

# Bremerton Tunnel Construction Cooperative Agreement

## GCA – 4924

THIS AGREEMENT is made and entered into this 2<sup>ND</sup> day of NOVEMBER, 2006 between the STATE OF WASHINGTON, Department of Transportation, hereinafter the "STATE," and the City of Bremerton, hereinafter the "CITY."

WHEREAS, the CITY has designed a project for improvements to SR 304 entitled "SR 304 – Downtown Bremerton Pedestrian / Bremerton Transportation Center (BTC) Access Improvement Project," hereinafter the "PROJECT," located from M.P. 2.79 to M.P. 3.01, and

WHEREAS, it has been determined that the STATE will be the lead agency for the construction of the PROJECT, but the CITY will participate in the construction process as further provided herein, and

WHEREAS, the CITY also has plans to construct a project entitled, "Combined Sewer Outfall," hereinafter the "CSO," as shown in Exhibit A, attached hereto and by this reference made a part of this AGREEMENT, within the same footprint as the PROJECT and scheduled for construction at the same time as the PROJECT, and

WHEREAS, the CITY will direct the PROJECT design consultant to incorporate the CSO work into the construction design of the PROJECT under a separate group and at no cost to the STATE, and

WHEREAS, since a mutual benefit in cost savings, through economy of scale and other efficiencies, will be derived by both the STATE and CITY by incorporating the CSO work into the PROJECT, the STATE agrees to construct the CSO at the same time as the highway PROJECT, and

WHEREAS, the CITY is obligated for the cost of CSO work described in Exhibit A,

NOW, THEREFORE, pursuant to RCW 47.28.140 and 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 AS FOLLOWS:

### 1. GENERAL

1.1 The STATE agrees to construct the CSO work at the same time as the highway PROJECT.

1.2 Plans, specifications and cost estimates shall be prepared by the CITY for the CSO work in accordance with the current State of Washington Standard Specifications for Road, Bridge, and Municipal Construction, and amendments thereto, ("Standard Specifications") and adopted design standards, unless otherwise noted. The CITY's consultant will incorporate the CSO plans and specifications into the STATE's PROJECT. The STATE will thereafter advertise the resulting PROJECT for bid and, assuming bids are received and a contract is awarded, administer the contract.

1.3 Warranty: The STATE's contract will include a bid item titled "CSO Warranty" specifying that the STATE's contractor will provide to the CITY, an agreed upon warranty for all associated CSO work performed under the contract. The STATE shall not be a party to this warranty. The CITY agrees that all actual direct and related indirect costs associated with the bid item "CSO Warranty" shall be the sole responsibility of the CITY.

1.4 The CITY hereby approves the CSO work shown in Exhibit A.

1.5 The CITY may, if it desires, furnish an inspector on the contract or CSO work. Any costs for such inspector will be borne solely by the CITY. All contact between the CITY and the STATE's contractor shall be through the STATE's representative. The STATE's representative shall have final authority for any and all decisions affecting the STATE's contract, including the CSO work shown in Exhibit A.

## **2. AWARD OF PROJECT/DELETION OF WORK**

2.1 Following bid opening, the STATE shall provide the CITY with one (1) copy of the apparent low bidder's bid. The CITY shall have fifteen (15) calendar days from the date of receipt, or two (2) calendar days from notification by the STATE or United States Environmental Protection Agency, hereinafter USEPA, that the apparent low bidder has met USEPA's Women and Minority Business Enterprise requirements, whichever is longer, to review and provide the STATE with the CITY's written concurrence of award or rejection of said bid. In the event the CITY rejects the bid the STATE shall delete the CSO work covered by this AGREEMENT from the STATE's contract. Should the CITY fail to respond as provided herein, the STATE shall delete the CSO work from the contract.

2.2 Should the CITY exercise its option to delete the CSO work or should the CITY fail to accept or reject the bid within the time provided under Section 2.1, the CITY agrees, upon receipt of a STATE invoice therefore, to reimburse the STATE for any and all engineering and administrative costs incurred by the STATE in deleting, from the STATE's contract, the CSO work covered by this AGREEMENT.

