



Local Agency Participating Agreement Work by WSDOT — Actual Cost		Local Agency Name & Address	
Agreement Number		Section/Location	
State Route	Control Section Number	Plans, Specifications and Cost Estimates (PS&E) for the Local Agency Work by Local Agency?	Yes No
Region		PS&E Due Date:	
Advance Payment Required? Yes No		Description of Work:	
Advance Payment Amount			
WSDOT		LOCAL AGENCY	
State Agency Representatives:		Local Agency Representatives:	
Name:		Name:	
Title:		Title:	
Address:		Address:	
Email Address:		Email Address:	
Phone:		Phone:	

This Agreement is made and entered into between the Washington State Department of Transportation (WSDOT) and the above named governmental entity (Local Agency), hereinafter collectively referred to as the "Parties" and individually as the "Party."

Recitals

1. WSDOT is planning the construction or improvement of a section of the state route as shown above, and in connection therewith, the Local Agency has requested that WSDOT perform certain work for the Local Agency as described above under Description of Work and/or further described in Exhibit B, (Work).
2. It is deemed to be in the public's best interest for WSDOT to include the requested Work in WSDOT's construction contract for the state route improvement.
3. The Local Agency is obligated for the cost of the Work described herein.

Now, Therefore, pursuant to RCW 47.28.140 and/or chapter 39.34 RCW and in consideration of the terms, conditions, and performances contained herein, the recitals as stated above, and the attached Exhibits which are incorporated and made a part hereof,

It Is Mutually Agreed As Follows:

1. Plans, Specifications, and Cost Estimates

- 1.1 WSDOT, on behalf of the Local Agency, agrees to perform the Work, as further provided herein and pursuant to the attached exhibits. Exhibit A is the Cost Estimate and Exhibit B, if included as an attachment, further defines the Work to be constructed for the Local Agency. The combination of the Local Agency's Work and WSDOT's improvements hereinafter constitute the Project.
- 1.2 If indicated in the above heading, the Local Agency shall provide WSDOT with plans, specifications and cost estimates (PS&E) for the Work.
 - 1.2.1 The PS&E shall be in accordance with the state of Washington Standard Specifications for Road, Bridge and Municipal Construction, and its amendments thereto (Standard Specifications), current at the time of Project advertisement, mutually acceptable design standards, or the Local Agency's standards, if applicable and specified by the Local Agency. Backup calculations for quantities and breakdowns for lump sum items shall be included with the PS&E for the Work.
 - 1.2.2 If the PS&E for the Work, with backup calculations and breakdowns, is not delivered by the above PS&E due date, WSDOT, at its sole discretion, may proceed without the Local Agency Work included with WSDOT's improvements. The Local Agency agrees to reimburse all WSDOT costs incurred up to and as a result of the Local Agency's failure to timely provide the PS&E. This Agreement shall terminate upon receipt of all reimbursement payments in accordance with Section 6.
- 1.3 WSDOT will incorporate the Local Agency's Work or Work PS&E into WSDOT's PS&E for WSDOT's improvements to produce a combined advertisement (Ad) ready PS&E for the Project. WSDOT will document WSDOT performed engineering design work required to incorporate the Work or Work PS&E into WSDOT's PS&E (Design Documentation). WSDOT shall provide up to two intermediate review sets of the PS&E and Design Documentation at mutually agreeable milestones. WSDOT will provide the Local Agency with one (1) reproducible copy of the stamped final Design Documentation prior to the proposed Ad date.
- 1.4 WSDOT will provide the Local Agency with one (1) reproducible copy of the Ad ready PS&E for the Project a minimum of thirty (30) working days prior to the proposed Ad date. The Local Agency will have fifteen (15) working days to review the Ad ready PS&E for the Project, resolve any concerns, and provide WSDOT with written approval, conditional approval, or rejection of the Ad ready PS&E for the Work portion of the Project. In the event the Work portion of the Ad ready PS&E is conditionally approved or rejected, the Local Agency shall include the reasons for conditional approval or rejection. The Local Agency may request an extension of time in writing, provided that WSDOT receives the written request not later than fifteen (15) working days after the Local Agency has received the Ad ready PS&E. WSDOT shall provide a written response, indicating the number of working days extended, if any.
- 1.5 If WSDOT does not receive the Local Agency's written approval, conditional approval or rejection of the Work portion of the Ad ready PS&E within fifteen (15) working days and any approved extension of time pursuant to Section 1.4, or if WSDOT cannot accept the Local Agency's condition(s) of approval, or if the Local Agency has not acquired all right of way and permits required to construct, maintain, and operate the Work, WSDOT may, at its sole discretion, delete the Work from the Project and advertise WSDOT's improvements. The Local Agency agrees to reimburse WSDOT for engineering costs and actual direct and related indirect costs incurred by WSDOT associated with either WSDOT or Local Agency deleting the Work from the Project. This Agreement shall then terminate upon receipt of all reimbursement payments in accordance with Section 6.

