

**GCB 3571**  
**Interlocal Agreement**  
**Between**  
**Washington State Department of Transportation**  
**And**  
**City of Lacey**

This Agreement is between the Washington State Department of Transportation (WSDOT) and City of Lacey(CITY); hereinafter individually referred to as the “Party” and collectively referred to as the “Parties.”

**Recitals**

- A.** SSB 5165, Section 215 9(a) provides funding solely for WSDOT to address the risks to safety and public health associated with homeless encampments on or adjacent to WSDOT owned rights-of-way (ROW). WSDOT must coordinate and work with local government officials to provide services and direct people to housing alternatives that are not in highway ROW to help prevent future encampments from forming on highway ROW.
- B.** The Parties entered a Memorandum of Understanding on August 11, 2020 which granted the CITY the authority to enter the real property under the jurisdiction of WSDOT within the city limits of Lacey, Washington for the enforcement of all state and municipal laws.
- C.** The Parties subsequently entered into an agreed Guidance Document on October 8, 2020, to address known encampments at Exits 108, 109 and 111.
- D.** The Parties desire to confirm their partnership in addressing the public safety, public health, and environmental risks associated with homeless encampments on state owned ROW.

NOW THEREFORE, pursuant to chapter 39.34 RCW, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, and the attached Exhibit A by this referenced incorporated and made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

**1. General**

- 1.1 WSDOT will continue to conduct clean-up efforts, and will post and maintain “No Trespassing” warning signs at all of its property as detailed in the August 11, 2020 MOU and the October 8, 2020 Guidance Document.
- 1.2 CITY will follow adopted policies and procedures, including but not limited to: *Guidelines to Address Illegal Encampments within State Right of Way*, attached hereto as Exhibit A, and the WSDOT Safety Manual found at:  
<https://www.wsdot.wa.gov/publications/manuals/fulltext/M75-01/Safety.pdf>
- 1.3 The CITY will continue to assist with clean-up efforts as necessary with WSDOT on a limited basis.

- 1.4 While on WSDOT premises, the CITY, its agents, employees, or subcontractors shall comply with WSDOT safety and security policies and regulations. Including requirements for the prevention of transmission of communicable diseases (such as Covid).
- 1.5 The Parties will work together for the purpose of connecting at-risk populations inside WSDOT right-of-way with critical wrap-around social services and resources that can aid and improve the circumstances of homeless persons ability to leave the ROW.
- 1.6 The property subject to this agreement shall include all WSDOT right-of-way located within the CITY
- 1.7 The effective date of this agreement is July 1, 2021 with a termination date of June 30, 2025, or before if available funding is fully expended.

## **2. Payment**

- 2.1 WSDOT in consideration of the faithful performance of the work to be done by the CITY, in accordance with this Agreement will reimburse the CITY for the actual direct and related indirect cost of the work in an amount not to exceed Three Hundred Thousand Dollars (\$300,000) over the term of the agreement.
- 2.2 Partial payments shall be made by WSDOT, upon request of the CITY, to cover costs incurred. These payments are not to be more frequent than one (1) per month. It is agreed that any such partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of the final audit, all required adjustments will be made and reflected in a final payment.
- 2.3 The CITY agrees to submit a final bill to WSDOT within ninety (90) days after completion of Work and no more often than once per month.
- 2.4 Invoices and Payment  
The CITY shall submit invoices that include detailed backup information including but not limited to timesheet reports. Each CITY invoice shall include the following items:
  - Agreement number and title.
  - Invoice number.
  - Period covered by the invoice (specific beginning and ending calendar days).
  - Total amount expended to-date against the CITY's preliminary estimate, which WSDOT has agreed to as the total dollar amount for this agreement.
  - A brief narrative progress report that addresses progress of the work performed by the CITY.
- 2.5 WSDOT will review invoices, and associated attachments, and will notify the CITY of any unallowable/disapproved costs. WSDOT will specify the reason for any unallowable/disapproved costs on the invoiced amounts it believes it is not responsible for and/or may request justification from the CITY for the unallowable/disapproved costs. If the CITY provides the justification and WSDOT approves the cost, the CITY may resubmit the unallowable/disapproved costs in a subsequent invoice, noted as a resubmittal and within 60-days' notice of WSDOT's notification to the CITY of the initial unallowable/ disapproved cost.

