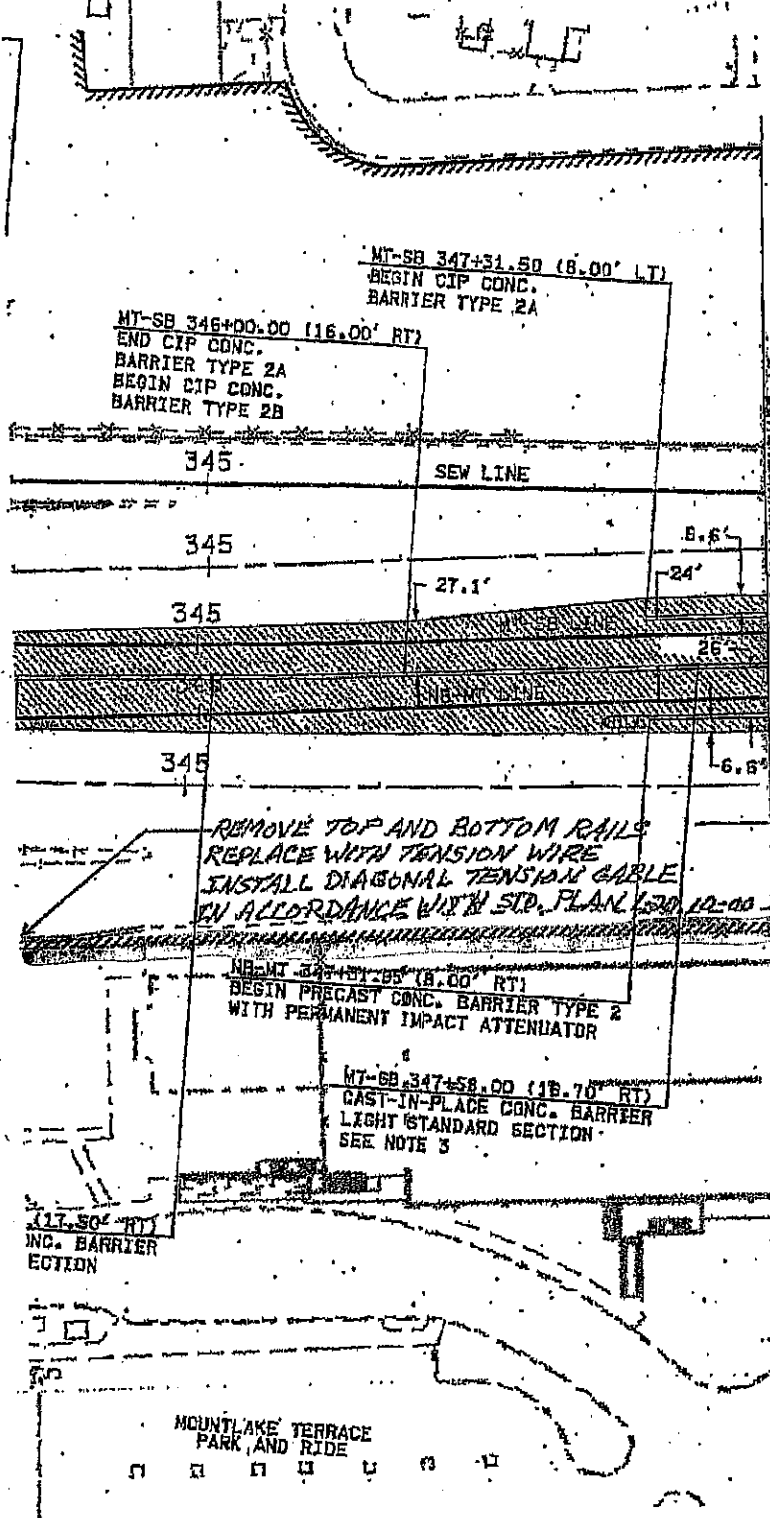
CONTRACT NO: 007649				CHANGE ORDER NO: 7			
ITEM NO	GROUP NO	STD ITEM	ITEM DESCRIPTION	UNIT MEASURE	UNIT PRICE	EST QTY CHANGE	EST AMT CHANGE
1010	01		C.O. 7 MODIFY CHAIN LINK FENCE	L.S.	0.00	0.00	3,734.66

3,734.66

GCA 6374
Exhibit A
Sheet 3 of 4

CONTRACT 7649
 CHANGE ORDER NO. 7
 SHEET 4 OF 4

ICE



REMOVE TOP AND BOTTOM RAILS
 REPLACE WITH TENSION WIRE
 INSTALL DIAGONAL TENSION CABLE
 IN ACCORDANCE WITH STD. PLAN 12-00

- BARRIER
- GABION WALL
- STEEL BARRIER
- IMPACT ATTENUATOR
- RETAINING WALL
- STIN
- STIN
- PAV
- CON
- PROP

GCA 6374
 Exhibit A
 Sheet 4 of 4