2. Bid, Award, and Cost Adjustments

- 2.1 WSDOT will advertise the Project for bids. WSDOT will be the Local Agency's representative during the Ad and Project contract award period. When requested by WSDOT, the Local Agency shall timely assist WSDOT 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 WSDOT.
- 2.2 If the Local Agency is responsible for preparing the Work PS&E, the Local Agency agrees to provide WSDOT with any addenda required for the Work during the Ad period, to the Parties' mutual satisfaction.
- 2.3 WSDOT shall provide the Local Agency with written notification of the bid price for the Work. The Local Agency shall have five (5) working days from the date of written notification to provide WSDOT written approval of the bid price for the Work, or request the Work be deleted from the Project. The Local Agency may request an extension of time in writing, provided that WSDOT receives the written request not later than five (5) working days after the Local Agency has received the written notification. WSDOT shall provide a written response indicating the number of working days extended, if any.
- 2.4 The Local Agency acknowledges that if it fails to provide WSDOT with written approval of the bid price for the Work or request that the Work be deleted from the Project within five (5) working days and any approved extension of time pursuant to Section 2.3, WSDOT shall delete the Work from the Project. In this event, the Local Agency agrees to reimburse WSDOT for engineering costs and actual direct and related indirect costs incurred by WSDOT associated with deleting the Work from the Project. The Local Agency understands that deleting the Work from the Project may require an equitable adjustment to the Project contract and agrees to reimburse WSDOT for costs associated with the equitable adjustment. This Agreement shall then terminate upon receipt of all reimbursement and equitable adjustment payments in accordance with Section 6.
- 2.5 If the Local Agency approves the bid price for the Work and WSDOT does not award or execute the Project contract, but thereafter re-advertises the Project for bids, WSDOT agrees to pay all WSDOT costs to re-advertise the Project. The Local Agency agrees that WSDOT is not responsible for increased bid prices or delay to the Work or other impacts to the Local Agency resulting from re-advertising the Project.
- 2.6 If the Local Agency approves the bid price for the Work and WSDOT does not award or execute the Project contract and does not re-advertise the Project for bids, this Agreement shall terminate upon receipt of all reimbursement payments in accordance with Section 6. The Local Agency agrees that WSDOT is not responsible for potential increased costs for the Work, delay to the Work or other impacts to the Local Agency resulting from not awarding the Project.

3. Construction

- 3.1 WSDOT will be the Local Agency's representative during construction and will act as owner in the administration of the contract for the Work. WSDOT will designate a WSDOT Project Engineer to provide all services and tools, including but not limited to construction administration, inspection, materials testing, and representation, necessary to administer and manage the contract to ensure that the Work is constructed in accordance with the contract.
- 3.2 The Local Agency may consult with and inquire of WSDOT Project Engineer, attend all meetings, and have access to all documentation concerning the Work. The Local Agency shall not provide direction, directly or indirectly, to WSDOT's contractor. All formal contacts between the Local Agency and the contractor shall be through WSDOT's representative.
- 3.3 When it becomes known that quantities for a unit bid item will exceed plan quantity for the Work by ten (10) percent or result in a cost increase for the Work exceeding the total amount by the percentage listed under Section 6.5, WSDOT shall consult with the Local Agency on possible courses of action within three (3) working days in accordance with Section 4.
- 3.4 The Local Agency may inspect the Work. Any costs for such inspection shall be borne solely by the Local Agency. All contact between said inspector and the contractor shall be only through WSDOT's inspector or WSDOT's representative.

