



<b>WSDOT Construction Administration of Local Agency Project Work by WSDOT — Actual Costs</b>			Local Agency & Address
Agreement Number			Section/Location
State Route Number <b>SR</b>	Control Section	Region	
<b>WSDOT Project Manager</b>			<b>Local Agency Contact</b>
Name			Name
Title			Title
Address			Address
Email			Email
Phone			Phone

**The below Sections denoted by a selection box that are not identified by a check marked in the selection box do not apply to this Agreement.**

This Agreement is entered into between the Washington State Department Of Transportation (WSDOT) and the above named Local Agency (Local Agency) individually the “Party” and collectively the “Parties.”

**Recitals**

1. The Local Agency is planning the construction of a project as described in the Description of Project above and/or as further described in an attached exhibit, hereinafter the “Project.”
2. The Project is partially or entirely within WSDOT-owned right of way.
3. The construction of the Project could significantly impact the safety, maintenance and operation of the WSDOT transportation system.
4. WSDOT deems it to be in WSDOT’s best interest for WSDOT to provide construction administration for the Project in an effort to control and minimize impacts to the safety, maintenance and operation of the WSDOT transportation system.

NOW, THEREFORE, pursuant to RCW 47.28.140 and/or chapter 39.34 RCW, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, and performances contained herein, and the attached Exhibit A, and Exhibit B, if attached, which is/are incorporated and made a part hereof,

## It Is Mutually Agreed As Follows:

### 1. Purpose

- 1.1 WSDOT, on behalf of the Local Agency, agrees to perform construction administration for the Project, as further provided herein and pursuant to the attached exhibits. Exhibit A is the Cost Estimate. Exhibit B, if attached, further defines the Project.

### 2. Design: WSDOT Approval

The Local Agency may contact WSDOT's Project Manager or his/her designee (hereinafter Project Manager), to determine the appropriate design review process requirements.

- 2.1 The Local Agency agrees not to advertise the Project for bids before receiving the following WSDOT written approvals for the portions of the Project located within WSDOT-owned right of way:

- (a) Design Approval;
- (b) Project Development Approval;
- (c) Plans, Specifications, and Cost Estimate (PS&E) Approval; and
- (d) Construction Start Date approval.

2.1.1 Project design and design documentation shall conform to WSDOT's Design Manual and policies.

## OR

- 2.1 The Local Agency agrees not to advertise the Project for bids before receiving the following WSDOT written approvals for the portions of the Project located within WSDOT-owned right of way:

- (a) Plans, Specifications, and Cost Estimate (PS&E) Approval; and
- (b) Construction Start Date approval.

2.1.1 Project design shall conform to WSDOT's Design Manual and policies.

- 2.2 WSDOT may require that the Parties jointly conduct a Project constructability review and that the Local Agency incorporate the changes recommended by the review into the plans, specifications, and estimates (PS&E) before advertising the Project for bids. The following shall be available before conducting the Project constructability review.

- (a) Cross sections including critical cross sections at key locations;
- (b) Staging plan describing and showing how the Project will be constructed;
- (c) Draft hydraulic report; and
- (d) Draft geotechnical report.

- 2.3 The Local Agency agrees to develop the PS&E in accordance with the Washington State Standard Specifications for Road, Bridge and Municipal Construction and amendments thereto, current as of the date of contract advertisement (Standard Specifications).

- 2.4 The Local Agency has previously agreed under a separate agreement, agreement

No. \_\_\_\_\_, to have WSDOT provide Project design and PS&E review services, including but not limited to STATE review of all Project submittals and coordination efforts with the Local Agency prior to advertisement (AD) of the Project for bids. Upon execution of this Agreement, agreement

No. \_\_\_\_\_ shall terminate once all payments under that agreement are received by WSDOT, and the provisions of this Agreement, including reimbursement in accordance with Section 8, shall control the Parties' obligations with respect to the Project.

## OR

2.4 The Local Agency hereby agrees to have WSDOT provide Project design and PS&E review services, including but not limited to WSDOT review of all Project submittals and coordination efforts with the Local Agency prior to advertisement (AD) of the Project for bids, hereinafter the "Services." Reimbursement shall be in accordance with Section 8.

2.5 All WSDOT reviews and approvals provided for herein are solely for the benefit of WSDOT and not for the benefit of the Local Agency or any other third party.

