

APPROVED

CONTRACT # 5760

AGREEMENT GCA-5854

**SR 520
BRIDGE REPLACEMENT AND HOV PROJECT
BEAR CREEK RESTORATION PROJECT**

THIS AGREEMENT is entered into by and between the **CITY OF REDMOND**, hereinafter referred to as the "CITY", and the **STATE OF WASHINGTON, DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as the "STATE", collectively referred to as the "PARTIES" and individually referred to as the "PARTY".

WHEREAS, the SR 520 Bridge is nearing the end of its useful life and is susceptible to damage, closure, or even catastrophic failure from earthquakes, windstorms, and waves, and;

WHEREAS, the STATE must take the necessary steps to move forward with a project to replace the SR 520 Bridge, and;

WHEREAS, one of those necessary steps involves establishing compensatory mitigation for the ecological effects of the SR 520 Bridge Replacement and HOV Project, hereinafter referred to as the "BRIDGE PROJECT", and;

WHEREAS, the BRIDGE PROJECT is located within the Lake Washington basin (Watershed Resources Inventory Area 8), and;

WHEREAS the BRIDGE PROJECT requires compensatory mitigation for its ecological effects, and;

WHEREAS, the CITY desires to relocate and restore approximately 3,000 feet of lower Bear Creek to enhance a highly valuable urban riparian habitat by 2016, hereinafter referred to as the "RESTORATION PROJECT", and;

WHEREAS, the RESTORATION PROJECT is on the "Start List" of the highest priority actions for the WRIA 8 Plan and is listed on WRIA 8's Three Year Workplan for the Puget Sound Partnership; and;

WHEREAS, the RESTORATION PROJECT is also on the CITY'S capital improvement program, and;

WHEREAS, the scope and scale of the RESTORATION PROJECT are beyond the resources of the CITY to successfully accomplish alone, and;

WHEREAS, the RESTORATION PROJECT offers advance compensatory mitigation partially fulfilling the needs of the BRIDGE PROJECT;

NOW, THEREFORE, by virtue of RCW 47.28.140 and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, it is mutually agreed as follows:

1. GENERAL

1.1 The CITY, as the lead agency for the RESTORATION PROJECT, shall design, permit, construct, maintain, and monitor the RESTORTION PROJECT. The RESTORATION PROJECT is generally located at the portion of lower Bear Creek that runs adjacent to SR 520 in the vicinity of the Redmond Town Center shopping center. The RESTORATION PROJECT will generally involve the relocation of approximately 3,000 lineal feet of the creek, re-introducing stream meanders and native vegetation, and relocating an existing public trail to fit into the context of the new stream location and its natural environment.

1.2 The CITY shall provide the STATE the opportunity to review and provide comments on the initial and final designs of the RESTORATION PROJECT in order to ensure that the ecological value to the STATE as a mitigation site is preserved. The final decision on design of the RESTORATION PROJECT shall be the CITY'S.

1.3 The STATE will not be responsible to perform long-term maintenance or monitoring of the RESTORATION PROJECT.

1.4 In consideration, the STATE will receive the ecological value inherent in RESTORATION PROJECT. The PARTIES understand that the STATE intends to use the ecological value of the RESTORATION PROJECT as compensatory mitigation for the environmental impacts created by the BRIDGE PROJECT. It is the responsibility of the STATE to work with various permitting and resource agencies to establish the appropriate value, but the obligations of the CITY and the STATE under this agreement are not contingent on the RESTORATION PROJECT qualifying for any specific value. However, in keeping with the STATE'S intent and as additional consideration for the commitments of the STATE as provided herein, the CITY agrees that it will:

1.4.1 Make every reasonable effort in designing, permitting, constructing, maintaining, and monitoring the RESTORATION PROJECT to maximize the potential for the RESTORATION PROJECT to qualify as compensatory mitigation for the BRIDGE PROJECT; and

1.4.2 Support the efforts of the STATE to use the RESTORATION PROJECT as compensatory mitigation for the BRIDGE PROJECT in discussions, negotiations, and agreements with other agencies and affected tribes.

1.4.3 Request no further mitigation from the STATE for the environmental impacts of the BRIDGE PROJECT on lower Bear Creek.

2. PAYMENT

2.1 The STATE, in consideration of the faithful performance of the work to be done by the CITY, agrees to reimburse the CITY for the actual direct and related indirect cost of the scoping, preliminary design, final design, permitting, and preparation of plans, specifications, and estimates of the RESTORATION PROJECT, not to exceed a maximum amount of \$800,000.

2.2 Upon the CITY's award of a contract to construct the RESTORATION PROJECT, the STATE agrees to reimburse the CITY for the actual direct and related indirect cost of construction of the RESTORATION PROJECT, and the ecological monitoring and ecological maintenance of the RESTORATION PROJECT for the required five-year post-construction monitoring period, not to exceed a combined maximum amount of \$8,000,000, inclusive of the project development costs described in paragraph 2.1 above.

2.3 Partial payments shall be made by the STATE, upon request from the CITY, to cover its portion of 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 final audit, all required adjustments will be made and reflected in the final payment. The STATE agrees to make payment within thirty (30) days from receipt of billing from the CITY.

2.4 The CITY agrees to submit a final bill to the STATE within forty-five (45) days after the earliest occurrence of one of the following: 1) completion of the restoration work, including a 5-year post-construction monitoring period; 2) reaching the maximum amount payable by the STATE of \$8,000,000; or 3) December 31, 2016.

3. AMENDMENT

3.1 Either PARTY may request changes to the provisions contained in this AGREEMENT. Such changes shall be mutually agreed upon and incorporated by written amendment to this AGREEMENT. No variation or alteration of the terms of this AGREEMENT shall be valid unless made in writing and signed by authorized representatives of the PARTIES hereto.

4. DISPUTES

4.1 The designated representatives herein under section 6, NOTIFICATION, shall use their best efforts to resolve disputes between the PARTIES. If these individuals are unable to resolve a dispute, the responsible project directors of each PARTY shall review the matter and attempt to resolve it. If they are unable to resolve the dispute, the matter shall be reviewed by the department directors of each PARTY or his or her designee. The PARTIES agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum, provided, that if any applicable statute of limitations would expire during the time required to exhaust these procedural steps, either party may file such suits, administrative appeals, or other actions as may be necessary to preserve that party's rights, with the understanding that both parties will agree to stay any such suits, administrative appeals, or other actions to the extent allowed until the procedural steps set forth in this Section can be exhausted.

5. EFFECTIVENESS AND DURATION

5.1 This AGREEMENT is effective upon execution by both PARTIES and will remain in effect until December 31, 2016, unless otherwise amended or terminated.

6. NOTIFICATION

6.1 Any notice required or permitted to be given pursuant to this AGREEMENT shall be in writing, and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the following addresses unless otherwise indicated by the PARTIES to this AGREEMENT:

To the STATE: Rick Singer
Program Manager, SR 520 Bridge Replacement
WSDOT – Urban Corridors Office
600 Stewart Street, Suite 520
Seattle, WA 98101
(206) 770-3522
singerr@wsdot.wa.gov

To the CITY: Donald W Cairns, P.E.
Transportation Services Manager
City of Redmond MS:2NPW
15670 NE 85th Street
PO Box 97010
Redmond WA 98073-0710

7. TERMINATION

7.1 This AGREEMENT may not be terminated without the mutual consent of both parties except as stated in section 7.3.

7.2 In the event of termination, payment will be made by the STATE for work performed by the CITY, up to the effective date of termination.

7.3 Nothing in this AGREEMENT is intended to limit the parties' remedies for a material breach including the right to terminate this AGREEMENT. Both parties reserve and retain all other remedies that may be available in law or equity to enforce any provision of this AGREEMENT or to seek redress for any breach thereof.

8. NONDISCRIMINATION

8.1 The CITY agrees to comply with all applicable Washington state and federal laws, rules, and regulations pertaining to nondiscrimination and agrees to require the same of all subcontractors providing services or performing any work using funds provided under this AGREEMENT.

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9. RECORDS RETENTION AND AUDIT

9.1 During the progress of the work and for a period not less than three (3) years from the date of final payment by the STATE, the records and accounts pertaining to the project and accounting therefore are to be kept available for inspection and audit by Washington state and/or the Federal Government and copies of all records, accounts, documents, or other data pertaining to the project will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until said litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the 3-year retention period.

10. INDEMNIFICATION

10.1 Each of the PARTIES, 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, arising out of, or in any way resulting from, each of the PARTY's own negligent acts or omissions. 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 is caused by the sole negligence of the other PARTY. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a PARTY's own negligence.

10.2 The STATE and the CITY agree that their obligations under this subparagraph 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, each of the PARTIES, by mutual negotiation, hereby waives, with respect to each of the other PARTY only, any immunity that would otherwise be available against such claims under the Industrial Insurance provision of Title 51 RCW.

10.3 In the event either PARTY incurs any judgment, award, and/or cost arising herefrom, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be recoverable from the other PARTY.

10.4 This indemnification and waiver shall survive the termination of this AGREEMENT.

11. ALL WRITINGS

11.1 This AGREEMENT contains all the terms and conditions agreed upon by the PARTIES to this AGREEMENT. No other understanding, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind any of the PARTIES hereto.

12. GOVERNANCE

12.1 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. SEVERABILITY

13.1 If any provisions 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 shall remain in effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this AGREEMENT. To this end, the provisions of this AGREEMENT are declared to be severable.

14. VENUE

14.1 This AGREEMENT shall be deemed to be made in the County of King, State of Washington, and the legal rights and obligations of the STATE and CITY shall be determined in accordance with the laws of the State of Washington. All legal actions in connection with this AGREEMENT shall be brought in the County of King, State of Washington unless otherwise required under RCW 47.28.120.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the latest date written below.

CITY OF REDMOND

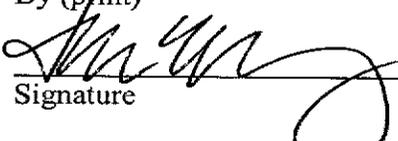
STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION


Signed _____
John Marchione
Printed Name
Mayor 8/19/08
Title Date


Signed _____
Ronald J. Paananen
Printed Name
Urban Corridors Dep. Admin 9/17/08
Title Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

JAMES E. HANEY
By (print)

Signature
CITY ATTORNEY
Title
8-19-08
Date


Elizabeth Lagerberg
Assistant Attorney General
9/15/08
Date