

AGREEMENT NO. GCB 1289

Washington State Department of Transportation and

Snohomish County and the City of Granite Falls

State Route 92 – Granite Falls Alternate Route: Limited Access

This Agreement is made and entered into among the State of Washington Department of Transportation (State), an agency of the State of Washington, Snohomish County (County), a political subdivision of the State of Washington, and the City of Granite Falls (City), a municipal corporation of the State of Washington.

WHEREAS, the County and the City partnered to design and construct the Granite Falls Alternate Route (GFAR), a new road alignment, that intersects SR 92 to the west of the City and connects with the Mountain Loop Highway, a County road; and

WHEREAS, portions of the GFAR are located both in the City and in unincorporated Snohomish County; and

WHEREAS, the County and the City intended to transfer jurisdiction of the entire length of the GFAR to the State upon completion of the construction; and

WHEREAS, from the project's beginning the City, the County, and the State all intended that the GFAR would become part of SR 92 upon completion of construction and would alleviate heavy truck traffic through downtown Granite Falls by, providing an alternate route around the downtown core; and

WHEREAS, the State was a member of the technical advisory committee that was formed to provide input on the design of the GFAR given that it intended to accept ownership and transfer of jurisdiction upon completion of the construction; and

WHEREAS, as part of its role in administering state and federal funds for the project, the State reviewed and concurred with the construction plans for the GFAR; and

WHEREAS, on February 13, 2005, the Snohomish County Council (County Council) approved the right-of-way plan for the GFAR by motion in County Council Motion No. 05-116; and

WHEREAS, on August 28, 2008, the County Council adopted County Council Ordinance No. 08-104 and made minor revisions to the previously approved right-of-way plan and adopted a limited access plan for the GFAR; and

WHEREAS, County Council Ordinance No. 08-104 also established those portions of GFAR located in unincorporated Snohomish County as a partially controlled limited access facility under Chapter 47.52 RCW; and

WHEREAS, on September 17, 2008, the Granite Falls City Council approved City Council Ordinance No. 769-08 adopting the right of way plan for the GFAR and establishing those portions of the GFAR located in the City as a partially controlled limited access facility under Chapter 47.52 RCW; and

WHEREAS, the GFAR opened to vehicular traffic on November 19, 2010; and

WHEREAS, the County and the City seek to have the GFAR incorporated into the State highway system; and

WHEREAS, the State agrees to accept the GFAR as a partially controlled limited access facility, as further provided herein, only upon the fulfillment of the terms and conditions stated in this Agreement; and

WHEREAS, an existing section of SR 92 located within unincorporated Snohomish County will no longer be required as a state highway upon State acceptance of GFAR into the state highway system, and it is the intent of the State, the County, and the City that this segment will no longer be a designated a state highway as provided further herein,

NOW, THEREFORE, pursuant to RCW 47.28.010, RCW 47.24.010, Chapter 47.52 RCW, the above recitals, which are incorporated herein as if fully set forth below, the terms, conditions, and performances contained herein, and the attached Exhibits A, B and C, which are incorporated and made part hereof:

IT IS MUTUALLY AGREED AS FOLLOWS:

1. RECORD OF ESTABLISHMENT OF PARTIALLY CONTROLLED LIMITED ACCESS FACILITY

The County and the City shall issue a Findings and Order and publish and serve the order as required under RCW 47.52.137 no later than April 30, 2014. The County and the City agree to provide to the State copies of all records and actions taken pursuant to the establishment of the GFAR as a partially controlled limited access facility, including but not limited to: any action by motion or ordinance taken by the County Council or the City Council related to the GFAR; the Findings and Order, proof of service of the Findings and Order; and affidavits of publication of the Resume. Upon acceptance by the State, as further explained in Section 4 below, the County shall also provide to the State all right-of-way plans related to the GFAR and all deeds for property acquired by the County for right-of-way associated with the GFAR. The County shall provide a draft quit claim deed to the State as grantee for the entire GFAR right-of-way no later than May 31, 2014. The State shall provide review comments within fourteen (14) calendar days following which the County and State shall work cooperatively to finalize the deed as soon as practicable.

