

### 22.1 General Discussion

A Local Agency Agreement is an agreement between a local agency and the Washington State Department of Transportation (WSDOT). An agreement is prepared for each federal aid project, and it covers all phases of work involved in the project (preliminary engineering, right of way acquisition, construction). Its purpose is to ensure that the federal funds in the agreed-upon amount are spent in accordance with all applicable state and federal laws and regulations. The agreement also specifies the procedure for payment and reimbursement on the project.

If the federal aid participation ratio entered in the agreement is not the maximum rate allowed by the Federal Highway Administration (FHWA), then the participation ratio entered becomes the maximum rate allowed.

No costs are eligible for federal aid reimbursement until authorized in writing by WSDOT. This authorization is separate from the agreement

The total cost of a project (including federal, state, agency, and private funds) must be shown on the Local Agency Agreement for each phase of work that includes federal or state funds. At the time of each phase authorization, all funds necessary to complete the scope of work for that phase must be secured.

**Project Agreement End Date** – All projects are now required to have a Period of Performance which includes both a begin date and an end date. A project’s begin date is the date of FHWA authorization. Local agencies will be required to supply an estimated Project Agreement End Date for each federally authorized phase of a project. To ensure adequate time for the delivery of local projects, which are subject to state environmental requirements, substantial community involvement, eminent domain, and coordination with other local projects, WSDOT recommends when establishing the “Project Agreement End Date” local agencies consider:

- For **Planning Only** projects – WSDOT recommends local agencies estimate the end of the project’s period of performance and add one year.
- For **Preliminary Engineering** (PE – design) and **Right of Way** (RW) – WSDOT recommends local agencies estimate when each phase will be completed and add one year to each, due to the complications that may arise with environmental requirements and approvals and negotiating right of way with property owners and railroads.
- For **Construction** (CN) – WSDOT recommends local agencies estimate when construction will be completed and add two years, to provide adequate time to acquire all the necessary paperwork, releases, and negotiate any claims for closure of the project.

**Note:** Any costs incurred after the “Project Agreement End Date” are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

When authorizing construction, the agency's proposed advertisement date must be noted on the supplemental Local Agency Agreement, or the original LAA if construction is the first phase authorized. Local Agencies are expected to go to ad within six weeks of construction authorization.

All funds shown on the Local Agency Agreement must be supported by a documented cost estimate (23 CFR Part 630) that is based on an Agency's best estimate of costs. The cost estimate must demonstrate how the funds shown on the LAA were determined, and what information was used in the calculation.

## 22.2 Preparation Procedure

An original Local Agency Agreement signed by the approving authority must be submitted by the local agency to the Region Local Programs Engineer when the Project Prospectus ([Chapter 21](#)) is submitted. This agreement form will be retained by WSDOT. It is the responsibility of the local agency to submit an additional agreement form or a copy if they need an executed agreement for their files. To allow sufficient time for WSDOT review and execution, these documents should be submitted a minimum of 4 weeks prior to the time when federal reimbursement is desired.

Agreements containing errors will be returned to the local agency for correction. Any changes must be initialed by the approving authority ([Chapter 13](#)). To avoid this delay, the agency should check all figures prior to submittal, and if in doubt, request assistance from the Region Local Programs Engineer.

An agreement form (DOT Form 140-039) is contained in [Appendix 22.51](#), with instructions for completing it in [Appendix 22.52](#). Local agency cost estimates for each phase of a project are entered on the form, as well as the project name, length, termini, description, Project Agreement End Date, Proposed Advertisement Date (required for construction phase) and method of construction financing. These methods are described in [Appendix 22.52](#).

Local agency resolutions or ordinances that may be needed are discussed in [Appendix 22.52](#).

## 22.3 Supplemental Agreement

Funds requested beyond the amount set forth in a Local Agency Agreement, supplementing for the next phase of the project and/or a change to the Project Agreement End Date will require execution of a Supplemental Agreement.

Changes to the project funding must be made in accordance with this manual (see [Chapter 12](#)) and must be accompanied by documented cost estimates for phases already authorized or seeking authorization (23 CFR Part 630).

All projects shall submit a supplemental agreement to revise the federal funds obligated within 90 days after it is determined that the estimated federal share of project costs has decreased by \$250,000 or more (23 CFR Part 630.106(4) Subpart A).

Federal approval is required to change a Project Agreement End Date. Therefore, Project Agreement End Date may only be changed during a phase, through a supplement, if:

- a project has a change in the terms and conditions of the federal award (e.g., significant cost change or scope change); or

- adequate justification is provided for project schedule revision or other circumstances (e.g., litigation) and there is no change to the terms and conditions of the Federal project.