2.3 The STATE shall make the final determination as to appropriateness of any bid with regards to the Standard Specifications for Road, Bridge, and Municipal Construction and regarding the practices, policies and procedures of the Washington State Department of Transportation and reserves the right, should the STATE deem it necessary, to reject any and all bids for the PROJECT and/or the CSO.

## **3. CHANGES TO WORK**

3.1 Changes to the contract will be documented by change order as defined in the current edition of the Standard Specifications.

3.2 Required change orders involve such changes in quantities or alterations in the CSO work or CITY-owned facilities as are necessary to satisfactorily complete the work as determined by the STATE. All other change orders shall be considered elective. The STATE shall process all required

change orders in the manner as set forth in subsection 1-2.4C(3), Approval of Changes, STATE Construction Manual, current edition.

3.3 The CITY herein authorizes the STATE to initiate, negotiate, document and execute all required change orders.

3.4 The STATE will advise the CITY of any proposed required change order affecting the CSO or other CITY-owned facility and provide it with an opportunity, if time permits, to review the change order before execution. The STATE will determine the length of the review time based upon the need to expedite the change order to avoid delay to the PROJECT work.

3.5 Any elective change order affecting the CSO or other CITY-owned facility shall require the written approval of the CITY before execution.

3.6 The CITY may request additions to the CSO work through the STATE. The STATE will comply with the requested change, provided that the change complies with the Standard Specifications, contract permits, state and/or federal law and applicable rules and/or regulations and/or design policies.

3.7 The STATE will make available to the CITY all change order documentation pertaining to CSO work and other CITY-owned facilities impacted by the contract.

#### 4. ACCEPTANCE OF CSO WORK

4.1 The CITY agrees, upon satisfactory completion of the CSO work, as part of the STATE'S PROJECT contract, to deliver a letter of acceptance to the STATE which shall include a release and waiver of all future claims or demands of any nature resulting from the performance of the CSO work under this AGREEMENT.

4.2 If a letter of acceptance is not received by the STATE from the CITY within twenty (20) business days following STATE'S completion notice to the CITY of the physical completion of the CSO work, said CSO work shall be considered accepted by the CITY and shall release the STATE from all future claims and demands of any nature resulting from the performance of the CSO work under this AGREEMENT.

4.3 The CITY may withhold this acceptance of the CSO work by submitting written notification to the STATE within the twenty (20) business day period. This notification shall include the reasons for withholding the acceptance. If these reasons cannot be resolved within forty (40) business days of the receipt of the CITY'S notification, the outstanding issues will go to dispute resolution per Section 16 of this AGREEMENT.

#### 5. REPRESENTATIVES

5.1 The STATE'S PROJECT manager for the STATE'S contract is:

Howard Diep, P.E.  
Port Orchard Project Engineer  
8293 Spring Creek RD SE  
Port Orchard, WA 98367-8192  
360-874-3000  
Fax – 360-874-3003

5.2 The CITY representative, acting as the CITY project coordinator, for the CSO work shall be:

Ned Lever, P.E.  
CITY CSO Coordinator  
3027 Olympus Drive  
Bremerton, WA 98310  
(360) 473-2398

Additionally, the CITY's representative providing technical expertise to the STATE for all other CITY facilities affected by the STATE's PROJECT shall be:

Lynn Price, P.E.  
CITY Tunnel Project Coordinator  
3027 Olympus Drive  
Bremerton, WA 98310  
(360) 473-5272

## 6. CITY SERVICES FOR PROJECT AND CSO

6.1 The STATE may request, and the CITY may provide, CITY construction support services for the PROJECT, such as, providing ongoing project review, coordination with CITY services, and expert advice regarding design and/or construction details of the STATE's contract as it may impact CITY facilities. Such requests may be either written or verbal and the STATE agrees to reimburse the CITY for 100% of its actual direct and related indirect costs for said construction support services not related to the CITY's CSO work. Verbal requests will be followed up in writing. Any services provided by the CITY without written or verbal request of the STATE shall be at the CITY's expense. Billing for services provided under this section ~~3.1~~ shall be in accordance with section ~~6.6~~ and ~~6.7~~ of this AGREEMENT.

