

**CLARK COUNTY  
STAFF REPORT**

**DEPARTMENT/DIVISION:** Department of Public Works/Transportation Program

**DATE:** September 24, 2013

**SPECIFIC REQUEST:** Approval of the Federal-Aid Project Prospectus and Local Agency Agreement for the Hazel Dell Area Sidewalks Project, CRP 322922 and 323012.

**CHECK ONE:**        X   Consent      \_\_\_\_\_ Chief Administrative Officer

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**PUBLIC WORKS GOALS:**

- Provide safe and efficient transportation systems within Clark County
- Continue responsible stewardship of public funds
- Promote family-wage job creation and economic development to support a thriving community
- Maintain a desirable quality of life
- Improve environmental stewardship and protection of natural resources
- Increase partnerships and foster an engaged, informed community
- Make Public Works a great place to work

**BACKGROUND:** Clark County has received notification from WSDOT Highways & Local Programs that the above project has been selected to receive grant funding through the Transportation Alternatives Program. The attached Federal Aid Project Prospectus and Local Agency Agreement will formally accept the awarded grant funds and begin the design phase of the project.

This project will construct more than a half-mile of sidewalk along NE Hazel Dell Avenue, from approximately 700 feet north of Alki Road to NE 63<sup>rd</sup> Street, and on NE 68<sup>th</sup> Street from NE 2<sup>nd</sup> Avenue to NW 4<sup>th</sup> Avenue.

**COMMUNITY OUTREACH:** Sidewalks are among the most common citizen requests received by Public Works. These projects are part of the 2013 Sidewalk Program which is included in the approved 2013-2018 Transportation Improvement Program (TIP). TIP development includes a wide array of public input, including public hearings and an informational web page.

**BUDGET AND POLICY IMPLICATIONS:** There are no budget implications involved in this request. The projects are listed and funded in the 2013 Annual Construction Program. (Item 23, Sidewalk Program.)

**FISCAL IMPACTS:**

Yes (see Fiscal Impacts Attachment)

No




*Y. He*


*PW 13-077*

**ACTION REQUESTED:** It is requested that the Board of County Commissioners sign both copies of the attached Project Prospectus and Local Agency Agreements to accept the awarded grant funds.

**DISTRIBUTION:** Please return to the Department of Public Works Transportation Programming Section, attention Michael Derleth: a copy of the approved staff report indicating the Board's action, one originally-signed copy of the Project Prospectus, and both originally-signed Local Agency Agreements. The second originally-signed Project Prospectus is for the Board's files. Upon receipt of a fully-executed Local Agency Agreement, a copy will be provided to the Board.

  
\_\_\_\_\_  
William Wright, P.E.  
Transportation Programming Manager

APPROVED: Sept. 24, 2013  
CLARK COUNTY, WASHINGTON  
BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
Peter Capell, P.E.  
Public Works Director/County Engineer

SR 186-13

c: PW Records, Michael Derleth,  
Attachments: Fiscal Impact Statement, (2) Prospectus, (2) State Funding Agreements, Vicinity Map.

PW 13-077

# FISCAL IMPACT ATTACHMENT

## Part I: Narrative Explanation

I.A - Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information.

This project will construct sidewalk along NE Hazel Dell Avenue (North of Alki Road to NE 63rd Street), and on NE 68th Street between NW 4th Avenue and NE 2nd Avenue.

Total cost is estimated at \$562,500

The sidewalks are programmed in the 2013-2018 Transportation Improvement Program (TIP) and in the 2013 Annual Construction Program (Item 23). The revenues and expenses for this project are currently included in the Road Fund 2013/2014 budget.

## Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	Road Fund	Total	Road Fund	Total	Road Fund	Total
1012 Road Fund	\$562,500	\$562,500	\$ -	\$ -	\$ -	\$ -
<b>Total:</b>	\$562,500	\$562,500	\$ -	\$ -	\$ -	\$ -

II.A - Describe the type of revenue (grant, fees, etc.)

Federal Transportation Alternatives (TAP) funding will reimburse up to \$442,000. Remaining \$120,500 will be paid by County Road Fund.