- 2.6 Otherwise, the Parties may enter into the dispute resolution process (all unallowable/disapproved costs shall be subject to the dispute resolution process unless otherwise agreed to by the Parties) as noted in Section 3.

### **3. Dispute Resolution**

- 3.1 The Parties shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this Agreement. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this Agreement.
- 3.2 Informal Resolution. The informal resolution process begins at the staff level and is raised to the higher organizational levels, if necessary. The levels of resolution are described below:
- 3.2.1 Upon receipt of a written notice of request for dispute resolution, the WSDOT and the CITY Project Managers shall meet within ten (10) Business Days and attempt to resolve the dispute. Any resolution of the dispute requires the agreement of all Designated Representative attending the meeting who requested to attend the meeting.
- 3.2.2 If unresolved, the Olympic Regional Administrator and the CITY's counterpart shall jointly cooperate to informally resolve any dispute as quickly and efficiently as possible.
- 3.2.3 Court of Law. If the Parties have not resolved the dispute within five (5) Business Days after the second level meeting, at any time thereafter either Party may seek relief under this Agreement in a court of law. The Parties agree that they have no right to relief in a court of law until they have completed the dispute resolution process outlined in this section.

### **4. Modification**

- 4.1 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.

### **5. Indemnification and Insurance**

- 5.1 To the extent permitted by law, WSDOT and the CITY shall protect, defend, indemnify, and save harmless each other, their respective 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, arising out of, or in any way resulting from, Indemnifying Party's negligent acts or omissions. Neither WSDOT nor the CITY will be required to indemnify, defend, or save harmless each other if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from concurrent negligence of WSDOT and the CITY, the indemnity provisions provided herein shall be valid and enforceable only to the extent of WSDOT's or the CITY's own negligence. WSDOT and the CITY agree that their respective obligations under this subsection extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, WSDOT and the CITY, by mutual negotiation, hereby waive, with respect to the other Party only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. In the event that WSDOT or the CITY incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this section, all such fees, expenses, and costs shall be recoverable by the prevailing Party. This indemnification shall survive the termination of this Agreement.

- 5.2 CITY warrants that it is self-insured pursuant to a self insurance “risk pool” duly authorized by the State of Washington, and agrees to provide acceptable evidence of its self-insured status to WSDOT. CITY self insurance risk pool insurance policy must provide liability coverage for its operations under this Agreement, including (i) general liability coverage for bodily injury, property damage, and personal injury of not less than Two Million and no/100 Dollars (\$2,000,000.00) combined single limit per occurrence, with a general aggregate amount of not less than Five Million Dollars (\$5,000,000.00) per policy period; coverage under policies shall be triggered on an “occurrence basis,” not on a “claims made” basis; and (ii) commercial automobile liability coverage providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the operations under this Agreement, with a combined single limit of not less than One Million \$1,000,000 per occurrence. WSDOT shall be named as an additional insured by endorsement of the commercial general liability coverage provided under the “risk pool” coverage, utilizing ISO Form 2026 (Additional Insured – Designated Person or Organization) or its equivalent without modification. Coverage obtained by County in compliance with the Section shall not be deemed as having relieved County of any liability in excess of such coverage.
- 5.3 In the event CITY is not a party to a state approved self insurance “risk pool”, it shall secure insurance coverage in conformance with the required of this Section 5.2 and promptly provide a certificate of insurance from an insurer licensed to conduct business in the State of Washington, evidencing the procurement of the required insurance coverages. WSDOT shall be named as an additional insured by endorsement of the liability policy required, utilizing ISO Form 2026 (Additional Insured – Designated Person or Organization) or its equivalent without modification on any such general liability policies.