2. LIMITED INDEMNIFICATION

2.1 COVERED CLAIMS

Subject to the tender of defense procedures in paragraph 2.3 below, from and after the date that the State accepts transfer of the GFAR into the State highway system, the County and the City agree to and shall, indemnify, defend at their sole cost and expense, and hold harmless the State from all claims, challenges, suits at law or in equity, or in any other proceedings as may occur in relation to the establishment of the GFAR as a partially controlled limited access facility only, including without limitation any claims, challenges suits at law or in equity, or in any other proceedings, including inverse condemnation, as may occur, brought by property owners abutting the GFAR, their heirs, successors, and/or assigns claiming that they are entitled to reasonable access onto the GFAR, herein defined a "Covered Claim." Any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever by third parties arising out of use, design, construction and/or maintenance of the GFAR and any claims, challenges, suits at law or in equity, or in any other proceedings, including inverse condemnation, trespass, diminution of value and/or loss of use as may occur not involving a claim of entitlement to reasonable access onto the GFAR are not a Covered Claim and are specifically excluded from the Limited Indemnification under this Agreement. This Limited Indemnification shall expire under Section 6.2 of this Agreement. After expiration of this Limited Indemnification, the State shall be responsible for defending any claims, including claims related to access, that may be brought involving the GFAR.

2.2 STATE COSTS AND EXPENSES PRIOR TO TENDER OF DEFENSE

Should, prior to tendering defense to the County and the City as required under Section 2.3 below, the State reasonably incur costs or expenses in defending a Covered Claim, the County and the City agree to reimburse the State for all such costs and expenses, including reasonable attorneys' fees. The State shall submit, as soon as is reasonably practicable, a detailed invoice to the County and City for such costs and expenses and the County and City agree to make payment within thirty (30) calendar days of receipt of such invoice.

2.3 REJECTION OF TENDER OF DEFENSE

Should the State receive any Covered Claim, it shall forward such claim to the County and City within fourteen (14) calendar days of receipt of such claim. The County and the City may reject tender of defense if the County or the City reasonably believe that the claim is not a Covered Claim. Failure to forward such claim within fourteen (14) calendar days of receipt shall waive the State's right to indemnification under this Agreement. If the County and the City accept tender of defense, then the County shall take the lead and may at its sole discretion and upon concurrence of the City use in-house or outside counsel to provide such defense. The County and the City may accept or reject, with State concurrence, any settlement offer that may be made. If the County and the City reject tender of defense of any claim, challenge, suit at law or in

equity, the State agrees to defend such action unless or until a court of competent jurisdiction determines that the County and the City wrongly rejected tender of defense. In such a case, the County and the City shall reimburse the State for all reasonable costs and expenses incurred to date while defending such claim.

2.4 REVISION OR LOSS OF LIMITED ACCESS DESIGNATION

Should the State, County, and/or City fail to successfully defend, choose not to defend or settle under Section 2.3, above, a Covered Claim, the State shall revise the limited access plan, as allowed by law, to provide reasonable access to the claimant. Should the State, County, and or City fail to successfully defend, or choose not to defend under Section 2.3 above, a Covered Claim that results in the GFAR losing its limited access designation entirely, those portions of the GFAR that are located within the City shall become an access managed city street that is also a state highway and be governed by RCW 47.24.020 and the 1997 Guidelines for City Streets as Part of State Highways, as amended, executed by the State and the Washington Association of Cities. Those sections of the GFAR that are located outside the City, including the right-of-way and all facilities appurtenant thereto, shall remain a state highway without limited access control. The State shall provide the City a quitclaim deed for those portions of the GFAR located within the City and the City agrees to accept said quitclaim deed.

2.5 COOPERATION AMONG PARTIES

The Parties shall fully cooperate and make their staffs and records related to the GFAR available to each other as may reasonably be necessary or convenient to allow the Parties to defend any Covered Claims.

3. SPECIFIC OBLIGATIONS OF THE PARTIES

3.1 ACCESS

The County and City shall not permit abutting property owners to access the GFAR except as depicted on the right-of-way and limited access plan adopted by the County and City Councils. The terms of this section shall survive the termination of this agreement.

