


Agenda Sheet for City Council Meeting of:

09/12/2022

Date Rec'd

8/22/2022

Clerk's File #

OPR 2022-0626

Renews #**Submitting Dept**

ENGINEERING SERVICES

Cross Ref #**Contact Name/Phone**

DAN BULLER 625-6391

Project #

2019164

Contact E-Mail

DBULLER@SPOKANECITY.ORG

Bid #**Agenda Item Type**

Contract Item

Requisition #**Agenda Item Name**

0370 - INTERLOCAL AGREEMENT DEPT OF TRANSPORTATION TRENT UNDERCROSSING

Agenda Wording

Interlocal Agreement with Washington State Department of Transportation to reimburse DOT for construction of trail segment under the Trent Avenue Bridge. Total cost estimate of \$192,144.62.

Summary (Background)

This interlocal agreement will allow for the City to reimburse the Department of Transportation for costs incurred to add a trail underneath the Trent Avenue Bridge. This trail would greatly improve pedestrian safety and is part of a broader Centennial Trail to Ben Burr Trail connection.

Lease? NO

Grant related? NO

Public Works? YES

Fiscal Impact**Budget Account**

Expense \$ 192,144.62

0

Select \$

#

Select \$

#

Select \$

#

Approvals**Council Notifications****Dept Head**

BULLER, DAN

Study Session\Other

PIES 8/22/22

Division Director

FEIST, MARLENE

Council Sponsor

Kinnear, Beggs, Bingle

Finance

ALBIN-MOORE, ANGELA

Distribution List**Legal**HARRINGTON,
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9/12/2022

Approved by Spokane City Council on: ~~10/10/2022~~Clerical Correction
10/14/2022 EK

