

GENERAL MAINTENANCE AGREEMENT
City of Bellevue, Washington State Department of Transportation
SR 520, MP5.60 to MP6.66
GMB 1069

This Agreement is made and entered into between the CITY OF BELLEVUE, a municipal corporation, hereinafter the "CITY," and the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, hereinafter the "STATE."

WHEREAS, the STATE, through the SR 520 Bridge Replacement and HOV Program, undertook the replacement of the existing Albert D. Rosellini (Evergreen Point) floating bridge, including the realignment and improvement of the State Route (SR) 520 corridor east of Lake Washington, and

WHEREAS, SR 520 is classified as a fully controlled limited access facility established under chapter 47.52 RCW; therefore, within the CITY's boundaries, the right-of-way title is vested in the state of Washington, where on behalf of the state, the STATE exercises full jurisdiction, responsibility, and control to and over the highway, and

WHEREAS, a portion of the SR 520 corridor is located within the incorporated limits of the CITY, as depicted on Exhibit A (Vicinity Map), and

WHEREAS, the STATE developed a contract with input from the CITY and surrounding communities, which resulted in the execution of STATE contract 007963, SR 520 – Medina to SR 202: Eastside Transit and HOV Project, hereinafter the "Project," and

WHEREAS, the legislature has mandated, pursuant to RCW 47.52.090(5) that the maintenance of city streets over limited access highways shall be in accordance with the governing policy entered into on June 21, 1956, between the STATE and the Association of Washington Cities, or as such policy may be amended, and

WHEREAS, the Parties find that the City Streets as Part of the State Highways Guidelines, dated April 30, 1997, amended April 2, 2013 (Guidelines), does not sufficiently detail nor specifically address some of the unique features constructed as part of the Project; however, the Parties agree that Table 3, State Owned Bridges That Convey City Traffic Over State Highways, interpreting the figures in WAC 468-18-050 that were originally drafted in 1956 and acknowledged by the legislature in RCW 47.52.090(5), is the appropriate guidance for this Agreement, and

WHEREAS, the Parties desire to clarify the division and responsibility of general maintenance and operations activities of items and features within the corridor, and to establish the method of reimbursement of costs, where applicable, for such activities.

NOW, THEREFORE, pursuant to chapter 47.52 RCW, RCW 47.28.140, the Guidelines, the above recitals as well as the Exhibit A and Exhibit B (Maintenance Responsibility Map) which are incorporated as if fully set forth below, and in consideration of the terms, conditions, performances, and duties described herein, and made a part hereof, **IT IS MUTUALLY AGREED AS FOLLOWS:**

1.0 PROJECT FEATURES

- 1.1 As part of the Project, the STATE reconfigured and/or constructed a variety of highway and street elements such as new structures connecting city streets, a local trail connection, fish passage culverts, direct access ramps, regional shared use path, landscaping, irrigation systems, storm water systems, illumination, and signal systems. A wide range of amenities were included in the Project as a result of public outreach, and CITY/STATE coordination including meetings with the STATE's contractor. The SR 520 Eastside Urban Design Criteria document that was included as part of the Project contract, was implemented by the STATE as part of the contract requirements for the STATE's contractor to design and construct the Project.
- 1.2 For the purpose of this Agreement geographic areas for which the CITY is responsible are identified and the elements and/or features are outlined and shown on Exhibit B; further details are set forth below.

2.0 CITY RESPONSIBILITIES

- 2.1 The CITY agrees that CITY maintenance responsibilities, hereinafter the "Work," includes any and all maintenance, operation, repair pursuant to chapter 47.52 RCW, the Guidelines, and other activities as shown on Exhibit B.
- 2.2 The CITY agrees that all landscape Work performed on state-owned right of way identified on Exhibit B shall be performed under the supervision of qualified CITY staff or retained contract services administered by the CITY, and performed in accordance with industry-accepted horticultural practices.
- 2.3 The CITY agrees that all pruning and mowing on state-owned right of way shall be performed, at a minimum, to the standards set forth in Chapter 6, Roadside Management, of the Washington State Department of Transportation, *Maintenance Manual* (M 51-01), which is located at <http://www.wsdot.wa.gov/Publications/Manuals/M51-01.htm>, and by this reference incorporated herein.
- 2.4 The CITY agrees to monitor the area of CITY responsibility for noxious weeds and to spray or remove all noxious weeds. If the STATE determines or has been notified by the county that noxious weeds exist and need to be sprayed or removed, the STATE will notify the CITY of such need in writing within ten (10) calendar days following its notification, and the CITY agrees to spray or remove all noxious weeds within twenty (20) calendar days from receipt of the STATE's notice.
- 2.5 The CITY agrees that application of pesticides and herbicides within state-owned right of way shall be performed by, or under, the direct supervision of CITY officers, officials, employees, and/or agents who possess a current Public Operator or Commercial Pesticide Operator license. Washington State Department of Agriculture Pesticide Application Records shall be kept by the CITY for each application in

accordance with chapter 17.21 RCW and be available for review by the STATE within thirty (30) calendar days of its request.