## Part III: Estimated Expenditures

III.A - Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		Road Fund	Total	Road Fund	Total	Road Fund	Total
1012 Road Fund		\$562,500	\$562,500	\$ -	\$ -	\$ -	\$ -
<b>Total:</b>		\$562,500	\$562,500	\$ -	\$ -	\$ -	\$ -

III.B = Expenditure by object category

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	Road Fund	Total	Road Fund	Total	Road Fund	Total
Salary/Benefits	\$28,750	\$28,750	\$ -	\$ -	\$ -	\$ -
Consultant						
Supplies						
Travel						
Other controllables						
Capital Outlays	\$533,750	\$533,750	\$ -	\$ -	\$ -	\$ -
Inter-fund Transfers						
Debt Service						
<b>Total:</b>	\$562,500	\$562,500	\$ -	\$ -	\$ -	\$ -



Prefix	Route	( )	Date	8/19/2013
Federal Aid Project Number			Central Contractor Registration Exp. Date	03/08/2014
Local Agency Project Number	322922	(WSDOT Use Only)	Federal Employer Tax ID Number	91-6001299

Agency Clark County	Federal Program Title <input checked="" type="checkbox"/> 20.205 <input type="checkbox"/> Other		
Project Title Hazel Dell Area Sidewalks	Start Latitude N 45.662	Start Longitude W -122.669	
	End Latitude N 45.671	End Longitude W -122.673	
Project Termini From - To Aprox 700' N of Alki Rd NW 68th Street	Nearest City Name Vancouver	Project Zip Code 98665-8639	
From: 0.48 To: 0.89 Length of Project 0.41 miles	Award Type <input checked="" type="checkbox"/> Local <input type="checkbox"/> Local Forces <input type="checkbox"/> State <input type="checkbox"/> Railroad		
Federal Agency <input checked="" type="checkbox"/> FHWA <input type="checkbox"/> Others	City Number N/A	County Number 6	County Name Clark
			WSDOT Region Southwest Region
Congressional District 3	Legislative Districts 49	Urban Area Number 3	TMA / MPO / RTP SW WA RTC

Phase	Total Estimated Cost (Nearest Hundred Dollar)	Local Agency Funding (Nearest Hundred Dollar)	Federal Funds (Nearest Hundred Dollar)	Phase Start Date Month Year
P.E.	\$20,000	\$5,000	\$15,000	8/2013
R/W	\$10,000	\$10,000	\$0	1/2014
Const.	\$533,750	\$106,750	\$427,000	8/2014
Total	\$563,750	\$121,750	\$442,000	

**Description of Existing Facility (Existing Design and Present Condition)**

Roadway Width N/A	Number of Lanes N/A
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These portions of NE Hazel Dell Avenue and NE/NW 68th Street lack sidewalks. Pedestrians walk on road shoulder or in resident's yards.

**Description of Proposed Work**

Description of Proposed Work (Attach additional sheet(s) if necessary)

Construct sidewalk along east side of NE Hazel Dell Ave. (Aprox. 700' N of Alki Rd. to NE 63rd St.), and south side of NW/NE 68th St. (NW 4th Ave to Aprox. NE Hazel Dell Ave.)

Local Agency Contact Person Michael Derleth	Title Capital Program Specialist	Phone 360-397-6118 x5794
Mailing Address 1300 Franklin St., P.O. Box 9810	City Vancouver	State WA
		Zip Code 98666-9810

Project Prospectus Approval

By \_\_\_\_\_ Title Director, Public Works/County Engineer

Approving Authority \_\_\_\_\_ Date \_\_\_\_\_

Agency Clark County	Project Title Hazel Dell Area Sidewalks	Date 8/19/2013
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<b>Type of Proposed Work</b>			Roadway Width	Number of Lanes
Project Type (Check all that Apply)			N/A	N/A
<input type="checkbox"/> New Construction	<input type="checkbox"/> Path / Trail	<input type="checkbox"/> 3-R		
<input type="checkbox"/> Reconstruction	<input checked="" type="checkbox"/> Pedestrian / Facilities	<input type="checkbox"/> 2-R		
<input type="checkbox"/> Railroad	<input type="checkbox"/> Parking	<input type="checkbox"/> Other		
<input type="checkbox"/> Bridge				