- 3.5 WSDOT will prepare the final construction documentation in general conformance with WSDOT's Construction Manual. WSDOT will maintain one set of plans as the official "as-built" set, then make notations in red ink of all plan revisions typically recorded per standard WSDOT practices, as directed by WSDOT's Construction Manual. Once the Local Agency has accepted the Work per Section 5, WSDOT will provide one reproducible set of as-built plans to the Local Agency within _____ (_____) working days.

4. Contract Changes

- 4.1 Changes to the Project contract will be documented by change order in accordance with the Standard Specifications. WSDOT shall process change orders for all changes affecting the Work in the manner set forth in subsection SS 1-04.4, Approval of Changes/Checklist, WSDOT Construction Manual, current edition.
- 4.2 Required changes involve such changes in quantities or alterations to the Work as are necessary to satisfactorily complete the Project. All other changes affecting the Work shall be considered elective changes.
- 4.3 The Local Agency authorizes WSDOT to initiate all required changes affecting the Work and to negotiate, document and execute the associated change orders. The Local Agency agrees to pay for the increases in cost, if any, for the required changes affecting the Work in accordance with Section 6.
- 4.4 WSDOT will advise the Local Agency of any proposed required changes affecting the Work as soon as possible and provide it with an opportunity, if time permits, to review the change before implementation. WSDOT will determine the length of the review time based upon the need to expedite the change to avoid delay to the contractor.
- 4.5 The Local Agency may request additions to the Work through WSDOT in writing. WSDOT will implement the requested changes as elective changes, provided that a change does not negatively impact WSDOT's transportation system and complies with the Standard Specifications, Project permits, state and/or federal law, applicable rules and/or regulations, and/or WSDOT design policies, and does not unreasonably delay critically scheduled Project contract activities.
- 4.6 All elective changes to the Work shall be approved in writing by the Local Agency before WSDOT directs the contractor to implement the changes, even if an executed change order is not required by the Project contract. The Local Agency agrees to pay for the increases in cost, if any, for such elective changes in accordance with Section 6.
- 4.7 WSDOT will make available to the Local Agency all change order documentation related to the Work.
- 4.8 In the event it is determined that the Local Agency does not have sufficient funds to complete the Work, WSDOT and the Local Agency shall negotiate to determine the future of the Work. If it is determined that the Work cannot proceed, the Work shall be brought to a level that is safe for public use and WSDOT will terminate the remainder of the Work from the Project contract. In the event the Work is terminated, Section 5 shall apply for that portion of the Work completed up to the time of termination. The Local Agency agrees to pay all costs associated with termination, including contractor claims, in accordance with Section 6.

5. Acceptance

- 5.1 Prior to Work acceptance, WSDOT and Local Agency will perform a joint final inspection. The Local Agency agrees, upon satisfactory completion of the Work and receipt of a Notice of Physical Completion of the Work, as determined by WSDOT, to deliver a letter of acceptance to WSDOT which shall include a release of WSDOT from all future claims or demands of any nature resulting from the performance of the Work and WSDOT administration thereof, outside WSDOT right of way, subject to any contractor claims (Section 8) caused by the negligent acts or omissions of WSDOT in administering the Work.

5.2 If a letter of acceptance is not received by WSDOT within ninety (90) days following delivery of a Notice of Physical Completion of the Work to the Local Agency, the Work and WSDOT administration thereof shall be considered accepted by the Local Agency, and WSDOT shall be released from all future claims and demands of any nature resulting from the performance of the Work and WSDOT's administration thereof, outside WSDOT right of way, subject to any contractor claims (Section 8) caused by the negligent acts or omissions of WSDOT in administering the Work.