2.6 The STATE shall pay the water bills for the irrigation system during the two years of landscaping warranty on lids or bridges and the three years of landscaping warranty on roadsides or mitigation areas. The landscape warranty started on May 31st, 2015. The CITY agrees to assume the landscaping, its irrigation system, and the water bills responsibility identified in Exhibit B at the end of the landscaping warranty periods, at which time billing shall be transferred from the STATE to the CITY.

2.8 If the CITY fails to perform the Work pursuant to the terms of this Agreement and further fails to perform the Work after forty-five (45) calendar days receipt of the STATE's written notice to perform the Work, the STATE will perform such Work, and the CITY agrees to reimburse the STATE for such Work pursuant to Section 5.

3.0 TRAFFIC CONTROL

3.1 The CITY is not required to notify the STATE prior to conducting the Work; provided no lane closures on city streets impact the traffic operation of mainline and/or ramps of SR 520.

3.2 The CITY shall timely coordinate and review traffic control plans with the STATE prior to conducting any Work that requires lane closures on city streets that may impact the traffic operation of mainline and/or ramps of SR 520.

4.0 EMERGENCY MAINTENANCE

4.1 Should the STATE identify a condition warranting emergency maintenance in those areas of the Work located within state-owned right of way which may cause a danger to the traveling public or adversely impact state highway operation, maintenance, right of way and/or facilities, the STATE will immediately notify the CITY by calling its emergency 24-hour contact number at 425-452-7840 and providing any necessary information.

4.2 Upon STATE notification, pursuant to Section 4.1, and in the event that CITY forces are not available to perform emergency maintenance, or if the STATE determines that time does not allow, the STATE reserves the right to perform the emergency maintenance, at CITY expense, to the extent necessary to preserve the safety of the traveling public and to prevent damage to state highway operation, maintenance, right of way, and/or facilities. The CITY agrees to reimburse the STATE for all such work performed in accordance with Section 5.

5.0 PAYMENTS

- 5.1 The CITY shall be solely responsible for the costs and expenses associated with the CITY's performance of the Work as identified in this Agreement.
- 5.2 Should the CITY fail to perform and the STATE finds it necessary to perform the Work that is the obligation of the CITY, as provided in this Agreement, the CITY agrees to reimburse the STATE for 100% of the STATE's actual direct and related indirect costs. The STATE shall invoice the CITY and provide supporting documentation for the work performed.
- 5.3 The CITY agrees to make payment within thirty (30) calendar days after the CITY receives a documented STATE invoice. Invoices will not be more frequent than one (1) per month.
- 5.4 Should the CITY fail to make payment to the STATE as provided herein, the CITY authorizes and agrees that the STATE may withhold any moneys to which the CITY is entitled to receive from the Motor Vehicle Fund and expend such moneys until the CITY's obligations are paid.

6.0 MODIFICATIONS TO IMPROVEMENTS

- 6.1 Any modifications to the features located within state-owned right of way as shown on Exhibit B shall be funded, installed, and/or constructed by the Party initiating the work.
- 6.2 Any modifications to the features not shown on Exhibit B located within the state-owned right of way are subject to STATE review and written approval by the STATE prior to installation, change, and/or construction.
- 6.3 The CITY agrees that any facility modifications it proposes within the state-owned right of way or outside the state-owned right of way shall not create additional storm water runoff to be added to the detention facilities or points of stream discharge, unless reviewed and approved by the STATE prior to installation, change, and/or construction.
- 6.4 In the event that widening or other highway improvements are contemplated by the STATE that will impact areas covered in this Agreement, the Parties will review the impacts to these areas and coordinate necessary modifications.

7.0 RIGHT OF ENTRY AND ACCESS

- 7.1 The STATE hereby grants to the CITY, its employees and/or agents, a right of entry within SR 520 right of way for the purpose of performing the Work identified under this Agreement in the areas shown on Exhibit B.