**Note:** Requests for reimbursement after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

A Supplemental Agreement form (DOT Form 140-041) is shown in [Appendix 22.53](#), and instructions for completing it are given in [Appendix 22.54](#). Like the original agreement form, the Supplemental Agreement form requires information about the project's name, length, termini, description, schedule and funding.

## 22.4 Documented Cost Estimate

A documented cost estimate is an itemized estimate of costs broken down by phase for a project. Preliminary engineering estimates can be based on a percentage of historical construction costs, or based on historical labor and equipment needs used to complete similar design efforts. Right of way estimates will be the right of way project funding estimate ([Appendix 25.172](#)) or true cost estimate ([Appendix 25.173](#)). Construction estimates will be the engineer's estimate, including construction engineering costs. Bid tabulations, or award data may be used to justify increases when completing Supplemental Agreements.

Acceptable references for building a documented estimate may be historical construction costs, estimates from recent similar work, WSDOT Unit Bid Analysis, or other estimating methods. A cost estimate must be provided for each phase shown on the Local Agency Agreement, including preliminary engineering. Estimates for the Construction Phase should include funds for construction engineering in addition to the Engineer's Estimate.

When submitting a cost estimate with a Supplemental Agreement please provide a brief statement explaining what costs changed since the original Local Agency Agreement was created. Bid tabulations or award data may be used to justify Supplemental Agreement increases for construction phases of a project.

## 22.5 Appendices

- [22.51](#) Local Agency Agreement
- [22.52](#) Local Agency Agreement – Instructions
- [22.53](#) Local Agency Agreement Supplement
- [22.54](#) Local Agency Agreement Supplement – Instructions
- [22.55](#) Vacant
- [22.56](#) Documented Cost Estimates – Example

## 22.6 Forms

- [DOT 140-039](#) Local Agency Agreement – Example
- [DOT 140-041](#) Local Agency Agreement Supplement – Example



# Appendix 22.51

# Local Agency Agreement



Agency

Address

## Local Agency Agreement

<b>CFDA No. 20.205</b> (Catalog or Federal Domestic Assistance)  <b>Project No.</b>  <b>Agreement No.</b>  For OSC WSDOT Use Only
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The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) 2 CFR Part 200, (4) the policies and procedures promulgated by the Washington State Department of Transportation, and (5) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

**Project Description**

Name \_\_\_\_\_ Length \_\_\_\_\_  
 Termini \_\_\_\_\_  
 Description of Work \_\_\_\_\_

Project Agreement End Date \_\_\_\_\_

Proposed Advertisement Date \_\_\_\_\_

Claiming Indirect Cost Rate <input type="checkbox"/> Yes <input type="checkbox"/> No
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Type of Work	Estimate of Funding		
	(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE			
% a. Agency			
% b. Other			
Federal Aid Participation			
c. Other			
d. State			
Ratio for PE			
e. Total PE Cost Estimate (a+b+c+d)			
Right of Way			
% f. Agency			
% g. Other			
Federal Aid Participation			
h. Other			
Ratio for RW			
i. State			
j. Total R/W Cost Estimate (f+g+h+i)			
Construction			
% k. Contract			
% l. Other			
m. Other			
Federal Aid Participation			
n. Other			
Ratio for CN			
o. Agency			
p. State			
q. Total CN Cost Estimate (k+l+m+n+o+p)			
r. Total Project Cost Estimate (e+j+q)			

**Agency Official**

By \_\_\_\_\_  
 Title \_\_\_\_\_

**Washington State Department of Transportation**

By \_\_\_\_\_  
 Director, Local Programs  
 Date Executed \_\_\_\_\_

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**Construction Method of Financing (Check Method Selected)**

**State Ad and Award**

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 5, column 2) in the amount of

\$ \_\_\_\_\_ at \$ \_\_\_\_\_ per month for \_\_\_\_\_ months.

**Local Force or Local Ad and Award**

Method C - Agency cost incurred with partial reimbursement

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

\_\_\_\_\_, Resolution/Ordinance No.

**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 the Federal Highway Administration.

When the State acts for the Agency but is 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 willing 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 ensure 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 local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State 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.
2. Right of way acquisition.
3. Project construction.

Once written authorization is given, the Agency agrees to show continuous progress through monthly billings. Failure to show continuous progress may result the Agency's project becoming inactive, as described in 23 CFR 630, and subject to de-obligation of federal aid funds and/or agreement closure.

If right of way acquisition, or actual construction of the road for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which preliminary engineering phase was authorized, 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 IX).

If actual construction of the road for which right of way has been purchased is not started by the close of the tenth fiscal year following the fiscal year in which the right of way phase was authorized, 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 IX).

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 statewide 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 accordance with the Federal Transportation Act, as amended, 2 CFR Part 200. 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.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR Part 200 - Uniform Admin Requirements, Cost Principles and Audit Requirements for Federal Awards, and retained for audit.

