

CLARK COUNTY STAFF REPORT

DEPARTMENT: Public Works / Transportation and Asset Division / Programming

DATE: August 11, 2015

REQUESTED ACTION: Approval of the Federal-Aid Project Prospectus and Local Agency Agreement for the Highway 99 Pedestrian/Bicycle Improvements Project, CRP #351322.

Consent Hearing County Manager

PUBLIC WORKS GOALS:

- Provide safe and efficient transportation systems in Clark County
- Create and maintain a vibrant system of parks, trails and green spaces
- Continue responsible stewardship of public funds
- Promote family-wage job creation and economic development to support a thriving community
- Maintain a healthy, desirable quality of life
- Increase partnerships and foster an engaged, informed community
- Cultivate a nimble, responsive work force
- Make Public Works a great place to work

BACKGROUND

Clark County has been notified by the Regional Transportation Council (RTC) that this project has been awarded grant funding from the Transportation Alternatives Program. The attached Federal Aid Project Prospectus and Local Agency Agreements will start the process of receiving the funds for design of the project.

The Highway 99 Pedestrian/Bicycle Improvements Project will replace deteriorated sidewalk along the west side of Highway 99 between NE 63rd Street and NE 78th Street, creating a smooth, attractive and ADA-compliant walkway. A mid-block crossing with pedestrian refuge island and High-intensity Activated CrossWalk (HAWK) signal will be added near 78th Street. ADA ramps and bicycle lane striping will be upgraded. A street-side bicycle repair station will also be installed.

COUNCIL POLICY IMPLICATIONS

None.

ADMINISTRATIVE POLICY IMPLICATIONS

None. This project is included in the 2015-2020 Transportation Improvement Program (TIP), 2015 Annual Construction Program (ACP) and 2015 Budget.

COMMUNITY OUTREACH

This project is included in the 2015-2020 Transportation Improvement Program (TIP). TIP development public involvement includes SEPA, public hearings and an internet website.



pw 15-067

not ok

BUDGET IMPLICATIONS

YES	NO	
✓		Action falls within existing budget capacity.
	✓	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	✓	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

BUDGET DETAILS

Local Fund Dollar Amount	\$ 551,000
Grant Fund Dollar Amount	\$1,225,000
Account	Road Fund
Company Name	NA

DISTRIBUTION:

Board staff will post all staff reports to The Grid. <http://www.clark.wa.gov/thegrid/>

Please return 2 originally signed copies of the Federal Aid Project Prospectus and 2 Local Agency agreements to Public Works Transportation Programming, attention Michael Derleth.


 Carolyn Heriges, P.E.
 Transportation & Asset Division Manager


 Heath H. Henderson, P.E.
 Public Works Director/County Engineer

APPROVED: _____
 CLARK COUNTY, WASHINGTON
 BOARD OF COUNTY COUNCILORS

DATE: Aug. 11, 2015

SR# SR 1104-15

APPROVED: _____
 Mark McCauley, Acting County Manager

DATE: _____

PW15-067

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.

The Highway 99 Pedestrian/Bicycle Improvements Project will replace deteriorated sidewalk along the west side of Highway 99 between NE 63rd Street and NE 78th Street, creating a smooth, attractive and ADA-compliant walkway. A mid-block crossing with pedestrian refuge island and High-intensity Activated CrossWalk (HAWK) signal will be added near 78th Street. ADA ramps and bicycle lane striping will be upgraded. A street-side bicycle repair station will also be installed.

Three grants totalling \$1,225,000 (Federal TAP funds, Transportation Improvement Board and State Bike-Ped Program), plus \$551,000 from County Road Fund for a project total of \$1,776,000

Part II: Estimated Revenues

Fund Number / Title	Current Biennium		Next Biennium		Second Biennium	
	Road Fund	Total	Road Fund	Total	Road Fund	Total
1210 Road Fund	\$1,776,000	\$1,776,000		\$0		\$0
		\$0		\$0		\$0
		\$0		\$0		\$0
		\$0		\$0		\$0
Total:	\$1,776,000	\$1,776,000	\$0	\$0	\$0	\$0

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

Three grants totalling \$1,225,000 (Federal TAP funds, Transportation Improvement Board and State Bike-Ped Program), plus \$551,000 from County Road Fund for a project total of \$1,776,000