5.3 The Local Agency may withhold its acceptance of the Work by submitting written notification to WSDOT within _____ Working Calendar (____) days following delivery of a Notice of Physical Completion of the Work. This notification shall include the reason(s) for withholding acceptance.

6. Payment

6.1 The Local Agency, in consideration of the faithful performance of the Work performed by WSDOT and its contractor, agrees to reimburse WSDOT for the actual direct and related indirect costs of the Work, as estimated in Exhibit A.

6.2 WSDOT shall provide detailed invoices to the Local Agency for the Work performed by WSDOT and its contractor or for costs incurred as provided in Sections 1.2.2, 1.5, 2.4, 4.8 or 8.1.4, and the Local Agency agrees to make payment within thirty (30) days from receipt of an invoice. A payment will not constitute agreement as to the appropriateness of any item. At the time of the final invoice, the Parties will resolve any discrepancies.

6.3 The Local Agency agrees that if it does not make payment within ninety (90) days after receipt of an invoice, WSDOT may deduct and expend any monies to which the Local Agency is entitled to receive from the Motor Vehicle Fund.

6.4 Advance Payment: If an advance payment is required, the Local Agency agrees to pay WSDOT the "Advance Payment Amount," shown above, within twenty (20) days after receipt of Project contract award notification. The advance payment represents approximately fifteen percent (15%) of the cost estimate and covers costs incurred by WSDOT in the initial stages of the Work. The advance payment will be carried throughout the life of the Local Agency's cost obligations, with final adjustment made in the final invoice.

6.5 Increase in Cost: In the event unforeseen conditions require an increase in the cost of the Work above the cost estimate (including sales tax, engineering, and contingencies) by more than _____ (____) percent, the Parties agree to modify this Agreement by executing a written amendment to address the increase pursuant to Section 10.1, or implement Section 4.8.

7. Right of Entry

7.1 The Local Agency hereby grants to WSDOT and its authorized agents, contractors, subcontractors, and employees, a right of entry upon all land in which the Local Agency has an interest for the purpose of constructing the Project.

7.2 Where applicable, the Local Agency hereby grants to WSDOT and its authorized agents, contractors, subcontractors, and employees, a right of entry upon all land in which the Local Agency has an interest for WSDOT to construct, operate, maintain and/or reconstruct signal loop detectors and appurtenances for signals belonging to WSDOT, if any, that are constructed within the Local Agency's right of way. The terms of this Section 7.2 shall survive the termination of this Agreement.

8. Claims

8.1 Claims for Additional Payment

8.1.1 In the event the contractor makes claims for additional payment associated with the Work, WSDOT will immediately notify the Local Agency of such claims. Such claims shall be made in the manner and form as provided for in the Standard Specifications.

- 8.1.2 The Local Agency shall not be obligated to pay such claims or their cost of defense to the extent that the claims are caused by the negligent acts or omissions of WSDOT in administering the Work.
- 8.1.3 The Local Agency shall have the right to review and comment on any settlement for claims associated with the Work. However, WSDOT shall have the ultimate right to settle such claims. In the event the Local Agency does not agree with the claim settlement as negotiated by WSDOT, the Local Agency shall reserve the right to not financially participate in the negotiated claim settlement. If agreement cannot be reached between the Local Agency and WSDOT on a claim settlement, the Parties agree to follow the dispute resolution procedure in Section 10.7.
- 8.1.4 If WSDOT agrees, the Local Agency may defend contractor claims associated with the Work at its own cost, and in doing so, the Local Agency agrees to pay any resulting settlement, court judgment or arbitration award. WSDOT will cooperate with the Local Agency in the Local Agency's defense of the claims. The Local Agency agrees to reimburse any WSDOT costs, including attorneys fees, incurred in providing such assistance in accordance with Section 6.
- 8.2 Claims for Damages: After Work acceptance, in the event of claims for damages or loss attributable to bodily injury, sickness, death, or injury to or destruction of property that occurs within the limits of the Work located on the Local Agency's right of way, the Local Agency shall defend such claims and hold harmless WSDOT therefrom, and WSDOT shall not be obligated to pay any claim, judgment or cost of defense. Nothing in this Section, however, shall remove from WSDOT any responsibility defined by the current laws of the state of Washington or from any liability for damages caused by WSDOT's own negligent acts or omissions independent of the Work performed pursuant to this Agreement.

