

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

Agreement GCA 6082

This Agreement is made and entered into between the STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION (STATE) and SNOHOMISH COUNTY, 3000 Rockefeller Avenue, CSC – 2nd Floor Admin. E – MS 607, Everett, WA 98201 (LOCAL AGENCY).

WHEREAS, the LOCAL AGENCY has the equipment, manpower and expertise to perform chip seal overlay work, and in connection therewith, the STATE has requested the LOCAL AGENCY to perform chip seal overlay on state route 96 (SR 96) from mile post 5.4 to mile post 6.75 and as further described in Exhibit A, hereinafter the “Work,” and

WHEREAS, it is deemed to be in the public’s best interest for the LOCAL AGENCY to perform the requested Work in conjunction with the LOCAL AGENCY’s routine maintenance work on the LOCAL AGENCY’s roads,

NOW, THEREFORE, pursuant to RCW 47.28.140 and 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 LOCAL AGENCY, on behalf of the STATE, 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 LOCAL AGENCY for the Work in accordance with the current state of Washington Standard Specifications for Road, Bridge and Municipal Construction, and its amendments thereto (Standard Specifications), and the PS&E has been reviewed and approved by the STATE. The LOCAL AGENCY will incorporate the Work, as approved by the STATE and as itemized in Exhibit A, as part of the LOCAL AGENCY’s upcoming maintenance work.

1.1.2 The STATE may, if it desires, furnish an inspector for the Work. Any costs for such inspection will be borne solely by the STATE.

1.1.3 The LOCAL AGENCY will be the STATE’s representative during the Work and will act as owner in the administration of the Work. The LOCAL AGENCY will designate a LOCAL AGENCY representative to provide all services and tools, including but not limited to inspection, materials testing, and representation, necessary to perform the Work and to ensure that the Work is constructed to the STATE’s satisfaction.

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WSDOT - AREA 3

GCA 6082

2. ACCEPTANCE

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

3. PAYMENT

- 3.1 The STATE, in consideration of the faithful performance of the Work performed by the LOCAL AGENCY, agrees to reimburse the LOCAL AGENCY for the actual direct salary and direct non-salary costs of the Work, as estimated in Exhibit A.
- 3.2 The LOCAL AGENCY shall provide detailed invoices to the STATE for the Work performed by the LOCAL AGENCY and the STATE 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 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 4.1.

4. GENERAL PROVISIONS

- 4.1 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.

4.2 Termination: Neither the STATE nor the LOCAL AGENCY may terminate this Agreement without the written concurrence of the other Party.

4.2.1 If this Agreement is terminated prior to the fulfillment of the terms stated herein, the STATE agrees to reimburse the LOCAL AGENCY for the actual direct salary and direct non-salary expenses and costs it has incurred for the Work up to the date of termination, as well as the costs of non-cancelable obligations.

4.2.2 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

4.3 Independent contractor: The LOCAL AGENCY shall be deemed an independent contractor for all purposes, and the employees of the LOCAL AGENCY or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the STATE.

4.4 Indemnification and waiver:

4.4.1 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, authorized agents, or contractors 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.

4.4.2 The LOCAL AGENCY agrees that its obligations under this section extend to any claim, demand and/or cause of action brought by, or on behalf of, any LOCAL AGENCY employees or agents while performing the Work located on state-owned right of way. For this purpose, the LOCAL AGENCY, by mutual negotiation, hereby waives with respect to the STATE only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of chapter 51.12 RCW.



4.5 Survivability: Section 4.4 shall survive the termination of this Agreement.

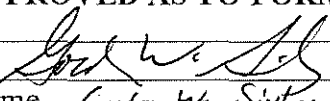
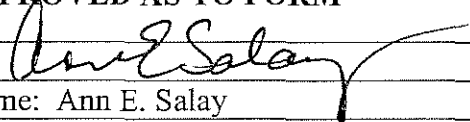
4.6 Disputes: In the event that a dispute arises under this Agreement, it shall be resolved as follows: The STATE and the LOCAL AGENCY shall each appoint a member to a disputes board, these two members shall select a third board member not affiliated with either Party. The three-member board shall conduct 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.