- 7.2 The CITY hereby grants to the STATE, its employees and/or agents, a right of entry to city right of way for purpose of performing the Work identified under this Agreement in the areas shown on Exhibit B.

8.0 CITY AND STATE CONTACTS

- 8.1 STATE: WSDOT Northwest Region, Area 5 Maintenance Superintendent
(425) 739-3730

- 8.2 CITY: Utilities Operations & Maintenance
24-Hour Response Number
(425) 452-7840

City of Bellevue, Natural Resources Manager, Parks and Community
Services Department
(425) 452-6885

City of Bellevue, Operations and Maintenance Manager,
Utilities Department
(425) 452-2014

City of Bellevue, Operations and Maintenance Manager,
Transportation Department
(425) 452-4104

9.0 NO THIRD PARTY BENEFICIARY RIGHTS

- 9.1 This Agreement is not intended to and shall not be construed to give any person (other than the Parties to this Agreement) any interest or rights (including, without limitation, any third party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

10.0 INDEPENDENT CONTRACTOR

- 10.1 The CITY shall be deemed an independent contractor for all purposes, and the employees of the CITY or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the STATE.

11.0 INDEMNIFICATION

- 11.1 To the maximum extent authorized by law, the CITY and STATE shall indemnify and hold harmless one another and their employees and/or officers from and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or costs, of whatsoever kind or nature, brought against the one Party arising out of, in connection with, or incident to

the other Party's own negligent performance or failure to perform any aspect of this Agreement, provided however, if such claims are caused by or result from the concurrent negligence of both Parties, their employee and/or officers, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of each Party's own negligence, their employees and/or officers; and provided further, that nothing herein shall require the CITY or the STATE to hold harmless or defend the other or its employees and/or officers from any claims arising from that Party's sole negligence or that of its employees and/or officers.

- 11.2 The CITY agrees that its obligation under this section extends to any claim, demand and/or course of action brought by, or on behalf of any CITY employee or agent while performing the Work or improvement modifications under Section 6 pursuant to the provisions of this Agreement. For this purpose, the CITY, by mutual negotiation, hereby waives with respect to the STATE only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Title 51 RCW.
- 11.3 The STATE agrees that its obligation under this section extends to any claim, demand and/or course of action brought by, or on behalf of any STATE employee or agent while exercising its rights under this Agreement. For this purpose, the STATE, by mutual negotiation, hereby waives with respect to the CITY only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Title 51 RCW.
- 11.4 The terms of this Section shall survive the termination of this Agreement.

12.0 SEVERABILITY

- 12.1 If any section, term, or provision of this Agreement, or any section, term, or provision of any document incorporated by reference, shall be held invalid, such invalidity shall not affect the other sections, terms, or provisions of this Agreement that can be given effect without the invalid section, term, or provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement are declared to be severable.

13.0 AMENDMENT

- 13.1 Either Party may request modifications to the provisions of this Agreement. Such modifications shall be mutually agreed upon by written amendments 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.

14.0 ALL WRITINGS CONTAINED HEREIN

- 14.1 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.

15.0 GOVERNANCE

- 15.1 This Agreement is entered into pursuant to, and under the authority granted by, the laws of the State of Washington and applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

16.0 EFFECTIVENESS AND DURATION

- 16.1 This Agreement shall begin as of the Party's date last signed below and continue to be in full force and effect until such time either Party provides written notice of termination to the other Party pursuant to Section 17.

17.0 TERMINATION

- 17.1 The CITY may request termination of this Agreement by written notice to the STATE. CITY termination requires written concurrence from the STATE.
- 17.2 The STATE may terminate this Agreement with thirty (30) calendar days prior written notice to the CITY if the STATE deems it necessary to terminate this Agreement for transportation purposes.
- 17.3 Upon termination of this Agreement, the CITY shall have no further responsibility, of any kind or nature, regarding the Work.

18.0 VENUE

- 18.1 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 proceeding shall be brought in the superior court situated in King County, Washington, unless the filing in King County conflicts with the provisions of RCW 47.28.120.

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

CITY OF BELLEVUE

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION

David Berg
Transportation Director

Date

David McCormick
Assistant Regional Administrator –
Maintenance


Date

APPROVED AS TO FORM

APPROVED AS TO FORM

Monica Buck
Assistant City Attorney

Date

 7/27/17

Mark Schumock
Assistant Attorney General

Date