9. Ownership, Operation, and Maintenance

- 9.1 Upon acceptance of the Work as provided in Section 5, the Local Agency shall be the sole owner of that portion of the Work located within the Local Agency's right of way, and the Local Agency shall be solely responsible for ownership and all future operation and maintenance of the Work at its sole cost, without expense, cost, or liability to WSDOT.
- 9.2 WSDOT facilities constructed on Local Agency right of way, if any, as identified in Section 7.2 shall be owned by WSDOT, and WSDOT shall be responsible for the operation and maintenance of such facilities at WSDOT's sole cost, until removed. The terms of this Section shall survive the termination of this Agreement.

10. General Provisions

- 10.1 Amendment: This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.
- 10.2 Termination: Neither WSDOT nor the Local Agency may terminate this Agreement without the written concurrence of the other Party, except as otherwise provided under Sections 1.2.2, 1.5, 2.4, and 2.6.
- 10.2.1 If this Agreement is terminated prior to the fulfillment of the terms stated herein, the Local Agency agrees to reimburse WSDOT for the actual direct and related indirect expenses and costs it has incurred for the Work up to the date of termination, as well as the costs of non-cancelable obligations.
- 10.2.2 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- 10.3 Independent contractor: WSDOT shall be deemed an independent contractor for all purposes, and the employees of WSDOT or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the Local Agency.

- 10.4 Indemnification: The Parties shall protect, defend, indemnify, and hold harmless each other and their employees, authorized agents, and/or contractors, 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/or property), arising out of, or in any way resulting from, each Party's obligations to be performed pursuant to the provisions of this Agreement. The Parties shall not be required to indemnify, defend, or hold harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) WSDOT, its employees, authorized agents, or contractors and (b) the Local Agency, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of each Party, its employees, authorized agents, and/or contractors.
- 10.5 Acceptance of Liability: The Local Agency agrees and accepts full liability for (1) the PS&E provided for the Work to WSDOT, if any; and (2) for any Work the Local Agency has provided direction to WSDOT to design and/or construct outside WSDOT's right of way and/or WSDOT's jurisdiction that does not meet WSDOT standards.
- 10.6 Survivability: Sections 10.4 and 10.5 shall survive the termination of this Agreement.
- 10.7 Disputes: In the event that a dispute arises under this Agreement, it shall be resolved as follows: WSDOT and the Local Agency shall each appoint a member to a disputes board, these two members shall select a third board member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the cost of the third disputes board member; however, each Party shall be responsible for its own costs and fees.
- 10.8 Venue: In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in the superior court situated in _____ County, Washington unless filing in another county is required under any provision of the Revised Code of Washington. Further, the Parties agree that each shall be responsible for its own attorneys' fees and costs..
- 10.9 Audits/Records: All Project records for the Work in support of all costs incurred shall be maintained by WSDOT for a period of six (6) years. The Local Agency shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. Should the Local Agency require copies of any records, it agrees to pay the costs thereof. The Parties agree that the Work performed herein is subject to audit by either or both Parties and/or their designated representatives, and/or state of Washington and/or the federal government.
- 10.10 Term of Agreement: Unless otherwise provided herein, the term of this Agreement shall commence as of the date this Agreement is fully executed and shall continue until the Work is accepted by the Local Agency pursuant to Section 5, or as otherwise provided herein, and all obligations for payment have been met.
- 10.11 Working Days: Working days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050.

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

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