3.2 COUNTY PHYSICAL IMPROVEMENTS

The County shall complete the construction of certain physical improvements to the GFAR alignment as identified in Exhibit A, attached and incorporated into this Agreement.

3.3 STATE PHYSICAL IMPROVEMENTS

The State agrees to enter into a separate agreement with the City to authorize the State to reimburse the City the actual cost, but not to exceed a total of \$133,000.00, to perform the work following: grind and provide a two-inch (2") overlay of existing SR 92 from Portage Avenue to Granite Avenue that was surveyed by the County and found to be in failure to poor condition

prior to transfer of that portion of existing SR 92 to the City. Reimbursement shall occur after July 1, 2015, and final payment by the State shall be within 30 calendar days of the date of invoice by the City.

3.4 COUNTY SURVEYOR CERTIFICATION

Prior to acceptance of the GFAR by the State, the County Surveyor shall certify, by preparing a record of survey, that the County acquired all necessary right-of-way for the GFAR project including any property rights necessary to allow the continued placement of the noise berm near the Granite Falls High School and the noise wall along the Plat of Perrigou Ranch Division 2 as more particularly described in Exhibit B. The County shall transfer said right-of-way to the State by quitclaim deed.

4. STATE ACCEPTANCE, OPERATION, AND MAINTENANCE OF THE GFAR

The State agrees that once the terms of Section 1 and Subsections 3.2 and 3.4 are fulfilled, and subject to the County's and the City's continuing obligations under Section 2, the State will accept transfer to the State highway system of the GFAR as a partially controlled limited access facility. This includes the ownership of the right-of-way that the GFAR is constructed upon and all facilities and improvements thereto. Upon acceptance, the State shall send a letter acknowledging such acceptance to both the County and City Public Works Department. Once the State has accepted the GFAR it is explicitly understood that the State shall then own, operate, and maintain the GFAR as partially controlled limited access facility as part of SR 92. Upon acceptance, neither the County nor the City shall have any ownership, jurisdiction, or responsibility for the GFAR.

5. SECTION OF EXISTING SR92 NO LONGER NEEDED AS PART OF THE STATE HIGHWAY SYSTEM, CERTIFICATION TO CITY AND COUNTY.

The parties agree that upon the State's acceptance of the GFAR as provided in Section 4 above, a section of existing SR92 will no longer be a necessary part of the state highway system. Under RCW 47.24.010, upon acceptance of the GFAR, the State shall certify to the Clerk of Granite Falls that that section of SR 92 located within the City, as shown in Exhibit C, is no longer necessary as part of the state highway system, and immediately upon such certification, it shall become a City street.

Upon acceptance of the GFAR, the State shall certify to the Snohomish County Council that the section of existing SR 92 as shown on Exhibit C located outside the boundaries of the City, if any, is no longer necessary as part of the state highway system and that it shall automatically become a County road pursuant to the terms of RCW 36.75.090. Upon certification, the Washington State Secretary of Transportation shall execute all deeds necessary to convey the abandoned section of SR92 to the City and County as the case may be.

6. GENERAL PROVISIONS

6.1 AMENDMENTS

Any Party may request amendments to the provisions in this Agreement. Such amendments shall be in writing and incorporated by mutual agreement of all Parties. No amendment to this Agreement shall be valid unless made in writing and signed by authorized representatives of the Parties hereto.

6.2 TERM

This Agreement is effective upon execution by all Parties and will remain in effect for a period of ten (10) years beginning on the effective date. This Agreement shall terminate ten (10) years from the effective date, unless amended or earlier terminated by written consent of authorized representatives of the Parties hereto, provided that subsection 3.1 shall survive termination of the Agreement.

6.3 VENUE

In the event that any 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 proceeding shall be brought in the Thurston County, Washington, Superior Court. Further the Parties agree that each party shall bear its own attorneys' fees and costs.

6.4 INTERPRETATION AND SEVERABILITY

This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against any Party. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. If any portion of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

6.5 EXECUTION IN COUNTERPARTS; SIGNATURE BY FACSIMILE AND EMAIL

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument. Signatures provided by facsimile or email shall be considered the same as original signatures.

6.6 PARTIES TO ACT IN GOOD FAITH

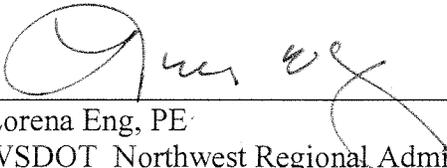
The Parties shall act in good faith in when performing their respective obligations under this Agreement.

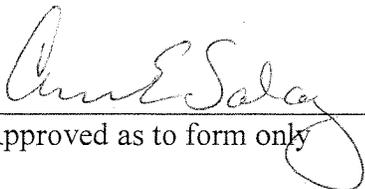
6.7 SIGNATORIES

All signatories of this agreement represent that they have the requisite authority to sign on behalf of each Party.

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

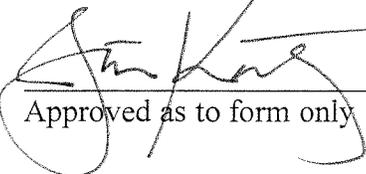
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

 4/10/14
Lorena Eng, PE Date
WSDOT Northwest Regional Administrator

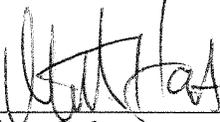
 4-7-14
Approved as to form only Date
AAG

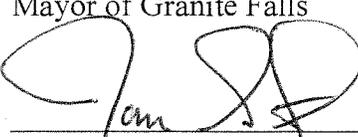
SNOHOMISH COUNTY

 6/10/14
John Lovick Date
Snohomish County Executive

 4/15/14
Approved as to form only Date

CITY OF GRANITE FALLS

 5/5/14
Joshua Golston Date
Mayor of Granite Falls

 4-17-14
Approved as to form only Date
City Atty

COUNCIL USE ONLY	
Approved:	<u>6-4-14</u>
Docfile:	<u>D-10</u>

EXHIBIT - A

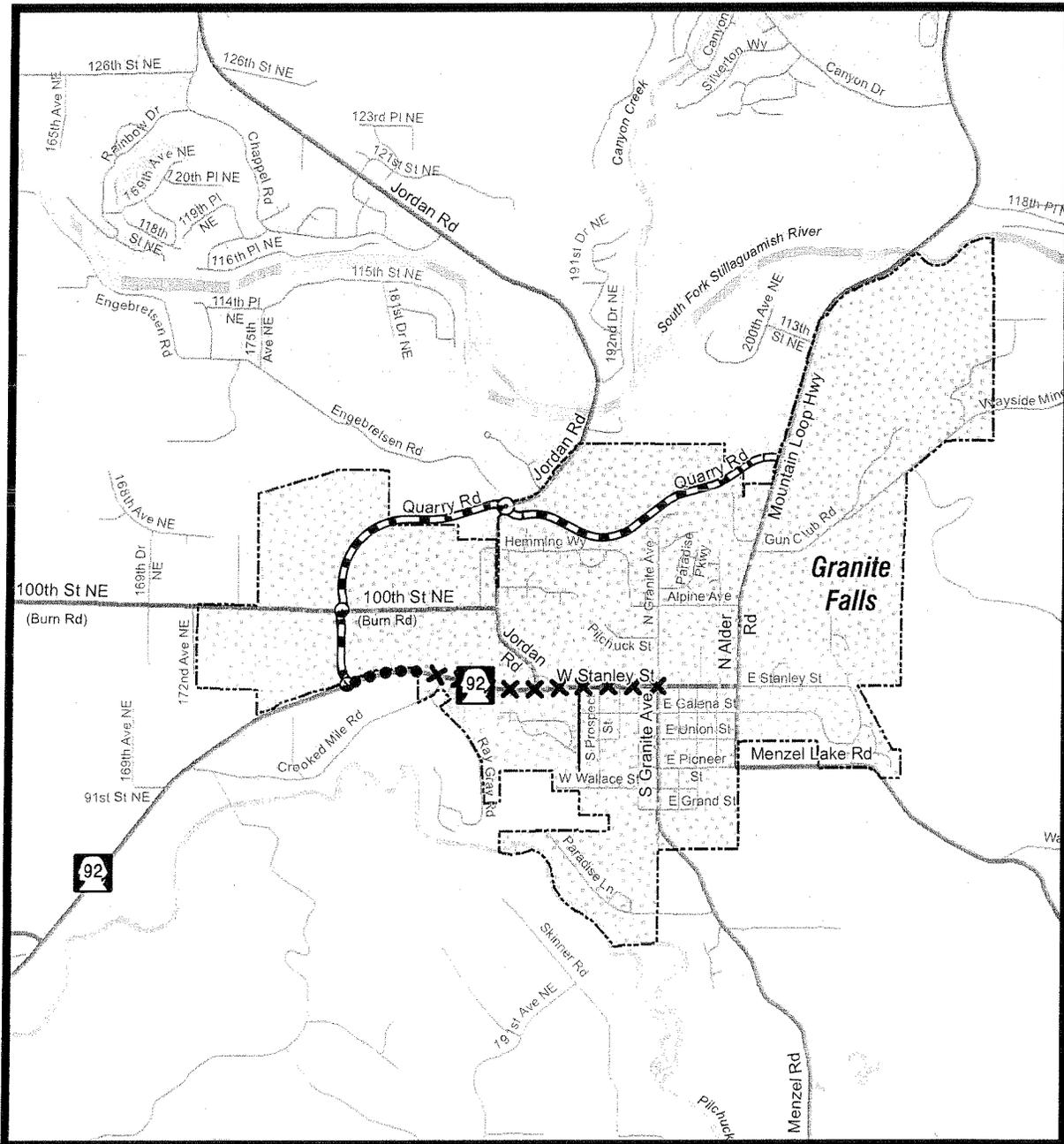
GFAR - Physical Improvements

<u>#</u>	<u>Issue</u>	<u>Specific Locations</u>	<u>Action</u>
1	Cracked or busted curbing	Burn and Jordan roundabout	Remove concrete, reform w/ asphalt per repair at SR92
2	Illumination pole foundations	North exit from Burn roundabout	Grade foundations per WSDOT Std. Plans J-28.22-00 & J-28.30-02
