

CONSTRUCTION METHOD OF FINANCING

STATE AD & AWARD

(Check Method Selected)

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 o., col. 2)
in the amount of \$ _____ at \$ _____ per month for _____ months ()

LOCAL FORCE OR LOCAL AD & AWARD

METHOD C _____ Agency Cost Incurred with Partial Reimbursement (X)

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 September 11, 1990, Resolution/Ordinance No. 69-90.

AGENCY OFFICIAL

By: Michael D. Libgan
CHAIRMAN, County Commissioners/Mayor

William Hunter

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

By: _____
State Aid Engineer

Date Executed

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 Federal Highway Administration.

When the State acts for the Agency but 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 acting 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 insure 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 procedures prescribed by the Division of Municipal Corporations of the State Auditor's Office, the U.S. Department of Transportation and Washington 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 up to and including approval
2. Preparation of Plans, Specifications, and Estimates
3. Right-of-Way Acquisition
4. Project Construction

In the event that Right-of-Way acquisition for, or actual construction of the road for which Preliminary Engineering is undertaken is not started by the closing of the fifth fiscal year following the fiscal year in which the agreement is executed, 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 VIII.)

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 AASHTO 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 accord with the Surface Transportation Assistance Act 1978, Title 23, United States Code, as amended, and Office of Management and Budget Circular A-102. 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.

1. Preliminary Engineering, Right of Way Acquisition and Audit Costs.

The Agency will pay for Agency incurred costs on the project. Following such payments, vouchers shall be submitted to the State in the format prescribed by the State, in quadruplicate, not more than one per month. The State will reimburse the Agency up to the amount shown on the face of this agreement 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 the establishment, maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation.

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 directly 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 VIII.)

2. 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 twenty (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 quadruplicate, 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 the establishment, maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation.

The State will 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 VIII).

VII AUDIT OF FEDERAL AID PROJECT

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 in accordance with Office of Management and Budget Circular A-102, Attachment P.

If upon audit it is found that an 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 VIII.)

VIII 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 State Aid Engineer.

IX TRAFFIC CONTROL, SIGNING, MARKING, & 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.

X 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.

No liability shall attach to the State or Federal Government except as expressly provided herein.

XI NONDISCRIMINATION PROVISION

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 at 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 undertaken pursuant to any Federal program involving such grant, contract, loan, insurance or guarantee, the following equal opportunity clause:

"DURING THE PERFORMANCE OF THIS CONTRACT, THE CONTRACTOR AGREES AS FOLLOWS:"

(a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Agency advising the said labor union or workers' representative of the contractor's commitments under this section 11-2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965 and by the rules and regulations and orders of the Secretary of Labor, or pursuant thereto and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246

of September 24, 1965 and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(g) The contractor will include the provisions of this section 11-2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965 so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Agency, WA Dept. of Transportation or Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor, he may request the United States to enter into such litigation to protect the interests of the United States.

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.

XII LIQUIDATED DAMAGES

The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 630, Subpart C and Volume 6, Chapter 3, Section 1 of the Federal-aid Highway Program Manual, 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.

XIII TERMINATION FOR PUBLIC CONVENIENCE

The Secretary, Washington State Department of Transportation may terminate the contract in whole, or from time to time in part, whenever:

(1) The requisite Federal funding becomes unavailable through failure of appropriation or otherwise.

(2) The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense; or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources;

(3) The contractor is prevented from proceeding with the work by reason of a preliminary, special or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor; or

(4) The Secretary determines that such termination is in the best interests of the State.

XIV VENUE FOR CLAIMS AND/OR CAUSES OF ACTION

For the convenience of the parties to this contract, it is agreed that any claims and/or causes of action which the Local Agency has against the State of Washington, growing out of this contract or the project with which it is concerned, shall be brought only in the Superior Court for Thurston County.

ADDITIONAL PROVISIONS