6.2 The STATE may request, and the CITY agrees to provide, construction support services related to the CITY's CSO work. All CSO related services requested by the STATE and provided by the CITY shall be at 100% CITY expense.

## 7. PAYMENT

7.1 The CITY, in consideration of the faithful performance of the CSO work to be done by the STATE, agrees to reimburse the STATE for the actual direct and related indirect cost of the CSO work as shown in Exhibit A. The CITY will also reimburse the STATE for a percentage of the STATE's construction administration and engineering costs based on the ratio of the value of CITY work to all contract work at award.

7.2 The CITY agrees to make partial payments within thirty (30) days of receipt of a detailed STATE invoice to cover costs incurred. Payments are not to be more frequent than one (1) 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 the final payment, all required adjustments will be made and reflected in the final payment.

7.3 An itemized estimate of cost for the CSO work to be performed by the STATE at the CITY's expense is marked as Exhibit B, attached hereto and by this reference made a part of this AGREEMENT.

7.4 In recognition of the cost savings to the CITY by the STATE's incorporation of the CITY's CSO work in the STATE PROJECT, the CITY agrees to pay for the actual direct and related indirect PROJECT costs identified as ineligible by the Federal Highway Administration. These costs are estimated at less than five thousand dollars (\$5,000). The CITY shall not be responsible for ineligible costs resulting from the sole negligence of the STATE.

7.5 The STATE, in consideration of the faithful performance of services provided by the CITY, agrees to reimburse the CITY for the actual direct and related indirect cost of the work as described in Section 3.1. *6.1*

7.6 The STATE agrees to reimburse the CITY for STATE-requested services as provided under Section 3.1. *6.1* The STATE agrees to make partial payments within thirty (30) days receipt of a detailed CITY invoice. These payments are not to be more frequent than one (1) per month. It is agreed that any such payment will not constitute agreement as to the appropriateness of any item and that at the time of the final payment, all required adjustments will be made and reflected in the final payment.

7.8 An itemized estimate of cost for services to be performed by the CITY at the STATE's expense is marked as Exhibit C, attached hereto and by this reference made a part of this AGREEMENT.

7.9 The CITY agrees to pay the STATE an advance payment amount of one hundred sixty-nine thousand four hundred sixty-three dollars (\$169,463) within 20 days after the STATE submits its first partial payment request to the CITY. The advance payment represents approximately fifteen (15) percent of the estimate of cost and covers costs incurred by the STATE in the initial stages of the contract. The advance payment will be carried throughout the life of the contract with final adjustment made in the final payment.

7.10 In the event unforeseen conditions require an increase in the cost of 25 percent or more from that agreed to on either Exhibits B or C or section 6.4, the parties agree to amend this AGREEMENT to include such increase. *7.4*

## **8. CLAIMS**

### **8.1 Claims for Additional Payment**

8.1.1 In the event the contractor makes a claim for additional payment for CSO work, the STATE will immediately notify the CITY of such claims. Such claims shall be made in the manner and form as provided for in the Standard Specifications.

18.1.2 The CITY shall have the right to review and discuss the settlement of all claims. The ultimate decision to pay a claim will be by mutual agreement of the CITY and the STATE. In the event such claims are not resolved, the CITY shall defend such claims at its own cost and shall pay any court judgment or arbitration award resulting from such claims, provided that the CITY shall not be obligated to pay such claims or the cost of defense to the extent that the claims are caused by the negligent acts or omissions of the STATE in administrating the CSO work. The STATE will cooperate with the CITY in the CITY's defense of the claim(s). The CITY shall reimburse any STATE costs incurred in providing such assistance.

### **8.2 Claims for Damages**

8.2.1 After CSO work acceptance, in the event of claims related to the CSO work for damages or loss attributable to bodily injury, sickness, death, or injury to or destruction of property, the CITY shall defend such claims and hold harmless the STATE, and the STATE shall not be obligated to pay any such claim or the cost of defense. Nothing in this section, however, shall remove from the STATE any responsibilities defined by the current laws of the State of Washington or from any liabilities for damages caused by the STATE's own negligent acts or omissions independent of the CSO work performed under this AGREEMENT.