Part III: Estimated Expenditures

III.A - Expenditures summed up

Fund Number / Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		Road Fund	Total	Road Fund	Total	Road Fund	Total
1210 Road Fund	NA	\$1,776,000	\$1,776,000		\$0		\$0
			\$0		\$0		\$0
			\$0		\$0		\$0
			\$0		\$0		\$0
Total:		\$1,776,000	\$1,776,000	\$0	\$0	\$0	\$0

III.B = Expenditure by object category

Fund Number / Title	Current Biennium		Next Biennium		Second Biennium	
	Road Fund	Total	Road Fund	Total	Road Fund	Total
Salary/Benefits	\$100,000	\$100,000		\$0		\$0
Contractual	\$310,000	\$310,000		\$0		\$0
Supplies		\$0		\$0		\$0
Travel		\$0		\$0		\$0
Other controllables		\$0		\$0		\$0
Capital Outlays	\$1,366,000	\$1,366,000		\$0		\$0
Inter-fund Transfers		\$0		\$0		\$0
Debt Service		\$0		\$0		\$0
Total:	\$1,776,000	\$1,776,000	\$0	\$0	\$0	\$0

	Prefix	Route	()
Federal Aid Project Number			
Local Agency Project Number	351322	(WSDOT Use Only)	

Date	7/20/2015
DUNS Number	030783757
Federal Employer Tax ID Number	91-6001299

Agency Clark County	CA Agency <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Federal Program Title <input checked="" type="checkbox"/> 20.205 <input type="checkbox"/> Other
Project Title Highway 99 Pedestrian/Bicycle Improvements		Start Latitude <u>N 45.668</u> End Latitude <u>N 45.678</u>
		Start Longitude <u>W -122.663</u> End Longitude <u>W -122.668</u>
Project Termini From - To NE 63rd Street NE 78th Street		Nearest City Name Vancouver
Project Zip Code (+ 4) 98665-8872		
Begin Mile Post 3.16	End Mile Post 3.91	Length of Project 0.75 Miles
Award Type <input checked="" type="checkbox"/> Local <input type="checkbox"/> Local Forces <input type="checkbox"/> State <input type="checkbox"/> Railroad		
Route ID	Begin Mile Point	End Mile Point
		City Number NA
		County Number 6
		County Name Clark
WSDOT Region Southwest Region	Legislative District(s) 49	Congressional District(s) 3
		Urban Area Number 3

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.	\$350,000	\$300,000	\$50,000	8	2016
R/W	\$390,000	\$390,000	\$0	1	2017
Const.	\$1,036,000	\$836,000	\$200,000	6	2018
Total	\$1,776,000	\$1,526,000	\$250,000		

Description of Existing Facility (Existing Design and Present Condition)

Roadway Width Sidewalk: 4-5 feet	Number of Lanes NA
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Current sidewalk is severely deteriorated with cracked, broken and heaving pavement. Utility poles in the center of the walkway reduce the width of the sidewalk restricting access. Many curb ramps are missing or not ADA compliant.

Description of Proposed Work

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

Construct and widen sidewalk, remove or adjust utilities, ADA and APS upgrades, add midblock pedestrian crossing and HAWK signal, enhance bike lane striping, transit stop relocations or upgrades. Add bicycle repair station within area of impact.

Local Agency Contact Person Michael Derleth	Title Capital Program Specialist II	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  Approving Authority

Title Director Public Works / County Engineer Date 7/31/15

Agency Clark County	Project Title Highway 99 Pedestrian/Bicycle Improvements	Date 7/20/2015
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Type of Proposed Work		
Project Type (Check all that Apply)	Roadway Width	Number of Lanes
<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	4-5	NA

Geometric Design Data		
Description	Through Route	Crossroad
Federal Functional Classification	<input checked="" type="checkbox"/> Urban <input checked="" type="checkbox"/> Principal Arterial <input type="checkbox"/> Rural <input type="checkbox"/> Minor Arterial <input type="checkbox"/> NHS <input type="checkbox"/> Collector <input type="checkbox"/> <input type="checkbox"/> Major Collector <input type="checkbox"/> <input type="checkbox"/> Minor Collector <input type="checkbox"/> <input type="checkbox"/> Local Access	<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
Terrain	<input checked="" type="checkbox"/> Flat <input type="checkbox"/> Roll <input type="checkbox"/> Mountain	<input checked="" type="checkbox"/> Flat <input type="checkbox"/> Roll <input type="checkbox"/> Mountain
Posted Speed	40 mph	35 mph
Design Speed	45 mph	40 mph
Existing ADT	22426	25135
Design Year ADT	unknown	unknown
Design Year	unknown	unknown
Design Hourly Volume (DHV)	1092	1322