### **3. Permitting, Right of Way, Ad and Award**

3.1 The Local Agency shall be responsible to secure the following for the Project:

- (a) State Environmental Policy Act (SEPA) approval;
- (b) National Environmental Policy Act (NEPA) approval, if applicable;
- (c) All permits; and
- (d) Right of way, including temporary construction easements needed to construct the Project, and an executed WSDOT airspace lease, cooperative agreement, or maintenance agreement, pursuant to Section 12.2, if required.

3.2 The Local Agency shall advertise the Project for bids, prepare and issue any addenda, and award and execute the Project construction contract. Any Project addenda affecting WSDOT-owned right of way must be reviewed and approved by WSDOT prior to issuance.

### **4. Construction Administration**

4.1 WSDOT agrees to provide construction administration for the Local Agency's Project construction contract. The executed Project contract plans, addenda, and specifications (hereinafter Contract) are by this reference made a part of this Agreement as if fully attached and incorporated herein. WSDOT's Project Manager will provide all necessary services and tools to provide construction administration, including but not limited to: answering questions during advertisement, surveying, inspection, materials testing, and the representation necessary to administer the Contract construction to ensure that the Project is constructed in accordance with the Contract.

4.2 The Local Agency may elect to have certain construction administration elements and/or tools provided in whole or in part by its contractor (hereinafter Contractor), if included as a Contract bid item, or by the Local Agency. Any construction administration to be performed by the Local Agency's Contractor or by the Local Agency shall require WSDOT prior written approval.

4.3 The Local Agency agrees that both formal and informal communication between the Local Agency and its Contractor shall be through WSDOT's Project Manager. The Local Agency shall make WSDOT's Project Manager aware by copy or written account of any direct communication affecting the Contract. WSDOT's Project Manager shall communicate regularly with the Local Agency to keep the Local Agency up-to-date on all significant issues affecting the Project.

4.4 The Local Agency may also inspect the Project. All contact between the Local Agency's inspector(s) and the Contractor shall be only through WSDOT's Project Manager or his/her designee.

4.5 WSDOT will provide the Local Agency with monthly progress reports, which will include details regarding progress of the Contract work, working days, updates to the Contractor's critical path schedule, progress estimates for payments to the Contractor, estimated costs for WSDOT's construction administration, Contract changes, and a comparison of planned vs. actual quantities.

4.6 WSDOT will prepare the final construction documentation in conformance with the WSDOT Construction Manual. Unless "as-built" plans are to be maintained and provided by the Contractor as part of the Contract, WSDOT will maintain one set of plans as the official "as-built" set and make notations in red ink of all plan revisions as required by WSDOT's Construction Manual. WSDOT will submit one reproducible set of as-built plans to the CITY within six (6) months of final Project acceptance pursuant to Section 7.

- 4.7 Should for any reason, the Local Agency decide not to complete the Project after construction has begun, WSDOT, in its sole discretion, shall determine what work must be completed to restore state facilities and/or right of way to a condition and configuration that is safe for public use, operation, and maintenance, and the Local Agency agrees that WSDOT shall have the authority to direct the Contractor to complete the restoration. The Local Agency agrees that all costs associated with Contract termination, including but not limited to engineering, completing state facility and right of way restoration, and Contractor claims, will be the sole responsibility of the Local Agency. If the Contractor is not available to restore the state facilities and right of way, WSDOT may perform, or contract to perform, the restoration work at Local Agency expense. Payment to WSDOT shall be pursuant to Section 8. This section shall survive the termination of this Agreement.
- 4.8 Upon completion of the Project, WSDOT shall submit all Project construction records, except WSDOT's copy of the "as-built" plans, to the Local Agency for retention. The Local Agency agrees to maintain these records for not less than six (6) years.

