



WSDOT Participating Agreement Work by Public Agency		Public Agency and Address
Agreement Number		Location and Description of Work (detailed in Exhibit A)
Estimated Cost (detailed in Exhibit B)		
State Route	Control Section	

This Agreement is between the Washington State Department of Transportation (WSDOT) and the above-named governmental entity (Agency), hereinafter collectively referred to as the “Parties” and individually as the “Party.”

Recitals

1. The Agency is planning the construction of a project as shown in Location and Description of Work above.
2. It is deemed to be in the best interest for WSDOT to include specific WSDOT requested items of work described as such in Exhibit A, herein after referred to as “Work” in the Agency’s construction contract.
3. WSDOT is obligated for the cost of Work described herein.
4. WSDOT is prohibited from the costs of mitigating utilities without a real property right under chapter 47.44 RCW.

Now therefore, pursuant to RCW 47.28.140 and in consideration of the terms, conditions, and performances contained herein, the recitals as stated above, and the attached Exhibit(s) which are incorporated and made a part hereof, it is mutually agreed as follows:

1. Purpose

- 1.1 The Agency, as agent acting for and on behalf of WSDOT, agrees to perform Work as described in Exhibit A.
- 1.2 Plans, specifications and cost estimates shall be prepared by the Agency in accordance with the current [Washington State Standard Specifications for Road, Bridge, and Municipal Construction](#), and amendments thereto, and adopted design standards, (the “Standard Specifications”) unless otherwise noted. All Work shall be constructed pursuant to the terms and conditions of the Standard Specifications. The Agency represents and warrants that it shall require its contractor performing the Work to (i) defend and indemnify WSDOT and the Indemnified Parties as fully set forth in Section 1-07.14 of the Standard Specifications, and (ii) obtain all insurance coverages, including but not limited to all additional insured coverages for the benefit of WSDOT, as required under Section 1-07.18, until acceptance of the Work. The Agency will incorporate the plans and specifications for the Work into the Agency’s project and thereafter advertise the resulting project for bid and, assuming bids are received and a contract is awarded, administer the contract.
- 1.3 The Agency agrees to submit plans and specifications for the described Work as shown on Exhibit A, attached hereto and by this reference made a part of this Agreement, to WSDOT for approval in writing prior to advertising the project. When requested by the Agency, WSDOT shall timely assist in answering bid questions and resolving any design issues that may arise that are associated with the Work. All comments and clarifications must go through the Agency.

- 1.4 The Agency shall provide WSDOT with written notification of the bid price for the Work. WSDOT shall have five (5) working days from the date of written notification to provide the Agency written approval of the bid price for the Work, or request the Work be deleted from the Project as noted in Section 5. WSDOT may request an extension of time in writing, provided that the Agency receives the written request not later than five (5) working days after WSDOT has received the written notification. WSDOT shall provide a written response indicating the number of working days extended, if any.
- 1.5 WSDOT may, if it desires, furnish an inspector on the project. Any costs for such inspection will be borne solely by WSDOT. All contact between said inspector and the Agency's contractor shall be through the Agency's representative.
- 1.6 WSDOT agrees, upon satisfactory completion of the Work involved, to deliver a letter of acceptance which shall include a release and waiver of all future claims or demands of any nature resulting from the performance of the Work under this Agreement, with the exception of claims for latent defects in the Work or any defense and indemnity obligations.

2. Term

- 2.1 This Agreement shall commence upon execution and shall remain in effect until acceptance of the Work, as described in herein, or terminated as set forth below.

3. Termination

- 3.1 This Agreement may be terminated, without penalty or further liability as follows:

3.1.1 Termination for Cause

This Agreement may be terminated for cause by either Party if the other Party does not fulfill in a timely and proper manner its obligations under this Agreement, or if the other Party violates any of the terms and conditions of this Agreement. The notice of intent to terminate for cause shall be issued by a Party in writing and the other Party shall have the opportunity to correct the violation or failure within fifteen (15) working days of the date of the notice. If the failure or violation is not corrected within the time allowed, this Agreement will automatically terminate.

3.1.2 Termination for Withdrawal of Authority.

This Agreement may be terminated by WSDOT in the event that WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement. The notice of intent to terminate for withdrawal of authority shall be issued by WSDOT in writing no less than fifteen (15) working days in advance of termination. No penalty shall accrue to WSDOT in the event termination under this section is exercised. This section shall not be construed to permit WSDOT to terminate this Agreement in order to acquire similar services from a third-party.

3.1.3 Termination for Non-Allocation of Funds

This Agreement may be terminated by either Party if insufficient funds are allocated or appropriated to the Party to continue its performance of this Agreement in any future period. The notice of intent to terminate for non-allocation of funds shall be issued in writing no less than fifteen (15) working days in advance of termination.

