

GCB 3128
I-90 WESTBOUND ON-RAMP PROJECT AGREEMENT

This Agreement is entered into between the Washington State Department of Transportation, hereinafter “WSDOT,” and the City of Snoqualmie, hereinafter the “CITY;” hereinafter collectively referred to as the “Parties” and individually as the “Party.”

RECITALS

1. WSDOT proposes to construct facilities to enhance safety and traffic flow between Interstate 90 (“I-90”) and State Route 18 (“SR 18”) with the design and construction of the Snoqualmie Parkway (“the I-90 / SR 18 Improvement Project”). WSDOT is currently conducting environmental review of one or more alternative improvement configurations, including “diverging diamond” improvements and other configurations. WSDOT anticipates commencing construction of the I-90 / SR Improvement Project in approximately 2021.
2. Prior to commencing construction of the I-90/SR 18 Improvement Project, WSDOT proposes to construct interim facilities to enhance safety and traffic flow onto westbound Interstate 90 (I-90). This interim project, hereinafter the “I-90 Ramp Project,” will be constructed within WSDOT’s I-90 limited access right of way. The approximate westernmost boundary (Ex. A, P. 1 of 2) and the approximate northern, eastern and southernmost boundaries (Ex. A, P. 2 of 2) of the I-90 Ramp Project are shown on Exhibit A in green.
2. As of the date of this Agreement, the westbound I-90 on-ramp allows a signal controlled right turn from the intersection where southbound Snoqualmie Parkway meets State Route (SR) 18, hereinafter the “I-90/SR 18 Interchange.” This westbound I-90 on-ramp divides into two lanes for a distance before rejoining into one. Trucks may take the right lane where the ramp divides and make use of a Washington State Patrol (“WSP”) weigh station, Scale No. 25, then either continue to westbound I-90 or turn right onto a loop up to Snoqualmie Parkway. Traffic in the right lane on southbound Snoqualmie Parkway can become congested as it approaches the I-90/SR 18 Interchange during the a.m. and p.m. peak hours. The CITY has expressed safety and access concerns over backups on Snoqualmie Parkway that extend from the westbound I-90 on-ramp through the unsignalized intersection with Southeast 99th Street.
3. To facilitate the I-90/SR 18 Project, WSP relinquished control over the Scale No. 25 weigh station to WSDOT. WSDOT has completed preliminary (100%) design plans for the I-90 Ramp Project, as shown in Ex. B. The I-90 Ramp Project will modify the existing right turn lane from the southbound Snoqualmie Parkway at the I-90/SR 18 Interchange to create a free right turn protected by a traffic island. The Scale No. 25 weigh station will be closed prior to the start of construction of the I-90 Ramp Project, keeping the building intact but removing the scale. The I-90 Ramp Project will pave over the area where the scale is currently located, and modify the right lane of the divided two lanes to create a dedicated lane on the ramp for traffic entering from southbound Snoqualmie Parkway. The I-90 Project will install a concrete barrier north of the right lane to separate the lane from the existing weigh station building, and close off the weigh station return loop to Snoqualmie Parkway. Once the I-90 Ramp Project is complete, traffic from southbound Snoqualmie Parkway will utilize the modified right turn lane from southbound Snoqualmie Parkway to the new dedicated lane on the westbound I-90 on-ramp, while traffic from north bound SR 18 will make a left-hand turn and utilize the existing parallel left-hand on-ramp lane. Traffic from the two on-ramp lanes will then merge together and enter westbound I-90.

4. Work for the I-90 Ramp Project will include, but is not limited to, earthwork, paving, drainage, Intelligent Transportation Systems/electrical work, signing, striping, traffic control, ramp metering and the utilization of substantial portions of existing pavement.
5. The total cost estimate for the I-90 Ramp Project is One Million One Hundred Ninety-Four Thousand Eight Hundred Fifty-Eight Dollars (\$1,194,858), with Seventy Thousand Dollars (\$70,000) for design (preliminary engineering) and One Million One Hundred Twenty-Four Thousand Eight Hundred Fifty-Eight Dollars (\$1,124,858) for construction, construction engineering and contingencies, as shown on Exhibit B.
7. WSDOT and the CITY agree that it would be in the public's best interest to accelerate completion of design and construction of the I-90 Ramp Project, because the interim constructed facilities will reduce existing traffic congestion on Snoqualmie Parkway and thereby improve safety.
8. The Parties wish to enter into this Agreement in order to provide the framework under which they can work cooperatively with one another and make reasonable, good faith efforts to timely and expeditiously facilitate WSDOT's completion of design and construction of the I-90 Ramp Project.