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 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 IX).

##### **1. 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 (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 duplicate, 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 maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

The State shall 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 IX).

#### **VII. Audit of Federal Consultant Contracts**

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 by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and 2 CFR Part 200.501 - Audit Requirements.

If upon audit it is found that 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 IX).

#### **VIII. Single Audit Act**

The Agency, as a subrecipient of federal funds, shall adhere to the federal regulations outlined in 2 CFR Part 200.501 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$750,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of 2 CFR Part 200.501. Upon conclusion of the audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

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**IX. 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 Director, Local Programs.

Project Agreement End Date - This date is based on your projects Period of Performance (2 CFR Part 200.309).

Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

**X. Traffic Control, Signing, Marking, and 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.

**XI. 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.

**XII. Nondiscrimination Provision**

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

The Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Agency of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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 in 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 understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

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.

**XIII. Liquidated Damages**

The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 635, Subpart 127, 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.

**XIV. Termination for Public Convenience**

The Secretary of the 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.
- (4) The Secretary is notified by the Federal Highway Administration that the project is inactive.
- (5) The Secretary determines that such termination is in the best interests of the State.

**XV. 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.

**XVI. Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying**

The approving authority certifies, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification as a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**XVII. Assurances**

Local agencies receiving Federal funding from the USDOT or its operating administrations (i.e., Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration) are required to submit a written policy statement, signed by the Agency Executive and addressed to the State, documenting that all programs, activities, and services will be conducted in compliance with Section 504 and the Americans with Disabilities Act (ADA).

**Additional Provisions**

## **Appendix 22.52 Local Agency Agreement – Instructions**

.01 **Agency Name and Billing Address** – Enter the Agency of primary interest which will become a party to the agreement.

.02 **Project Number** – Leave blank. This number will be assigned by WSDOT.

.03 **Agreement Number** – Leave blank. This number will be assigned by WSDOT.

.04

- a. **Project Description** – Enter the project name, total length of the project (in miles), and a brief description of the termini. Data entered here must be consistent with the name, length, and termini noted in the STIP and Project Prospectus.

*Example:* (Name) “Regal Road”, (Length) “1.2 miles”, (Termini) “Smith Road to Main Street”

- b. **Description of Work** – Enter a concise statement of the major items of work to be performed. Statement must be consistent with the description of work noted in the STIP and Project Prospectus.

*Example:* “Asphalt overlay of Regal Road; curb, gutter, and sidewalk on the east side of the roadway; illumination; and traffic signal at the intersection of Regal Road and Dakota Avenue.”

- c. **Project Agreement End Date** – Enter your Project Agreement End Date. This date is based on your projects Period of Performance (2 CFR 200.309).

For Planning Only projects – WSDOT recommends agencies estimate the end of the project’s period of performance and add one year to determine the “Project Agreement End Date”.

For PE and RW – WSDOT recommends agencies estimate when the phase will be completed and add one year to determine the “Project Agreement End Date”.

For Construction – WSDOT recommends agencies estimate the end of the project’s period of performance and add two years to determine the “Project Agreement End Date”.

- d. **CN Phase Authorization Only** – Enter your proposed project advertisement Date.

- e. **Claiming Indirect Cost Rate** – Check the Yes box if you will be claiming indirect costs on your project. For those projects claiming indirect costs approval by your cognizant agency and supporting documentation is required to be available for review by FHWA, WSDOT and /or State Auditor. Check the No box if you will not be claiming indirect costs on your project. See section 23.5 for additional guidance.

**.05 Type of Work and Funding (Round all dollar amounts to the nearest dollar)**

- a. **PE** – Lines a through d show Preliminary Engineering costs for the project by type of work (e.g., consultant, agency, state services, etc.).

\*Federal aid participation ratio for PE – enter ratio for PE lines with amounts in column 3.

**Line a** – Enter the estimated amount of agency PE in columns 1 through 3.

**Line b & c** – Identify user, consultant, etc., and enter the estimated amounts in columns 1 through 3.

**Line d** – State Services. Every project must have funding for state services. Secure an estimate from the Region Local Programs Engineer and enter in columns 1 through 3.

**Line e** – Total of lines a + b + c + d.

- b. **Right of Way** – If Right of Way is acquired on the project, the appropriate costs are shown in lines f through i.

\*Federal aid participation ratio for R/W – enter ratio for R/W lines with amounts in column 3.

**Line f** – Enter the estimated amount of agency work in columns 1 through 3.

**Line g & h** – Identify user, consultant, etc., and enter the estimated amounts in columns 1 through 3.

**Line i** – State Services. If state services are required in the acquisition, enter the estimated amounts in columns 1 through 3.

**Line j** – Total of lines f + g + h + i.

- c. **Construction** – Lines k through p show construction costs for the project by type of work (e.g., contract, consultant, agency, state services, etc.).