## **9. RIGHT OF ENTRY**

9.1 The CITY hereby grants to the STATE, including its contractors and subcontractors, the right of entry upon all land which the CITY has interest, within or adjacent to the right of way of the highway, for the purpose of constructing and if necessary, maintaining said improvements. Upon completion of the work outlined herein, all future ownership, operation and maintenance of the CITY's facilities shall be at the sole cost of the CITY and without expense to the STATE.

## **10. MODIFICATION**

10.1 No modification of this AGREEMENT is valid unless evidenced in writing by amendment to this AGREEMENT and signed by both Parties. No verbal agreement may supersede, replace or amend this AGREEMENT.

## **11. ASSIGNMENT**

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

## **12. SEVERABILITY**

12.1 Should any section, 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.

## **13. HOLD HARMLESS/INDEMNIFICATION**

13.1 Each Party to this AGREEMENT shall protect, defend, indemnify, and save harmless the other Party, 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, each Party's negligent acts or omissions in connection with the terms of this AGREEMENT. No Party will be required to indemnify, defend, or save harmless the other Party if the claims, suits, or actions for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the Party. Where such claims, suits, or actions result from concurrent negligence of the Parties, or is covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the Party's own negligence.

13.2 This indemnification shall survive the termination of this AGREEMENT.

## **14. DISPUTES**

14.1 In the event that a dispute arises under this AGREEMENT that cannot be resolved to the satisfaction of both Parties, with regards to the CSO work and other CITY-owned facilities, it shall be resolved as follows: The CITY and STATE shall each appoint a member to a disputes board, these two members shall select a third member not affiliated with either Agency. Costs related to the third member will be equally shared between the CITY and STATE. The decision made by this board shall be final and binding on the Parties to this AGREEMENT.

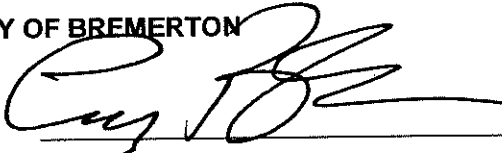
15. VENUE

15.1 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 hereto agree that any such action or proceedings shall be brought in the superior court situated in Thurston County, Washington.

IN WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT as of the day and year first above written.

CITY OF BREMERTON

By:

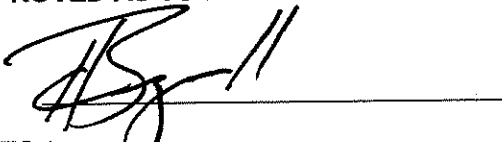


Cary Bozeman, Mayor

Date: 10-26-06

APPROVED AS TO FORM

By:



CITY Attorney

Date: 10/20/06

STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION

By:

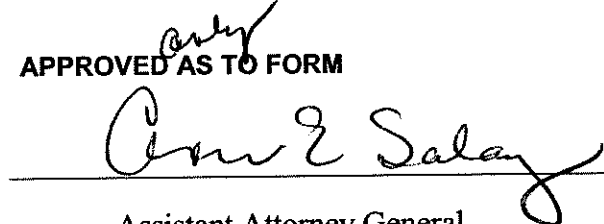


Randall A. Hain, Region Administrator

Date: 11-2-06

APPROVED AS TO FORM

By:



Assistant Attorney General

Date: 10-3-06

GCA-4924

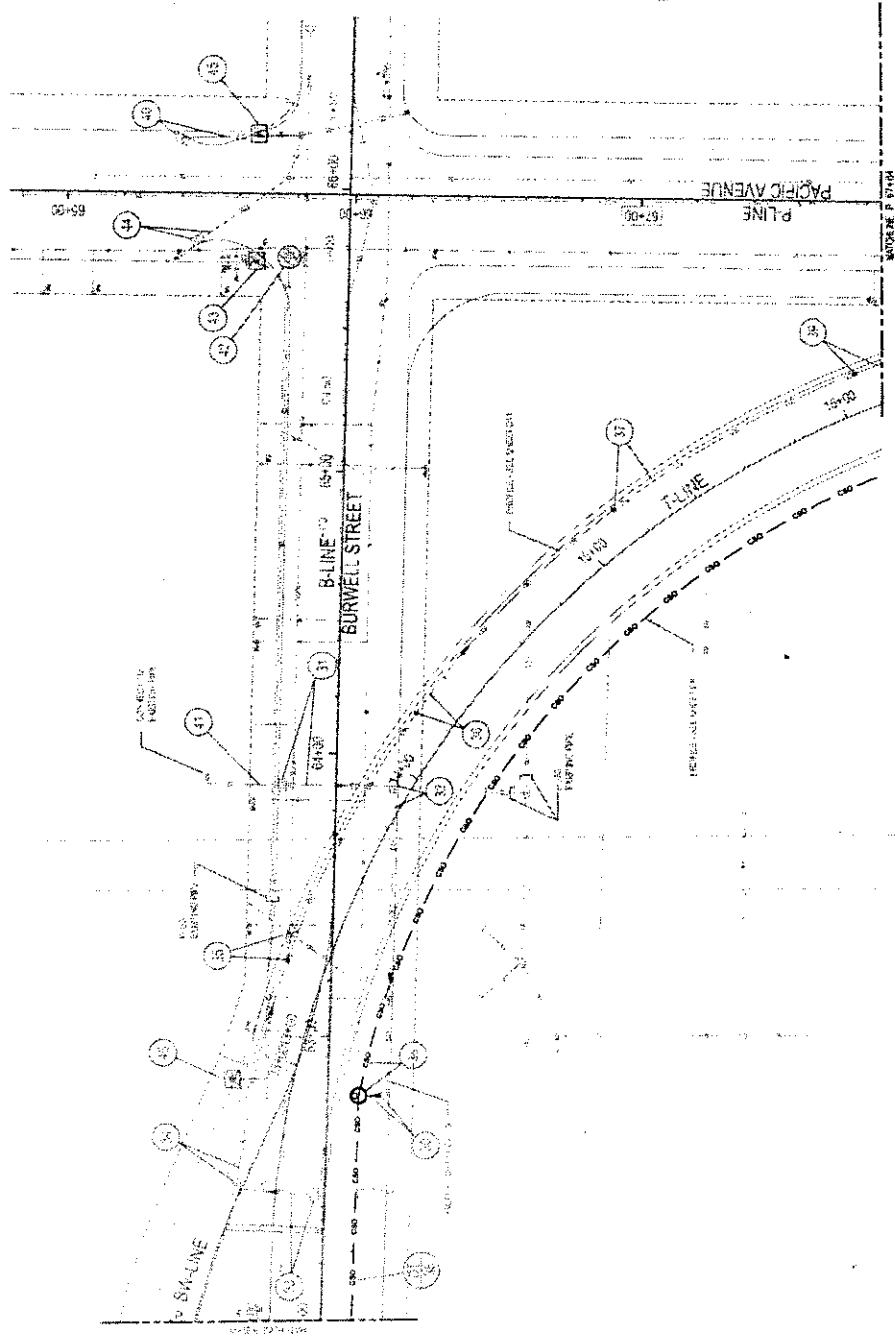
Exhibit A

Page 1 of 5

## Description of Work

The Combined Sewer Outfall line will install 1,163 feet of 36 inch pipe and 418 feet of 48 inch pipe from the intersection of 4<sup>th</sup> Street and Park Avenue to 1<sup>st</sup> Street and Pacific Avenue in the City of Bremerton. It includes associated manholes, shoring, excavation, backfill and erosion control work. The work will also include the installation of a 12 inch storm line at the intersection of 4<sup>th</sup> Street and Park Avenue and pavement restoration on Park Avenue from Burwell Street through to 4<sup>th</sup> Street.