## **5. Contract Changes**

- 5.1 Changes to the Contract will be documented by change order as defined in the Standard Specifications. WSDOT shall prepare all change orders in accordance with WSDOT's Construction Manual (M41-01), current edition.
- 5.2 Required change orders are change orders that involve any or a combination of the following:
- (a) Changes in the work, work methods, working days, or quantities as necessary to satisfactorily complete the scope of the Project within WSDOT-owned right of way.
  - (b) Mitigating an emergency or safety threat to the traveling public.
- All other change orders shall be considered elective.
- 5.3 WSDOT will advise the Local Agency of any proposed change order as soon as reasonably practical.
- 5.4 WSDOT will develop required change orders, secure signatures from the Contractor, approve and submit final required change orders to the Local Agency for execution and payment.
- 5.5 The Local Agency authorizes WSDOT to initiate, negotiate, document, approve, and direct the Contractor by either verbal or written direction in all matters regarding required changes described in Section 5.2.
- 5.6 WSDOT reserves the right, when necessary due to emergency or safety threat to the traveling public, as solely determined by WSDOT, to direct the Contractor to proceed with work associated with a required change prior to the Local Agency's execution of the change order. If time permits, WSDOT will provide an opportunity for the Local Agency to review the required change before providing direction to the Contractor.
- 5.7 In the event that the Local Agency disagrees with WSDOT's determination of a required change, the Local Agency may pursue resolution under Section 13.5, Disputes. However, any delays to the Contract due to the Local Agency pursuing the Disputes process shall be at Local Agency expense.
- 5.8 The Local Agency may request additions or modifications to the Contract through WSDOT. These additions or modifications shall be deemed elective change orders. WSDOT will direct the Contractor to implement elective change(s), provided that the change(s) comply with the Standard Specifications, Project permits, and state and federal laws, rules, regulations, and design policies. WSDOT will develop elective change orders, secure signatures from the Contractor and submit final elective change orders to the Local Agency for approval, execution, and payment, except when approval and execution of the elective change order by the Local Agency is not required pursuant to Section 5.13.
- 5.9 Changes to structures within WSDOT-owned right of way must be reviewed and approved by WSDOT Bridge Office and WSDOT Geotechnical Division of the Materials Laboratory before implementation.

- 5.10 Changes to electrical and intelligent transportation systems within WSDOT-owned right of way must be reviewed and approved by WSDOT Region Traffic Office before implementation.
- 5.11 WSDOT will notify the Local Agency of errors or omissions in the Contract as soon as reasonably practical. The Local Agency shall provide to WSDOT the necessary documents (PS&E) that will be incorporated into a change order; however, if both Parties agree in writing, WSDOT will produce the necessary documents at Local Agency expense.
- 5.12 The Local Agency authorizes WSDOT to direct the Contractor to proceed with changed work prior to consultation with the Local Agency when WSDOT deems it necessary to avoid exposure to delay claims. WSDOT will consult with the Local Agency as soon as reasonably practical.

**OR**

- 5.13 The Local Agency authorizes WSDOT to direct the Contractor to proceed with changed work prior to consultation with the Local Agency for elective changes, each resulting in cost increases of \$ \_\_\_\_\_ or less.

## **6. Payments to Contractor**

- 6.1 WSDOT shall prepare summaries of the amount due to the Contractor from the Local Agency for work performed in accordance with the terms of the Contract (Progress Estimates). WSDOT shall submit monthly Progress Estimates to the Local Agency for payment by the Local Agency to the Contractor.
- 6.2 The Local Agency agrees that it shall be solely responsible for all costs associated with the Local Agency's Project. The Local Agency further agrees that WSDOT shall have no liability or responsibility for payment of any or all Project Contractor or subcontractor costs, including material costs and the costs of required and/or elective change orders, or costs associated with Contractor claims and/or delays attributable to failure of performance by the Local Agency.
- 6.3 The Local Agency shall at all times indemnify and hold harmless WSDOT from all claims for labor or materials in connection with the Project located on WSDOT-owned right of way, and from the cost of defending against such claims, including attorney fees. In the event a lien is filed upon WSDOT-owned right of way, the Local Agency shall (1) Record a valid Release of Lien; (2) Deposit sufficient cash with WSDOT to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lien holder claim; or (3) Procure and record a bond which releases WSDOT-owned right of way from the claim of the lien and from any action brought to foreclose the lien.

## **7. Project Acceptance**

- 7.1 Prior to acceptance of the Project and WSDOT's construction administration, WSDOT and the Local Agency will perform a joint final inspection of the Project. The Local Agency agrees, upon satisfactory completion of the Project by its Contractor and receipt of a "Notice of Physical Completion," as determined by WSDOT, to deliver a letter of acceptance of the Project and WSDOT's construction administration which shall include a release of WSDOT from all future claims or demands, except from those resulting from the negligent performance of WSDOT's construction administration under this Agreement.
- 7.2 If a letter of acceptance of the Project is not received by WSDOT within sixty (60) calendar days following delivery of a "Notice of Physical Completion" of the Project to the Local Agency, the Project and WSDOT's construction administration shall be considered accepted by the Local Agency and WSDOT shall be released from all future claims or demands, except from those resulting from the negligent performance of WSDOT's construction administration under this Agreement.
- 7.3 The Local Agency may withhold its acceptance of the Project and WSDOT's construction administration by submitting written notification to WSDOT within sixty (60) calendar days following "Notice of Physical Completion" of the Project. This notification shall include the reason(s) for withholding the acceptance. The Parties shall then work together to resolve the outstanding issues identified in the Local Agency's written notification. Upon resolution of the outstanding issues, the Local Agency will promptly deliver the letter of acceptance to WSDOT.

## 8. Payment to WSDOT

- 8.1 The Local Agency, in consideration of the faithful performance of WSDOT's construction administration and Services provided by WSDOT as described in this Agreement, agrees to reimburse WSDOT for its actual direct and related indirect costs. A cost estimate for WSDOT's construction administration and Services is provided as Exhibit A.
- 8.2 If the Parties have a reciprocal overhead agreement in place effective as of the execution date of this Agreement, WSDOT's overhead rate will not be charged. In this event, WSDOT will only invoice for actual direct salary and direct non-salary costs for WSDOT's construction administration and Services.
- 8.3 WSDOT shall submit monthly invoices to the Local Agency after construction administration and Services have been performed and a final invoice after acceptance of the Project and WSDOT's construction administration. The Local Agency agrees to make payments within thirty (30) calendar days of receipt of a WSDOT invoice. These payments are not to be more frequent than one (1) per month. If the Local Agency objects to all or any portion of any invoice, it shall notify WSDOT in writing of the same within fifteen (15) calendar days from the date of receipt and shall pay that portion of the invoice not in dispute. The Parties shall immediately make every effort to settle the disputed portion of the invoice.
- 8.4 A payment for WSDOT's construction administration and Services will not constitute agreement as to the appropriateness of any item, and at the time of final invoice, the Parties will resolve any discrepancies.
- 8.5 INCREASE IN COST: In the event unforeseen conditions require an increase in cost for WSDOT's construction administration and Services by more than twenty-five (25) percent above the cost estimate in Exhibit A, the Parties must negotiate and execute a written amendment to this Agreement addressing said increase prior to WSDOT performing any construction administration or Services in excess of said amount.

## 9. Right of Entry

- 9.1 The Local Agency hereby grants to WSDOT, its employees, and authorized agents, a right of entry upon all land in which the Local Agency has an interest for WSDOT to perform construction administration and Services under this Agreement.
- 9.2 WSDOT hereby grants to the Local Agency, its employees, authorized agents, contractors and subcontractors a right of entry upon state-owned right of way for the Local Agency to provide inspection and to construct the Project.
- 9.3 Where applicable, the Local Agency hereby grants to WSDOT, its employees, and authorized agents, a right of entry upon all land in which the Local Agency has an interest for WSDOT to operate, maintain, and/or reconstruct signal loop detectors and appurtenances for signals belonging to WSDOT, if any, that are constructed as part of the Project and located within the Local Agency's right of way. The terms of this section shall survive the termination of this Agreement.

## 10. Claims

- 10.1 Contractor Claims for Additional Payment: In the event the Contractor makes a claim for additional payment associated with the Project work, WSDOT will immediately notify the Local Agency of such claim. WSDOT shall provide a written recommendation to the Local Agency regarding resolution of Contractor claims. The Local Agency agrees to defend such claims at its sole cost and expense. WSDOT will cooperate with the Local Agency in the Local Agency's defense of the claim. The Local Agency shall reimburse any WSDOT costs incurred in providing such assistance, including reasonable attorneys' fees, pursuant to Section 8.
- 10.2 Third Party Claims for Damages Post Project Acceptance: After Project 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 because of the Project located on Local Agency or WSDOT-owned right of way, the Party owning the right of way shall defend such claims and hold harmless the other Party, and the other Party shall not be obligated to pay any such claim or the cost of defense. Nothing in this section, however, shall remove from the Parties any responsibilities defined by the current laws of the state of Washington or from any liabilities for damages caused by the Party's own negligent acts or omissions. The provisions of this section shall survive the termination of this Agreement.

## 11. Damage to the Project During Construction

- 11.1. The Local Agency authorizes WSDOT to direct the Local Agency's Contractor to repair all third party damage to the Project during construction.
- 11.2 The Local Agency agrees to be responsible for all costs associated with said third party damage and for collecting such costs from the third party.
- 11.3 WSDOT will document the third party damage by required change order and cooperate with the Local Agency in identifying, if possible, the third party. WSDOT will also separately document and invoice the Local Agency for WSDOT's costs associated with third party damage. WSDOT costs shall be reimbursed pursuant to Section 8.