<b>Geometric Design Data</b>		
<b>Description</b>	<b>Through Route</b>	<b>Crossroad</b>
<b>Federal Functional Classification</b>	<input checked="" type="checkbox"/> Urban <input checked="" type="checkbox"/> Rural <input type="checkbox"/> NHS <input type="checkbox"/> Principal Arterial <input checked="" type="checkbox"/> Minor Arterial <input type="checkbox"/> Collector <input type="checkbox"/> Major Collector <input type="checkbox"/> Minor Collector <input type="checkbox"/> Local Access	<input type="checkbox"/> Principal Arterial <input type="checkbox"/> Minor Arterial <input checked="" type="checkbox"/> Collector <input type="checkbox"/> Major Collector <input type="checkbox"/> Minor Collector <input type="checkbox"/> Local Access <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural <input type="checkbox"/> NHS
Terrain	<input type="checkbox"/> Flat <input checked="" type="checkbox"/> Roll <input type="checkbox"/> Mountain	<input type="checkbox"/> Flat <input checked="" type="checkbox"/> Roll <input type="checkbox"/> Mountain
Posted Speed	35	25
Design Speed	40	30
Existing ADT	3224	665
Design Year ADT	Unknown	Unknown
Design Year	Unknown	Unknown
Design Hourly Volume (DHV)	160	67

<b>Performance of Work</b>		
Preliminary Engineering Will Be Performed By Agency	Others 5 %	Agency 95 %
Construction Will Be Performed By Contractor	Contract 90 %	Agency 10 %

<b>Environmental Classification</b>	
<input type="checkbox"/> Class I - Environmental Impact Statement (EIS) <input type="checkbox"/> Project Involves NEPA/SEPA Section 404 Interagency Agreement <input type="checkbox"/> Class III - Environmental Assessment (EA) <input type="checkbox"/> Project Involves NEPA/SEPA Section 404 Interagency Agreement	<input checked="" type="checkbox"/> Class II - Categorically Excluded (CE) <input checked="" type="checkbox"/> Projects Requiring Documentation (Documented CE)

Environmental Considerations None
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Agency Clark County	Project Title Hazel Dell Area Sidewalks	Date 8/19/2013
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**Right of Way**

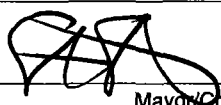
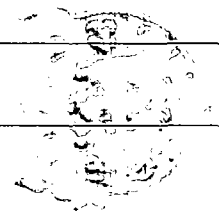
<input type="checkbox"/> No Right of Way Required * All construction required by the contract can be accomplished within the existing right of way.	<input checked="" type="checkbox"/> Right of Way Required <input checked="" type="checkbox"/> No Relocation	<input type="checkbox"/> Relocation Required
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Description of Utility Relocation or Adjustments and Existing Major Structures Involved in the Project  
 Small strip acquisitions for sidewalk along roadside. Utility pole relocations and guy-wire adjustments.

FAA Involvement  
 Is any airport located within 3.2 kilometers (2 miles) of the proposed project?       Yes     No

Remarks  
 None

This project has been reviewed by the legislative body of the administration agency or agencies, or it's designee, and is not inconsistent with the agency's comprehensive plan for community development.

Date September 24, 2013      Agency Clark County Board of Commissioners  
 By         
 Mayor/Chairperson

# Local Agency Agreement

Agency Clark County  
 Address 1300 Franklin St.  
P.O. Box 9810  
Vancouver, WA 98666

**CFDA No. 20.205**  
 (Catalog of Federal Domestic Assistance)  
 Project No. \_\_\_\_\_  
 Agreement No. \_\_\_\_\_  
 For OSC WSDOT Use Only

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) 2 CFR 225, (4) Office of Management and Budget Circulars A-102, and A-133, (5) the policies and procedures promulgated by the Washington State Department of Transportation, and (6) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

## Project Description

Name Hazel Dell Area Sidewalks Length 0.41 Miles  
 Termini Aprox. 700' N of Alki Rd. - NW 68th Street

## Description of Work

Construct sidewalk along east side of NE Hazel Dell Ave. (Aprox. 700' N of Alki Rd. to NE 63rd St.), and south side of NW/NE 68th St. (NW 4th Ave to Aprox. NE Hazel Dell Ave.)

