

# RECIPROCAL MAINTENANCE AGREEMENT

## GM-1464

THIS AGREEMENT is made and entered into this 15<sup>TH</sup> day of FEBRUARY, 2007, between the STATE OF WASHINGTON, Department of Transportation, hereinafter called the "STATE," and Mason County, Department of Public Works, 615 West Alder Street, Shelton, WA 98584-5016, hereinafter called the "COUNTY."

WHEREAS, the Parties hereto are charged with the responsibility of maintaining their streets, roads, and highways and maintaining staff, equipment and materials to perform the necessary work; and

WHEREAS, a Party may, from time to time, need labor, equipment, or materials or may have labor, equipment and materials available in certain locations which could be used by the other Party; and

WHEREAS, RCW 47.28.140 authorizes the STATE to enter into a cooperative agreement with a public agency for the performance of, *inter alia*, road maintenance and repair, so long as the costs and expenses are reimbursed by the Party whose responsibility it is for the work; and

WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental service which each public agency is authorized to perform, provided that such contract shall be authorized by the governing body of each Party to the contract, so long as the full costs of the services and materials are reimbursed to the agency furnishing them pursuant to RCW 39.34.130; and

WHEREAS, the Parties agree that it is in the public interest to make the most efficient use of their labor, equipment, and materials by sharing them on a reimbursable basis when available and when doing so would assist the other Party.

NOW, THEREFORE, IT IS MUTUALLY AGREED BY THE PARTIES AS FOLLOWS:

### 1. GENERAL

1.1 Each Party agrees to furnish the other Party with labor, equipment, and materials on a fully reimbursable basis when available, for roadway maintenance. The furnishing of labor, equipment, and materials shall be subject to the procedures and compensation requirements set forth below, and shall be at the option of the Party requested to perform the work or to supply labor, equipment or material. The Parties understand and agree that the work of the Party possessing the labor, equipment, and materials takes first priority.

1.2 When the STATE is requesting labor, equipment or materials, the provisions of RCW 47.28.030 shall apply.

## **2. PERIOD OF PERFORMANCE**

2.1 The period of performance of this AGREEMENT shall commence upon execution of this AGREEMENT and extend for a term of one year unless terminated sooner, pursuant to Section 10, Termination. This AGREEMENT shall automatically renew for successive one (1) year terms, unless terminated as provided herein, or for a maximum term of ten (10) years.

## **3. PROCEDURE FOR REQUESTING SERVICES**

3.1 Each request for labor, equipment, or materials shall be submitted on behalf of the STATE by the Maintenance Supervisor, Assistant Area Maintenance Superintendent, or Area Maintenance Superintendent, and each request for labor, equipment, or materials shall be submitted on behalf of the COUNTY by the Assistant County Road Engineer or position of higher authority on behalf of the COUNTY. Each request for labor, equipment or materials shall be submitted on a Task Order Form, which shall include the task location, program manager information, scope of work, task schedule and estimated cost, and be executed by the County Road Engineer on behalf of the COUNTY, or the Area Maintenance Superintendent or Assistant Area Maintenance Superintendent on behalf of the STATE. In the event of an emergency, work may be requested and agreed to verbally, but such agreement must be documented by a Task Order within forty-eight (48) hours of the verbal agreement. The Task Order Form is attached hereto as Exhibit A. All fully executed Task Order Forms shall be deemed automatically made a part of this AGREEMENT.

## **4. PAYMENT**

4.1 The Party receiving labor, equipment or materials under this AGREEMENT shall fully reimburse the Party providing it for that Party's actual direct and related indirect costs. Actual direct costs with respect to labor includes the cost of salary and benefits, but does not include overhead or administration.

4.2 The Party receiving labor, equipment or materials agrees to make payment for the labor, equipment or materials within thirty (30) days from receipt of invoice. These payments are not to be more frequent than one (1) per month.

## **5. RECORDS MAINTENANCE**

5.1 For a period of not less than three (3) years from the date of payment for the labor, equipment or materials, the Parties shall each maintain books, records, documents, and other evidence which sufficiently and properly reflect the labor, equipment or material expended for inspection, review, or audit by personnel of both Parties, other personnel duly authorized by either Party, the office of the State Auditor, and federal officials so authorized by law. If any litigation, claim, or audit is commenced, the records and accounts along with supporting

documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the 3-year retention period.

5.2 Records and other documents, in any medium, furnished by one Party to this AGREEMENT to the other Party, will remain the property of the furnishing Party, unless otherwise agreed.

## **6. CARE AND MAINTENANCE OF EQUIPMENT**

6.1 A Party requesting use of equipment from the other Party shall be solely responsible for the proper care, maintenance, and security of the equipment until the equipment is returned to the Party owning the equipment. Repair of damage, other than normal wear and tear, will be the responsibility of the Party in possession of the equipment at the time the equipment is damaged, including damages caused by a third party.

## **7. RIGHT OF ENTRY**

7.1 The Parties hereto grant to each other the right of entry upon all land in which the Parties have an interest and which land is within or adjacent to the right-of-way of any highway, road or street upon which labor is being utilized by the other Party under this AGREEMENT.

## **8. SUPERVISION and INDEPENDENT CAPACITY**

8.1 The employees of each Party who are engaged in the performance of this AGREEMENT shall continue to be employees of that Party and shall not be considered for any purpose to be employees of the other Party. Each Party shall be solely responsible for the supervision of its own employees.

## **9. AGREEMENT ALTERATIONS AND AMENDMENTS**

9.1 This AGREEMENT may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

## **10. TERMINATION**

10.1 Either Party may terminate this AGREEMENT or a Task Order upon thirty (30) days prior written notification to the other Party. If this AGREEMENT or a Task Order is so terminated, the Parties shall be liable only for performance rendered or costs incurred prior to the effective date of termination. Termination of this AGREEMENT shall likewise terminate any outstanding Task Orders.

## 11. DISPUTES

11.1 In the event that a dispute arises under this AGREEMENT, it shall be determined by a Dispute Board in the following manner: Each Party to this AGREEMENT shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, relevant Task Order, AGREEMENT terms, and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the Parties hereto. All costs for the additional appointed member shall be shared equally between the Parties.

## 12. LEGAL RELATIONS

12.1 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, judgment, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, each Party's negligent acts or omissions with respect to the provisions of this AGREEMENT. No Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and property) is caused by the sole negligence of the Party; Provided that if such claims, suits, or actions result from (a) the concurrent negligence of the Parties, or (b) 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 Party's own negligence.

12.2 The Parties specifically assume potential liability for actions brought by the Party's own employees against the other Party and, solely for the purposes of this indemnification, the Parties mutually waive any immunity they might have under the state industrial insurance laws, Title 51 RCW.

12.3 This indemnification shall survive the termination of this AGREEMENT.

## 13. GOVERNANCE

13.1 This AGREEMENT is entered into pursuant to and under the authority granted by the laws of the State of Washington and any applicable federal laws. The provisions of this AGREEMENT shall be construed to conform to those laws.

13.2 In the event of an inconsistency in the terms of this AGREEMENT, or between its terms and any Task Order entered into pursuant to Section 3, or any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. Any Task Order entered into pursuant to Section 3 and its Scope of Work and materials incorporated by reference; and
- c. The provisions of this AGREEMENT.

#### **14. ASSIGNMENT**

14.1 This AGREEMENT, and any Task Order entered into pursuant to Section 3, as well as any claim arising thereunder, is not assignable or delegable by either Party in whole or in part.

#### **15. SEVERABILITY**

15.1 If any provision of this AGREEMENT or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this AGREEMENT which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this AGREEMENT, and to this end the provisions of this AGREEMENT are declared to be severable.

#### **16. ALL WRITING CONTAINED HEREIN**

16.1 This AGREEMENT contains all the terms and conditions agreed upon by the Parties, except for Task Orders that have been entered into by the Parties pursuant to Section 3, which are incorporated herein by reference. No other understandings, oral or otherwise, regarding the subject matter of this AGREEMENT or such Task Orders shall be deemed to exist or to bind the Parties hereto.

#### **17. WARRANTY**

17.1 Each Party, its employees, agents, and assigns warrant its (they) has/have the necessary training, skill and experience (and certification where applicable) necessary to safely operate equipment and materials owned by the other Party and loaned for temporary use. Any injury or loss of life shall not be indemnified by the other Party if such injury or loss occurred as a result of the employee's negligence and/or misuse of equipment or materials.

#### **18. CONTRACT MANAGEMENT**

18.1 The program manager for each of the Parties shall be responsible for and shall be the contact person for all communications and invoices for Task Orders under this AGREEMENT.

The Program Manager for the COUNTY is:

Rick Blake  
Mason County  
Road Maintenance Manager  
415 North 6<sup>th</sup> ST  
P.O. Box 1850  
Shelton, WA 98584-3422  
(360) 427-9670 ext. 384

rickb@co.mason.wa.us

The Program Manager for the STATE is:

Joyce Komac  
Washington State  
Department of Transportation  
8293 SE Spring Creek Road  
Port Orchard, WA 98367-8192  
(360) 874-3050  
jkomac@wsdot.wa.gov

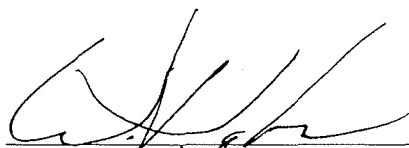
AND / OR

Tom Gibbs  
Washington State  
Department of Transportation  
4801 Olympic Highway  
Aberdeen, WA 98520-6922  
(360) 533-9346  
gibbst@wsdot.wa.gov

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

MASON COUNTY:

STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION:

By:   
County Engineer WILLIAM J. TABOR

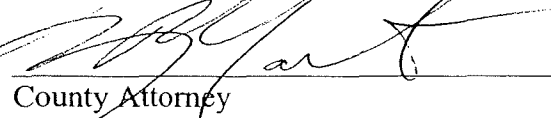
By:   
Kevin J. Dayton, Region Administrator

Date: 2/13/07

Date: 2/15/07

APPROVED AS TO FORM ONLY:

APPROVED AS TO FORM:

  
County Attorney

  
Assistant Attorney General

Date: 02/13/07

Date: 2-5-07