**6. Governing Law and Venue**

- 6.1 This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington. In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action or proceedings shall be brought in Thurston Superior Court. Further, the Parties agree that each will be solely responsible for payment of their own attorneys’ fees, witness fees, and costs.

**7. Independent capacity**

- 7.1 The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.

**8. Contacts and Notices**

- 8.1 Contact between the Parties, including but not limited to invoicing, agreement administration, and notices will be directed to the below identified contacts as follows or his/her designee or such other addresses as either Party may, from time to time, designate in writing:

**CITY Project Manager shall be:**

City Manager  
 Scott Spence  
 420 College St SE  
 Lacey, WA 98503  
 Phone: (360) 491-3214  
 Email: sspence@ci.lacey.wa.us

**WSDOT Project Manager shall be:**

Maintenance Superintendent – Area 1  
 Jeff Hastings  
 11211 41<sup>st</sup> Ave SW  
 Lakewood, WA 98499  
 Phone (253) 983-7550  
 Email: hastinj@wsdot.wa.gov

**9. Severability**

9.1 Should any clause, phrase, sentence or paragraph of this Agreement or its application be declared invalid or void by a court of competent jurisdiction, the remaining provisions of this Agreement or its applications of those provisions not so declared shall remain in full force and effect.

**10. Termination**

10.1 Neither WSDOT nor the CITY may terminate this Agreement without the concurrence of the other Party. Termination shall be in writing and signed by both Parties. If this Agreement is so terminated prior to the fulfillment of the terms stated herein, the CITY shall be reimbursed for actual direct and related indirect expenses and costs incurred up to the date of termination, as well as the costs of non-cancelable obligations.

**11. No Third-Party Beneficiaries**

11.1 This Agreement is executed for the sole and exclusive benefit of the signatory Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any right, remedy or other entitlement upon any person other than the Parties hereto, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third-party, nor shall any provision herein give any third-party any right of action against any Party hereto.

**12. Audits/Records**

12.1 All records for the PROJECT in support of all costs incurred shall be maintained by WSDOT for a period of six (6) years. The CITY shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. Should the CITY 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 the federal/state government.

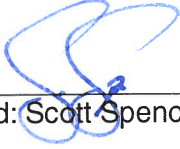

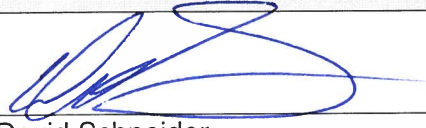
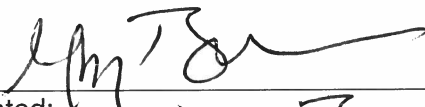
**13. Working Days**

13.1 Working days for this Agreement are defined as Monday through Friday, excluding Washington State furlough days or state holidays pursuant to RCW 1.16.050.

**14. Counterparts**

14.1 This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each party, for all purposes. Electronic signatures or signatures transmitted via e-mail in a "PDF" may be used in place of original signatures on this Agreement. Each party intends to be bound by its electronic or "PDF" signature on this Agreement and is aware that the other parties are relying on its electronic or "PDF" signature.

In Witness Whereof, the Parties hereto have executed this Agreement as of the date last written below.

City of Lacey	Washington State Department of Transportation
By: 	By: 
Printed: Scott Spence	Printed: TROY A COWAN
Title: City Manager	Title: ARA for M+O
Date: 5/18/2022	Date: 5-26-2022
Approved as to Form City of Lacey	Approved as to Form Washington State Department of Transportation
By: 	By: 
Printed: David Schneider	Printed: Guy T Bowman
Title: City Attorney	Title: Asst. Atty General
Date: 5/17/22	Date: 5-25-2022