- LEGEND**
- CATCH-BASIN TYPE I
  - CATCH-BASIN TYPE II
  - MANHOLE TYPE I
  - MANHOLE TYPE II
  - ABANDON EXISTING MANHOLE
  - PERMANENT URNAGE SERVICE CURB
  - PERMANENT URNAGE PIPE
  - STORM SEWER (MS-40)

**GCA-4924**  
**EXHIBIT A**  
**Sheet 3 of 5**

Bridge Design Eng. Supervisor Checked By L. CHIN Checked By R. MOORE Drawn By L. BOKROS Bridge Projects, Inc. Project No. GCA-4924		DATE: 05-15-09 BY: LBC	STATE: WA TO: WASH. JOB NUMBER:	SHEET NO.: 03 TOTAL SHEETS: 05		<p>Exceltech          Liberty, WA, Everett, WA, Seattle, WA, Spokane, WA</p>	<p>Washington State          Department of Transportation</p>	PROJECT: D2 SHEET: 03
DOWNTOWN BREMERTON PEDESTRIAN/ BTC ACCESS IMPROVEMENTS								
DRAINAGE PLANS								





**GCA - 4924  
Exhibit B**

**Downtown Bremerton Pedestrian/BTC Access Improvements  
Construction Estimate**

STD ITEM	ITEM DESCRIPTION	UNIT	UNIT PRICE	CSO (in State Right of Way)		CSO		TOTAL	
				GROUP 3		GROUP 4		QTY	AMOUNT
				QTY	AMOUNT	QTY	AMOUNT		
	<b>PREPARATION</b>								
0001	MOBILIZATION (7%)	L.S.			\$ 3,434.03		\$ 57,916.64		\$ 61,350.67
0049	REMOVING DRAINAGE STRUCTURE	EACH	\$ 1,000.00			1	\$ 1,000.00	1	\$ 1,000.00
	<b>STORM SEWER</b>								
3091	CATCH BASIN TYPE 1	EACH	\$ 2,500.00			1	\$ 2,500.00	1	\$ 2,500.00
3151	TESTING STORM SEWER PIPE	L.F.	\$ 2.00	80	\$ 160.00	1,579	\$ 3,158.00	1659	\$ 3,318.00
3577	SCHEDULE A STORM SEWER PIPE 12 IN. DIAM.	L.F.	\$ 50.00			77	\$ 3,850.00	77	\$ 3,850.00
	HDPE DR 32.5 STORM SEWER PIPE 36 IN. DIAM. (See CSO)	L.F.	\$ 325.00			1,163	\$ 377,975.00	1163	\$ 377,975.00
	HDPE DR 32.5 STORM SEWER PIPE 48 IN. DIAM. (See CSO)	L.F.	\$ 400.00	80	\$ 32,000.00	338	\$ 135,200.00	418	\$ 167,200.00
	<b>STRUCTURE</b>								
	DEWATERING	L.S.	\$ 250,000.00			0	\$ -	0.00	\$ -
	<b>LIQUID ASPHALT</b>								
5334	ANTI-STRIPPING ADDITIVE	EST.	\$ 1.00			190	\$ 190.00	190	\$ 190.00
	<b>HOT MIX ASPHALT</b>								
5711	PLANING BITUMINOUS PAVEMENT	S.Y.	\$ 10.00			1700	\$ 17,000.00	1700	\$ 17,000.00
5767	HMA CL. 1/2 IN. PG 64-22	TON	\$ 65.00			187	\$ 12,155.00	187	\$ 12,155.00
5830	JOB MIX COMPLIANCE PRICE ADJUSTMENT	CALC	\$ 1.00			370	\$ 370.00	370	\$ 370.00
5835	COMPACTION PRICE ADJUSTMENT	CALC	\$ 1.00			230	\$ 230.00	230	\$ 230.00
	<b>EROSION CONTROL AND PLANTING</b>								
6403	ESC LEAD	DAY	\$ 150.00			10	\$ 1,500.00	10	\$ 1,500.00
6470	STREET CLEANING	HR	\$ 125.00			25	\$ 3,125.00	25	\$ 3,125.00
6373	SILT FENCE	L.F.	\$ 4.00			250	\$ 1,000.00	250	\$ 1,000.00
6478	STRAW BALE	EACH	\$ 5.00			5	\$ 25.00	5	\$ 25.00