- 3.2 If this Agreement is terminated prior to the fulfillment of the terms stated herein, WSDOT agrees to reimburse the Agency for the actual direct and related indirect expenses and costs it has incurred up to the date of termination, as well as the costs of non-cancelable obligations.
- 3.3 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

4. Payment

- 4.1 WSDOT, in consideration of the faithful performance of the Work to be done by the Agency, agrees to reimburse the Agency for the actual direct and related indirect costs incurred by the Agency for the Work.
- 4.2 An itemized estimate of cost for Work to be performed by the Agency at WSDOT's expense is marked Exhibit B and is attached hereto and by this reference made a part of this Agreement.
- 4.3 Partial payments shall be made by WSDOT, upon request of the Agency, to cover 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 the final audit, all required adjustments will be made and reflected in a final payment.

- 4.4 The Agency agrees to submit a final bill to WSDOT within forty-five (45) calendar days after the Agency has completed the Work.

WSDOT Fiscal Year End Closure Requirements (chapter 43.88 RCW): Any invoices for Work performed between July 1st and June 30th of any given year must be submitted to WSDOT no later than July 6th (or the first business day after the July 4th holiday) of the same calendar year. If the Agency is unable to provide an invoice for such Work by this date, an estimate of all remaining payable costs must be submitted to WSDOT no later than July 19th of the same year in order for WSDOT to accrue the amount necessary for payment. The Agency will thereafter submit any remaining invoices to WSDOT for such Work as soon as possible. Failure to comply with these requirements may result in delayed payment. WSDOT shall not be required to pay to the Agency late payment fees, interest, incidental costs, or any other costs related to a delayed payment if the Agency fails to comply with the invoice requirements of this Section.

5. Deletion of Work

- 5.1 In the event the estimated cost of the Work, as indicated in Exhibit B, is in excess of Ten Thousand US Dollars (\$10,000) and the total actual bid prices for the Work covered by this Agreement exceeds the estimate of cost by more than fifteen (15) percent, WSDOT shall have the option of directing the Agency to delete all or a portion of the Work covered by this Agreement from the Agency's contract.
- 5.2 WSDOT shall have five (5) working days from the date of written notification from the Agency that Section 5.1 above has been implicated, to inform the Agency to delete the Work. Should WSDOT exercise its option to delete Work, WSDOT agrees, upon billing by the Agency, to reimburse the Agency for preliminary engineering costs incurred by the Agency to include the Work covered by this Agreement in the Agency's contract.

6. Extra Work

- 6.1 In the event unforeseen conditions require an increase in the cost of more than _____ percent from that agreed to in Exhibit B, this Agreement will be modified by amendment, as provided for in this Agreement.
- 6.2 In the event it is determined that any change from the Work contained in this Agreement is required, approval in writing must be secured from WSDOT prior to the beginning of such Work.
- 6.3 Reimbursement for increased Work and/or a substantial change in the Description of Work shall be limited to costs covered by a written modification, change order or extra Work order approved by WSDOT.

7. Right of Entry

- 7.1 Each Party hereby grants to the other Parties a right of entry upon the real property for which the Party holds fee title as may be necessary to perform the Work required under this Agreement.
- 7.2 The granting of the right of entry pursuant to this Agreement does not relieve the Party exercising the right of entry from obtaining all permits required to perform the Work required under this Agreement.

8. Operations, Maintenance and Future Improvements

- 8.1 Upon completion of the Work outlined herein, all future operation and maintenance of WSDOT's facilities shall be at the sole cost of WSDOT and without expense to the Agency.
- 8.2 A Party shall not make any alterations, additions, or improvements to the property that may affect the other Party without first obtaining the other Party's prior written approval, which approval shall not be unreasonably withheld. Alterations and improvements shall be the subject of a written agreement or amendment which must be executed prior to commencing work.

- 8.2.1 The cost and expense of any such alteration, addition, or improvement consented to by the other Party, including construction, maintenance, and removal, shall be borne by the Party(ies) (i) requesting the alteration, addition, or improvement, or (ii) benefiting from the improvements, in proportion to the benefit received by each Party.
- 8.2.2 It shall be the responsibility of the Party making the request for alteration, addition or modification to secure any and all governmental permits required in connection with any such work, and to perform such work in accordance with governing laws and procedures.
- 8.2.3 In addition, any Party constructing such an improvement shall work with the other Party to minimize any adverse impacts of construction to the other Parties.