NOW, THEREFORE, pursuant to RCW 47.28.140, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, covenants, conditions, and performances contained herein, and the attached Exhibit A, Exhibit B and Exhibit C, that are incorporated herein by this reference,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. I-90 RAMP PROJECT DESIGN AND CONSTRUCTION

- 1.1 The Parties agree that the I-90 Ramp Project is proposed to be constructed on property located entirely within WSDOT-owned highway right-of-way, outside of the corporate limits of the CITY of Snoqualmie. Accordingly, WSDOT is responsible for design and construction of the I-90 Ramp Project.
- 1.2. WSDOT prepared 60% and 100% design plans for the I-90 ramp Project. Excerpts of the draft 100% design plans are attached hereto as Exhibit A. In light of CITY familiarity with existing traffic patterns and design considerations related to Snoqualmie Parkway, I-90 and their interchange, WSDOT provided the CITY reasonable opportunity for review and comment upon the draft 60% and 100% design plans. WSDOT agrees to give good faith consideration to CITY comments and recommendations, and to consider incorporating them into Project design revisions where feasible and within budget; provided, however, that WSDOT retains the final authority and responsibility for the Project design documents.
- 1.3 WSDOT's contract for construction shall require completion of all physical work within 45 working days. For purpose of this subsection 1.4, "working day" shall have the meaning as set forth in Section 1-08.5 of the WSDOT Standard Specifications for Road, Bridge and Municipal Construction, M 41-10 (as amended as of January 7, 2019). WSDOT intends to construct the Project according to the timelines set forth in the Project Milestones attached hereto as Exhibit D, although the Parties acknowledge that these dates may change depending on weather or other factors beyond the Parties' control.

2. FUNDING

- 2.1 Each Party shall provide the funding and resources necessary to fulfill the responsibility of that Party as established in this Agreement.
- 2.2 WSDOT shall provide all necessary funding for all I-90 Ramp Project design and construction costs without reimbursement from the CITY, except for the CITY Payment required by Section 2.3 of this Agreement.
- 2.3 The CITY, in consideration of WSDOT designing and constructing the I-90 Ramp Project consistent with the cost estimate shown on Exhibit B and the Project's 100% Preliminary Plans, a portion of which (the pavement marking plans) are shown on Exhibit C and, subject to the all of the provisions of this Agreement, will provide to WSDOT a maximum payment in the amount of fifty percent (50%) of the total estimated design and construction cost of the I-90 Ramp Project, specifically, Five Hundred Ninety-Seven Thousand, Four Hundred Twenty-Nine Dollars (\$597,429) ("CITY Payment") for the I-90 Ramp Project.
- 2.4 WSDOT will apply the CITY Payment on an equal basis with WSDOT funds to design and/or construction costs of the I-90 Ramp Project, *i.e.*, for each dollar (\$1.00) of the CITY Payment applied to design or construction costs, WSDOT will apply one dollar (\$1.00) of STATE funds. If the CITY Payment is not fully expended because the I-90 Ramp Project is completed for less than the total cost estimate of One Million One Hundred Ninety-Four Thousand Eight Hundred Fifty-Eight Dollars (\$1,194,858), WSDOT shall allocate the remaining portion of the CITY Payment to the budget for design and construction of the I-90 / SR 18 Improvement Project.
- 2.5 If all construction bids for the I-90 Ramp Project, when combined with the subtotals for late season ad contingency, sales tax, contingency and construction engineering shown on Ex. B, page 4, are certified to exceed the total Project I-90 Ramp Project construction cost (exclusive of preliminary engineering) shown on Exhibit B plus 10%, WSDOT will confer with the City and reach a decision as follows:
 - 2.5.1 If both Parties agree to proceed with the I-90 Ramp project, WSDOT will coordinate with the CITY concerning award of the contract for construction or, in the alternative, repackaging the work and submitting the new package for advertisement for bids.
 - 2.5.2 If the CITY or WSDOT decides not to proceed with the I-90 Ramp Project, WSDOT will withdraw the advertisement for bids and return to the CITY the amount of the CITY Payment that has not been expended. This Agreement shall then terminate.
 - 2.5.3 The CITY agrees to make its share of the CITY Payment for design costs (\$35,000, *i.e.*, 50% of \$70,000) to WSDOT for the I-90 Ramp Project within thirty (30) calendar days from the date of execution of this Agreement. At the time WSDOT issues payment to its construction contractor, WSDOT will bill the CITY for 50% of each payment plus then-applicable WSDOT construction engineering costs, up to the CITY Payment maximum. In its invoice to the CITY, WSDOT will include a pre-estimate report documenting the monthly payment amount due the contractor, along with an invoice documenting the monthly WSDOT construction engineering cost (if any). The City will pay WSDOT within thirty (30) days of receipt of WSDOT invoices.