- 4.7 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.
- 4.8 Audits/Records: All records for the Work in support of all costs incurred during the contract shall be maintained by the LOCAL AGENCY for a period of three (3) years. The STATE shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. Should the STATE 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.
- 4.9 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 STATE 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 	By 
Name Owen B. Carter, P.E.	Name Dave McCormick, PE
Title County Engineer	Title NRW Asst. Regional Admin. Maint.
Date 8/4/09	Date 8-11-09

APPROVED AS TO FORM	APPROVED AS TO FORM
	
Name Gordon W. Sivley	Name: Ann E. Salay
Title Deputy Prosecuting Attorney	Title: Assistant Attorney General
Date 8/4/09	Date: 7-29-09

2005 Chip-Seal Estimate

Project: Chip-Seal (10,250 x21 ft)

EXHIBIT A - GCA 6082

Location: State Route 96

Description of Work: Pavement rehabilitation in the form of a chip seal overlay on SR 96 between M.P. 5.4 to M.P. 6.75

Class	No	Rate	Hours	Amount
Road Maintenance Lead Worker	1	31.23	10	\$ 312.30
Road Maintenance Worker 6	1	28.94	10	\$ 289.40
Road Maintenance Worker 5	3	27.57	10	\$ 827.10
Road Maintenance Worker 4	1	26.21	10	\$ 262.10
Road Maintenance Worker 3	11	24.92	10	\$ 2,741.20
Road Maintenance Worker 2	1	23.66	10	\$ 236.60
Road Maintenance Worker 1	10	22.26	10	\$ 2,226.00
Total				\$ 6,894.70
Fringe Benefits				\$ 3,654.19
Subtotal				\$ 10,548.89

Equipment	No	Rate	Hours	Amount
Loader	1	66.86	10	\$ 668.60
Tractor	1	36.60	10	\$ 366.00
Heated Trailer	1	25.95	10	\$ 259.50
Distributor	2	36.97	10	\$ 739.40
Chip Spreader	1	118.79	10	\$ 1,187.90
Dbl Axle Trk	8	21.47	10	\$ 1,717.60
Eqmnt Trailer	4	9.52	10	\$ 380.80
Rubber Tire Roller	2	30.04	10	\$ 600.80
10 Ton Roller	1	9.56	10	\$ 95.60
Med. Crewcab	1	9.48	10	\$ 94.80
1-Ton Flatbed	1	11.16	10	\$ 111.60
1 Ton Crewcab	1	7.51	10	\$ 75.10
3/4 Ton Pick-up	1	6.44	10	\$ 64.40
1/2 Ton Pick-up	1	4.71	10	\$ 47.10
Broom	1	31.32	10	\$ 313.20
Subtotal				\$ 6,722.40

Material	Quantity	Rate	Amount
3/8 Chipped Rock (20lbs per yrd/2)	250tns	14.20	\$ 3,550.00
CRS 2P (.50 gal per yrd/2)	50.5tns	550.00	\$ 27,775.00
Subtotal			\$ 31,325.00

Total for BST **\$ 48,593.29**

Fog-Seal Crew-

Single Axle Distributor	1	36.97	10	\$ 369.70
1 Ton Crewcab	1	7.51	10	\$ 75.10
CSS 1 (.10 gal per yrd/2)	5tns	530.00		\$ 2,650.00
Road Maintenance Worker 1	4	22.26	10	\$ 890.40
Road Maintenance Worker 4	1	26.21	10	\$ 262.10
Total for Fog				\$ 4,247.30

Total Cost **\$52,840.59**

Reciprocating Overhead Charges OH00017 Agreement between State and Local Agency applicable to this Work.