Type of Work		Estimate of Funding		
		(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE 80 %  Federal Aid Participation Ratio for PE	a. Agency	18,750.00	3,750.00	15,000.00
	b. Other			
	c. Other			
	d. State	1,250.00	1,250.00	0.00
	e. Total PE Cost Estimate (a+b+c+d)	20,000.00	5,000.00	15,000.00
Right of Way ____ %  Federal Aid Participation Ratio for RW	f. Agency			
	g. Other			
	h. Other			
	i. State			
	j. Total R/W Cost Estimate (f+g+h+i)			
Construction    ____ % Federal Aid Participation Ratio for CN	k. Contract			
	l. Other			
	m. Other			
	n. Other			
	o. Agency			
	p. State			
	q. Total CN Cost Estimate (k+l+m+n+o+p)			
	r. Total Project Cost Estimate (e+j+q)	20,000.00	5,000.00	15,000.00

Agency Official

By 

Title Chair, Board of County Commissioners

Washington State Department of Transportation

By \_\_\_\_\_

Director of Highways and Local Programs

Date Executed \_\_\_\_\_

**Construction Method of Financing** (Check Method Selected)

**State Ad and Award**

- Method A - Advance Payment - Agency Share of total construction cost (based on contract award)
- Method B - Withhold from gas tax the Agency's share of total construction cost (line 4, column 2) in the amount of \$ \_\_\_\_\_ at \$ \_\_\_\_\_ per month for \_\_\_\_\_ months.

**Local Force or Local Ad and Award**

- Method C - Agency cost incurred with partial reimbursement

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will comply with the applicable provisions set forth below. Adopted by official action on

\_\_\_\_\_, \_\_\_\_\_, Resolution/Ordinance No. \_\_\_\_\_

**Provisions**

**I. Scope of Work**

The Agency shall provide all the work, labor, materials, and services necessary to perform the project which is described and set forth in detail in the "Project Description" and "Type of Work."

When the State acts for and on behalf of the Agency, the State shall be deemed an agent of the Agency and shall perform the services described and indicated in "Type of Work" on the face of this agreement, in accordance with plans and specifications as proposed by the Agency and approved by the State and the Federal Highway Administration.

When the State acts for the Agency but is not subject to the right of control by the Agency, the State shall have the right to perform the work subject to the ordinary procedures of the State and Federal Highway Administration.

**II. Delegation of Authority**

The State is willing to fulfill the responsibilities to the Federal Government by the administration of this project. The Agency agrees that the State shall have the full authority to carry out this administration. The State shall review, process, and approve documents required for federal aid reimbursement in accordance with federal requirements. If the State advertises and awards the contract, the State will further act for the Agency in all matters concerning the project as requested by the Agency. If the Local Agency advertises and awards the project, the State shall review the work to ensure conformity with the approved plans and specifications.

**III. Project Administration**

Certain types of work and services shall be provided by the State on this project as requested by the Agency and described in the Type of Work above. In addition, the State will furnish qualified personnel for the supervision and inspection of the work in progress. On Local Agency advertised and awarded projects, the supervision and inspection shall be limited to ensuring all work is in conformance with approved plans, specifications, and federal aid requirements. The salary of such engineer or other supervisor and all other salaries and costs incurred by State forces upon the project will be considered a cost thereof. All costs related to this project incurred by employees of the State in the customary manner on highway payrolls and vouchers shall be charged as costs of the project.

**IV. Availability of Records**

All project records in support of all costs incurred and actual expenditures kept by the Agency are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the Agency. Copies of said records shall be furnished to the State and/or Federal Government upon request.

**V. Compliance with Provisions**

The Agency shall not incur any federal aid participation costs on any classification of work on this project until authorized in writing by the State for each classification. The classifications of work for projects are:

1. Preliminary engineering.
2. Right of way acquisition.
3. Project construction.

In the event that right of way acquisition, or actual construction of the road, for which preliminary engineering is undertaken is not started by the closing of the tenth fiscal year following the fiscal year in which the agreement is executed, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

The Agency agrees that all stages of construction necessary to provide the initially planned complete facility within the limits of this project will conform to at least the minimum values set by approved statewide design standards applicable to this class of highways, even though such additional work is financed without federal aid participation.

The Agency agrees that on federal aid highway construction projects, the current federal aid regulations which apply to liquidated damages relative to the basis of federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

**VI. Payment and Partial Reimbursement**

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, 2 CFR 225 and Office of Management and Budget circulars A-102 and A-133. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.