6490	EROSION/WATER POLLUTION CONTROL	EST.	\$ 100,000.00			0.1	\$ 10,000.00	0.10	\$ 10,000.00
	<b>TRAFFIC</b>								
6857	PLASTIC CROSSWALK LINE	SF	\$ 12.00			166	\$ 1,992.00	166	\$ 1,992.00
6882	RAISED PAVEMENT MARKER TYPE 1	HUND	\$ 250.00			0.9	\$ 225.00	1	\$ 225.00
3884	RAISED PAVEMENT MARKER TYPE 2	HUND	\$ 600.00			0.3	\$ 180.00	0.30	\$ 180.00
	INTERCONNECT	L.S.	\$ 32,000.00			0.00	\$ -	0.00	\$ -
6971	PROJECT TEMPORARY TRAFFIC CONTROL	L.S.	\$ 430,000.00			0.04	\$ 17,200.00	0.04	\$ 17,200.00
6992	OTHER TRAFFIC CONTROL LABOR	HR	\$ 50.00			100.00	\$ 5,000.00	100	\$ 5,000.00
6974	TRAFFIC CONTROL SUPERVISOR	L.S.	\$ 125,000.00			0.04	\$ 5,000.00	0.04	\$ 5,000.00
	<b>OTHER ITEMS</b>								
7006	STRUCTURE EXCAVATION CLASS B INCLUDING HAUL	C.Y.	\$ 16.00	340	\$ 5,440.00	3668	\$ 58,688.00	4008	\$ 64,128.00
7008	SHORING OR EXTRA EXCAVATION CLASS B	S.F.	\$ 2.50	1193	\$ 2,982.50	15467	\$ 38,667.50	16660	\$ 41,650.00
7013	GRAVEL BACKFILL FOR PIPE BEDDING	C.Y.	\$ 25.00	111	\$ 2,775.00	1,500	\$ 37,500.00	1611	\$ 40,275.00
7014	GRAVEL BACKFILL FOR DRAIN	C.Y.	\$ 25.00	228	\$ 5,700.00	2,490	\$ 62,250.00	2718	\$ 67,950.00
7360	MANHOLE 48 IN. DIAM. TYPE 1	EACH	\$ 4,000.00			1	\$ 4,000.00	1	\$ 4,000.00
7364	MANHOLE 60 IN. DIAM. TYPE 3	EACH	\$ 4,000.00			4	\$ 16,000.00	4	\$ 16,000.00
7365	MANHOLE 72 IN. DIAM. TYPE 3	EACH	\$ 4,200.00			1	\$ 4,200.00	1	\$ 4,200.00
7366	MANHOLE 84 IN. DIAM. TYPE 3	EACH	\$ 4,500.00			1	\$ 4,500.00	1	\$ 4,500.00
	CONSTRUCTION FENCING	L.F.	\$ 10.00			250	\$ 2,500.00	250	\$ 2,500.00
7736	SPCC PLAN	L.S.	\$ 5,000.00			0.04	\$ 200.00	0.04	\$ 200.00
	<b>Sub-Total Construction</b>				\$ 52,491.53		\$ 885,297.14		\$ 937,788.67
	<b>Sales Tax</b>				\$ 4,409.29				\$ 4,409.29
	<b>Construction Engineering Costs (10%)</b>				\$ 5,249.15		\$ 88,529.71		\$ 93,778.87
	<b>Construction Contingency (10%)</b>				\$ 5,249.15		\$ 88,529.71		\$ 93,778.87
	<b>Administrative Overhead (1)</b>								\$ 50.00
	<b>Total Construction</b>				\$ 67,399.12		\$ 1,062,356.56		\$ 1,129,755.68

NOTE: (1) per Overhead Agreement OH-00168

**GCA-4924**  
**EXHIBIT C**

**Combined Sewer Outfall**  
**City Inspection Service and Coordination**

City coordination and technical expertise provided by the City of Bremerton at WSDOT request	\$77,000.00
0.75 Full Time Equivalent X 12 months X \$7,000 / mo.	
0.25 Full Time Equivalent X an additional 8 months X \$7,000 / mo.	
Administrative Overhead (1)	\$0.00
<b>Total City Services</b>	<b>\$77,000.00</b>

Note: (1) Per Overhead Agreement OH-00166