9. Utility Mitigation

- 9.1 The Parties agree that utilities in conflict with the Project, which are also located within each jurisdiction, shall be identified in a timely manner that does not delay the Project. The Parties agree to work together in good faith to identify all utilities in conflict with the Project. The Parties shall develop a utility listing of all facilities in conflict with the project located in each jurisdiction and include the mode of occupation or accommodation for each utility, including but not limited to a franchise, permit, lease, easement, etc. The Parties agree to work together to conduct a thorough utility conflict analysis. Further, the Parties agree that they shall adequately mitigate all utilities in their own jurisdictional right-of-way so as to not be in conflict with the project, including temporary or permanent relocation. This includes mitigating all utilities who occupy the underlying right-of-way via franchise, permit, ordinance, lease, easement, or any other mode of occupation, in a timely manner that does not delay the Project. State law prohibits WSDOT from expending any Project funds to mitigate a utility conflict unless the utility's facilities occupy the underlying right-of-way via a compensable, real property interest, such as an easement. WSDOT does not recognize Agency issued franchises, permits, ordinances, or other similar accommodation agreements issued by Agency as instruments that convey a compensable, real property interest to a utility. WSDOT, at its sole discretion, reserves the right to alter, de-scope or terminate any of the Project within the Agency's jurisdiction at any time if the terms of this section are not satisfied.

10. Legal Relations

- 10.1 It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other Party. No joint venture or partnership is formed as a result of this Agreement.
- 10.2 The Parties shall be deemed independent contractors for all purposes, and the employees of the Parties or any of their contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the other Party.
- 10.3 No liability shall attach to the Agency or WSDOT by reason of entering into this Agreement except as expressly provided herein.

11. Indemnification

- 11.1 To the extent as allowed in law, 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, or that Party's contractors, subcontractors or consultants, 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, or that Party's contractors, subcontractors or consultants. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their agents, officials or employees, or the Party's contractors, subcontractors, or consultants 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.
- 11.2 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.
- 11.3 This indemnification and waiver will survive the termination of this Agreement.

12. Dispute Resolution

- 12.1 The Parties shall work collaboratively to resolve disputes and issues arising out of, or related to, this Agreement. Disagreements shall be resolved promptly and at the lowest level of hierarchy. To this end, following the dispute resolution process shown below shall be a prerequisite to the filing of litigation concerning any dispute between the Parties:
- 12.1.1 The designated representatives of the Parties shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. They shall communicate regularly to discuss the status of the tasks to be performed hereunder and to resolve any disputes or issues related to the successful performance of this Agreement. They shall cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any disputes or issues arising during the term of this Agreement.
- 12.1.2 A Party's designated representative shall notify the other Party in writing of any dispute or issue that the designated representative believes may require formal resolution contained herein. They shall meet within five (5) working days of receiving the written notice and attempt to resolve the dispute.
- 12.1.3 In the event they cannot resolve the dispute or issue, the Agency, and WSDOT's Region Administrator, or their respective designees, shall meet and engage in good faith negotiations to resolve the dispute.
- 12.1.4 In the event the Agency and WSDOT's Region Administrator, or their respective designees, cannot resolve the dispute or issue, the Agency and WSDOT shall each appoint a member to a Dispute Board. These two members shall then select a third member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. All expenses for the third member of the Dispute Board shall be shared equally by both Parties; however, each Party shall be responsible for its own costs and fees.

13. Records and Audit

- 13.1 All records related to the Work performed under this Agreement shall be held and kept available for inspection and audit for a period of six (6) years from the date of termination of this Agreement or any final payment authorized under this Agreement, whichever is later. Each Party shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. In the event of litigation or claim arising from the performance of this Agreement, the Agency and WSDOT agree to maintain the records and accounts until such litigation, appeal or claims are finally resolved. This section shall survive the termination of this Agreement.

14. General

- 14.1 Assurances. The Parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, State, and local laws, rules, and regulations as they currently exist or as amended.
- 14.2 Interpretation. This Agreement shall be interpreted in accordance with the laws of the state of Washington. The titles to paragraphs and sections of this Agreement are for convenience only and shall have no effect on the construction or interpretation of any part hereof.
- 14.3 Amendments. This Agreement may be amended only by the mutual written agreement of the Parties executed by personnel authorized to bind each of the Parties.
- 14.4 Waiver. A failure by a Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing signed by an authorized representative of the waiving Party and attached to the original Agreement.
- 14.5 All Writings Contained Herein. This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties.
- 14.6 Venue. Exhaustion of the dispute resolution process set forth in Section 11 is a prerequisite for instituting legal proceedings in a court of law. In the event that a lawsuit is necessary, the exclusive venue for any action brought under this Agreement involving WSDOT shall be in Superior Court for _____ County, State of Washington.
- 14.7 Severability. If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.
- 14.8 Authority to Bind. The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

15. Counterparts and Electronic Signature

15.1 This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each Party, for all purposes. Electronic signatures or signatures transmitted via e-mail in a "PDF" may be used in place of original signatures on this Agreement. Each Party intends to be bound by its electronic or "PDF" signature on this Agreement and is aware that the other Party is relying on its electronic or "PDF" signature.

In Witness Whereof, the Parties hereto have executed this Agreement as of the Party's date signed last below.

Public Agency	Washington State Department of Transportation
Signature: _____	Signature: _____
By: _____ Print Name	By: _____ Print Name
Title: _____	Title: _____
Date: _____	Date: _____