 city clerk

Committee Agenda Sheet

PIES

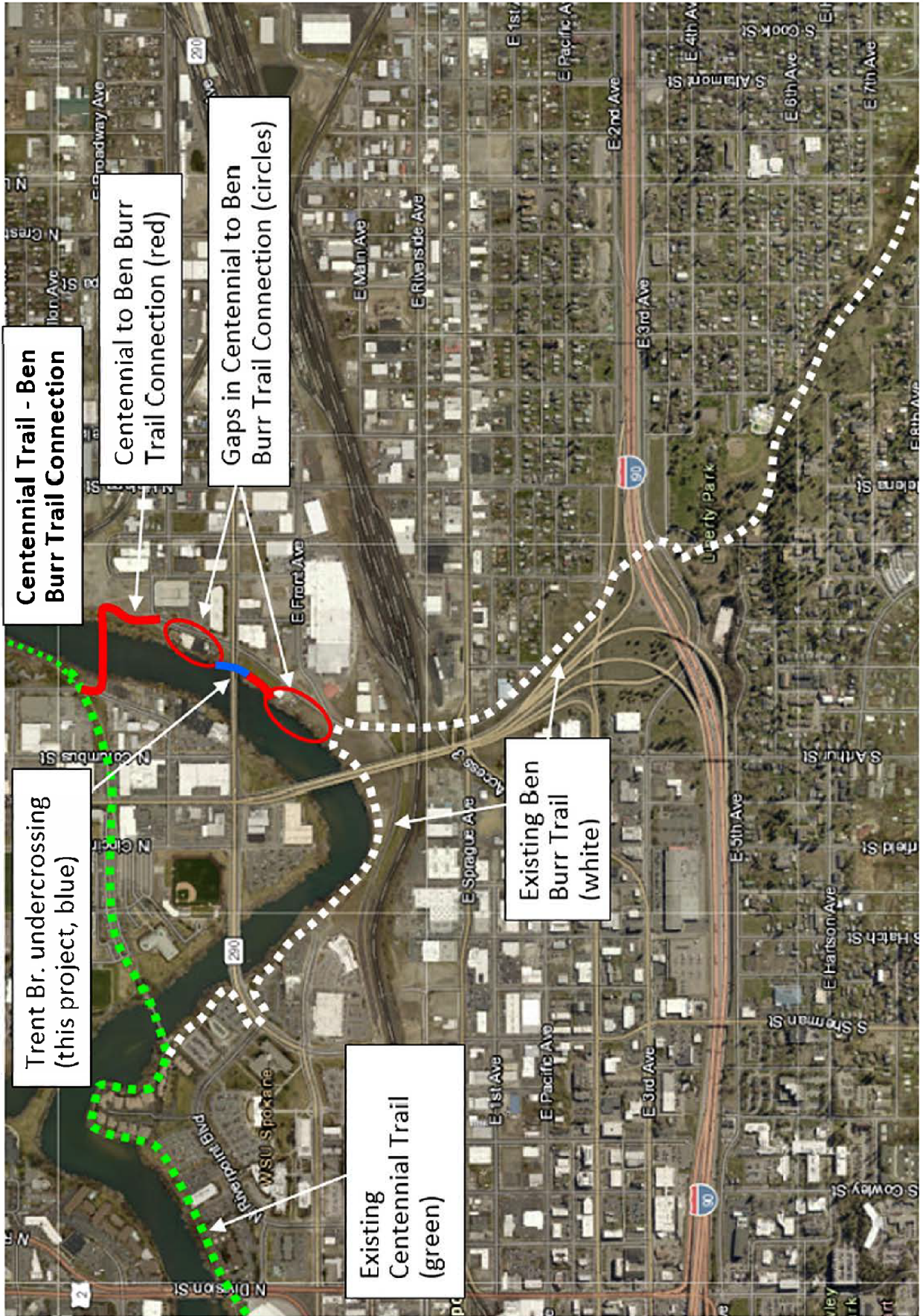
Submitting Department	Public Works, Engineering
Contact Name & Phone	Dan Buller 625-6391
Contact Email	dbuller@spokanecity.org
Council Sponsor(s)	Lori Kinnear
Select Agenda Item Type	X Consent <input type="checkbox"/> Discussion Time Requested: _____
Agenda Item Name	Centennial Trail to Ben Burr Connection
Summary (Background)	<ul style="list-style-type: none"> • Engineering Services has been working with WSDOT for several years to include a segment of trail as part of WSDOT's on-going Trent Bridge replacement project. • This trail segment is part of a broader Centennial Trail to Ben Burr Trail connection as pictured in the attached exhibit. • The proposed trail segment beneath Trent Ave. would greatly improve the safety of crossing this busy truck route. • Engineering Services has negotiated a change order into WSDOT's on-going Trent Bridge replacement project. The cost is slightly less than \$200,000. • If approved by council, this trail segment would be constructed by next summer. • The remaining two gaps in this trail as pictured on the attached exhibits will be constructed in upcoming not yet funded projects.
Proposed Council Action & Date:	Approval of agreement with WSDOT
Fiscal Impact: Total Cost: Approved in current year budget? <input type="checkbox"/> Yes X No <input type="checkbox"/> N/A Funding Source X One-time <input type="checkbox"/> Recurring Specify funding source: project funds (generally street or utility funds) Expense Occurrence X One-time <input type="checkbox"/> Recurring Other budget impacts: (revenue generating, match requirements, etc.)	
Operations Impacts	
What impacts would the proposal have on historically excluded communities? Public Works services and projects are designed to serve all citizens and businesses. We strive to offer a consistent level of service to all, to distribute public investment throughout the community, and to respond to gaps in services identified in various City plans. We recognize the need to maintain affordability and predictability for utility customers. And we are committed to delivering work that is both financially and environmentally responsible. This item supports the operations of Public Works.	
How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities? N/A – This contract supports multiple public works projects and should not impact racial, gender identity, national origin, income level, disability, sexual orientation or other existing disparity factors.	

How will data be collected regarding the effectiveness of this program, policy or product to ensure it is the right solution?

Public Works follows the City's established procurement and public works bidding regulations and policies to bring items forward, and then uses contract management best practices to ensure desired outcomes and regulatory compliance.

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?

The projects which will use this on-call contract are consistent with our adopted six year programs as well as the annual budget and strategic initiative to advance street maintenance activities.