The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR 225 - Cost Principles for State, Local, and Indian Tribal Government, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

### **1. Project Construction Costs**

Project construction financing will be accomplished by one of the three methods as indicated in this agreement.

**Method A** – The Agency will place with the State, within (20) days after the execution of the construction contract, an advance in the amount of the Agency's share of the total construction cost based on the contract award. The State will notify the Agency of the exact amount to be deposited with the State. The State will pay all costs incurred under the contract upon presentation of progress billings from the contractor. Following such payments, the State will submit a billing to the Federal Government for the federal aid participation share of the cost. When the project is substantially completed and final actual costs of the project can be determined, the State will present the Agency with a final billing showing the amount due the State or the amount due the Agency. This billing will be cleared by either a payment from the Agency to the State or by a refund from the State to the Agency.

**Method B** – The Agency's share of the total construction cost as shown on the face of this agreement shall be withheld from its monthly fuel tax allotments. The face of this agreement establishes the months in which the withholding shall take place and the exact amount to be withheld each month. The extent of withholding will be confirmed by letter from the State at the time of contract award. Upon receipt of progress billings from the contractor, the State will submit such billings to the Federal Government for payment of its participating portion of such billings.

**Method C** – The Agency may submit vouchers to the State in the format prescribed by the State, in duplicate, not more than once per month for those costs eligible for Federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

The State shall reimburse the Agency for the Federal share of eligible project costs up to the amount shown on the face of this agreement. At the time of audit, the Agency will provide documentation of all costs incurred on the project.

The State shall bill the Agency for all costs incurred by the State relative to the project. The State shall also bill the Agency for the federal funds paid by the State to the Agency for project costs which are subsequently determined to be ineligible for federal participation (see Section IX).

## **VII. Audit of Federal Consultant Contracts**

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and Office of Management and Budget Circular A-133.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation (see Section IX).

## **VIII. Single Audit Act**

The Agency, as a subrecipient of federal funds, shall adhere to the federal Office of Management and Budget (OMB) Circular A-133 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$500,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of OMB Circular A-133. Upon conclusion of the A-133 audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

## **IX. Payment of Billing**

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed the Director of Highways and Local Programs.

## **X. Traffic Control, Signing, Marking, and Roadway Maintenance**

The Agency will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The Agency will not install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and MUTCD. The Agency will, at its own expense, maintain the improvement covered by this agreement.

## **XI. Indemnity**

The Agency shall hold the Federal Government and the State harmless from and shall process and defend at its own expense all claims, demands, or suits, whether at law or equity brought against the Agency, State, or Federal Government, arising from the Agency's execution,

performance, or failure to perform any of the provisions of this agreement, or of any other agreement or contract connected with this agreement, or arising by reason of the participation of the State or Federal Government in the project, PROVIDED, nothing herein shall require the Agency to reimburse the State or the Federal Government for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Federal Government or the State.

## **XII. Nondiscrimination Provision**

No liability shall attach to the State or Federal Government except as expressly provided herein.

The Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Agency of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The Agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor in 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee or understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

The Agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Agency also agrees:

- (1) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.
- (2) To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.
- (3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.
- (4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the Agency agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:

- (a) Cancel, terminate, or suspend this agreement in whole or in part;
- (b) Refrain from extending any further assistance to the Agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Agency; and
- (c) Refer the case to the Department of Justice for appropriate legal proceedings.

## **XIII. Liquidated Damages**

The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 635, Subpart 127, as supplemented, relative to the amount of Federal participation in the project cost, shall be applicable in the event the contractor fails to complete the contract within the contract time. Failure to include liquidated damages provision will not relieve the Agency from reduction of federal participation in accordance with this paragraph.

## **XIV. Termination for Public Convenience**

The Secretary of the Washington State Department of Transportation may terminate the contract in whole, or from time to time in part, whenever:

- (1) The requisite federal funding becomes unavailable through failure of appropriation or otherwise.
- (2) The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.
- (3) The contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.
- (4) The Secretary determines that such termination is in the best interests of the State.

## **XV. Venue for Claims and/or Causes of Action**

For the convenience of the parties to this contract, it is agreed that any claims and/or causes of action which the Local Agency has against the State of Washington, growing out of this contract or the project with which it is concerned, shall be brought only in the Superior Court for Thurston County.

**XVI. Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying**

The approving authority certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification as a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**Additional Provisions**