Performance of Work		
Preliminary Engineering Will Be Performed By Agency	Others 95 %	Agency 5 %
Construction Will Be Performed By Contractor	Contract 95 %	Agency 5 %

Environmental Classification	
<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 type="checkbox"/> Projects Requiring Documentation (Documented CE)

Environmental Considerations None

Agency Clark County	Project Title Highway 99 Pedestrian/Bicycle Improvements	Date 7/20/2015
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Right of Way		
<input type="checkbox"/> No Right of Way Needed * All construction required by the contract can be accomplished within the existing right of way.	<input checked="" type="checkbox"/> Right of Way Needed <input checked="" type="checkbox"/> No Relocation	<input type="checkbox"/> Relocation Required

Utilities	Railroad
<input type="checkbox"/> No utility work required <input checked="" type="checkbox"/> All utility work will be completed prior to the start of the construction contract <input checked="" type="checkbox"/> All utility work will be completed in coordination with the construction contract	<input checked="" type="checkbox"/> No railroad work required <input type="checkbox"/> All railroad work will be completed prior to the start of the construction contract <input type="checkbox"/> All railroad work will be completed in coordination with the construction contract

Description of Utility Relocation or Adjustments and Existing Major Structures Involved in the Project

Adjustment of utilities may be required (for example, relocating valve box or utility pole from center of sidewalk.)
 Timing of utility work (prior or during contract, by utility or by contractor) will be determined as design progresses.

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

Remarks

NA

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.

Agency Clark County - Board of County Councilors

Date Aug-11, 2015 By  Mayor/Chairperson

Local Agency Agreement

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

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 Part 200, (4) the policies and procedures promulgated by the Washington State Department of Transportation, and (5) 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 Highway 99 Pedestrian/Bicycle Improvements Length 0.75 miles
Termini NE 63rd Street - NE 78th Street

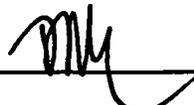
Description of Work

Construct and widen sidewalk, remove or adjust utilities, ADA and APS upgrades, add midblock pedestrian crossing and HAWK signal, enhance bike lane striping, transit stop relocations or upgrades. Add bicycle repair station within area of project impact

Project Agreement End Date: 12/2019
Proposed Advertisement Date: _____

Claiming Indirect Cost Rate
 Yes No

Type of Work	Estimate of Funding		
	(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE			
<u>86.5</u> % a. Agency	57,803.00	7,803.00	50,000.00
b. Other Elig. Non-Federal	262,197.00	262,197.00	
c. Other TIB Sidewalk Program	30,000.00	30,000.00	
d. State	5,000.00	5,000.00	
e. Total PE Cost Estimate (a+b+c+d)	355,000.00	305,000.00	50,000.00
Right of Way			
_____ % f. Agency			
g. Other			
h. Other			
i. State			
j. Total RW Cost Estimate (f+g+h+i)			
Construction			
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)	355,000.00	305,000.00	50,000.00

Agency Official
 By 
 Title Board of County Councilors
Aug-11, 2015

Washington State Department of Transportation
 By _____
 Director, Local Programs
 Date Executed _____

Construction Method of Financing (Check Method Selected)

State Aid 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 Aid 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
August 11, 2015, Resolution/Ordinance No. 2015-08-07

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.

Once written authorization is given, the Agency agrees to show continuous progress through monthly billings. Failure to show continuous progress may result the Agency's project becoming inactive, as described in 23 CFR 630, and subject to de-obligation of federal aid funds and/or agreement closure.

If right of way acquisition, or actual construction of the road for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which preliminary engineering phase was authorized, 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).

If actual construction of the road for which right of way has been purchased is not started by the close of the tenth fiscal year following the fiscal year in which the right of way phase was authorized, 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 Part 200. 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 Part 200 - Uniform Admin Requirements, Cost Principles and Audit Requirements for Federal Awards, 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 2 CFR Part 200.501 - Audit Requirements.

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 regulations outlined in 2 CFR Part 200.501 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$750,000 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 2 CFR Part 200.501. Upon conclusion of the 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 by the Director of Local Programs.

Project Agreement End Date - This date is based on your projects Period of Performance (2 CFR Part 200.309).

Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

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.