DRAFT GCB 2977 INTERLOCAL AGREEMENT

This Interlocal Agreement is entered into between City of Spokane, a municipal corporation of the State of Washington, hereinafter referred to as “Local Agency,” and Washington State Department of Transportation, hereinafter referred to as “WSDOT,” hereinafter to be referred to individually as the “Party” and collectively as the “Parties.”

1. The LOCAL AGENCY is planning to construct a trail beneath the currently under construction SR290 East Trent Bridge, hereinafter referred to as the “Bridge Project”, connecting to the existing trail to the south and extending far enough north to get above the Spokane River ordinary high-water mark, hereinafter referred to as the “Trail PROJECT,”
2. The Local Agency desires to make this improvement in conjunction with WSDOT’s current Bridge project, to most effectively coordinate City improvements with WSDOT improvements, disturb the Spokane River and surrounding area only once, and most effectively utilize public resources by having the same contractor do all the work in this area.
3. The Local Agency shall reimburse WSDOT for all actual direct and related indirect costs incurred by WSDOT for the added change order work to the Bridge Project as shown in Exhibit A.
4. WSDOT and the Local Agency now wish to define each Party’s responsibilities for design, construction, inspection, materials testing, costs, and Bridge Project acceptance.

Now, therefore, by virtue of Title 39.34 RCW, pursuant to the above recitals that are incorporated herein as if fully set forth below and in consideration of the terms, conditions, covenants and performances contained in or the attached Exhibits A and B by this reference made a part of this Agreement,

It is mutually agreed as follows:

1. Pre-Construction and Construction Provisions:

- 1.1 The Trail Project plans, specifications, and special provisions (Trail Project Documents) are to be prepared in accordance with the current State of Washington Standard Specifications for Road, Bridge, and Municipal Construction, 2020 edition, and amendments thereto (2020 Standard Specifications), and the Washington State Department of Transportation Design Manual, M 22-01, current version, unless otherwise noted.

2. WSDOT Responsibilities

- 2.1 Review city design of proposed trail.

- 2.2 Negotiate and execute change order with Contractor.
- 2.3 Utilize river/environmental protection measures installed for bridge construction to construct the proposed trail.
- 2.4 Provide construction inspection of trail construction in consultation with the City construction management team.
- 2.5 Pay Contractor (to be reimbursed by City)

3. Local Agency Responsibilities:

- 3.1 Obtain necessary permitting for the Project.
- 3.2 Mitigate any disruption to WSDOT's proposed mitigation areas.
- 3.3 Design the proposed trail beneath the bridge (including paving) in such a way that complies with permit requirements and does not negatively impact WSDOT's abutment armoring.
- 3.4 Consult with WSDOT during the construction phase of the proposed trail.
- 3.5 Pay WSDOT to act as lead agency and construct the proposed trail, which shall include all WSDOT direct and related indirect costs associated with the Trail Project.
- 3.6 Upon completion, maintain and repair the paved pathway, at its sole expense, so as to not negatively impact WSDOT's infrastructure.
- 3.7 Survey (stake) the trail/path within 3 days of Contractor's request for survey.

4. Construction

- 4.1 WSDOT will be the Local Agency's Representative during construction and will act as lead agency in the construction and administration of the Trail Project. A description of the work to be accomplished on the Trail Project is attached and is incorporated into this Agreement as Exhibit B. The WSDOT Representative will provide all necessary services and tools, including but not limited to Contract administration, inspection, materials testing, and the representation necessary to administer and manage the construction Contract for the Trail Project to ensure work is constructed in accordance with the Contract documents. WSDOT may utilize a Consultant in providing some of these services.
- 4.2 WSDOT will allow the Local Agency to consult with and inquire of the WSDOT Representative, attend all meetings, and have access to all documentation as to all matters concerning the Trail Project. The Local Agency shall not provide direction, directly or

indirectly to the contractor. All contact between said Local Agency and the Contractor shall be through WSDOT's Representative.