3	Guardrail without terminal	West exit from Jordan roundabout	Install Type 10 anchor assembly
4	New cut slope sliding	West side of Jordan roundabout	none - stabilized
5	Underdrain rock at edge of pavement	North side GFAR east of Jordan Rd; south side GFAR east of wildlife crossing	Remove round rock & replace w/ load supporting railroad ballast type rock
6	Truck encroachment over curb - settling of mulch in planters	Outside planter areas in roundabouts	Fill up with soil where necessary
7	Fall protection	Walls at vicinity: 55+30 RT; 58+50 RT; 71+60 RT; 78+20 RT; 90+00 LT	Provide 4ft tall coated chain link fence per WSDOT Plan FS-1 & Std. Plan L-20.10-02, at heights > 4ft.

EXHIBIT - B

GFAR - Property Rights

<u>#</u>	<u>Issue</u>	<u>Specific Locations</u>	<u>Action</u>
1	Mural attached to back of noise wall	High School	none - permit provided to WSDOT
2	Noise berm	High School	Easement to be recorded with School for permanent use of berm
3	Wall outside ROW	Noise wall at east end of Perrigoue Div. 2	Easement to be recorded with City for permanent use of wall



Key to Features:

- xxx Jurisdiction Transfer to Granite Falls
- ▬▬▬ Jurisdiction Transfer to WSDOT
- Local Roads
- Waterbodies

Federal-Aid Urbanized Area

- Jurisdiction Transfer to Snohomish County
- ▬▬▬ Arterial Roads
- ▭ Incorporated Cities

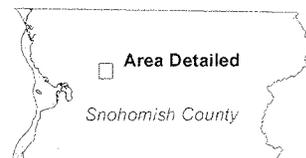


Exhibit C: Granite Falls Alternate Route Jurisdiction Transfer