\*Federal aid participation ratio for CN – enter ratio for CN lines with amounts in column 3.

**Line k** – Enter the estimated cost of the contract.

**Lines l & m & n** – Enter other estimated costs such as utility and construction contracts or non-federally matched contract costs.

**Line o** – Enter estimated costs of all construction related agency work.

**Line p** – State force. Every project must have funds set up for state force work. Contact the Region Local Programs Engineer for an estimate and record in columns 1 through 3.

**Line q** – Total Construction Cost Estimate. Total of lines k + l + m + n + o + p.

- d. **Total Project Cost Estimate**

**Line r** – Total Cost Estimate of the Project. Total of lines e + j + q.

\*Please remember, if the federal aid participation rate entered is not the maximum rate allowed by FHWA, then the participation rate entered becomes the maximum rate allowed.

- .06 **Signatures** – An authorized official of the local agency signs the agreement, and writes in their title. *Note:* Do **not** enter a date on the Date Executed line.
- .07 **Method of Construction Financing** – Choose the method of financing for the construction portion of the project.
  - a. **Method “A”** is used when the state administers the contract for the agency.
  - b. **Method “B”** is also used when the state administers the contract for the agency.
  - c. **Method “C”** is used with projects administered by the local agency. The agency will submit billings monthly through the state to FHWA for all eligible costs. The billings must document the payment requests from the contractor. If state-force work, such as audit and construction engineering, is to receive federal participation, it will be billed to the agency and FHWA simultaneously at the indicated ratio. To show continuous progress agencies should bill monthly until agreement is closed.
- .08 **Resolutions/Ordinances** – When someone other than the County Executive/Chairman, County Commissioners/Mayor is authorized to sign the agreement, the agency must submit to WSDOT with the agreement a copy of the Resolution/Ordinance designating that individual.
- .09 **Parties to the Agreement** – Submit one originally signed agreement form to the Region Local Programs Engineer. It is the responsibility of the local agency to submit an additional, originally signed agreement form if they need an executed agreement for their files. The agreement is first executed by the agency official(s) authorized to enter into the agreement. It is then transmitted to the state for execution by Local Programs. The agreement is dated at the time of final execution by Local Programs.

# Appendix 22.53 Local Agency Agreement Supplement



## Local Agency Agreement Supplement

Agency		Supplement Number
Federal Aid Project Number	Agreement Number	CFDA No. <b>20.205</b> (Catalog of Federal Domestic Assistance)

The Local Agency requests to supplement the agreement entered into and executed on  
 All provisions in the basic agreement remain in effect except as modified by this supplement.

The change to the agreement are as follows:

**Project Description**

Name \_\_\_\_\_ Length \_\_\_\_\_

Termini \_\_\_\_\_

Description of Work  No Change

Reason for Supplement \_\_\_\_\_

Are you claiming indirect cost rate?  Yes  No Project Agreement End Date \_\_\_\_\_

Does this change require additional Right of Way or Easements?  Yes  No Advertisement Date: \_\_\_\_\_

Type of Work	Estimate of Funding				
	(1) Previous Agreement/Suppl.	(2) Supplement	(3) Estimated Total Project Funds	(4) Estimated Agency Funds	(5) Estimated Federal Funds
PE			0.00		
% a. Agency			0.00		
b. Other			0.00		
Federal Aid			0.00		
Participation			0.00		
Ratio for PE			0.00		
c. Other			0.00		
d. State			0.00		
e. Total PE Cost Estimate (a+b+c+d)	0.00	0.00	0.00	0.00	0.00
Right of Way			0.00		
% f. Agency			0.00		
g. Other			0.00		
Federal Aid			0.00		
Participation			0.00		
Ratio for RW			0.00		
h. Other			0.00		
i. State			0.00		
j. Total R/W Cost Estimate (f+g+h+i)	0.00	0.00	0.00	0.00	0.00
Construction			0.00		
% k. Contract			0.00		
l. Other			0.00		
Federal Aid			0.00		
Participation			0.00		
Ratio for CN			0.00		
m. Other			0.00		
n. Other			0.00		
o. Agency			0.00		
p. State			0.00		
q. Total CN Cost Estimate (k+l+m+n+o+p)	0.00	0.00	0.00	0.00	0.00
r. Total Project Cost Estimate (e+j+q)	0.00	0.00	0.00	0.00	0.00

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.

Agency Official \_\_\_\_\_

Washington State Department of Transportation

By  
Title

By  
Director, Local Program  
Date Executed

Agency		Supplement Number
Federal Aid Project Number	Agreement Number	CFDA No. <b>20.205</b> (Catalog of Federal Domestic Assistance)

**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 accordance with the Federal Transportation Act, as amended, 2 CFR Part 200. 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.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR Part 200 - Uniform Admin. Requirements, Cost Principles and Audit Requirements for Federal Awards, and retained for audit.

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 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 IX).

**VII. Audit of Federal Consultant Contracts**

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 by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and 2 CFR Part 200.501 - Audit Requirements.

If upon audit it is found that 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.

**IX. 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 Director, Local Programs.

Project Agreement End Date - This date is based on your projects Period of Performance (2 CFR Part 200.309).

Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

**VIII. Single Audit Act**

The Agency, as a subrecipient of federal funds, shall adhere to the federal regulations outlined in 2 CFR Part 200.501 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$750,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of 2 CFR Part 200.501. Upon conclusion of the audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

**XVII. Assurances**

Local Agencies receiving Federal funding from the USDOT or its operating administrations (i.e., Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration) are required to submit a written policy statement, signed by the Agency Executive and addressed to the State, documenting that all programs, activities and services will be conducted in compliance with Section 504 and the Americans with Disabilities Act (ADA).

- .01 **Agency** – Enter the agency name as entered on the original agreement.
- .02 **Supplemental Number** – Enter the number of the supplement. Supplement numbers will be assigned in sequence beginning with Number 1 for the first supplement.
- .03 **Project Number** – Enter the federal aid project number assigned by WSDOT on the original agreement.
- .04 **Agreement Number** – Enter the agreement number assigned by WSDOT on the original agreement.
- .05 **Execution Date** – Enter date the original agreement was executed on.
- .06 **Project Description.** Enter the project name, length, and termini.
- .07 **Description of Work** – Clearly describe if there is a change in work such as the addition or deletion of work elements and/or changes to the termini. If the work has not changed, put a check mark in the “No Change” box.
- .08 **Reason for Supplement** – Enter the reason for this supplement, i.e., increase PE funding to cover design changes presented in the revised prospectus; request funding of construction phase; decrease construction funding to the contract bid amount. If the supplement is authorizing a construction phase, the project’s proposed advertisement date must be included in the space provided.
- .09 **Claiming Indirect Cost Rate** – Check the Yes box if you will be claiming indirect costs on your project. For those projects claiming indirect costs approval by your cognizant agency and supporting documentation is required to be available for review by FHWA, WSDOT and /or State Auditor. Check the No box if you will not be claiming indirect costs on your project. See Section 23.5 for additional guidance.
- .10 **Project Agreement End Date** – Enter your previously established Project Agreement End Date. If authorizing a new phase of the project determine your revised Project Agreement End Date based on the following guidance:
  - For PE and RW – WSDOT recommends agencies estimate when the phase will be completed and add one year to determine the “Project Agreement End Date”.
  - For Construction – WSDOT recommends agencies estimate the end of the project’s period of performance and add two years to determine the “Project Agreement End Date”.

.11 **Type of Work and Funding** – Complete this section in the manner described in [Appendix 22.52](#), Paragraph .05.

1. **Column 1** – Enter the amounts from column 1 of the original local agency agreement. If the agreement has already been supplemented, enter the amounts by type of work from column 3 of the last supplemental agreement.
2. **Column 2** – Enter additional amounts requested by type of work.
3. **Column 3** – Add the amounts in columns 1 and 2.
4. **Columns 4 and 5** – Enter the appropriate amounts based on the participation ratio recorded on the original agreement.

.12 **Signatures** – An authorized official of the local agency signs the Supplemental Agreement, and writes in their title. Submit one originally signed supplement form to the Region Local Programs Engineer. It is the responsibility of the local agency to submit an additional, originally signed agreement form if they need an executed agreement for their file.



## Appendix 22.56 Documented Cost Estimates – Example

### Documented Cost Estimate for Preliminary Engineering

Agency Cost through Dec. 31, 2008	\$16,144
Additional PE Agency Cost for 2009	
• PS & E Review	3,500
• Prepare Bid Documents	2,000
• Advertisement Process	<u>2,000</u>
	\$23,644
Agency PE Cost Estimate	\$24,000
Consultant PE Cost Estimate ((\$53,169 per consultant agreement))	\$54,000

### Documented Cost Estimate for Construction

Construction Cost Estimate	\$420,385
Agency Construction Engineering (25%)	<u>\$105,096</u>
	\$525,481
Agency Construction Estimate	\$525,000
State Construction Engineering Estimate	\$ 50,000
Total Construction Cost Estimate	\$575,000

1/2

PS&E ESTIMATE

No.	Item Description	Unit	Amt.	Unit Costs	Item Cost	% of total
<b>PREPARATION</b>						
1	Mobilization	L.S.	L.S.	L.S.	\$ 42,000	10.0%
2	Clearing and Grubbing	L.S.	1	3,000	\$ 3,000	0.7%
3	Remove Exist. Bridge	L.S.	1	30,000	\$ 30,000	7.1%
<b>GRADING</b>						
4	Roadway Excavation Incl. Haul	C.Y.	419	25	\$ 10,475	2.5%
5	Gravel Borrow Incl. Haul	C.Y.	138	15	\$ 2,070	0.5%
6	Embankment Compaction	C.Y.	73	5	\$ 365	0.1%
<b>STRUCTURE</b>						
7	Structure Excavation Class A Incl. Haul	C.Y.	177	50	\$ 8,850	2.1%
8	Shoring or Extra Excavation Cl. A	L.S.	1	17,000	\$ 17,000	4.0%
9	Gravel Backfill For Walls	C.Y.	12	50	\$ 600	0.1%
10	Epoxy-Coated St. Reinf. Bar For Bridge	LB	391	2.00	\$ 782	0.2%
11	Steel Reinforcing Bar for Bridge	LB	6,734	2.00	\$ 13,468	3.2%
12	Deficient Strength Conc. Price Adjustment	Dol.	1		\$ -	0.0%
13	Superstructure - Schmid Road Bridge	L.S.	1	130,000	\$ 130,000	30.9%
14	Concrete Class 4000 for Bridge	C.Y.	61	800	\$ 48,800	11.6%
15	Traffic Barrier	L.F.	107	200	\$ 21,400	5.1%
16	Membrane Waterproofing	S.Y.	106	50	\$ 5,300	1.3%
<b>SURFACING</b>						
17	Gravel Base	Ton	634	25	\$ 15,850	3.8%
18	Crushed Surfacing Base Course	Ton	190	50	\$ 9,500	2.3%
<b>HOT MIX ASPHALT</b>						
19	Asphalt Conc. Pavement Cl. A	Ton	165	175	\$ 18,375	4.4%
20	Asphalt Cost Price Adjustment	Dol.	1		\$ -	0.0%
<b>EROSION/WATER POLLUTION CONTROL</b>						
21	ESC Lead	Day	20	300	\$ 6,000	1.4%
22	Seeding Fertilizing and Mulching	L.S.	1	3,000	\$ 3,000	0.7%
23	Silt Fence	L.F.	160	5	\$ 800	0.2%
24	TESC	L.S.	1	8,000	\$ 8,000	1.9%
<b>TRAFFIC</b>						
25	Beam Guardrail Non-Flared Terminal	Each	3	2,500	\$ 7,500	1.8%
26	Beam Guardrail Transition Type 1	Each	3	2,000	\$ 6,000	1.4%
27	Permanent Signing	L.S.	1	1,000	\$ 1,000	0.2%
28	Project Temporary Traffic Control	L.S.	1	5,000	\$ 5,000	1.2%
<b>OTHER ITEMS</b>						
29	Water	M. Gal	10	125	\$ 1,250	0.3%
30	Trimming and Cleanup	L.S.	1	2,000	\$ 2,000	0.5%
31	SPCC	L.S.	1	2,000	\$ 2,000	0.5%
<b>CONTRACT ITEM TOTAL</b>					<b>420,385</b>	<b>100.0%</b>

2/4/2009

2/2

Opinion of Probable Construction Cost  
 30% Design Phase

Opinion of Probable Construction Cost - 30% Design	
ITEM	SUBTOTAL
1 Mobilization	\$ 80,000
2 Traffic Control	\$ 90,000
3 TESC	\$ 10,000
4 Clearing, Demo, and Grading	\$ 25,000
5 Storm Water	\$ 20,000
6 Utilities	\$ 20,000
7 Roeder Bridge	\$ 507,000
<b>Subtotal ROEDER BRIDGE, TRANSPORTATION, AND UTILITIES</b>	<b>\$ 752,000</b>
<hr/>	
Construction Contingency (25%)	\$ 188,000
Transportation and Utilities Construction Total	\$ 940,000
<hr/>	
<b>Engineering and Project Management</b>	
Project Management (\$45/hr x 400 hrs.)	\$ 18,000
Engineering Staff (\$40/hr x 200 hrs.)	\$ 8,000
Administrative Staff (\$35/hr x 200 hrs.)	\$ 7,000
Inspection Staff (\$40/hr x 675 hrs.)	\$ 27,000
<b>Engineering and Project Management Total *</b>	<b>\$ 60,000</b>
<hr/>	
<b>Opinion of Probable Project Costs Total</b>	<b>\$ 1,000,000</b>

\*Note: Engineering and Project Management cost estimates are based on previous project costs similar in nature where the City is managing and overseeing a consultant and the construction. This accounts for approximately 1500 hours of engineering, project management, inspection, and staff time

**2009 SIDEWALK IMPROVEMENTS**  
FEDERAL AID PROJECT NO. STP-

**Preliminary Engineers Estimate of Probable Costs**  
**Low Range of Costs**

**Sidewalk Improvements**

Work for each item in this schedule shall be in accordance with the Specification Reference listed for each item below.

Item No.	Description of Item Write In Unit Price in Words	Plan Quantity	Unit of Quantity	Unit Price Dollars & Cents	Total Price Dollars & Cents
1	Mobilization per lump sum	1	LS	NA	\$ 110,000.00
2	Type A - Cement Concrete Curb and Gutter Project Length Minus Northern 2,500 feet per linear feet	5314	LF	\$ 25.00	\$ 132,850.00
3	Cement Concrete Sidewalk - 4" Depth Project Length (6 feet wide) per square yard	5209	SY	\$ 45.00	\$ 234,405.00
4	Cement Concrete Sidewalk/Driveway Approach - 6" Depth Every 100 Feet Along Project Length per each	78	EA	\$ 2,500.00	\$ 195,000.00
5	Cement Concrete Sidewalk Ramp - Type 2 Each Intersection per each	28	EA	\$ 1,500.00	\$ 42,000.00
6	Sawcut Asphalt Pavement Along Curb & Gutter per linear feet	5314	LF	\$ 2.00	\$ 10,628.00
7	Hot Mix Asphalt - (Commercial HMA) 2' Wide by 3" Deep Along Curb & Gutter per ton	300	TN	\$ 200.00	\$ 60,000.00

2009 Sidewalk Improvements  
**SUMMARY**

Description of Item	Total
Sidewalk Improvements	\$ 854,883.00
Non-Specified Items	20% \$ 170,976.60
	7.7 % Tax \$ 78,991.19
Subtotal Construction Cost	\$ 1,104,850.79
Design and Inspection	20% \$ 220,970.16
<b>TOTAL PROJECT COST</b>	<b>\$ 1,325,820.95</b>



# Chapter 22 Forms Local Agency Agreement – Example



**Washington State  
Department of Transportation**

Agency

Address

## Local Agency Agreement

**CFDA No. 20.205**  
(Catalog or Federal Domestic Assistance)

**Project No.**

**Agreement No.**

For OSC WSDOT Use Only

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) 2 CFR Part 200, (4) the policies and procedures promulgated by the Washington State Department of Transportation, and (5) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

**Project Description**

Name

Length

Termini

**Description of Work**

Project Agreement End Date

Claiming Indirect Cost Rate

Yes  No

Proposed Advertisement Date

Type of Work	Estimate of Funding		
	(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE			
% a. Agency			
% b. Other			
Federal Aid Participation Ratio for PE			
c. Other			
d. State			
e. Total PE Cost Estimate (a+b+c+d)			
Right of Way			
% f. Agency			
% g. Other			
Federal Aid Participation Ratio for RW			
h. Other			
i. State			
j. Total RW Cost Estimate (f+g+h+i)			
Construction			
% k. Contract			
% l. Other			
m. Other			
Federal Aid Participation Ratio for CN			
n. Other			
o. Agency			
p. State			
q. Total CN Cost Estimate (k+l+m+n+o+p)			
r. Total Project Cost Estimate (e+j+q)			

**Agency Official**

By

Title

**Washington State Department of Transportation**

By

Director, Local Programs

Date Executed

## Construction Method of Financing (Check Method Selected)

### State Ad and Award

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 5, column 2) in the amount of

\$ \_\_\_\_\_ at \$ \_\_\_\_\_ per month for \_\_\_\_\_ months.

### Local Force or Local Ad and Award

Method C - Agency cost incurred with partial reimbursement

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

\_\_\_\_\_, \_\_\_\_\_, Resolution/Ordinance No.

## 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 the Federal Highway Administration.

When the State acts for the Agency but is 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 willing 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 ensure 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 local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State 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.
2. Right of way acquisition.
3. Project construction.

Once written authorization is given, the Agency agrees to show continuous progress through monthly billings. Failure to show continuous progress may result the Agency's project becoming inactive, as described in 23 CFR 630, and subject to de-obligation of federal aid funds and/or agreement closure.

If right of way acquisition, or actual construction of the road for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which preliminary engineering phase was authorized, 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 IX).

If actual construction of the road for which right of way has been purchased is not started by the close of the tenth fiscal year following the fiscal year in which the right of way phase was authorized, 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 IX).

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 statewide 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 accordance with the Federal Transportation Act, as amended, 2 CFR Part 200. 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.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR Part 200 - Uniform Admin Requirements, Cost Principles and Audit Requirements for Federal Awards, and retained for audit.

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 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 IX).

##### **1. 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 (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 duplicate, 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 maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

The State shall 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 IX).