## 12. Ownership, Operation and Maintenance

- 12.1 Upon acceptance of the Project as provided in Section 7, the Local Agency shall be the sole owner of that portion of the Project located within the Local Agency's right of way, and the Local Agency shall be solely responsible for all future operation and maintenance of the Project located within the Local Agency's right of way at its sole cost, without expense or cost to WSDOT, except for any improvements made pursuant to Section 9.3.
- 12.2 Upon acceptance of the Project as provided in Section 7, WSDOT shall be the sole owner of that portion of the Project located within state-owned right of way, and WSDOT shall be solely responsible for all future operation and maintenance of the Project located within state-owned right of way at its sole cost, without expense or cost to the Local Agency. However, if the Local Agency has obtained or is required to obtain an air space lease, cooperative agreement, or maintenance agreement from WSDOT to own, operate, or maintain a portion of the Project located within WSDOT-owned right of way, the terms of the air space lease, cooperative agreement, or maintenance agreement will control for those specified portions of the Project.
- 12.3 Section 12 shall survive the termination of this Agreement.

## 13. General Provisions

- 13.1 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.
- 13.2 Termination: The Local Agency may terminate this Agreement upon written notice to WSDOT. WSDOT may terminate this Agreement only with the written concurrence of the Local Agency.
  - 13.2.1 If this Agreement is terminated prior to the fulfillment of the terms stated herein, the Local Agency agrees to reimburse WSDOT for the costs WSDOT has incurred up to the date of termination, as well as the costs of non-cancelable obligations.
  - 13.2.2 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
  - 13.2.3 Termination prior to completing the Project within WSDOT-owned right of way will terminate the right of the Local Agency to complete the Project within WSDOT-owned right of way. The Contractor will be directed by WSDOT to restore WSDOT facilities and right of way in accordance with Section 4. 7. This section shall survive the termination of this Agreement.
- 13.3 Independent Contractor: The Parties shall be deemed independent contractors for all purposes, and the employees of the Parties or any of their contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the other Party.

#### 13.4 Indemnification:

- 13.4.1 Unless a claim falls within the provisions of Section 10.2, the Local Agency shall protect, defend, indemnify, and hold harmless WSDOT and its employees and 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, arising out of, or in any way resulting from, the Local Agency's design, inspection, and construction obligations to be performed pursuant to the provisions of its Contract or as authorized under this Agreement. The Local Agency shall not be required to indemnify, defend, or save harmless WSDOT if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the negligence of WSDOT; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) WSDOT, its employees or authorized agents and (b) the Local Agency, its employees, authorized agents, or contractors, 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 or authorized agents and/or contractors.
- 13.4.2 Unless the claim falls within the provisions of Section 10.2, WSDOT shall protect, defend, indemnify, and hold harmless the Local Agency and its employees and 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, arising out of, or in any way resulting from, WSDOT's construction administration and Services obligations to be performed pursuant to the provisions of this Agreement. WSDOT shall not be required to indemnify, defend, or save harmless the Local Agency if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the negligence of the Local Agency; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) WSDOT, its employees or authorized agents and (b) the Local Agency, its employees, authorized agents, or contractors, 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 or authorized agents and/or contractors.
- 13.4.3 The Local Agency agrees to accept full liability for any facilities the Local Agency has provided direction to WSDOT to design and/or construct outside WSDOT-owned right of way that do not meet WSDOT standards.
- 13.4.4 Section 13.4 shall survive the termination of this Agreement.
- 13.5 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.
- 13.6 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 County Superior Court. Further, the Parties agree that each will be solely responsible for payment of its own attorneys fees, witness fees, and costs.
- 13.7 Audit Records: All financial records, including labor, material and equipment records in support of all WSDOT costs shall be maintained by WSDOT for a period of six (6) years from the date of termination of this Agreement. 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, and 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 WSDOT and federal government.



13.8 Term of Agreement: Unless otherwise provided herein, the term of this Agreement shall commence as of the date this Agreement is executed and shall continue until all of the following are complete:

- (a) The Project and WSDOT's construction administration and Services are accepted by the Local Agency pursuant to Section 7;
- (b) WSDOT and Local Agency both have a reproducible copy of the final "as-built" plans;
- (c) All Project records are submitted to the Local Agency pursuant to Section 4.8; and
- (d) All obligations for payment have been met, except for Sections 4.7, 9.3, 10.2, 13.2.3, 13.4, and all of Section 12, all of which survive the termination of this Agreement.

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

<b>Local Agency</b>	<b>Washington State Department of Transportation</b>
Signature: _____	Signature: _____
Printed: _____	Printed: _____
Title: _____	Title: _____
Date: _____	Date: _____