3. MAINTENANCE AND OPERATION

3.1 Upon completion of the work outlined herein, all future maintenance and operation of the facilities belonging to WSDOT will be done at the sole cost and expense of WSDOT and without cost or expense to the CITY.

4. PARTY REPRESENTATIVES

4.1 For all communications under this Agreement the Parties designate the following representatives:

City of Snoqualmie	Washington State Department of Transportation
Robert R. Larson City Administrator City of Snoqualmie 38624 SE River Street PO BOX 987 Snoqualmie, WA 98065 (425) 888-8009 blarson@ci.snoqualmie.wa.us	John Chi, P.E. Engineering Manager Washington State Department of Transportation Northwest Region 15700 Dayton Ave. North PO BOX 330310 Seattle, WA 98133 (206) 440-4577 CHIJ@wsdot.wa.gov

4.2 A Party may designate an alternative representative to the individual listed in Section 5.1 and in this event will notify the other Party in writing.

5. GENERAL PROVISIONS

5.1 Amendment: This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

5.2 Term of Agreement: Unless otherwise provided herein, the term of this Agreement shall commence as of the date the last Party signs this Agreement, and shall remain in effect until terminated pursuant to Section 6.3 below.

5.3 Termination:

5.3.1 This Agreement may terminate upon the mutual written agreement of WSDOT and the CITY. If the Parties agree to terminate this Agreement they shall address in writing all issues related to the termination.

5.3.2 This Agreement shall terminate when both the CITY's Payment has been made to WSDOT pursuant to this Agreement and the I-90 Ramp Project has been completed.

5.3.3 This Agreement shall terminate if the conditions of both Section 2.5 and Section 2.5.2 apply.

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

5.4 Risk Allocation:

5.4.1 No CITY Liability for Assistance, Review or Comments. Any CITY review or comment upon any of WSDOT's design plans or specifications, or any CITY assistance provided to WSDOT by the CITY during the course of the I-90 Ramp Project is for the CITY's

sole benefit and shall not constitute an opinion or representation by the CITY as to any compliance with any law, ordinance, rule or regulation or any adequacy of WSDOT design plans or specifications for other than the CITY's own purposes; and such assistance, review or comment shall not create or form the basis of any liability on the part of the CITY or any of its officials, officers, employees, or agents for any injury, damage, or other liability resulting from, or relating to, any inadequacy, error or omission therein or any failure to comply with applicable law, ordinance, rule, regulation or standard of care; and such assistance, review or comment shall not relieve WSDOT of any of its obligations under this Agreement or under applicable law.