#### **VII. Audit of Federal Consultant Contracts**

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 by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and 2 CFR Part 200.501 - Audit Requirements.

If upon audit it is found that 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 IX).

#### **VIII. Single Audit Act**

The Agency, as a subrecipient of federal funds, shall adhere to the federal regulations outlined in 2 CFR Part 200.501 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$750,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of 2 CFR Part 200.501. Upon conclusion of the audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

DOT Form 140-039  
Revised 05/2015

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#### **IX. 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 Director, Local Programs.

Project Agreement End Date - This date is based on your projects Period of Performance (2 CFR Part 200.309).

Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

#### **X. Traffic Control, Signing, Marking, and 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.

#### **XI. 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.

#### **XII. Nondiscrimination Provision**

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

The Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Agency of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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 in 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 understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

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.

**XIII. Liquidated Damages**

The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 635, Subpart 127, 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.

**XIV. Termination for Public Convenience**

The Secretary of the 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.
- (4) The Secretary is notified by the Federal Highway Administration that the project is inactive.
- (5) The Secretary determines that such termination is in the best interests of the State.

**XV. 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.

**XVI. Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying**

The approving authority certifies, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification as a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**XVII. Assurances**

Local agencies receiving Federal funding from the USDOT or its operating administrations (i.e., Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration) are required to submit a written policy statement, signed by the Agency Executive and addressed to the State, documenting that all programs, activities, and services will be conducted in compliance with Section 504 and the Americans with Disabilities Act (ADA).

**Additional Provisions**

# Local Agency Agreement Supplement – Example



**Washington State  
Department of Transportation**

## Local Agency Agreement Supplement

Agency		Supplement Number
Federal Aid Project Number	Agreement Number	CFDA No. <b>20.205</b> (Catalog of Federal Domestic Assistance)

The Local Agency requests to supplement the agreement entered into and executed on  
All provisions in the basic agreement remain in effect except as modified by this supplement.

The change to the agreement are as follows:

**Project Description**

Name Length

Termini

**Description of Work**       No Change

Reason for Supplement

Are you claiming indirect cost rate?    Yes    No      Project Agreement End Date

Does this change require additional Right of Way or Easements?    Yes    No      Advertisement Date:

Type of Work	Estimate of Funding				
	(1) Previous Agreement/Suppl.	(2) Supplement	(3) Estimated Total Project Funds	(4) Estimated Agency Funds	(5) Estimated Federal Funds
PE			0.00		
% a. Agency			0.00		
b. Other			0.00		
Federal Aid Participation Ratio for PE			0.00		
c. Other			0.00		
d. State			0.00		
e. Total PE Cost Estimate (a+b+c+d)	0.00	0.00	0.00	0.00	0.00
Right of Way			0.00		
% f. Agency			0.00		
g. Other			0.00		
Federal Aid Participation Ratio for RW			0.00		
h. Other			0.00		
i. State			0.00		
j. Total R/W Cost Estimate (f+g+h+i)	0.00	0.00	0.00	0.00	0.00
Construction			0.00		
% k. Contract			0.00		
l. Other			0.00		
m. Other			0.00		
Federal Aid Participation Ratio for CN			0.00		
n. Other			0.00		
o. Agency			0.00		
p. State			0.00		
q. Total CN Cost Estimate (k+l+m+n+o+p)	0.00	0.00	0.00	0.00	0.00
r. Total Project Cost Estimate (e+j+q)	0.00	0.00	0.00	0.00	0.00

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.

**Agency Official**

**Washington State Department of Transportation**

By  
Title

By  
Director, Local Program  
Date Executed

Agency		Supplement Number
Federal Aid Project Number	Agreement Number	CFDA No. <b>20.205</b> (Catalog of Federal Domestic Assistance)

**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 accordance with the Federal Transportation Act, as amended, 2 CFR Part 200. 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.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR Part 200 - Uniform Admin. Requirements, Cost Principles and Audit Requirements for Federal Awards, and retained for audit.

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 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 IX).

**VII. Audit of Federal Consultant Contracts**

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 by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and 2 CFR Part 200.501 - Audit Requirements.

If upon audit it is found that 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.

**IX. 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 Director, Local Programs.

Project Agreement End Date - This date is based on your projects Period of Performance (2 CFR Part 200.309).

Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

**VIII. Single Audit Act**

The Agency, as a subrecipient of federal funds, shall adhere to the federal regulations outlined in 2 CFR Part 200.501 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$750,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of 2 CFR Part 200.501. Upon conclusion of the audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

**XVII. Assurances**

Local Agencies receiving Federal funding from the USDOT or its operating administrations (i.e., Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration) are required to submit a written policy statement, signed by the Agency Executive and addressed to the State, documenting that all programs, activities and services will be conducted in compliance with Section 504 and the Americans with Disabilities Act (ADA).