- 4.3 The Local Agency may inspect the Trail Project. Any costs for such inspection shall be borne solely by the Local Agency.
- 4.4 WSDOT will maintain one set of plans as the official "as-built" set, then make notations in red ink of all plan revisions typically recorded per standard WSDOT practices, in accordance with the Construction Manual. Once final acceptance of the Contract has occurred, WSDOT will submit one reproducible set of as-built plans to the Local Agency no later than 180 days after Final Acceptance.
- 4.5 WSDOT will prepare the permanent final construction documentation in general conformance with Section 10-3.1A (1) of the WSDOT Construction Manual.

5. Archeological and/or Historical Findings

- 5.1 If any archaeological and/or historical resources are revealed in the Trail Project work vicinity, work shall immediately stop work. WSDOT will retain a qualified archaeologist, at the Local Agency's sole cost and expense, who shall evaluate the site. The WSDOT Representative, in consultation with applicable WSDOT personnel, shall be solely responsible for determining when and under what circumstances the Trail Project work may continue. The Local Agency agrees that costs incurred as a result of a suspension of the Trail Project work pursuant to this provision shall be part of the Trail Project costs and shall be the sole responsibility of the Local Agency; provided, if the discovery of archaeological and/or historical resources is more closely related to WSDOT's Bridge Project, Local Agency shall have no responsibility for said costs. WSDOT shall have no cost liability as provided in Section 6.1.

6. Payment

- 6.1 The Local Agency agrees that it shall be responsible for all actual direct and related indirect costs associated with construction and contract administration related to the Trail Project. As per the WSDOT EBASE User's Guide, the cost of the Construction Administration work is estimated to be 10% of the Engineer's Estimate for the Trail Project (Exhibit A) or the Bid Proposal amount for the Trail Project, whichever is higher. WSDOT shall invoice the Local Agency and provide supporting documentation, for which the Local Agency agrees to pay WSDOT within thirty (30) calendar days of receipt and approval of an invoice. A partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of final invoice, the Parties will resolve any discrepancies.
- 6.2 Increase in Cost: In the event unforeseen conditions require an increase in the cost of the work listed above in Section 6.1, (including sales tax, engineering, contingencies, and WSDOT overhead) by more than Twenty-Five (25) percent, the Parties agree to modify the amount listed in Section 6.1 to include such cost increase. Local Agency shall be responsible for any such cost increases.

- 6.3 Contract administration costs shall commence on the day of execution.
- 6.4 The cost of the construction includes items set forth in the Contract documents. Construction contingencies may be used for cost increases to the Project Contract work, including any change orders. Construction engineering as shown in Section 6.1 reimburses the WSDOT Contract administration work.
- 6.5 The WSDOT Representative (or designee) will hold progress estimate review meetings with the contractor as needed and will invite the Local Agency to participate in these reviews when they occur. WSDOT will be responsible for making progress payments and final payments to the contractor in accordance with the 2020 WSDOT Standard Specifications. WSDOT shall invoice the Local Agency and provide supporting documentation, for which the Local Agency agrees to reimburse WSDOT within thirty (30) calendar days of receipt.
- 7. Right of Entry**
The Local Agency hereby grants to WSDOT and its authorized agents, contractors, subcontractors, and employees, a right of entry upon all land in which the Local Agency has an interest for the purpose of constructing the Trail Project.
- 8. Change Orders**
- 8.1 Changes to the Project Contract will be documented by change order in accordance with the 2020 WSDOT Standard Specifications. WSDOT shall process change orders for all the changes affecting the Project in accordance with Section 1-04.4 of the 2020 WSDOT Standard Specifications.
- 8.2 WSDOT will advise the Local Agency of any proposed required changes affecting the Trail Project as soon as possible and provide an opportunity, if time permits, to review the change before implementation. WSDOT will determine the length of the review time based upon the need to expedite the change to avoid delay to the Contractor.
- 8.3 WSDOT shall submit proposed Trail Project change orders in excess of \$10,000 to the Local Agency for review and approval prior to the issuance of a change order to the Contractor. Local Agency shall respond within 7 days of receipt of the proposed change order, or such other time period as mutually agreed by the Parties so as to not delay the Trail Project or the Bridge Project. WSDOT has the right to issue change orders necessary to, in its sole discretion, preserve public safety without first obtaining Local Agency approval. In such circumstances, Local Agency agrees that WSDOT may issue change orders of \$10,000 or less without the Local Agency's approval when aggregated they are less than 25 percent of the Bid Proposal amount for the Trail Project. If cumulative change orders are anticipated to exceed that amount, WSDOT shall timely notify the Local Agency so staff may seek additional change order authority from City Council so that the Trail Project is not delayed. The Local Agency further agrees to reimburse WSDOT for all change orders as provided in this agreement. Time and monetary impacts to the Trail Project that occur while waiting for Local Agency change order approval will be borne by the Local Agency.

8.4 The Local Agency's EOR shall be responsible for providing revised plan sheets, specifications, quantities, updated design information, and staking information, as necessary for Trail Project change orders. WSDOT will make available to the Local Agency all change order documentation related to the Trail Project.

9. Final Inspection and Project Acceptance

9.1 Punch List: WSDOT shall notify the Local Agency in writing of Substantial Completion, as defined in the 2020 WSDOT Standard Specifications, of the Trail Project, within five (5) working days of said completion. WSDOT shall prepare the punch list and oversee the Contractor's corrections of the Trail Project. WSDOT shall include the Local Agency in a walk-through of the Trail Project to assist WSDOT in compiling punch list items that are outside WSDOT's SR 290 limits.

9.2 Project Acceptance: After Physical Completion of the Trail Project, as defined in the 2020 WSDOT Standard Specification, the Local Agency will provide WSDOT with a Letter of Acceptance of the Project, after the following items have been completed:

- a. Satisfactory completion of the Trail Project Work as determined by WSDOT and the Local Agency and all Agreement obligations.
- b. Final inspection of the Trail Project work by WSDOT and the Local Agency;
- c. Submittal by WSDOT to the Local Agency of a complete set of as-built plans acceptable to the Local Agency and final record documentation for the Trail Project; and

The Local Agency's Letter of Acceptance shall include a release of WSDOT from all Trail Project maintenance, past, present and future claims and/or demands of any nature resulting from the performance of the Trail Project work, except for claims resulting from negligent construction defects of a latent nature located within the Trail Project limits or SR 290 right of way, and subject to WSDOT's obligations.

9.2.1 The Local Agency may withhold its Trail Project acceptance by submitting written notification, including the reason(s) for withholding acceptance, to WSDOT, within thirty (30) calendar days following the date the final inspection was performed. The Parties shall work together in good faith to resolve the outstanding issues identified in the Local Agency's written notification. If any issues cannot be resolved within forty-five (45) calendar days after the Local Agency's notification, the Parties agree to meet and discuss a resolution of the outstanding issue(s) within the forty-five (45) calendar day time frame, including providing for an extension of time in which to resolve all matters.

9.2.2 Upon final resolution of the outstanding issues, the Local Agency agrees to deliver a Letter of Acceptance to WSDOT.

9.2.3 The Local Agency shall continue to be responsible for all actual direct and related indirect costs incurred by WSDOT, until the outstanding issue(s) have been resolved, a Letter of Acceptance has been issued, and all payments have been made pursuant to Section 6.

10. Indemnification and Hold Harmless

10.1 Each Party to this Agreement will 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, judgments, 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. Neither 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 other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their agents, officials or employees, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein will be valid and enforceable only to the extent of the negligence of the indemnifying Party, its agents, officials or employees.

10.2 The Parties agree that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees or agents. For this purpose, only, **the Parties, by mutual negotiation, hereby waive**, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

10.3 This indemnification and waiver shall survive the termination of this Agreement.

11. Records and Audit

11.1 During construction of the Trail Project through Trail Project Acceptance, WSDOT will maintain all records and accounts pertaining to the construction and Contract administration of the Trail Project. After closeout, and for a period of not less than six (6) years from the date of final payment to the Contractor, the records and accounts pertaining to the construction and Contract administration of the portions of the Trail Project, shall be maintained and kept available by WSDOT for inspection and audit by the Local Agency and federal government and for use in the event of litigation, claim or any other purpose. All records generated or used in this Trail Project shall be subject to the Public Record Act, chapter 42.56 RCW. The Local Agency is responsible for retention of records provided after closeout for Local Agency constructed facilities in accordance with the appropriate retention policies. In the event of litigation or claim arising from the performance of this Agreement, WSDOT agrees to maintain the records and accounts until all such litigation, appeal or claim are finally resolved. This Section shall survive termination of this Agreement.

12. Claims

12.1 Claims for Additional Payment

12.1.1 In the event the Contractor makes a claim for additional payment, WSDOT will notify the Local Agency immediately of such claims. Such claims shall be made in the manner and form as provided for in the 2020 WSDOT Standard Specifications.

12.1.2 The Local Agency shall have the right to review and discuss the settlement of all claims presented by the Contractor. The ultimate decision to pay a claim will be by mutual agreement of the Local Agency and WSDOT. In the event such claims are not resolved, the Local Agency shall defend itself and WSDOT, and indemnify and hold harmless WSDOT, against such claims at its sole cost and shall pay any settlement, court judgment or arbitration award resulting from such claims, provided that the Local Agency shall not be obligated to pay such claims or the cost of defense to the extent that the claims are caused solely by the negligent acts or omissions of WSDOT in administering the contract. WSDOT will cooperate with the Local Agency in the Local Agency's defense of the claim. The Local Agency shall reimburse any WSDOT costs incurred in providing such assistance.

13. Amendments

13.1 This Agreement, including the attached Exhibits, 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.

14. Termination

14.1 The Secretary of the Department of Transportation, or designee, may terminate this Agreement if the funding becomes unavailable or otherwise determined to be in the best interest of WSDOT.

14.2 The Local Agency, may terminate this Agreement if the funding becomes unavailable or otherwise determined to be in the best interest of the Local Agency.

14.3 If either Party terminates this Agreement pursuant to Section 14, the terminating Agency shall give the other Party at least 90 days advance written notice.

15. Dispute Resolution

15.1 The Parties agree that any and all disputes or claims arising out of or relating to this Agreement shall be submitted to a mediator selected by both Parties for mediation pursuant to Section 15.2 below.

15.2 Mediation. Either Party may commence mediation by providing the other Party with a written request for mediation, setting forth the matter in dispute and the relief requested. The Parties agree to cooperate with one another in selecting a mediator and scheduling mediation proceedings. The Parties agree to participate in the mediation in good faith. The Local Agency agrees, at its sole cost and expense, to pay all costs of the mediation between the Parties. WSDOT shall have no cost liability as provided in Section 6.1. If the

Parties do not agree on a mediation service to conduct the mediation, the mediation shall be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association. All offers, promises, conduct and statements, whether written or oral, made in the course of mediation are confidential, privileged, and/or inadmissible for any purpose in any litigation or arbitration of the dispute, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in mediation.

- 15.3 Venue: In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement after the mediation process outlined in 15.2 is concluded, the Parties agree that any such action or proceedings shall be brought in the superior court situated in Spokane County, Washington unless filing in another county is required under any provision of the Revised Code of Washington. Further, the Parties agree that each shall be responsible for its own attorneys' fees and costs.

16. Term of Agreement

- 16.1 Unless otherwise provided herein, the term of this Agreement shall commence and shall be binding on the Parties as of the date this Agreement is fully executed and shall continue until the Project is accepted by the Local Agency pursuant to Section 9, all payments are made as required under Section 6.

The rest of this page left blank intentionally.

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

CITY OF SPOKANE	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
By: <i>Johnnie Perkins</i>	By: <i>Mike Gribner</i>
Printed: Johnnie Perkins	Printed: Mike Gribner, P.E.
Title: City Administrator	Title: Regional Administrator
Date: 10/13/2022	Date: 10/13/2022
APPROVED AS TO FORM	APPROVED AS TO FORM
By: <i>Margaret Harrington</i>	By: <i>Guy Bowman</i>
Printed: Margaret Harrington	Printed: Guy Bowman
Title: Assistant City Attorney	Title: Assistant Attorney General
Date: 10/11/2022	Date: 10/13/2022

Attest:

[Signature]
city clerk