- 5.4.2 No CITY Liability for Delay, Consequential or Liquidated Damages. The CITY shall not be liable in damages for any failure to act within any time limits established by law or for any other delay to WSDOT or WSDOT's contractors, nor shall the CITY have any liability for consequential or liquidated damages, and, to the maximum extent allowed by law, WSDOT shall protect, defend indemnify, and save harmless the CITY, and its officials, officers, employees, and agents, from any and all costs, claims, demands, judgments, damages, or liability of any kind caused by, resulting from, relating to, or connected to delays. The PARTIES agree that this Agreement shall not be construed as a construction agreement.
- 5.4.3 No CITY Liability for Design or Construction Costs. The City's sole financial obligation under this Agreement is the CITY Payment as set forth in Section 2.3 above, and except as provided therein, the CITY shall have no liability WSDOT for any design or construction costs of the I-90 Ramp Project. Further, the City shall not be liable to WSDOT or any of WSDOT's contractors for any design or construction costs for the I-90 Ramp Project, nor shall CITY be liable in damages for any claims arising out of or related to the WSDOT's construction contract for the I-90 Ramp Project and, to the maximum extent allowed by law, WSDOT shall protect, defend indemnify, and save harmless the CITY, and its officials, officers, employees, and agents, from any and all costs, claims, demands, judgments, damages, or liability of any kind caused by, resulting from, relating to, or connected to WSDOT's construction contract for the I-90 Ramp Project, including without limitation any claims for damages for extra work, differing site conditions, *quantum meruit*, breach of contract, breach of implied warranties of good faith and fair dealing, or the like. The PARTIES agree that this Agreement shall not be construed as a construction agreement.
- 5.4.4 General Indemnity. Each of the Parties shall protect, defend, indemnify, and hold harmless the other Party and its employees and authorized agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, damages (both to persons and/or property) or liability of any kind, arising out of, or in any way resulting from, the negligent acts or omissions, or intentional misconduct, of the indemnifying Party and its employees, contractors, and/or authorized agents. No Party shall be required to indemnify, defend, or hold harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) WSDOT, its employees and authorized agents and (b) the CITY, its employees, contractors, consultants, or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of the other Party, its employees, contractors, consultants, and authorized agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to the other Party only, and

expressly not for the benefit of their employees or third parties, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Title 51 RCW.

- 5.4.5 Survival of Indemnification Obligations. Any liability of WSDOT or CITY under any indemnity provision of this Agreement shall survive termination of this Agreement, whether or not any claim giving rise to such liability shall have accrued.
- 5.5 Disputes: In the event that a dispute arises under this Agreement, it shall be resolved as follows: WSDOT and the CITY agree to negotiate to resolve any issues. Should such negotiations fail to produce a satisfactory resolution then WSDOT and the CITY shall each appoint a member to a disputes board, these two members shall select a third board member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded, and shall issue a written recommendation to the Parties for resolution of the dispute. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute, and the Parties agree they have no right to relief in a court of law until they have completed the dispute resolution process outlined in this Section and five (5) days have passed following issuance of the dispute board's written recommendation. Each Party shall be responsible for its own costs and fees and agree to share equally in the cost of the third disputes board member.
- 5.6 Construction and Venue: This Agreement shall be interpreted, construed and enforced 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 agree that any such action or proceedings shall be brought in King County Superior Court. Further, the Parties agree that each will be solely responsible for payment of its own attorney's fees, witness fees, and costs.
- 5.7 Audits/Records: All records for the I-90 Ramp 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 I-90 Ramp Project work is subject to audit by either or both Parties and/or their designated representatives, and/or the State of Washington and/or the federal government.
- 5.8 Severability: Should any section, term or provision of this Agreement be determined to be invalid, the remainder of this Agreement shall not be affected and the same shall continue in full force and effect to the maximum extent permitted by law.
- 5.9 Remedies; Enforcement. Subject to the dispute resolution provisions in Section 6.5, WSDOT and the CITY shall have, in addition to any remedies available at law or equity, the right to specific performance of this Agreement.
- 5.10 Police Power. The Parties acknowledge the right of each Party to the exercise of police power pursuant to the general law and applicable statutes for the protection of the public health, safety, and welfare of its citizens and their properties. Nothing in this Agreement shall be construed as waiving or limiting WSDOT's or CITY's rights to exercise its police power or to preclude or limit the exercise of any regulatory power in connection with the I-90 Ramp Project.

5.11 Waiver. No failure to exercise, and no delay in exercising, on the part of either Party hereto, any rights, power, or privilege hereunder shall operate as a waiver thereof, except as expressly provided herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Party's date last signed below.

CITY of Snoqualmie	Washington State Department of Transportation
By:	By:
Printed: Matthew R. Larson	Printed: Amir Rasaie
Title: Mayor	Title: Assistant Regional Administrator Northwest Region
Date:	Date:
Approved as to Form CITY of Snoqualmie	Approved as to Form Washington State Department of Transportation
By:	By:
Printed:	Printed:
Title: CITY Attorney	Title: Assistant Attorney General
Date:	Date: