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Foreword

The Agreements Manual has been prepared to provide guidance on the principals, policies, and procedures used in developing and processing agreements negotiated by the Washington State Department of Transportation.

The previous edition of the Agreements Manual, which was issued in January 2012 is hereby superseded.

Updating the Agreements Manual is an ongoing process and revisions will be made regularly. Users should submit suggestions for additions or revisions to the HQ Utilities, Railroads, and Agreements Section: www.wsdot.wa.gov/utilities or via SharePoint: http://sharedot/pd/ura/default.aspx

/s/ Jeff Carpenter, P.E

Jeff Carpenter, P.E
Director & State Design Engineer
Development Division
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Chapter 1   General Overview

1.01   Introduction

WSDOT routinely enters into many different types of agreements with public and private parties. The Agreements Manual provides general guidance on agreement elements, agreement structure, and agreement processes, as well as more specific guidance regarding government contracts, maintenance agreements, detour/haul road agreements, turnback agreements, and region-level agreements. Chapter 11 guides users to other manuals and resources for more specific information on agreements not covered in this manual.

1.02   Definitions

**Accounting & Financial Services (AFS)** This office, also known as HQ Division of Accounting & Financial Services, is responsible for entry of data from agreement documents into the accounting software system. This facilitates payment of invoices received for payable agreements or generates invoices for receivable agreements. These functions can also be managed at the region level by the Financial Services Office. AFS is contacted via the email address of HQAcctAgmts@WSDOT.WA.GOV.

**Advance Payment** Amount paid to WSDOT in advance for work to be performed under a reimbursable (receivable) agreement. (See the Accounting Policy Manual for more information.)

**Agreement** For the purposes of this manual, an agreement is a written contract between WSDOT and another party or parties (public, private, or both), establishing an exchange of benefits and/or obligations.

**Agreement Amendment** Written amendments are used to change the original agreement terms. An amendment may be used to adjust costs, extend the term, or strengthen the agreement. An agreement amendment is written in the form of a nonstandard agreement.

---

1 The terms “amendment” and “supplement” are often used interchangeably; however, they have technical differences. Amendments are a change to the original agreement terms, and supplements are an addition to an agreement that do not change the original terms. These general differences should be noted when determining whether to title a document an amendment or a supplement.
Agreement Body  The portion of the agreement after the recitals, starting with and including the ‘Now Therefore’ statement up to the ‘In Witness Whereof’ statement. This is the legally enforceable portion of the agreement.

Agreement Cancellation  Any discontinuance of the agreement process prior to execution.

Agreement Closure  The process for closing an agreement in the Transportation Reporting and Accounting Information System (TRAINS), which is WSDOT’s financial system. (See Chapter 3 for further information.)

Agreement Manager  The WSDOT staff responsible for setting up any needed work orders, monitoring the progress of work and costs, and closing the agreement.

Agreement Requestor (WSDOT)  The person who initiates an agreement and is responsible for negotiating the terms of the agreement, determining the agreement schedule, and ensuring the agreement is reviewed and executed within this schedule.

Agreement Reviewer  This person is assigned to your specific office or to a specific agreement type (i.e., Maintenance, Utilities, or Railroad). This person advises on templates or Standard Form agreements, performs review of agreement documents (prior to signature), and facilitates review by the Office of the Attorney General (AGO) and by others in the region or office who may need to review specific terms of an agreement. The Agreement Reviewer will also typically complete ART data as needed.

Agreement Review Transmittal (ART) Database  A WSDOT agreement database and management system used to facilitate development and review of agreements, enter pertinent information into the accounting (TRAINS) system, and store executed agreements and related documents.

Agreement Review Transmittal Form  The form generated by the Agreement Review Transmittal database, used for input of relevant agreement data and ultimately submitted to the HQ Division of Accounting & Financial Services (AFS) for inputting executed agreements into TRAINS.

Agreement Supplement  Supplements are an addition to an agreement that do not change the original terms. A supplement may be used to add new elements or make up for a deficiency. Also see Agreement Amendment.

Agreement Termination  Terms within the Agreement that specify how and when an executed agreement will expire and/or when the parties are no longer obligated under the agreement. Termination is usually triggered by an agreed-upon end date, completion of work, expenditure of certain funding limits, and/or at the discretion of one or both parties.

Agreement Writer  The person responsible for developing the agreement language, coordinating required reviews, and providing a final agreement that is ready for execution to the parties.
**Approval As To Form**  is a legal review provided for WSDOT by the Office of the Attorney General. It certifies that an agreement contains those elements essential to a legally binding contract, is of legally sufficient form, and does not contain clear and obvious errors of law. Note - Approval As To Form is not required to make the contract binding.

**Conveyance**  A legal document, such as a quitclaim deed, supporting a relinquishment or certification of real property, which WSDOT conveys to a local agency.

**Cost Estimate**  The estimated cost of work to be performed based on the most current information available at the time the agreement is prepared.

**EBASE (Estimates and Bid Analysis System)**  WSDOT’s system for developing project Cost Estimates.

**Effective Date**  The date the agreement goes into full force and effect. The Effective Date is sometimes referred to as Executed Date or Date of Execution. It is usually the date the last party signs the agreement, amendment, or supplement, but can be a different date if specified in the terms of the agreement.

**Force Majeure**  Language that provides for assignment of liability in the event that agreement obligations cannot be performed due to causes that are outside the control of the parties and that could not be avoided by the exercise of due care, such as “acts of God,” which include adverse weather, earthquakes, fires, and floods, or such as acts of war and strikes.

**HQ**  The WSDOT Headquarters in Olympia.

**Indirect Cost Rate**  The overhead percentage rate applied to the total cost of work performed by WSDOT for another entity under a reimbursable agreement. (See the Master Agreement for more information.) The Indirect Cost Rate is updated annually.

**Local Agency**  A county, city, or town within Washington State.

**Master Agreement**  An agreement that provides all the necessary general terms and conditions for a general type of work (e.g., research or plan review) and has an overall beginning and ending date. It will not contain specifics for individual elements of work (tasks) such as specific scope, schedule or budget. This information will be in each individually executed task order (see Task Order). Between the master agreement and the task order, the task’s scope of work, schedule, and budget must be completely defined.

**Memorandum of Understanding (MOU)**  A written document signed by two or more parties that establishes each party's intent, objectives, and/or requirements, such as outlining a future action by one or both of the parties. An MOU is sometimes referred to as a Letter of Understanding (LOU). MOUs and LOUs differ from agreements in that they do not create a legally binding commitment on the part of the STATE and the other party.
Mutuality of Obligation  The legal principle that provides that unless both parties to a contract are legally bound to perform, neither party is bound.

Non-Operating Property  Waste sites, pit sites, stockpile sites, maintenance sites, and/or other such lands required or used in support of the construction and/or operation of a highway.

Nonstandard Agreement  Any agreement that is not a WSDOT standard form approved by the Office of the Attorney General (AGO). Any revision to a standard form will constitute a nonstandard agreement that must be reviewed by the AGO and the Agreements Reviewer.

Operation of Law  A change or transfer that occurs automatically due to existing laws and not due to an agreement or court order. Example: WSDOT buys right of way for a project on a managed access state highway within a city. Once construction is complete, the city will automatically own the purchased right of way in accordance with RCW 47.24.020(15).

Payable Agreement  An agreement in which WSDOT agrees to pay for goods and/or services provided by another entity.

Payable Cost  The dollar amount WSDOT will pay under the terms of an agreement.

Private Party Agreement  An agreement between WSDOT and a nonpublic entity or individual.

Public Agencies  Any agency, political subdivision, or unit of local government of this state, including, but not limited to, municipal corporations, quasi-municipal corporations, special-purpose districts and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state (see RCW 39.34.020). Agreements between Public Agencies are commonly referred to as Interlocal or Intergovernmental Agreements.

RCW (Revised Code of Washington) The law of the state as enacted by the Washington State Legislature.

Reimbursable Agreement  An agreement under which WSDOT receives payment from another entity for goods and/or services provided by WSDOT.

Reimbursable Cost  The total estimated or gross dollar amount a party will pay WSDOT under the terms of an agreement.

Relinquishment  The turnback to a county, city, or town of that portion of a facility constructed by WSDOT and designated by agreement to become the property of the local agency upon completion of construction (see Certification).
**Standard Form Agreement**  A preapproved agreement format that contains a form number assigned by WSDOT Forms Management. Any revision to a standard form agreement will constitute a nonstandard agreement and will require further review (see Nonstandard Agreement).

**State-Generated Funds**  Revenues that are collected and dispensed by the state, such as cash receipts and receivables derived from taxes and other sources.

**Statutory Authority**  The specific law or rule, resolution, or ordinance that authorizes an entity to enter into an agreement to perform an action, take on an obligation, and/or make payment for services and/or products received.

**Task Order**  An agreement that is not a stand-alone document, but is a preplanned addition to a master agreement, containing its own scope of work, beginning and ending dates of the work, and a specific dollar amount for the work to be completed. A task order cannot be used to make changes or additions to the terms of the master agreement. Task orders are executed and monitored individually (see Master Agreement).

**TRAINS**  The Transportation Reporting and Accounting Information System, which is the official financial system of WSDOT.

**Uneconomic Remainder**  Due to a WSDOT acquisition, the portion of real property, lying outside the right of way, left in such shape or condition as to be of little value to its owner. WSDOT may acquire an Uneconomic Remainder if its value does not exceed its potential severance claims or damages.

**WAC (Washington Administrative Code)**  Rules and regulations that apply to individual state agencies that are developed by each agency according to the Administrative Procedures Act.

**Work Order Authorization (WOA)**  An accounting system document used to authorize, set up, and revise a work order. (See the Accounting Policy Manual for details.)

**Work Order**  An account set up as the central collection point for recording all WSDOT payments or receivables associated with a particular project or activity. (See the Accounting Policy Manual for details.)

**WSDOT**  Washington State Department of Transportation.

### 1.03 Types of Agreements Addressed in this Manual

#### (1) Agreement Types and Definitions

The following prefixes denote types of agreements that will be discussed in detail in this manual. Chapter 11 includes descriptions and further information on other types of agreements commonly entered into by WSDOT.

Additional information on Agreement Prefixes can be found in the Chart of Account Manual M 13-02 Chapter 1 – Agreement Prefixes.
### Agreement Prefix | Description
---|---
D – Payable | A Payable Agreement under $100,000, for the performance of maintenance work or the furnishing of equipment, materials, supplies, or operating services (see Chapter 8). D agreements are managed entirely within each region and do not require HQ involvement.

GC – Governmental Contract | An agreement with another public agency, sometimes referred to as Intergovernmental, that includes, but is not limited to, participation in design studies, planning, development of plans, acquisition of right of way, and project construction (see Chapter 4).

GM – Maintenance | An agreement between WSDOT and one or more parties (public and/or private) that assigns certain maintenance and/or operational obligations to all or one of the parties and apportions related costs between the parties (see Chapter 5).

HR – Haul Road or Detour | An agreement with a local agency for state use of a county road or city street to detour traffic or haul materials associated with a highway project. WSDOT may or may not have to pay the local agency for using these roads and streets (see Chapter 6).

J – Reimbursable: Non-State Agency or Private Party | A reimbursable agreement executed at the region level for work performed by the region (state forces) at the expense of another party (see Chapter 9). J agreements are managed entirely within each region and do not require HQ involvement.

N – Reimbursable: Another State Agency | A reimbursable agreement executed at the region level for work being performed by the region (state forces) at the expense of another Washington State agency (see Chapter 10). N agreements are managed entirely within each region and do not require HQ involvement.

TB – Turnback | An agreement to provide for the conveyance of WSDOT highway real property to a local agency after project completion where the local agency will operate and maintain that portion of the highway right of way (see Chapter 7).

### (2) Region Designators for D, J, and N Agreements

Some agreements require that a region designator be placed in the agreement number. Use the following matrix to help determine which designator should be used.

**Exhibit 1-2 Region Designators**

<table>
<thead>
<tr>
<th>Region Name</th>
<th>Dx, Jx &amp; Nx Designator</th>
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<tbody>
<tr>
<td>Northwest</td>
<td>A or Z</td>
</tr>
<tr>
<td>North Central</td>
<td>B</td>
</tr>
<tr>
<td>Olympic</td>
<td>C</td>
</tr>
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<td>Southwest</td>
<td>D</td>
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<tr>
<td>South Central</td>
<td>E</td>
</tr>
<tr>
<td>Eastern</td>
<td>G</td>
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</table>
1.04 Standard Form Agreement vs. Nonstandard Agreement

Many standard form agreements have been reviewed by the HQ Agreements and approved as to form by an Assistant Attorney General (AAG). Some standard form agreements are the responsibility of other offices within WSDOT.

The Form Owner can be determined by clicking on the “Details” link in the list view of the Forms Catalog as shown below.

![Forms Catalog](image)

This enables the reader to contact the correct person or office with any questions regarding the use of the standard form or to request a word version to be modified for use as a nonstandard agreement.

Standard form agreements have been assigned a form number and must be used WITHOUT CHANGE. Any revisions, either directly or indirectly, to a standard form agreement make it a nonstandard agreement. Adding, deleting, or altering terms of the standard form agreement in an exhibit or attachment also creates a nonstandard agreement. Standard form agreements can be found in the [Forms Catalog](#) on the WSDOT Intranet.

Always download a copy from the Forms Catalog when creating a Standard Form Agreement document, to ensure you are using the most current approved form.

Contact the HQ Agreements for information on revising existing or creating new standard form agreements.

Nonstandard agreements are customized to meet the specific needs of a particular project or situation. The following are considered nonstandard agreements:

- A standard form with changes made.
- Any agreement prepared by other entities (their standard or otherwise).
- Any standard form agreement with an exhibit that adds, deletes, and/or changes any of the terms of the standard form agreement.

Nonstandard agreements must go through the review process described in [Chapter 3](#).
1.05 Memorandum/Letter of Understanding

A Memorandum or Letter of Understanding (MOU or LOU) is a document outlining a plan for two or more parties to work together. MOUs and LOUs document the intent of the parties, but should not be written with the intent of legally binding the parties. Use an applicable standard form agreement or a nonstandard agreement if the intent is to bind the parties. MOUs and LOUs are not assigned agreement numbers and do not require review by the HQ Agreements or the Attorney General’s Office.²

Some agencies title their agreements “Memorandum of Agreement” (MOA). These should be treated as agreements and receive a WSDOT agreement number appropriate to the type of agreement. They must be reviewed and approved in accordance with Chapter 3.

1.06 Headquarters and Region Contact Information

Visit the HQ Utilities, Railroad, and Agreements Section’s website for current Headquarters and Region contacts: http://www.wsdot.wa.gov/utilities

² LOUs are sometimes developed by Real Estate Services during the process of right of way acquisition, and they ultimately become part of the acquisition file. Contact HQ Real Estate Services for guidance on this particular application of LOUs.
Chapter 2  Elements of an Agreement

2.01  Introduction

Chapter 1 defines an agreement as "A written contract between WSDOT and another party or parties (public, private, or both), establishing an exchange of benefits and/or obligations." This chapter explains what each agreement must contain to be a coherent document that is enforceable in a court of law.

2.02  Main Elements of an Agreement

(1) Agreement Elements

For agreements to be valid and legally enforceable, they must contain the following five essential elements:

- Competent parties
- Subject matter (purpose and intent)
- Legal consideration
- Mutuality of agreement
- Mutuality of obligations

(a) Competent Parties

Competent parties are entities that have the required legal authority to obligate themselves to either perform an action or make payment under an agreement. All parties to an agreement must have this legal authority. WSDOT's designation as a competent party is related to the legal authority it has to enter into specific types of agreements. For example, RCW 47.52.090 gives WSDOT and local agencies legal authority to enter into cooperative agreements with each other to facilitate planning, constructing, or improving limited access highways. Specific legal authority varies according to an agreement's purpose.

(b) Subject Matter (Purpose and Intent)

The actual purpose and intent of the agreement must be in accordance with the law and must be clearly and comprehensively stated so that no ambiguity exists as to the scope and intent of the agreement.

(c) Legal Consideration

Agreements are based on an exchange of one form of consideration (benefits or obligations) for another. Consideration typically consists of payment by one party for services performed or materials/goods provided by another party, but it may also take the form of an exchange or trade for "in-kind" benefits such as for property or equipment.
For an agreement to be legally enforceable, consideration must include something of nearly equivalent value to each of the parties involved. For example, if an entity is already obligated to perform an action, an agreement to require the entity to perform its preexisting duty is not legal consideration; therefore, the agreement would be void. Without legal consideration, there is no agreement.

(d) **Mutuality of Agreement**

Mutuality of agreement means that all parties agree to the details of an agreement; it is a meeting of the minds regarding what each party is required to perform. The details include essential terms of the agreement, such as costs, time of performance, and subject matter. Creating an agreement with the clearest terms possible will help each party avoid mistakes, disputes, and uncertainty.

(e) **Mutuality of Obligations**

For every agreement, each party must perform some act and receive something in return. It is the legal principle that provides that unless both parties to a contract are bound to perform, neither party is bound. For example, if WSDOT and a local agency enter into an agreement where WSDOT performs a local roadway improvement, the local agency would benefit from having the roadway improvement and WSDOT would benefit from being reimbursed for the work.

### 2.03 Structure/Format of an Agreement

(1) **Developing Consistent Agreements**

To the extent possible, agreements written by WSDOT should be consistent in their structure and format. This not only represents a good practice in terms of consistency within WSDOT, but it also facilitates review and processing by Region, Headquarters (HQ) and the Attorney General's Office.

The following represents sections that are typically contained within WSDOT agreements:

- Parties
- Recitals
- Statement of Legal Authority
  - [Usually proceeded by Now Therefore]
- General (Purpose or Intent)
- WSDOT’s Responsibility
- Other Party’s Responsibility
- Right of Entry
- Payment
- General Provisions

(2) **Examples of Agreement Provisions**

The following examples may be used as a basis for developing and structuring agreement components.

*Note: These examples are for informational purposes only and should not be used as actual agreement provisions. Actual language will depend on the individual agreement needs.*
(a) **Parties**

This section identifies the two (or more) entities entering into the agreement.

*Example:*

This Agreement is entered into by and between the Washington State Department of Transportation, hereinafter “WSDOT,” and the City of Burien, *(address)*, a municipal corporation, hereinafter “City,” individually the “Party” and collectively the “Parties”.

(b) **Recitals**

Recitals are a series of statements that explain why the parties are entering into the agreement. These statements provide background to better understand the actual terms and context of the agreement.

It may be necessary to cite the legal authority under the Recitals, especially if a specific legislative appropriation, FHWA grant, city ordinance, or board resolution must be noted.

Recitals are not agreement terms and are not enforceable agreement elements unless language in the agreement makes them part of the agreement.*

*Example: Within the “Now Therefore” statement, insert “...the above Recitals that are incorporated herein as if fully set forth below...”

In addition, the Recitals are not the location to squeeze in agreement terms. The definition of Work or other specific terms should be in the sections of the agreement and come after the “It Is Mutually Agreed...” language.

*Examples: (Recitals can be numerically or alpha identified)*

**RECITALS**

1. WSDOT is planning the construction or improvement of State Route 509, and in connection therewith, it is necessary to remove, relocate, or construct certain highway facilities.

2. The Local Agency has an ownership interest in the land in which its facilities are located, therefore, WSDOT is obligated to reimburse the Local Agency for the relocation of its facilities.

3. Engrossed Substitute Senate Bill 6386 provides funds to the WSDOT for the SR 509/Miller/Walker Impervious Area Project, hereinafter the “Project”.

4. The Project is one of several components that comprise the SR 509/Miller/Walker Impervious Area Project.

5. WSDOT has agreed to partially fund construction of the Project.

6. The Project will benefit the state highway system by alleviating flooding problems in the pond vicinity by providing additional detention for existing stormwater runoff from SR 509 that flows into the Miller Creek Basin.
(c) **Statement of Legal Authority**

All parties to an agreement must have legal authority to enter into the agreement. This authority shall be identified in the agreement by citing the proper Revised Code of Washington (RCW) or its title or chapter and/or the Washington Administrative Code (WAC). In most cases the legal authority will apply to both parties, and in other cases the other entity will need to provide its own legal authority. For highway purpose related agreements between WSDOT and a local agency, **RCW 47.28.140** is typically the authorizing statute; however, other statutes and/or rules may also require citation. Contact the HQ Agreements for assistance in determining the applicable authority. The specific terms after this general statement of mutual agreement comprise the agreement.

*Example:*

Now therefore, pursuant to **RCW 47.28.140**, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, and the attached exhibits that are incorporated and made a part hereof,

It Is Mutually Agreed As Follows:

*Note: For RCWs, reference to a title is written “Title 47 RCW,” reference to a chapter is written “Chapter 47.28 RCW,” and reference to a title, chapter, and subpart is written “RCW 47.28.140”.*

(d) **General (Purpose or Intent of Agreement)**

This section states the purpose or intent of the agreement. This information may closely resemble information in the recital section; however, it is necessary to state purpose or intent within the body of the agreement as well, unless you have included the Recitals by adding “the above Recitals that are incorporated herein as if fully set forth below,” as shown under subsection c, above.

It is the intent of the Parties to work cooperatively with each other and in good faith to timely and expeditiously complete all phases of this Agreement as provided herein, including, but not limited to, the development of preliminary engineering and final design, plans and specifications, and cost estimates.

(e) **WSDOT’s Responsibilities**

This section describes WSDOT’s obligations under the agreement, including work to be performed and/or payments to be made.

*Note: Do not include the other party’s responsibilities in this section.*
(f) **Other Party’s Responsibilities**

This section describes the other party’s obligations under the agreement, including work to be performed and/or payments to be made.

*Note:* Do not include WSDOT’s responsibilities in this section.

(g) **Right of Entry**

If the agreement requires either party to access the other party’s property for constructing, operating, maintaining, and/or inspecting a facility, a right of entry is usually required from the owning party. These elements may or may not be needed depending upon the terms of the agreement.

*Example:*

WSDOT hereby grants to the CITY and its authorized agents, contractors, subcontractors, and employees, a right of entry upon all land in which WSDOT has an interest for the purpose of constructing the Work covered by this Agreement.

*Example:*

Upon acceptance of the Work as provided in Section _______ or _______, WSDOT shall be the sole owner of the Work, and WSDOT shall be solely responsible for all future operation and maintenance of the facility at its sole cost, without expense or cost to the City.

*Notes:* In the preceding and following examples, “Work” is defined elsewhere in the agreement by identifying specific items being performed by the other party.

For additional examples of agreement language, check with the HQ Agreements.

(h) **Payment**

This section discusses the payment terms when one party is required to pay the other party, including specifying dollar amounts, frequency of invoices, payment due dates,¹ and federal/state requirements covering allowable costs. This section may or may not be needed, depending upon the terms of the agreement.

*Example:*

WSDOT, in consideration of the faithful performance of the Work to be performed by the City, agrees to reimburse the City for the actual direct and related indirect costs of the Work. The City shall provide detailed invoices to the State, and WSDOT shall make payment within thirty (30) calendar days from receipt of a City invoice. Invoices shall be submitted no more than once per month. A payment will not constitute agreement as to the appropriateness of any item and, at the time of final invoice, the Parties will resolve any discrepancies. The City agrees to submit a final bill to WSDOT within forty-five (45) calendar days after the City has completed the Work.

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¹ In cases where a city or town is obligated to pay WSDOT, [RCW 47.24.050](https:// laws.wa.gov/laws/enacted/RCW/47-24/) provides WSDOT with authority to withhold and expend local agency motor vehicle funds until such time the amount owed has been recovered. Contact the HQ Division of Accounting & Financial Services (AFS) with questions about application of this statute.
The following clause should be added to payment section of all payable agreements.

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

### (i) General Provisions

These following General Provisions are included in WSDOT agreements, with the exception of special circumstances. If an agreement is developed without these provisions, please provide an explanation to the HQ reviewer.

Other provisions, not listed below, are often needed or desired depending upon the circumstances. The other party may suggest provisions as well. Sometimes their own internal policies may result in additional provisions.

The following sections should be considered for all agreements:

1. **Amendment**

   An amendment is a written contract used to modify the contents of an existing agreement.

   **Example:**
   This Agreement may be amended 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.

2. **Termination**

   This section has language that specifies how and when an executed agreement will expire and when the parties are no longer obligated under the agreement.

   **Example:**
   Neither WSDOT nor the City may terminate this Agreement without the concurrence of the other Party, except as otherwise provided under Section _______. Termination shall be in writing and signed by both Parties. If this Agreement is so terminated prior to the fulfillment of the terms stated herein, the City shall be reimbursed for actual direct and related indirect expenses and costs incurred up to the date of termination, as well as the costs of non-cancelable obligations.
3. **Independent Contractor**

This section has language that specifies that a party's employees, contractors, agents, representatives, and so on, are not employees of the other party. This clause may be written in a reciprocal manner when required.

*Example:*  
The City shall be deemed an independent contractor for all purposes, and the employees of the City or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of WSDOT.

4. **Indemnity**

This section has language that generally allocates the legal liability of a party for damages or injury caused to third parties, not the contracting parties.

Indemnification language will change depending upon the purpose, scope, and liabilities addressed in individual agreements. The nature and purpose of indemnity clauses require close consultation with the Attorney General's Office through the HQ Agreements.

*Example:*  
To the extent authorized by law, the Parties shall protect, defend, indemnify, and hold harmless each other and their employees and authorized agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, the Work to be performed or performed pursuant to the provisions of this Agreement. The Parties shall not be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) the City, its employees or authorized agents, and (b) WSDOT, 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 each Party's, its employees', and/or authorized agents' own negligence.

The City agrees that its obligations under this section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents while performing construction, operation, and/or maintenance of the project. For this purpose, the City, by mutual negotiation, hereby waives, with respect to the state only, any immunity that would otherwise be available to it against such claims under the industrial insurance provisions in Chapter 51.12 RCW.

This indemnification and waiver shall survive the termination of this Agreement.

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2 *Title 51 RCW* addresses the rights of employees and their employers when employees are injured during the course of performing duties. This language provides WSDOT with protection against claims related to injuries sustained by employees of the other party when the cause is not due to WSDOT negligence. WSDOT Risk Managers strongly advise including this or similar language within agreements where another party will perform work under the agreement. Contact the WSDOT Administrative Risk Manager with questions regarding Title 51 RCW.
5. Disputes

This section has language that establishes a process for dispute resolution prior to either party taking legal action.

*Example:*
In the event that a dispute arises under this Agreement, it shall be resolved as follows: WSDOT and the City shall each appoint a member to a disputes board; these two members shall select a third member not affiliated with either agency. 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 the 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.

*Note:* The sharing of the cost of the third board member may not always apply. It may be that the Party responsible for the cost of the agreement is solely responsible.

6. Venue

This section has language that specifies the location where legal action may be filed.

*Example:*
*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 per any provision of the Revised Code of Washington. Further, the Parties agree that each shall be responsible for its own attorneys’ fees and costs.

7. Audits/Records

This section has language that specifies which records must be maintained, and for how long, for all work performed under an agreement. Sometimes, this section identifies who is to pay for copies of the records if requested.

*Example:*
All project records in support of all costs incurred with respect to the Work shall be maintained by the City for a period of six (6) years. The State of Washington shall have full access to and the right to examine said records, during normal business hours, and as often as it deems necessary. The Parties agree that the Work performed herein is subject to audit by either or both Parties and/or their designated representatives, and/or the federal/state government.
8. **Working Days v. Calendar Days**

   The agreement should specify whether the time frames are given in calendar days or working days so that all parties are clear and to avoid confusion - particularly regarding deadlines for submittals, responses, or payment.

   **Example:**
   Working Days: Working days for this Agreement are defined as Monday through Friday, excluding Washington State furlough days or state holidays pursuant to RCW 1.16.050.

9. **Signatures, Effective Date, and Counterparts**

   The agreement concludes with a section for authorized representatives of each party to sign and date the document. Once signed by all parties, the agreement is considered to be fully executed. Unless otherwise stipulated elsewhere in another provision or exhibit, the last date signed is the effective date of the agreement.

   Include the printed name and the title/position of the individual who will sign on behalf of their respective agency.

   **Counterparts** is a statement that indicates that each party may sign on separate, identical agreements (*i.e.* it is not necessary for all signatures to be on the same original).

   **Example:**
   This Agreement may be executed in two counterparts, each of which shall be deemed to be an original having identical legal effect.

   WSDOT is responsible for its own business decisions and acceptance of risk and liability, as long as the decisions are supported by law.

   **Approval as to form** is an acknowledgment provided by an Assistant Attorney General (AAG) based upon review of an agreement draft. The AAG review is to make sure the agreement:

   - Contains those elements essential to a legally binding agreement, such as the mutuality of obligations, competency of the parties to enter into it, terms that are sufficiently definite, and enforceability.
   - Is of legally sufficient form, such as containing required language, correcting internal inconsistencies in the terms, and including proper exhibits or attachments.
   - Does not contain obvious errors of law, such as lack of statutory authority to enter into the agreement, inconsistency with applicable state or federal laws or rules, or agreeing to make or receive payments for unauthorized purposes.

   Approval as to form does not mean the reviewer finds that the agreement meets WSDOT’s purposes, or that it is a good bargain, a sound business decision, or a prudent policy decision, or that it does not present excessive risk to WSDOT or the public.
AAG signature and Approval as to Form should take place before an agreement is executed. If an agreement has been executed prior to AAG Approval as to Form, WSDOT will be legally bound by that agreement and the AAG is not going provide a review.

There are occasions when an AAG will review an agreement and agree to execution, by the Parties, prior to AAG signature.

**Example:**
In Witness Whereof, the Parties hereto have executed this Agreement as of the Party’s date signed last below.³

City of Xxxxxxxx  
Washington State Department of Transportation

By: ___________________________  
By: ___________________________

Jesse P. Doolin, Mayor  
Melissa W. Raezer, Region Administrator

Date: July 1, 20XX  
Date: July 15, 20XX

Approved as to Form:  
Approved as to Form:  

By: ___________________________  
By: ___________________________

Jane Wiest, City Attorney  
[name of AAG]  
Assistant Attorney General

Date: ___________________________  
Date: ___________________________

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³ In this example, July 15 would be the effective date of the agreement, since it is the last date of the last signature.
Chapter 3  Agreement Process

3.01 Introduction
This chapter describes the procedural life of an agreement from beginning to end and the various roles associated with each stage.

3.02 Overview of the Agreement Process
The agreement process includes initiating, writing, managing and closing the agreement.

(1) Initiating the Agreement Process
This phase begins when it is recognized by the region or Headquarters offices that an agreement may be needed and ends with submitting all information needed to the Agreement Writer to draft the agreement. In this phase, the Agreement Requestor is the lead. Guidance and steps for this phase are further detailed in Section 3.03.

(2) Writing the Agreement
During this phase, the Agreement Writer, working with the Agreement Requestor and/or Agreement Manager, takes the lead in developing the agreement. This phase ends when the agreement is fully executed and delivered to the Agreement Manager and/or the party or parties. Guidance and steps for this phase are further detailed in Section 3.04.

(3) Managing the Agreement
Upon receiving the completed (executed) agreement, the Agreement Manager is responsible for setting up any needed work orders, managing the agreement to ensure that each parties’ obligations within the agreement are met, processing invoices, and initiating any request for modifications to the agreement. Guidance and steps for this phase are further detailed in Section 3.05.

(4) Closing the Agreement
When the agreement is ready to be closed, the Agreement Manager is responsible to initiate the closeout process by: verifying work is completed, final invoices have been processed, and all necessary documentation and/or notifications are completed. Guidance and steps for this phase are further detailed in Section 3.06.
Chapter 3 Agreement Process

3.03  **Initiating the Agreement Process**

(1)  **Guidance for the Agreement Requestor (WSDOT)**

The following is general guidance to help Agreement Requestor determine whether or not an agreement is needed, along with guidance for successful agreement initiation.

(a)  **Is an agreement needed?**

If the answer is “Yes” to any of the following questions, an agreement is usually required:

- Will WSDOT be receiving, paying, or exchanging funds with another party, or will WSDOT be receiving, providing, or exchanging services with another party?
- Will WSDOT commit to performing certain actions/activities or making a payment if another party performs other actions or activities?
- Will WSDOT commit to operating and/or maintaining certain facilities in a particular manner, in exchange for payment or other actions performed by another party?

The following WSDOT standard procedures always require an agreement:

- Operating construction detours on facilities not owned by WSDOT.
- Local agency contributing funds to WSDOT construction work.
- WSDOT contributing funds to a local agency project.
- Transfer of WSDOT highway property to a local agency, usually following construction under a WSDOT contract (Turnback Agreement).

(b)  **An agreement is needed...what’s next?**

1. **START EARLY!** This cannot be stressed enough. Start the agreement process as soon as the need for an agreement has been identified. The agreement process can take many months, and in some cases a year or more. An early start will help ensure the project schedule is maintained.

2. Understand what needs to be accomplished. Determine the agreement’s purpose, goals, terms, and scope of work. What are the commitments and what value is being received, provided, or exchanged? It is necessary to understand the intent of the agreement so that it can be properly reflected in the written document. Write down the specific items of agreement with the other party(ies), if these types of discussions are held in the early stages of a project, so this information may be provided to the Agreement Writer.

3. Consider all current and future factors that may be affected by the agreement, such as access, right of way, environmental, utilities, railroad, drainage, signs, traffic signals, maintenance, and liabilities. Some of these factors may require that additional agreements be written and executed.

4. It is essential that both WSDOT and the other party have the legal authority to enter into the agreement. Do not assume both parties have full power to act. To verify this, it may be necessary to research the RCW, WAC, WSDOT policies and procedures, and/or request the other party’s verification of legal authority.
5. As soon as possible, contact the Agreement Writer to discuss the known details of the agreement. Even if all the details are not yet known or agreed to, initiating dialogue about the agreement early will provide the opportunity to help identify potential pitfalls or provide assistance in streamlining the agreement development process. This early communication can greatly influence the potential to successfully execute the agreement within the time frame allowed by the schedule.

6. Determine the type of agreement needed based on 2 and 3 above. (See Chapter 1 for more information about agreement types.)

7. All agreements require an exchange of consideration,\(^1\) which is the legal term for something of value to a party to the agreement. Exchange of consideration is always the direct, stated goal of an agreement and can be financial or service/performance oriented. Consideration can also include requiring a party not to perform a specific action. In any case, there must be consideration of sufficient equality identified for both parties to the agreement, or else it is not a legal agreement—consideration cannot be one-sided. Consideration also cannot include the commitment of a party to perform services or actions that it would otherwise normally be required to perform as part of its usual course of business.

Following is a simple example of consideration:

\textit{WSDOT is paving a section of a state highway through a local jurisdiction. To take advantage of the economy of scale pricing, the local jurisdiction requests that WSDOT pave local streets at local expense. The consideration that WSDOT receives is payment for all costs associated with the paving of local streets (both direct and related indirect costs). The consideration the local jurisdiction receives is the street paving. Both parties are made whole in this example.}

8. Consider the various sources of funding associated with the agreement and be aware of any effects those sources may have on how the funds are dealt with by the agreement or subsequent agreements or contracts. Some types of funding (such as federal funds) require that special clauses be included in the agreement language, while other types of funding are limited by what they can be spent on, when they can be spent, or how reimbursement will occur. Any of these instances would likely result in the need to clarify agreement language. Be aware of any limitations created by the source of the funds being used and be sure not to commit funds in any way that is not legally or logistically supportable.

9. If the other party will be receiving WSDOT invoices, be sure the other party understands what costs, in addition to direct reimbursable charges, may be included on the invoice (e.g., indirect cost rate).

10. If either party has timing or other restrictions related to funding, invoicing, or payments, ensure these conditions are covered in the agreement. Work closely with region or HQ Program Management and AFS staff, as appropriate, to ensure the commitments can be achieved.

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\(^1\) Consideration typically consists of payment by one party for work or services performed by another party, but it may also take the form of payment or trade for such things as property or equipment.
11. Determine whether a Standard Form Agreement (SFA) can be used. The use of a SFA can greatly reduce the time needed to complete and execute the agreement. However, any change, no matter how small, to a SFA creates a “nonstandard” agreement, which must be reviewed by Agreement Reviewer assigned to your specific office. They will also help determine if the agreement needs to be forwarded to the Attorney General’s Office (AGO) for review and approval as to form, or whether region/office execution can proceed. Standard Form

12. Involve the right people or group during agreement development. Determine who has the authority to implement the commitments identified by the agreement. Even if commitments in an agreement are legally supportable, it is imperative that the Agreement Requestor work with the appropriate staff to confirm that those commitments can be met once the agreement is in place. For example: If a maintenance agreement is being developed by a project office, then Maintenance management staff need to be involved in the development of the agreement.

13. It is vital to understand who has the legal authority to sign the agreement. The current Delegation of Authority is issued by the Secretary of Transportation’s Executive Order E 1012.

14. Develop an agreement preparation/review schedule early. Each project has different schedule requirements, and it is the Agreement Requestor’s responsibility to allow sufficient time in the project schedule to accommodate the entire agreement process. As part of agreement preparation/review schedule development, it is also the Agreement Requestor’s responsibility to determine the other agency’s approval process (such as city council action) and to incorporate it into both the agreement preparation and project schedules.

15. Many agreements require a cost estimate to be attached as an exhibit. Cost estimates need to be complete, containing sufficient details to allow the parties to determine the items, quantities, rates, dollar amounts, taxes, overhead costs, and so on, being billed. It should be clear what is and is not included in the estimate. Estimates must have a rational basis. Backup assumptions and calculations must exist.

(c) Things NOT to do when creating an agreement:

1. Do not make commitments or promises (verbal approvals and agreements) to other parties until the agreement process has begun. It is not uncommon for commitments to be made by the project office that are later found to be against WSDOT policies, laws, and/or are otherwise untenable and therefore cannot be included in a formalized agreement. As a public agency utilizing public funds, which are typically allocated for specific purposes, WSDOT is limited in what it can promise to do and/or pay for and also in how it can accept funds for services rendered. Verbal approval of agreements can lead to greater risk and liability and should be avoided at all costs.

2. Never enter into an agreement without proper review. Any nonstandard agreement (any agreement that is not an exact copy of a WSDOT Standard Form agreement) must be reviewed by Agreement Reviewer and possibly by the AAG for approval as to form. Crossing out any portion of a SFA creates a nonstandard agreement. In addition, one cannot change the Standard Form agreement’s terms by including conflicting or different language in an exhibit.
3. If the agreement involves WSDOT paying another party to perform work for the department, work cannot begin until the agreement is executed. RCW 47.28.140 prohibits payment for services provided prior to execution of the agreement. If advance work is an issue for the project, consult with an Agreement Reviewer staff for further guidance and assistance.

4. Do not wait for the final Estimates and Bid Analysis System (EBASE) estimate to use in an agreement. Use a conservative preliminary estimate instead. If necessary, agreements may include overrun provisions; for example, allowing payment of up to 25% over the estimated amount. WSDOT does not use allowable overrun provisions in agreements for preliminary engineering work performed by another party or its agents.

5. **MOST IMPORTANTLY:**
   - DO NOT wait until all negotiations with the other party have concluded before initiating the agreement process.
   - DO NOT wait until the last minute to start the agreement.
   - DO NOT make the mistake of thinking the agreement is so simple it will only take a week or two to complete. The final legal preparations and execution of the agreement is dependent upon how well the agreement and its exhibits is prepared before it goes to an Agreement Reviewer for review. The preparation of a complex agreement and its exhibits may take several months if local agency council or board actions are required. **Waiting until the last minute to complete the agreement could delay the project.**

(2) **Steps for Initiating the Agreement (Agreement Requestor)**

(a) **Determine Need and Due Date (Why, What, and When)**

Many agreements related to project development are initiated during project planning efforts, but can also begin later as the design progresses. The Agreement Requestor should consider the scope of the project and identify which agreements will likely be needed and when. For non-project agreements (such as reciprocal Maintenance Agreements), the Agreement Requestor is normally also the future agreement owner. In all cases, the Agreement Requestor determines whether an agreement may be needed, why it is needed, what the agreement needs to accomplish, and when the agreement is needed.

(b) **Pre-negotiation Consultation with the Agreement Writer**

The Agreement Requestor should not negotiate with and/or make commitments to the other party before consulting with the Agreement Writer (see Section 3.03). After discussing the scope of the project or need for an agreement, the Agreement Writer will verify the agreement types needed, provide guidance on negotiating the agreement terms, and assist in planning the steps and time needed to secure the agreement(s).
(c) **Negotiate Terms/Requirements**

It is the Agreement Requestor’s responsibility to negotiate the terms and requirements of the agreement. What are the parties agreeing to? What gives WSDOT authority to enter into the agreement? Each function of the agreement needs to be well defined; for example, it is important to know how often and to whom an invoice will be sent and what information must be on the invoice. It is advisable for the negotiator to document the discussions with the other parties for the benefit of the Agreement Writer.

(d) **Agreement Request**

The Agreement Requestor should submit a request to the Agreement Writer specifying the purpose, scope, terms, and requirements of the proposed agreement.

### 3.04 Writing the Agreement (Agreement Writer)

(1) **Role of the Agreement Writer**

The responsibilities of the Agreement Writer may vary within WSDOT, but can generally be defined as follows:

- Ensure agreements comply with state and federal law, WSDOT policies and procedures, and general office or region practices.
- Assist the Agreement Requestor by facilitating the agreement process.
- Select appropriate SFA or assist in determining proper templates for nonstandard agreement.
- Craft an agreement that accomplishes the desired outcomes for all involved parties.
- Process the agreement through Agreement Reviewer for review and for facilitation of the AAG’s review.
- Upon AAG approval or Agreement Reviewer recommendation for region execution, the agreement will be returned to the Agreement Writer for execution.
- Distribute originals and copies to the parties.
- Track the status of agreements through to their execution.

The Agreement Writer typically does not negotiate the terms of the agreement, though it can be beneficial for the development of the agreement when an Agreement Writer attends negotiations between the parties.

Writing the agreement begins when the Agreement Requestor submits all information and documents needed to draft the agreement to the Agreement Writer (see Section 3.03). The Agreement Writer should immediately check the information and verify that it is complete and that the purpose, terms, and requirements of the agreement are completely defined. If clarification, additional information, or specific exhibits are needed, the Agreement Writer makes those requests. Until all information is received, writing the agreement cannot be completed.
(2) **Draft the Agreement**

(a) **Obtain an Agreement Number**

Each agreement is assigned a unique number. The Agreement Review Transmittal (ART) database automatically generates the agreement number.

For agreements that are not executed, the agreement number may be reused if there is not a significant amount of correspondence associated with it. If there is a significant amount of correspondence, then the number is “Cancelled” in ART.

Region-level agreement numbers will be provided within the region. Who distributes those numbers may differ from region to region.

Add a footer to each page of the agreement containing: the agreement number, exhibit designation if applicable and page number in a ‘page of page’ format to capture the total number of pages contained in the document.

(b) **Agreement Review Transmittal (ART) Database**

ART was developed to expedite and consolidate various functions that previously required multiple forms and coordination with different WSDOT offices. These include:

- Assignment of agreement numbers.
- Facilitating and documenting agreement reviews.
- Providing necessary information to set up agreements in TRAINS.
- Establishing a searchable statewide agreements database for research and reporting.
- Serving as a repository for electronic copies of executed agreements or supporting documents.

Detailed guidance on entering an agreement into ART is contained within the ART User Guide.

ART is used for the following agreement types: GC (Government Contracts), GM (Maintenance), UT (Utilities), RR (Railroad), UC (Developer), OP (Rental and Lease), Turnback (TB) and LM (Local Mitigation).

Other agreements, such as K (Information Technology) and Y (Personal and Consultant Services) agreements, have independent systems for accomplishing these functions, as do region-level agreements that do not require Headquarters involvement.

Users of ART must be granted permission to create and manipulate agreement records; however, all WSDOT staff can log in as a guest. Contact the URA office if you need to request permission to make edits to entries in ART.

The data entry component of ART is an electronic form, which is ultimately printed and filed with the AFS once an agreement is executed.
Chapter 3 Agreement Process

One the Agreements Requestor and Agreements Writer agree that an agreement is needed, the Agreement Writer creates a new record within ART (including amendments and tasks). Once a record is created, the Agreement Writer must complete the ART form so the agreement can be filed with AFS. Some of the fields in the ART form are only accessible by Agreement Reviewer and are only applicable for nonstandard agreements as described below. Detailed guidance on entering an agreement into ART is contained within the ART User Guide that is available as a link within the ART database.

(c) **WSDOT Standard Form Agreements (SFA)**

WSDOT has developed SFA for commonly encountered agreement needs. As written, the SFA do not require a review.

SFA are written for specific applications and may only be used for their intended purpose. The Agreement Writer must review the “Recitals” and terms of the SFA and verify that the agreement fits the application. If the SFA fits, contact the other party and verify that the SFA will be acceptable to them.

If the SFA is altered in any way, it becomes nonstandard and must be sent for review.

When a SFA is executed, the Agreement Writer must complete and print the ART form and send it along with the executed agreement to AFS for processing into TRAINS. The Agreement Writer is responsible for attaching a PDF of the executed agreement to the “Attachment” tab associated with the agreement in ART. (The ART form should not be part of the attachment.)

(d) **Pre-Draft Consultation (for new nonstandard agreements only)**

Consult with an Agreement Reviewer to discuss the possible options for drafting an agreement with complex issues. A pre-draft discussion will provide the Agreement Writer with useful guidance toward drafting the agreement, and it may eliminate time-consuming problems during the formal review.

(e) **Nonstandard Agreements**

Nonstandard agreements are required when a SFA cannot be used. WSDOT considers agreements drafted by the other party as nonstandard agreements. These require review by an Agreement Reviewer and possible review and approval as to form by the AAG.

Agreement Writers and Agreement Reviewers have access to template agreements that have been developed for general use and which have had a preliminary AAG review. Drafting a new nonstandard agreement from a template can save time and ensures using the most current legal terms.

Often, previously executed nonstandard agreements exist that may fit some of the new agreement needs and can be used as a template. (Agreement Reviewer can provide Word versions of most of the SFA.)

If an executed agreement is used as a template, the Agreement Writer must carefully review the Recitals and agreement terms to verify that the agreement clauses meet the needs of the new agreement’s purpose and scope. Use of a previously executed agreement as a template does not eliminate the need for review. For more information
on the typical parts and clauses of a nonstandard agreement, see Section 2.03 in Chapter 2.

When a nonstandard agreement is ready to be reviewed, an electronic copy (in Word) of the draft agreement, along with all exhibits, is e-mailed by the Agreement Writer to an Agreement Reviewer.

AAG comments are for internal WSDOT discussions only and should not be forwarded or shared outside WSDOT. Correspondence between the AAG and WSDOT is attorney-client privilege. Contact the Agreement Reviewer to discuss sharing AAG comments with other parties. Review all comments remaining in the agreement before sending it to an outside entity for their review and/or approval.

When a nonstandard agreement is fully executed, the original signed agreement is sent to the Agreement Reviewer, which will complete its portion of the ART form and file the documents with AFS. The Agreement Writer is responsible for attaching a PDF of the executed agreement to the “Attachment” tab associated with the agreement in ART.

(f) **Compile Exhibits and Attachments**

Exhibits are usually provided by the Agreement Requestor. Typical exhibits may include scope of work, vicinity maps, cost estimates, and plans. The Agreement Writer must review and understand the exhibits, which should be clear and concise. Label and number each sheet of the exhibit. For example:

```
In the Footer: GCB 2583
Exhibit B-Title of Exhibit
Sheet 1 of 3
```

Cost estimates need to be complete. It should be clear what work, labor, services, and/or materials are eligible for reimbursement under the agreement. Cost estimates may be itemized or lump sum, and they are normally attached to the agreement as an exhibit. Lump sum payments must be supported by adequate documentation. All estimates must include indirect costs unless prior written agreements are in place that clearly define mutual exchange of work.

Do not delay the agreement process waiting for 100% plans or final EBASE estimates. Many SFA allow for overruns of up to 25%, and nonstandard agreements can be set up with overrun provisions. Overrun provisions should not be inserted within agreements for preliminary engineering work performed by another party or its agents.

(3) **Review Process**

(a) **Internal Review and Formatting**

The draft agreement should be reviewed by the Agreement Requestor and/or the Agreement Manager. It may also be beneficial to have another Agreement Writer or individual who understands the particular agreement requirements perform a peer review prior to submitting the agreement for further processing.

For the process to move forward quickly and smoothly, thoroughly read the agreement and all its exhibits before submitting to the Agreement Reviewer. Ensure the entire agreement is cohesive and that one section does not negate another. For example,
duplicate information in the exhibits and the body of the agreement does not add clarity and can create conflicting information.

Be sure each section in the body of the agreement is numbered. For example:

4. Payment, Records and Audit
   4.1 WSDOT shall be responsible...
   4.2 The Local Agency shall...

References to individual agreement parties, such as “City,” “Local Agency,” or “Developer,” must be clearly defined and use that form throughout the agreement. For example:

This Agreement is entered into between the Washington State Department of Transportation, hereinafter “WSDOT,” and the City of Spokane, (include address here), hereinafter the “Local Agency.”

Where common nouns are used to reference a specific item term or party, such as “Agreement,” “Parties,” or “Project,” only the first letter is capitalized.

Typically, MS Word files are distributed via e-mail to reviewers. Activate the “Track Changes” tool in MS Word before distributing the agreement for review. Attaching a “Draft Watermark” helps alert the other entity that the document is not ready for signature.

When requesting a review, identify a response due date, and follow up with a status request. It is the Agreement Writer’s responsibility to track the Agreement status.

The Agreement Writer should keep a file of all review comments and changes. Each comment should be addressed by incorporating the comment or explaining to the contributor why the comment cannot be incorporated. An annotated version of the agreement containing all suggested edits, incorporated or not, should be maintained throughout the review process. The background and explanations contained in the comments assist in the review.

(b) WSDOT Review (if SFA, skip to Other Party Review)

Review by an Agreement Reviewer prior to execution is highly recommended. Agreements subject to this review requirement include, but may not be limited to, Intergovernmental (GC), Maintenance (GM), Haul Road/Detour (HR), Turnback (TB), Utilities (UT), Railroad (RR), and Developer (UC) agreements.

When submitting an agreement to the Agreement Reviewer, the Agreement Writer should include the agreement and all exhibits. Editable files of the agreement must be sent. PDF files of plan attachments are acceptable.

The Agreement Reviewer reviews the agreement and if needed, obtains comments and questions from relevant departments. Unless identified as a "RUSH," the Agreement Reviewer usually provides the first round of comments in the agreement within one to two weeks, depending on agreement complexity, workload, and priorities.

The Agreement Reviewer will return the agreement with changes for consideration and the Agreement Writer, working with the Agreement Requestor, must address all comments, questions, and recommended changes before returning the agreement to the Agreement Reviewer for concurrence or additional comments. If changes are significant,
the Agreement Writer will want to consult with the Agreement Requestor and the other party to the agreement for concurrence or further modification.

(c) **AAG Review (if SFA agreement, skip to Other Party Review)**

After all Parties involved have reviewed the agreement and all issues or questions have been addressed, the Agreement Reviewer will forward the complete agreement to the Attorney General's Office (AGO) for review and approval as to form. Should the AAG have comments that need to be addressed, the document will be returned to Agreement Reviewer and if necessary, it will be returned to the Agreement Writer/Requestor for resolution. If the AAG comments result in significant modifications, the Agreement Writer may need to consult with the Agreement Requestor and the other party/parties to discuss the agreement for concurrence of the modifications, or modify and resubmit.

If approved as to form, the AAG will return the signed document to Agreement Reviewer. If returned to Agreement Reviewer, they will forward the originals to the Agreement Writer for execution by the parties. It is the Agreement Writer's responsibility to assemble a complete agreement package, containing all exhibits, to present to the other party/parties for signature.

Edits requested after AAG Approval as to Form may require review by both Agreement Reviewer and the AAG.

(d) **External Party Review**

Send an electronic copy of the agreement with exhibits attached by e-mail to the other party for review. When requesting a review, identify a response due date, and follow up with a status request.

If any substantive changes are proposed by the other party, the agreement must have another internal review (see Internal Review and Formatting above). Comments changing the terms or requirements of the agreement are usually addressed by the Agreement Requestor.

*Remember most AAG comments are for internal purposes only, and not to be shared with an outside entity.*

(4) **Execution**

The Agreement Writer is responsible for securing signatures and verifying that the person signing the agreement for WSDOT is authorized through the Delegation of Authority. The Agreement Writer must also verify that the signature method is compliant with the Electronic Signature Policy (E 1066).

In the execution of agreements, WSDOT typically signs last. However, there are situations where the other party signs last, such as agreements with the federal government. The date of execution is the date of the last party's signature on the agreement.
(a) **Signatures for Execution**

Send agreement and exhibits to the other party for signature. It is good practice to identify a response due date. Instruct the other party to sign agreement and return agreement documents to the Agreement Writer.

Agreement Writer will coordinate with Agreement Reviewer for Approval As To Form signature. WSDOT generally is the last signature.

Signatures of the parties may be obtained on separate signature pages (Counterparts). When added to the agreement, these signatures constitute a fully executed agreement.

Be aware when the other party/parties require approval from their councils, boards, or commissions, this usually happens at scheduled times of the month. Take that into consideration for the processing timeline.

Once the agreement has been signed by all parties, it is executed and is legally binding.

(5) **Post-Execution Processing**

Once all signatures are obtained, the following steps need to occur:

(a) **Agreement Review Transmittal (ART)**

The Agreement Writer completes the ART entry. The information on this form is used to enter the agreement into the TRAINS. Some of the fields that must be updated include:

- **Org. Code:** The org. code for the Agreement Manager (see Section 3.05).
- **Start Date:** Usually the agreement execution date, but may be a past or future date depending on the terms of the agreement.
- **End Date:** The termination (end) date identified in the agreement. If the agreement does not identify an end or termination date, leave it blank and note in the comment fields that the end date is not determined or "99/99/99."

If there are changes to the ART form after it is distributed, as noted in 5(c), it is sufficient to send an e-mail to the AFS requesting that the change be made. An example of this is requesting a name change for an Agreement Manager.

Consult the ART User Guide for more information.

(b) **Agreement Amounts**

For the purposes of completing the ART form, an agreement is payable if WSDOT pays the other party. An agreement is reimbursable if the other party pays WSDOT. Some agreements are both. If the agreement is both payable and reimbursable, enter separate amounts for maximum amount payable and maximum amount reimbursable on the ARTS form. Some agreements, such as reciprocal maintenance agreements, have a maximum payable amount per year. The maximum payable would be the maximum per year for the life of the agreement unless the annual costs have been adjusted per the agreement. Contact AFS for guidance on agreements where the maximum dollar amount is unknown.
Allowed cost overrun percentages are entered only if the agreement provides for cost overruns and the allowable cost overrun dollar amount is not included in the “Maximum Payable” or “Maximum Reimbursable” boxes.

(c) Agreement Distribution and Retention

Within ART, the Agreement Writer inserts/pastes a PDF copy of the executed agreement in “Attachment” tab associated with the agreement. The Agreement Writer also distributes as follows:

Distribution of SFA:

<table>
<thead>
<tr>
<th>Electronic or Digital Signature</th>
<th>Originals with &quot;wet&quot; signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Agreement Writer emails AFS the agreement documents with ART form. <a href="mailto:HQAcctAgmts@WSDOT.WA.GOV">HQAcctAgmts@WSDOT.WA.GOV</a></td>
<td>The Agreement Writer emails AFS a PDF (scanned copy) of agreement documents with ART form. <a href="mailto:HQAcctAgmts@WSDOT.WA.GOV">HQAcctAgmts@WSDOT.WA.GOV</a></td>
</tr>
<tr>
<td>Original agreement is maintained for duration of retention schedule by Agreement Manager.</td>
<td></td>
</tr>
<tr>
<td>PDF attached in ART.</td>
<td>Scanned PDF is attached in ART.</td>
</tr>
<tr>
<td>Other Parties: emailed copies</td>
<td>Other Parties: emailed copies or duplicate original as appropriate.</td>
</tr>
</tbody>
</table>

Distribution of nonstandard agreements:

<table>
<thead>
<tr>
<th>Electronic or Digital Signature</th>
<th>Originals with &quot;wet&quot; signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Agreement Writer will email agreement documents to the Agreement Reviewer. The Agreement Reviewer completes ART form and emails agreement and ART form to AFS.</td>
<td>The Agreement Writer will email scanned agreement documents with all exhibits to the Agreement Reviewer. The Agreement Reviewer completes ART form and emails to AFS for entry into TRAINS.</td>
</tr>
<tr>
<td>Original agreement is maintained for duration of retention schedule by Agreement Manager.</td>
<td></td>
</tr>
<tr>
<td>PDF attached in ART.</td>
<td>Scanned copy attached in ART.</td>
</tr>
<tr>
<td>Other Parties: emailed copies</td>
<td>Other Parties: emailed copies or duplicate originals as appropriate.</td>
</tr>
</tbody>
</table>

(6) Posting and Reporting

URA will post all agreements entered into under Chapter 39.34 RCW on its web page: [https://wsdot.wa.gov/engineering-standards/design/utilities/agreements](https://wsdot.wa.gov/engineering-standards/design/utilities/agreements)

URA will also complete annual reports required by the Department of Enterprise Services under chapter 39.26 RCW.

(7) Setting Up the Agreement in Transportation Reporting and Accounting Information System (TRAINS)

All WSDOT agreements must be set up in the TRAINS, even if no funding is involved. This is done through either AFS or the region Financial Services Office.
3.05 Managing the Agreement

(1) Assigning an Agreement Manager

Every agreement will be assigned an Agreement Manager. It is the responsibility of the Agreement Manager to make sure WSDOT fulfills its responsibilities under the terms of the agreement and ultimately closes the agreement when it is no longer needed. Guidance and steps for closure are further detailed in Section 3.06.

If the responsibility for the agreement is later transferred to another manager or organization, AFS needs to be notified so the information for the Agreement Manager can be updated.

(2) Managing the Agreement

Agreements must be attached to a Work Order Group and Funding Source prior to processing a payment to a vendor (payable agreement) or billing a customer (reimbursable agreement). Adequate time for funding and work order setup needs to be considered in the development and implementation of the agreement. The Agreement Manager needs to work jointly with the Work Order Manager and Project Manager to ensure the management and closure processes are followed.

It is the Agreement Manager’s responsibility to monitor the agreement scope, schedule, and budget and to determine whether an amendment needs to be processed to modify the agreement scope, schedule, and budget. The Agreement Manager must keep the other party/parties to the agreement informed of all decisions that would change the scope, schedule, or budget of the agreement.

Agreement status reports are available from AFS. The Agreement Manager should monitor these reports or the status of the agreement should be checked at least quarterly.

If an agreement amendment or supplement is required, contact the Agreement Writer. Allow adequate time for the amendment/supplement process (see Definitions in Chapter 1).

(a) Payable Agreements

All invoices submitted for payment need to be reviewed to ensure compliance with agreement terms, and then promptly forwarded to either AFS or the region Financial Services Office for processing.

For master payable agreements with task orders, the Agreement Manager for the task order may differ from the Agreement Manager for the master agreement. The status of the master agreement will always be “Closed” in TRAINS, as no direct charges will be accepted on the master.

The Master Agreement Manager will assign the task assignment or task order numbers and is responsible to ensure (1) the total dollar amounts authorized on task assignments do not exceed the total authorized on the master agreement; (2) the time period of the work on the task assignments is in the time period of the master agreement; and (3) provide an end date for the task.
The Task Manager is responsible for agreement monitoring for the task assignment. The Task Manager must contact the Agreement Manager prior to supplementing the task assignment for an increase in budget so the Agreement Manager can determine whether the funds are available.

(b) **Reimbursable Agreements**

If the reimbursable agreement is anticipated to exceed the authorized dollar amount, an amendment must be processed to address the expected overrun. The amendment must be fully executed prior to the department incurring expenditures or performing additional work beyond the agreement.

AFS or the region Financial Services Office generates invoices to the other party for work charged to a reimbursable agreement. Payment is due from the other party as specified in the agreement. Past due accounts may be subject to late fees, interest charges, or collection.

It is the Agreement Manager’s responsibility to assist AFS or the region Financial Services Office in resolving financial issues.

Some agreement terms require delayed billing. The Agreement Manager must notify AFS or the region Financial Services Office when it is time to start charging for the work.

### 3.06 Agreement Closure Process

(1) **Closing the Agreement**

When the agreement is ready to be closed, the Agreement Manager will verify that:

- Work is complete.
- Final financial transactions have been made.
- No amendment is necessary.

It is recommended that the Agreement Manager communicate with the other party/parties in writing that the terms of the agreement have been met and no further charges will be allowed. Once the terms of the agreement have been completed and all obligations have been met, the Agreement Manager requests closure of the agreement and associated Work Order Groups.

The Agreement Manager will then notify the AFS, region Financial Services and Program Management, as appropriate, that the agreement is ready for closure. An email to AFS, from the Agreement Manager, requesting the closure of an agreement is sufficient.

Once AFS and/or the region Financial Services Office's is notified the agreement is closed in TRAINS, the agreement is then archived according to Records Retention requirements or as stated within the agreement. **Note:** Consult the appropriate region Financial Services Office for more information on closure processes for a specific region.
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Chapter 4  GC Agreements – Agreements with Government Agencies

4.01 Introduction

GC Agreements are agreements with other governmental or quasi-governmental entities (also known as “quasi-municipal corporations”). These include agencies of Washington State, other states' agencies, federal agencies, counties, cities, towns, transit authorities, and federally recognized tribes. GC Agreements may be either payable or receivable. For the purposes of this chapter, a governmental or quasi-governmental agency will be referred to as the “agency” or “agencies.”

(1) When to Use a GC Agreement

GC Agreements are used for participation in design studies, planning, development of plans, acquisition of right of way, mitigation arrangements, and construction of projects related to highways and the transportation system. Either WSDOT or the participating agency can be the lead for performing the work described in the agreement.

When determining the need for a GC Agreement, the references listed in Section 4.04 must be followed. The general process for agreement development, management, and closure is provided in Chapter 3.

For examples of the types of work that can be covered under a GC Agreement, see Exhibit 4-1, GC Work Types.

4.02 Important Considerations for GC Agreements

The following section highlights important considerations when developing GC Agreements:

1. GC vs. Maintenance Agreements

Although both types of agreements may be with other agencies, agreements that assign the maintenance and/or operational obligations of roadways and transportation-related facilities between the WSDOT and other agencies should be written as Maintenance (GM) Agreements. (See Chapter 5 for guidance on Maintenance Agreements.)

---

1 The Agreement Writer must make sure that the entity in question is truly a "quasi-governmental" agency. For example, a private corporation or group could be performing work for a city or county, but that private entity is not a quasi-governmental agency just because it may be performing a governmental function. Contact the HQ Agreements with any questions regarding quasi-governmental agencies.
For projects under GC Agreements where maintenance responsibilities will be assigned to one or more parties, a separate Maintenance (GM) Agreement is required to cover the maintenance responsibilities. In these cases, the GM Agreement should be executed simultaneously or prior to execution of the GC Agreement.

2. Legal Authority

All parties to an agreement must have legal authority to enter into the agreement and to perform the work defined by the agreement. WSDOT is authorized to enter into agreements through various statutes in the Revised Code of Washington (RCW) and rules in the Washington Administrative Code (WAC). Other agencies may depend upon legal authorities different from WSDOT, such as through different statutes or rules, local ordinances, council actions, or resolutions. The Agreement Writer must ensure other parties to a GC Agreement are authorized to enter into the agreement and have the authority to perform the work according to their own requirements or legal authorizations.

3. Approval as to Form

For nonstandard GC Agreements with other Washington State agencies, approval as to form by assistant attorneys general representing other Washington State agencies does not constitute approval as to form for WSDOT. Approval as to form for WSDOT must still be obtained as described in Chapter 3.

4. Multiphase Projects

Separate agreements should be considered for each phase of project work, such as studies, preliminary engineering, right of way, maintenance, and construction. Since each phase may have differing time frames, payment requirements, liability issues, and legal requirements, separating the phases under different agreements helps to avoid confusion and allows for more efficient tracking and records retention.

5. GC Master Agreements

Task assignments under a GC Master Agreement have a unique identifiers, using “T” and “AA,” “AB,” “AC,” and so on. For example: Task Assignments for Master Agreement GCA 6486 should be T 6486 AA, T 6486 AB, T 6486 AC, and so on. Other variations of Task Assignments can be used but it is important to establish a consecutive and consistent system.

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2 Some existing reimbursable GC Master Agreements use a different numbering system; however, the HQ Division of Accounting & Financial Services (AFS) has requested that this system be the standard for all future GC Master Agreements.
4.03 Standard Form GC Agreements

Standard form agreements have been created to apply toward a variety of agreement needs. These forms are intended for specific purposes and allow for expedited agreement coordination between parties when compatible with all of the needs and requirements for the desired agreement.

Agreement Writers are encouraged to use standard forms whenever possible; however, standard forms are not always appropriate if the agreement scope or needs of the parties do not conform to the purpose and/or provisions specified within the standard form. If the desired work or coordination cannot be accomplished using the terms and conditions within an established standard form agreement, a non-standard agreement would need to be drafted.

- DOT Form 224-065 Local Agency Participating – Work by WSDOT – Actual Cost
- DOT Form 224-067 WSDOT Participating Agreement – Local Agency – Actual Cost
- DOT Form 224-701 Local Agency Preliminary Engineering Participating Agreement
- DOT Form 224-075 Government Agreement for Aid
- DOT Form 224-076 Government Agreement for Aid (For Highway, Road and Street Purposes Only)
- DOT Form 224-032 Construction by Local Agency on State Highway Right of Way at Local Agency Expense

4.04 References

Chapter 39.34 RCW Interlocal cooperation act

City Streets as Part of State Highways (guidelines between WSDOT and the Association of Washington Cities)

Title 47 RCW Public highways and transportation
### Exhibit 4-1 GC Work Types

<table>
<thead>
<tr>
<th>Nonexclusive List of Activities That Typically Fall Under the GC Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Aerial Photography</td>
</tr>
<tr>
<td>• Airport Improvement</td>
</tr>
<tr>
<td>• Animal/Pest Control for Highway Purposes</td>
</tr>
<tr>
<td>• Commute Trip Reduction Grants</td>
</tr>
<tr>
<td>• Contribution of Funds and/or Resources</td>
</tr>
<tr>
<td>• Construction</td>
</tr>
<tr>
<td>• Demolition</td>
</tr>
<tr>
<td>• Design</td>
</tr>
<tr>
<td>• DMWBE Support Services</td>
</tr>
<tr>
<td>• Emergency Services</td>
</tr>
<tr>
<td>• Equipment Use and Procurement</td>
</tr>
<tr>
<td>• Inspections</td>
</tr>
<tr>
<td>• Litter Pickup</td>
</tr>
<tr>
<td>• Mitigation</td>
</tr>
<tr>
<td>• Plan/Permit Reviews</td>
</tr>
<tr>
<td>• Right of Entry</td>
</tr>
<tr>
<td>• Right of Way (appraisal, acquisition and relocation)</td>
</tr>
<tr>
<td>• Rock Crushing</td>
</tr>
<tr>
<td>• Safety Improvements</td>
</tr>
<tr>
<td>• Stockpile Materials</td>
</tr>
<tr>
<td>• Studies/Research</td>
</tr>
<tr>
<td>• Traffic Enforcement; Traffic Control</td>
</tr>
<tr>
<td>• Training</td>
</tr>
<tr>
<td>• Transportation Demand/Planning Coordination</td>
</tr>
<tr>
<td>• Tribal Coordination</td>
</tr>
<tr>
<td>• Use of Agency Experts or Staff</td>
</tr>
</tbody>
</table>
Chapter 5  Maintenance Agreements

5.01  Introduction

A Maintenance (GM) Agreement is a negotiated contract between two or more parties that assigns certain maintenance and/or operational obligations of roadways or transportation-related facilities among all or to one of the parties. The Maintenance Agreement can also provide for associated costs, reimbursable or payable, in accordance with the agreement provisions.

All documents provided to HQ must be in word, excel, or adobe for plan sheets.

(1)  When to Use a Maintenance Agreement

A Maintenance Agreement is required when either WSDOT or another party desires to assign the responsibility for maintenance and/or operation of roadways or transportation-related facilities to the other party(ies), exchange of materials, equipment, and/or labor for public roadway maintenance purposes.

Maintenance Agreements do not convey a property right. When a portion of a facility that will be maintained is located off that party's right of way, such as for drainage, the issuance of a property right by the property owner, either through easement or lease, will be required. In cases where the facility will be jointly used by WSDOT and another public agency, such as a detention pond, an easement or lease is not required. Contact the Headquarters (HQ) Agreements for project-specific guidance on whether an agreement, an easement, or a lease will be required. Refer to 5.02(3) for examples of when a lease document should be used in lieu of a Maintenance Agreement.

The Agreement writer should consult with the Maintenance Superintendent prior to deciding whether a Maintenance Agreement is needed or before negotiating any related issues with non-WSDOT parties.

---

1 If the local agency writes the agreement, refer to 5.03.

2 RCW 47.24.020 and the Guidelines for City Streets (updated April 2013) as Part of State Highways (Memorandum, E. R. Burch, May 18, 1997, City Streets as Part of State Highways, Final Report, April 30, 1997) define maintenance obligations between WSDOT and cities. Maintenance Agreements may be used to assign maintenance obligations that are different from the Guidelines.
(2) **Statutory Authorities**

Statutes and codes applicable to Maintenance Agreements include, but may not be limited to, the following:

- **Chapter 39.34 RCW**, Interlocal cooperation act
- **RCW 39.34.080**, Contracts to perform governmental activities which each contracting agency is authorized to perform
- **RCW 39.34.130**, Transactions between state agencies – Charging of costs – Regulation by director of financial management
- **RCW 47.01.260**, Authority of department
- **Chapter 47.24 RCW**, City streets as part of state highways
- **RCW 47.24.020**, Jurisdiction, control
- **RCW 47.28.030**, Contracts – State forces – Monetary limits – Small businesses, minority, and women contractors – Rules
- **RCW 47.28.140**, Highway, public transportation improvements, flood damage prevention – Cooperative agreements
- **Chapter 47.40 RCW**, Roadside improvement and beautification
- **RCW 47.52.090**, Cooperative agreements – Urban public transportation systems – Title to highway – Traffic regulations – Underground utilities and overcrossings – Passenger transportation – Storm sewers – City street crossings
- **WAC 468.18.050**, Policy on the construction, improvement and maintenance of intersections of state highways and city streets

5.02 **Agreement Preparation**

(1) **Standard Form Maintenance Agreements With Governmental Agencies**

The standard form Maintenance Agreement is DOT Form 224-093 – Maintenance Agreement, Work by WSDOT for Other State, Federal, and Local Governmental Agencies (Total Cost of Agreement May Not Exceed $50,000 Per Year).

(a) **Preparing and Processing the Standard Form Maintenance Agreement**

Refer to Chapter 3 of the Agreement Manual for instructions on the Standard Form Agreement process. The difference is there is a Maintenance Agreement Request Form to be completed by the Agreement Requestor at the beginning of the process.

---

3 If with a private party, develop a nonstandard Maintenance Agreement.
4 See Exhibit 5-1.
(2) **Nonstandard Agreements and Templates**

The use of a nonstandard agreement format requires review by the HQ Agreements Office. Upon completion of the review and coordination with the region for any modifications, it is submitted to the Assistant Attorney General (AAG) for review and approval as to form.

(a) **Preparing and Processing the Nonstandard Maintenance Agreement**

Refer Chapter 3 of the Agreement Manual for the Agreement Process, the process is nearly identical only the distribution should include:

- Area Maintenance Office
- Project Engineer (if agreement is project-related)

(3) **Leases vs. Maintenance Agreements**

In some instances, leases are to be used in lieu of Maintenance Agreements. The two most common situations involve trails and park & ride lots.

(a) **Trails**

Trails and related structures, such as pedestrian bridges, that are constructed within state right of way usually fall under two categories:

1. **Trails Owned by WSDOT**

   These may include trails constructed at state expense as part of project mitigation activities or for safety purposes where the state owns the trail facility. In these situations, a Maintenance Agreement should be used when another entity will be maintaining or operating any portion of the state-owned trail facility within WSDOT right of way.

2. **Trails Owned by Other Governmental Entity**

   These include trails or related facilities constructed either by the other governmental entity or constructed by WSDOT at the other governmental entity’s expense, where the other governmental entity’s trail will be located on state-owned property. Under this scenario, a trail lease must be written by HQ Real Estate Services granting the other entity the right to occupy WSDOT property and operate and maintain the trail. A Construction Agreement is written to cover actual construction of the trail facility. The trail lease should be executed prior to or at the same time the Construction Agreement is executed. It is important to note that in order for the trail to be considered a highway purpose, and not pay fair market rent, the trail must be part of a comprehensive trail plan adopted by the federal, state, or local governmental entity proposing the trail, and the separation of motor vehicle traffic from trail users will materially increase safety to the motoring public. Failure to meet these requirements will require that the trail owner pays fair market rent.

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5 A template for the “Signal and Illumination Maintenance Agreement” is available through the HQ Agreements Office or region agreements staff.
5.03 **When a Local Agency Writes the Maintenance Agreement**

Generally, WSDOT writes all agreements that deal with department performance or work within state right of way. However, there are parties that request or require the use of their own agreement forms or formats, such as federal agencies. In these cases, WSDOT will review their requests to ensure that all state requirements are met. These agreements will require the same review and approval process as nonstandard agreements.

5.04 **Coordination with Region Maintenance Superintendents**

For Maintenance Agreements, it is essential that Maintenance Superintendents be contacted during agreement development to ensure the Maintenance Office is aware of the agreement and to gain a better understanding of the purpose and needs. This may include frequency of maintenance activities, local considerations, and region Maintenance Office concerns and capabilities.

5.05 **References**

- **RCW 47.12.120**, Lease of unused highway land or air space
- **Chapter 47.24 RCW**, City streets as part of state highways
- **Chapter 47.30 RCW**, Trails and paths
- **WAC 468-18-050**, Policy on the construction, improvement and maintenance of intersections of state highways and city streets
- **Design Manual** M 22-01, WSDOT
- **Maintenance Manual** M 51-01, WSDOT
- **Right of Way Manual** M 26-01, Chapter 11, WSDOT

5.06 **Exhibits**

Exhibit 5-1 – Sample of a Region's Maintenance Agreement Request

5.07 **Link to Maintenance Agreement**

224-093 Region's Maintenance Agreement
MAINTENANCE AGREEMENT REQUEST

Please review the outline below. This information is needed to start a Maintenance (GM_) Agreement. If you have questions, contact:

Prior to applying for a Maintenance Agreement, be sure you discuss the agreement with the affected Maintenance office(s). It is vital the office knows and agrees with the maintenance responsibilities that will be covered in the agreement.

Please provide the following information:

1. Why is the Maintenance Agreement needed? Typically, RCWs and WACs clearly separate the duties of WSDOT and local agencies. If the regulations already cover a specific situation, a GM Agreement would not be needed. If both the state and local agency want something other than what is provided by RCW/WAC, then a GM Agreement is needed.

2. Is it in limited access? If so, FHWA may need to review/approve.

3. Name of Agreement Requestor (your name). If related to a WSDOT project, include the Project Engineer’s name. Include mail stop, organization code number, and phone numbers.

4. If applicable, include WSDOT project name, description, ad date, and WIN/PIN. Provide the charge number (work order) to use while developing and processing this agreement.

5. Maintenance Superintendents are usually the person who manages GM Agreements once they are executed. Identify who you have worked with in Maintenance regarding the details of the agreement. Make sure the Maintenance staff have knowledge of and agree with the need for the agreement.

6. Provide details of the agreement (Scope of Work). The Location where this maintenance will occur? What are the limits of the responsibility? Is work within limited access?
   - What is the nature of the work to be done? Cut the grass? Control the signal? Change the light bulbs?
   - Who is doing the maintenance? WSDOT or local agency/private party? Are there shared responsibilities between state and agency/private party? Please elaborate.
   - When is maintenance needed? The agreement may need to discuss criteria of frequency and/or establish levels of performance.
   - Are there costs to either party? Some GM agreements are no cost, and some will require the state to pay or receive monies from the other party. How is payment determined? Please provide an estimate of costs. If there is a cost, Maintenance and Program Management need to be notified. Lack of secure funding may mean no agreement.
   - Please include in your request:
     - One (1) copy of WSDOT RW plan sheet(s) with the area(s) highlighted.
       - A vicinity map in 11 x 17 format.
       - Contract plans may also be needed to identify specific features.

Note:
Send a memo initialed by the Project Engineer or the Assistant Project Engineer with the above information to start the agreement process.
Chapter 6  Haul Road/Detour Agreements

6.01  Introduction

A Haul Road/Detour (HR_) Agreement is an agreement with a local agency to designate a county road or city street as a haul road or detour route when needed for a WSDOT highway project. WSDOT may or may not incur any costs associated with the use of these roads and/or streets.

1 When to Use a Haul Road/Detour Agreement

Haul Road/Detour Agreements are required when:

1. WSDOT work requires traffic to be detoured from the state highway onto a local agency road and eventually back onto a state highway; or

2. A WSDOT highway project requires the use of a local agency road for hauling materials or waste and all of the following apply:
   a. The local road does not have adequate structural strength\(^1\) or geometry to sufficiently accommodate the required haul;
   b. The local road does not normally experience significant truck traffic; and
   c. The specified local agency road is not part of an already designated roadway network to or from a commercially available pit or waste site.

2 Securing Permits/Approvals

Regardless of whether or not a Haul Road/Detour Agreement is used, it the responsibility of WSDOT's contractor to secure local permits or approvals for hauling operations that exceed legal limits or result in some other variance from local requirements.

When WSDOT proposes to use a local agency roadway, the process is determined between the department and the local agency. Different options may be available depending on variables such as policies of the local agency, condition of the facility, duration of WSDOT's use, or volume of proposed traffic. In some cases, it may be possible to use a local agency-issued permit instead of a Haul Road/Detour Agreement. It is a good idea to take pictures and videos to record roadway conditions prior to and after its use as a Detour/Haul Road.

In general, the permit approach should be used for smaller projects where the impact to the road and duration of use is relatively low. Haul Road/Detour Agreements not only establish a right for WSDOT to use a particular local agency road for a project, but they also include language that clearly establishes responsibilities and limits risk for both parties.

\(^1\) The proposed haul is more than 30% of the calculated Equivalent Single Axle Load (ESAL) strength of the road section.
Agreement Preparation

(1) Considerations

The Project Manager should consider all potential impacts to the road and related costs to the project prior to contacting a local agency to propose using a roadway for haul road or detour purposes. Additionally, the region Local Programs Office should be consulted to discuss the particular local agency policies prior to establishing a haul road or detour road.

(a) Before Writing the Agreement

The following questions should be answered or considered before writing a Haul Road/Detour Agreement:

1. Clearly identify the roads that will be used.
2. What additional measures may be necessary for WSDOT’s use?
   a. Are traffic control devices adequate to accommodate projected increases in average daily traffic volumes?
3. Document existing condition of the roadway using pictures and/or videos prior to and after its use.
4. How will bicyclists and pedestrians be accommodated during use?
   a. Will any bicycle or community events occur during the project?
5. Is the roadway used for other purposes such as free range area?
   a. Find out about any special circumstances or events that may be associated with the route.
6. Considering all the different alternatives, what mitigation to the local agency may be required (either direct payment or cost of WSDOT-directed improvements) and can it be accommodated in the budget?
   a. If it is determined that long-term use of the road(s) is needed, additional funding may need to be set up in the construction program.
   b. A lump sum payment to the local agency may be an option when there are plans for a future overlay of the road being used. When using a lump sum payment, you must provide a detailed estimate.
7. Are there any other construction projects that conflict with the timing?
8. Are there prohibitions or restrictions on the use of any roadway based on local laws or ordinances?
   a. For instance, some local agencies have roadway weight restrictions or prohibit certain types of vehicle brakes in residential neighborhoods.
(2) **Communication**

Prior to meeting with the local agency to request use of a roadway, be prepared with general project information, a preliminary concept of the detour or haul road, and possible mitigation needs. If the local agency requests mitigation, the Project Manager should ensure the mitigation is reasonable and the project stays within designated funding limits.

(a) **Documentation**

When coordinating a possible haul road or detour, discuss the types of documentation needed for the project. Whenever possible, WSDOT standard form Local Agency Haul Road/Detour Agreement (DOT Form 224-014) should be used. If the local agency’s permit or agreement form is to be used, ask for it electronically so the Project Manager can review the permit or agreement terms and conditions. This is considered a nonstandard agreement.

Regardless which type of agreement is used, a joint inspection should still be performed to document preexisting conditions. If additional maintenance and operation costs are known in advance set up the appropriate methods of tracking and paying for those costs.

(3) **Nonstandard Agreement Format**

Depending on the complexity of the detour or haul road's impacts and associated mitigation measures, it may be necessary to prepare a nonstandard agreement. When preparing a nonstandard agreement, the information in Section 6.02(1)(a) will be required, just as they are required for a standard form agreement, but more extensive explanations might be needed. Please refer to Chapter 1 for definitions and types of agreements, Chapter 2 for Elements of an Agreement, and Chapter 3 for Agreement Process.

6.03 **References**

- **WAC 468-18-030**, *Policy governing use of county roads as haul roads on state highway projects*
- **Construction Manual** M 41-01, WSDOT
- **Design Manual** M 22-01, WSDOT
- **Plans Preparation Manual** M 22-31, WSDOT
Turnback Agreements

7.01 Introduction

Turnback Agreements are used to facilitate the transfer of state highway right of way from WSDOT to a local agency for highway purposes. Actual transfer of the right of way occurs through a quitclaim deed. The Turnback Agreement specifies the portion of right of way to be conveyed, any necessary work or improvements to the right of way that must be completed, interim maintenance obligations, and other necessary details of coordination between WSDOT and the local agency prior to conveyance of the right of way. If a conveyance deed is required by the Turnback Agreement, it must be provided to the local agency no later than twelve (12) months after the date of issuance of the “Notification of Transfer of Maintenance and Operations” letter (see example in Exhibit 7-4).

When a Turnback Agreement is associated with a WSDOT highway project, coordination between WSDOT and the local agency should begin early in the design process and execution of the Turnback Agreement, including securing all necessary property rights should be completed prior to advertisement of the project.

1 Turnback Agreement vs. Route Jurisdiction Transfer

Each state route is legislatively established under chapter 47.17 RCW, which includes a description of the general route of each highway. When a proposed change to a state route requires a corresponding change to the statutory description of the state route in chapter 47.17 RCW, the turnback process is not used. Instead, the proposal must go through the Route Jurisdiction Transfer (RJT) process. (See Secretary’s Executive Order E 1020.01 for more information on the RJT process.)

When projects or proposals involve relinquishing or abandoning portions of a state route where the highway alignment changes significantly, the statutory description of the state route under chapter 47.17 RCW must be reviewed to determine whether the RJT process is required.

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1 Right of way includes any encumbrances such as easements within the right of way.
2 Prior to 1985, turnback actions were processed as Maintenance (GM) Agreements. When researching turnbacks prior to that year, the search should include GM files.
3 A legal document that conveys an interest in land from one person or entity to another.
(2) When to Use a Turnback Agreement vs. a Construction Permit

Whether to use a Turnback Agreement or a construction permit will depend on property ownership. In general, WSDOT must obtain a construction permit from a local agency when performing work in areas owned by the local agency (see Exhibit 7-1 for an example). Many local agencies have their own application forms and permit processes that take considerable time and effort.

When a construction permit is needed, the Design PE must investigate the permit process and requirements early in the project and incorporate them into the project schedule.

The following sections summarize situations where Turnback Agreements are used. They provide guidance on when to use either a Turnback Agreement or construction permit depending on property ownership.

(a) For work within unincorporated county limits (for both managed and limited access facilities):

1. When right of way is acquired by WSDOT from a third party (a party other than the county), and a portion of that right of way will be used to improve a county roadway or otherwise result in a new facility that will be maintained or operated by a county, a Turnback Agreement is used to facilitate the transfer of the highway portion of the right of way to the county by a quitclaim deed. The non-highway portion, or “uneconomic remainder,” is considered surplus property and is not to be included as part of the Turnback Agreement.

2. Construction permits are used for work performed by WSDOT within a county's existing right of way ownership.

3. In the event that a portion of a county road crosses or lies within the proposed new right of way of a state highway, a deed is required from the county in order to pass title to the state.

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4 Limited access facilities: Highways (public roadway system) controlled by acquiring the abutting property owners’ access rights (rights of ingress and egress), which include all existing, future, and potential rights of access, light, view, and air. The state owns access after purchase. The highway may be further distinguished as having full, partial, or modified access control. Access control is not to be transferred as a part of a Turnback Agreement involving limited access facilities (see also chapter 47.52 RCW).

5 Uneconomic remainder is that portion of acquired property that is not used for roadway purposes. (See definition in Chapter 1 for more information.)
(b) For work on a state limited access highway located in a city:

1. Upon completion of construction of a limited access highway within a city or town, WSDOT may relinquish to the city any improvements constructed as a functional part of the limited access facility that will be maintained and/or operated by the city. This includes any new right of way acquired by WSDOT as part of a limited access facility or portions of existing city streets that will be located within limited access hachures. All highway property to be relinquished to a city or town that is part of the limited access plan is required to be conveyed to the city or town by deed. In such cases, a Turnback Agreement is used to facilitate the transfer of that portion of the right of way to the city. While areas within limited access control boundaries may be included within a Turnback Agreement, all limited access control must remain with the state (see RCW 47.52.210(2)).

2. Construction permits are used for work performed by WSDOT within a city's existing right of way ownership. It should be noted that construction permits are not required for work within WSDOT-owned right of way, including any portions located outside of hachured limited access limits.

(c) For work on a city street that is also part of a state highway (managed access facility):

1. When additional right of way is being acquired from a third party (a party other than the city) inside incorporated city limits for a managed access facility, that portion of the right of way used for highway purposes is automatically vested in the city pursuant to RCW 47.24.020(15). In such cases, a Turnback Agreement is not needed; however, the city should be contacted as early as possible and advised of any property that will be vested in the city by law. Once the highway project has been completed, written notification should be provided to the city stating that title to the new portions of city street/state highway has vested in the city and the assignment of jurisdiction, control, and duties between WSDOT and the city regarding the city street/state highway is pursuant to RCW 47.24.020 and the current guidelines in City Streets as Part of State Highways. (See Exhibit 7-2 for an example of a notification letter.) Only right of way that is located within the city street/state highway managed access limits automatically vests in the city pursuant to RCW 47.24.020(15). Contact the region Real Estate Services (RES) for guidance regarding property purchased by WSDOT that is outside the managed access limits.

2. When no additional right of way is required, a construction permit will be required to perform work within a city's existing right of way, except for those portions of roadway the state is already responsible for pursuant to RCW 47.24.020.

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6 This acquired property should be identified on the right of way plan with the following note: "Upon acquisition, title to vest in the city per RCW 47.24.020 (15)."
(d) For existing state highways or portions of existing state highways that are no longer needed as such:

1. Turnback Agreements may be used to facilitate the transfer of abandoned state highway right of way to the city or county in which the highway is located pursuant to RCW 36.75.090.

7.02 Agreement Preparation and Management

(1) Roles and Responsibilities

The Turnback Agreement process requires the coordination of many offices. The general process and responsibilities for the different steps are described below; however, responsibilities for specific steps may be assigned to other offices depending on region practices.

(a) Design Project Engineer (PE)

Negotiation/coordination with counties, cities, and towns (local agencies) is as follows:

1. The Design PE must negotiate the design elements of the project within the turnback area and/or construction permit limits with the affected local agency early in the design decisions stage. The improvements within the turnback area and/or within the construction permit limits should be designed and constructed to local agency standards as long as they meet AASHTO requirements. For more information, refer to the Master Deliverables List (MDL).

2. The negotiated design elements that are specified in a Turnback Agreement include, but may not be limited to, the following:
   - Roadway geometry
   - Illumination
   - Utility (underground or overhead) installations or changes
   - Landscaping
   - Drainage facilities (ponds, swales, and so on)
   - Sidewalk
   - Traffic control devices and appurtenances
   - Guardrail
   - Surface pavement
   - Maintenance responsibilities

3. The outcome of negotiations on design elements and the local agency’s concurrence with the design must be documented in writing by the Design PE. Make a written record of all meetings, including who from the local agency attended, what items were discussed, and what design elements, if any, were agreed upon. Local agency concurrence is required for any design changes that occur as the design progresses. This information is shared with region staff responsible for managing the agreement. These notes become a part of the permanent turnback file and will be provided to region RES and FHWA, when its concurrence is necessary, see 7 below.

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7 Turnback Agreements may be used in lieu of the certification process outlined in WAC 468-30-070 and WAC 468-30-075.
4. The approved right of way/limited access plans must be used as Exhibit A to the Turnback Agreement and must be updated when turnback areas and right of way/limited access plans are revised.

5. Request a Turnback Agreement from the appropriate region section that writes agreements.

6. Upon execution of the agreement, provide the Construction PE with documentation of the local agency’s written concurrence of the design elements associated with the Turnback Agreement. The document is provided to region staff (agreement writer) responsible for managing the agreement.

7. When federal funds are used all properties considered for turnback must comply with 23 CFR Part 620.203 Subpart B and be aligned with the terms of the Programmatic Agreement between the WSDOT and FHWA. This means that the WSDOT Engineering will provide review and in the case of an interstate, HQ RES will request FHWA approval.

(b) Agreement Writer

WSDOT’s general “Agreement Writer” process is described in Chapter 3. The “Turnback Agreement Writer” process closely resembles the general process, but requires additional coordination with the region RES and the HQ Right of Way Plans Office.

1. Upon receipt of the initial request from the Design PE’s Office, send a Turnback Agreement questionnaire (see Section 7.03) to the requester.

2. Once all the requested information is received, issue an agreement number for the Turnback Agreement. Turnback agreement numbers are assigned in region. In addition to an agreement number an Inventory Control Number is required. Consult with RES.

3. The Agreement Writer must review the material received from the Design PE’s Office and determine whether the standard form Turnback Agreement (DOT Form 224-240; see Exhibit 7-3) language meets all requirements. If it does not, a nonstandard agreement must be written. (See Section 7.04 for different examples of nonstandard agreement needs.) Note that a standard form cannot be modified by merely changing the form’s terms by use of an exhibit. If the terms need to be modified, a nonstandard agreement procedure must be used.

4. Draft the agreement according to the information received from the Design PE’s Office, as described in Section 7.03.

5. Send an electronic draft copy of the agreement (preprinted standard form agreement only) to the region RES for plan review (skip to 7 below for further steps in the process).

6. Please contact your region’s RES office for assistance in processing a non-standard Turnback agreement.
(c) Construction Project Engineer (PE)

The following steps occur during the project construction phase and are therefore presented below as being the responsibility of the Construction PE's Office. Some of the steps may be assigned to other offices depending on specific region practices.

1. Review all Turnback Agreements and other written information associated with the project to determine the actions for which the Construction PE will be responsible.

2. Obtain local agency contact information from the Design PE or region Local Programs Engineer or Agreement Writer.

3. If unknown, contact the local agency to get the main contact names for construction and emergency/safety issues.

4. Contact the Design PE to verify whether all information has been received regarding Turnback Agreement(s).

5. Invite the local agencies that are parties to the Turnback Agreement(s) to the Project Pre-Construction Conference.

6. Meet with construction project inspection staff to ensure WSDOT's understanding of its responsibilities related to the terms of the agreement, including what steps must be taken in the event of changes to the work within the turnback limits.

7. Changes to project design within a turnback area during the construction phase will require local agency concurrence prior to performing the work. Coordinate with the Agreement Writer if such changes require an amendment or supplement to the Turnback Agreement. An executed amendment or supplement for the changes or additions to the Turnback Agreement must be in place prior to performing the work.

8. Send project schedules and upcoming project deliverables to the local agency as appropriate.

9. Coordinate any necessary project inspection activities (walk-through) with the local agency pursuant to the terms of the Turnback Agreement.

10. Prepare and send a “Notification of Transfer of Maintenance and Operations” letter to the local agency (see example in Exhibit 7-4) pursuant to the terms of the Turnback Agreement. Send a copy of this letter to the Agreement Writer.

11. Send a request to the region RES to process the deed. Include a copy of the executed Turnback Agreement, Notification of Transfer of Maintenance and Operations letter (see Exhibit 7-4), copy of preconstruction notes from meetings and concurrence from the local agency, Relinquishment (Turnback) Review (see Exhibit 7-XX), and, if applicable, FHWA Memorandum (see Exhibit 7-XY).

Note: The Construction PE may be required to assist the region RES Property Management Section in deed processing if questions arise. A quitclaim deed should be issued within one year of the Notification of Transfer of Maintenance and Operations letter.
(d) Real Estate Services (RES)

Upon receipt of the executed Turnback Agreement, the Notification of Transfer of Maintenance and Operations letter, Relinquishment (Turnback) Review, and FHWA Memorandum as necessary by region RES from the Construction PE’s Office, the region RES shall verify that all necessary right of way has been acquired and that the plan revision matches the agreement. The quitclaim deed is prepared, signed, and recorded. (See Chapter 11 of the Right of Way Manual for more information.)

7.03 Turnback Agreement Request

When requested by a project design office to write a Turnback Agreement, the Agreement Writer should submit a questionnaire to the project design office that includes the information in the bullets in this section. This will assist in determining whether a standard form Turnback Agreement can be used or a nonstandard agreement is required.

• The design office contact information, including the individual initiating the request and the design team leader.
• WSDOT project title, including “WIN” or “PIN” title and any other titles.
• Work Order (as in 0L, XL, or other), WIN number(s), PIN numbers(s), and Control Section (four digits only).
• A brief description of the whole project.
• Approved right of way/limited access plan sheets identifying the turnback areas.
• A brief description of the work in the turnback area: channelization, widening, drainage, electrical, and so on. After construction is completed, what physical features will be conveyed to the local agency?
• The name and contact information of the primary local agency contact for the agreement negotiation.
• Any known negotiated terms between WSDOT and the local agency, such as specific design features; inspection, acceptance and approval processes; maintenance obligations, and so on.
• Whether any state facilities will remain on the turned back right of way.

When providing this questionnaire* to the project design office that has requested the Turnback Agreement, the Agreement Writer should also ensure the Design PE is familiar with the roles and responsibilities of a Design PE in the Turnback Agreement process listed in Section 7.02.

*This questionnaire may be informal and sent electronically.
7.04 Nonstandard Agreements

A nonstandard Turnback Agreement must be developed when the standard form agreement is not consistent with the turnback needs or the terms negotiated with the local agency. The nonstandard agreement must be reviewed and approved by HQ Agreements as well as an Assistant Attorney General (AAG). Examples of when nonstandard Turnback Agreements are needed include:

- Transferring WSDOT right of way to another agency other than the city or county.
- Whenever monies and or additional improvements\(^8\) have been negotiated to facilitate the transfer.
- Whenever any other negotiated terms are not covered in the standard form agreement.

7.05 References

- RCW 36.75.090, Abandoned state highways
- Chapter 47.17 RCW, State highway routes
- RCW 47.24.010, Designation – Construction, maintenance – Return to city of town
- RCW 47.24.020(15), Jurisdiction, control
- RCW 47.52.210, Property title designation upon construction of limited access highways
- WAC 468-18-040, Design standards for rearranged county roads, frontage roads, access roads, intersections, ramps and crossings
- WAC 468-30-070, Procedure for transfer of abandoned state highways to counties
- WAC 468-30-075, Procedure for transfer of abandoned state highways to cities and towns

Right of Way Manual M 26-01, WSDOT

Secretary’s Executive Order E 1020 Route Jurisdiction Transfers

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\(^8\) This situation applies to older state improvements where a Turnback Agreement was never executed.
7.06 Exhibits

Exhibit 7-1 Temporary Construction Permit
Exhibit 7-2 Example Notification to Cities for Transfer of Right of Way Pursuant to RCW 47.24.020(15)
Exhibit 7-3 Example Notification of Transfer of Maintenance and Operations
Exhibit 7-4 Relinquishment – Turnback Review
Exhibit 7-5 FHWA Memorandum
Exhibit 7-6 Programmatic Agreement – FHWA and WSDOT

7.07 Links to Standard Forms

224-240 Standard Form Turnback Agreement – (New Construction)
224-241 Standard Form Turnback Agreement – (Construction Complete)
**Exhibit 7-1  Temporary Construction Permit**

___________ County

WSDOT

Temporary Construction Permit

WSDOT Project No.: _________________

KNOW ALL PERSONS BY THESE PRESENTS, that the Grantor, _________________ COUNTY (Grantor), a political subdivision of the State of Washington, for MUTUAL BENEFITS, does hereby grant to the Grantee, the Washington State Department of Transportation (WSDOT), or its agents, contractors, or subcontractors, the right to use and occupy the hereinafter described lands, together with rights of ingress and egress for the purpose of ______________________ until the completion of the construction of the above-mentioned project for any and all purposes incidental to the construction of the above-mentioned project across the hereinafter described lands in the County of _________________, State of Washington:

Insert Legal Description per area:

__________________________________________________________

Proposed Ad Date: _________________ Hours of Use: ___________ to ____________

Anticipated Construction Dates/Window: _________________________

Is this work associated with:

Approved Turnback Agreement: Yes ☐  No ☐  TB #: ______________________

General Maintenance Agreement: Yes ☐  No ☐  GM #: ______________________

Participation Agreement: Yes ☐  No ☐  GC #: ______________________

It is further understood and agreed that the Grantee shall defend, indemnify, and save harmless the Grantor from any and all claims and causes of action of every kind and description that may accrue to, or be suffered by, any person, persons, or property by reason of, arising out of, or resulting from the use and occupancy of said lands by the Grantee, its agents, contractors, or subcontractors, except for the Grantor’s sole negligence. It is understood and agreed that upon completion of construction of said project, WSDOT or its agents, contractors, or subcontractors shall restore the existing slopes on said lands to match new construction, including replacing improvements, if any, now located thereon.

Additional Terms:

County requires notification once work under this permit is completed.

County requires a post-construction inspection on areas of this permit.

County reserves the right to require that WSDOT and/or its contractor(s) make necessary repairs and/or restoration to County Engineering Design and Development Standards.

Evidence of contractor insurance on file with _________________ County

Dated this ______________________ day of _________________ 20_____.

__________________________________________  ______________________________________
WSDOT      Joe Smith
County Engineer

Attachments:
R/W Plan ☐  Maps ☐  Construction Plans ☐  Drainage Plans ☐  TCP/Detour ☐  Aerial ☐
Exhibit 7-2  Example Notification to Cities for Transfer of Right of Way Pursuant to RCW 47.24.020(15)

February 11, 2010

City of Bremerton
Phil Williams, Public Works Director
100 Oyster Bay Ave N
Bremerton, WA 98312

Re: Transfer of Right of Way Notice

Dear Phil:

The Washington State Department of Transportation (WSDOT) has completed the Bremerton Transportation Center Pedestrian Improvement Project, also known as the Bremerton Tunnel. As part of this project, WSDOT acquired certain right of way on Burwell ST, Pacific Ave and 1st Ave that directly vests in the City pursuant to RCW 47.24.020(15). This letter is to put the City on notice that it now has jurisdiction over this right of way and its street/highway improvements pursuant to the provisions of RCW 47.24.020, which also carries certain maintenance obligations as provided by statute.

The right of way covered by this notice is marked in red on WSDOT right of way sheets “SR 304 Burwell ST. to Washington Ave.” sheets 1 and 2 of 2 (copies enclosed).

Also, pursuant to RCW 47.24.020(15), the City may not vacate, sell, rent, or put the right of way to any other non-highway/street use without prior written approval by WSDOT. If approval is given, all revenue derived from such sale, vacation, rental, or non-highway/street use shall be returned to WSDOT for deposit into the motor vehicle fund account.

Sincerely,

Neal J. Campbell
Olympic Region Local Programs Engineer

Enclosure

cc: Mark Ellis  Brendan Clarke
    Duke Stryker  Dick Ryan
DATE:

TO: Neal Campbell, P.E.
    Local Programs Engineer MS: 4-7440

FROM: Michele Britton, P.E.
      Port Orchard PEO
      MS: WB-18

SUBJECT: SR 16/Anderson Creek Tributary to Sinclair Inlet
         Fish Barrier Removal
         Turnback Agreement TB3-0147

On the day of , 20 , Kitsap County and WSDOT performed a joint inspection of the above named right of way and Roadway Facilities, and Kitsap County accepts the right of way and Roadway Facilities in accordance with Turnback Agreement TB3-0147.

of Kitsap County of WSDOT

Date Date

cc: Kitsap County
    Lois Gilchrist MS: 47358
    file
Exhibit 7-4  Relinquishment – Turnback Review

RELINQUISHMENT (TURNBACK) REVIEW

Turnback Agreement No.: TB _____-_________  I. C. No. ____________________________

Plan Title: ________________________________________________________________

Federal Aid No. __________________________

The Design office (or other appropriate initiator) is proposing relinquishment (turnback) of portions of the right way as delineated on the attached Exhibit map. The local agency conurs with the design elements. This request is being processed to comply with Section 23 CFR Part 620, Subpart B and Programmatic Agreement regarding Turnbacks dated __________. Attached are:

☐ Diary and or other written record of meetings with local agency and their concurrence with the design elements.

☐ Turnback Agreement with Right of Way Exhibit Sheet(s)

☐ Relinquishment Memorandum

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Memorandum

Date:
To:      Dan Mathis, Federal Highway Administration
From:
Subject: Turnback No. TB      Federal Aid No. _______    I. C. No. _______

This Relinquishment Memorandum has been completed for the above subject TB No. and Project.
The design elements have been coordinated with the local agency and the local agency concurs with the
design.
The Agreement anticipates the conveyance of title to the local agency of certain property or property
rights shown as shaded on the attached right of way plan. The property will be transferred to the local
agency by deed and the State will retain access rights where delineated and be contingent on continued
use for road or street purposes only. The conveyance will be made following the written transfer of
responsibility for maintenance and operation of the roadway facility.
The transfer is authorized by RCW 86.75.080 and/or RCW 47.52.210 and/or WAC 468-30-070 or WAC
468-30-075 in accordance with Section 22 CFR Part 620.203 (1).
WSDOT ensures that the relinquishment delineated on right of way plans be justified by the State’s
finding that:

(1) The subject land will not be needed for Federal-aid highway purposes in the foreseeable future;
(2) That the right-of-way being retained is adequate under present day standards for the facility involved;
(3) That the release will not adversely affect the Federal-aid highway facility or the traffic thereon;
(4) That the lands to be relinquished are not suitable for retention in order to restore, preserve, or improve
the scenic beauty adjacent to the highway consistent with the intent of 23 U.S.C. 319 and Pub. L. 89-283,
Title III, sections 302-305 (Highway Beautification Act of 1965).
The purpose of this memorandum is to obtain concurrence from FHWA of the proposed Relinquishment.

Approved,
Daniel M. Mathis, P.E.

By:     Elizabeth Healy, P.E.
ROW Program Manager & Environmental
Specialist

Enclosures: Relinquishment Review, Turnback Agreement, & Right of Way Plan
PROGRAMMATIC AGREEMENT
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION (FHWA),
AND
THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (WSDOT),
WSDOT DISPOSALS AND TURNBACKS FOR CONTINUED HIGHWAY PURPOSE -
NON INTERSTATE

WHEREAS, Section 23 CFR Part 620.203(i) of the Code of Federal Regulations states:

i) Relinquishments must be justified by the State’s finding concurred in by the FHWA, that:
   (1) The subject land will not be needed for Federal-aid highway purposes in the foreseeable future;
   (2) That the right-of-way being retained is adequate under present day standards for the facility involved;
   (3) That the release will not adversely affect the Federal-aid highway facility or the traffic thereon;
   (4) That the lands to be relinquished are not suitable for retention in order to restore, preserve, or improve the scenic beauty adjacent to the highway consonant with the intent of 23 U.S.C. 319 and Pub. L. 89–285, Title III, sections 302–305 (Highway Beautification Act of 1965).

WHEREAS, Disposal of excess right of way is outlined in Section 23 CFR 710.409 of the Code of Federal Regulations; and

WHEREAS, 23 CFR 710.409(d) states:

d) Where the transfer of properties to other agencies at less than fair market value for continued public use is clearly justified as in the public interest and approved by the FHWA, the deed shall provide for reversion of the property for failure to continue public ownership and use. Where property is sold at fair market value no reversion clause is required. Disposal actions described in 23 CFR 710.403(d)(1) for less than fair market value require a public interest determination and FHWA approval, consistent with that section.

WHEREAS, currently FHWA is required to review any non-interstate less than fair market value transfers; and

WHEREAS, The Federal Highway Administration, Washington Division (FHWA) and the Washington State Department of Transportation (WSDOT) entered into a Federal-Aid Highway Program Stewardship and Oversight Agreement dated February 19, 2008; and
NOW, THEREFORE, WSDOT and FHWA agree to allow WSDOT to have final approval, without FHWA concurrence (approval), of non-interstate excess lands less than fair market value transfers that will have a continued use for road purposes only;

STIPULATIONS:

1. WSDOT’s Engineering Review will determine that the property is no longer needed by the department for a highway purpose.
2. Upon completion of the Engineering Review, WSDOT will prepare a Disposal Memorandum addressing the four sections discussed in 23 CFR Part 620.203(i) listed above. The Headquarter’s Real Estate Service’s (HQ RES) Office will keep a copy of this Memorandum in the disposal or turnback file.
3. WSDOT will require the following reversionary verbiage in the conveyance document:
   
   The Grantee herein, on behalf of itself and its successors or assigns, covenants and agrees that the Property is transferred for road/street purposes only, and no other use shall be allowed. The Grantee intends to construct upon the lands conveyed herein city streets and/or roadways and should the Property not be developed or cease to be used for road/street purposes said ownership shall automatically revert to Grantor and be evidenced by conveyance from Grantee, its successors or assigns, releasing all Grantee’s interest in the Property.
4. WSDOT will reserve access to any remaining department owned property across or upon the area that has been determined to be excess.

COMPLIANCE MONITORING

To ensure compliance and consistency among WSDOT Regions using this agreement, FHWA will work with HQ RES once every three years to review a sample of the Disposal and Turnback Memoranda. FHWA will report the results of this review in writing to the Agreement signatories.

AGREEMENT DURATION

This Agreement will remain in effect until terminated by one of the parties.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement is hereby approved.

Dated this 23rd Day of April, 2013

Signed by:

Dan Mathis
Division Administrator
Federal Highway Administration

Terry T. Mixan
HQ Real Estate Services Program Administrator
Washington State Dept. of Transportation
8.01 Introduction

D Agreements are sometimes referred to as Dx Agreements due to the variable region designation, represented by the “x.”

This chapter applies only to the following D prefixes:

• DA – Northwest Region
• DB – North Central Region
• DC – Olympic Region
• DD – Southwest Region
• DE – South Central Region
• DG – Eastern Region

(1) Description

D Agreements are region-level payable agreements that provide for work to be performed by another entity on behalf of WSDOT. D Agreements allow the regions to respond to needs in various functional areas depending on the circumstances. D Agreements are intended for region-level work (covered under a region-level work order) not specifically covered by other types of agreements.

(a) When Used

WSDOT may enter into a D Agreement for the performance of work or the furnishing of equipment, materials, supplies, or operating services that does not involve work already covered under a highway construction contract. The Agreement Originator must ensure proper purchasing and competitive bid procedures are followed.

When determining whether a D Agreement is appropriate, all other avenues should be explored, see Exhibit 8-1 for guidance on when D agreements may be used.
### Exhibit 8-1  Contracting Options according to RCW

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Statutory/Policy Requirements</th>
<th>Contract Value</th>
<th>Competitive Selection Required?</th>
<th>Procurement Process and/or Contract Options</th>
</tr>
</thead>
</table>
| Public Works by Private Entity for Highway Projects (excluding routine maintenance) | **RCW 47.28.030 Ad and Award Manual**  
*This section does not address situations where state force work may be used* | Under $7,500   | Yes                | Limited competitive selection required, See **Ad & Award Manual**.  
For emergency work, see the **Emergency Relief Procedures Manual**  
Purchase Order  
D Agreement may be used after competitive selection process |
| Over $7,500                                                             | Yes – Except for Sole Source Contracts              |                |                                 | Small Works Roster (under $300,000)  
Sole Source if applicable  
For emergency work, see the **Emergency Relief Procedures Manual**  
D Agreement may be used after competitive selection process, where required |
| Public Works by Private Entity for NON-Highway Projects                   | **39.04 RCW**                                        | See threshold requirements under 39.04.020 39.04.155 | Yes – Unless an exemption as described in 39.04.280 applies. | See **Ad & Award Manual**  
D Agreement may be used after competitive selection process, unless exempted |
| Description                                                              |                                                     |                |                                 |                                                                                     |
| Work, construction, alteration, repair, or improvement other than ordinary maintenance |                                                     |                |                                 |                                                                                     |
| **Note:** Ordinary maintenance is something that occurs at regular intervals and on a regular basis. See "Other Procurement of goods/materials/services" below for contracting for maintenance work. |                                                     |                |                                 |                                                                                     |
### Exhibit 8-1  Contracting Options according to RCW

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Statutory/Policy Requirements</th>
<th>Contract Value</th>
<th>Competitive Selection Required?</th>
<th>Procurement Process and/or Contract Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inter-local Agreements</td>
<td>RCW 47.28.140 Or Chapter 39.34 RCW</td>
<td>N/A</td>
<td>No</td>
<td>GC Agreement with Standard Form Agreements or Non-Standard Agreement D Agreement with Standard Form Agreement 502-001 or Non-Standard Agreement <strong>Note:</strong> If executed under 39.34 these contracts require reporting procedure in RCW 39.34.040</td>
</tr>
<tr>
<td>Other procurement of goods/materials/services (including routine highway maintenance)</td>
<td>Chapter 39.26 RCW DES Procurement Policies</td>
<td>Direct Buy thresholds under $10,000 (or $13,000 if Small Business)</td>
<td>No Direct Buy as designated by DES policy.</td>
<td>Direct Buy (purchase order) See Purchasing Manual or DES website for more information. Purchase Order D Agreement with Standard Form Agreement 502-001 or Non-Standard Agreement Over $10,000 (or $13,000 if Small Business)</td>
</tr>
</tbody>
</table>

**Note:** Procurement of any goods or services not covered under one of the other categories above.
8.02 Agreement Preparation and Closure

After reviewing the preceding criteria, if it is determined that a D Agreement is appropriate, proceed as follows:

(1) **Agreement Number**

To obtain a D Agreement number, contact the region Financial Services Office and provide the following:

- Customer name
- Customer billing address
- Contact name/phone number
- Federal tax identification number
- Estimated costs
- Title of agreement
- Agreement manager name
- Description of work

(2) **D Agreement Review**

(a) **Standard Form (DOT Form 520-001) D Agreement With WSDOT or Federal Funds (work under $100,000)**

No review is required by the Headquarters (HQ) Utilities, Railroad, and Agreements Section. Any changes made to a standard form agreement will result in a nonstandard agreement. A nonstandard agreement should be created when the anticipated amount exceeds $100,000.

(b) **Nonstandard Agreement**

When using a nonstandard D agreement, a review is required by the HQ Agreements Unit or the Ad and Award Office.

(c) **Agreement and Work Order Establishment in the Accounting System**

The D Agreement Writer is responsible for sending the executed WSDOT original D Agreement to the region Financial Services Office for setting up the D Agreement and work order in the accounting system.

(d) **Federal Funds**

If the activity on the D Agreement is to be federally funded:

- Region Program Management staff is responsible for ensuring the Federal Highway Administration (FHWA) has authorized the specific work identified on the D Agreement.
- The agreement will not be executed until the WSDOT Capital Program Development and Management Office has concurred that FHWA has authorized the funding for the work.
Following are several issues of consideration when the region uses a D Agreement that involves federal funds:

1. A federally funded D Agreement must follow all federal requirements prior to advertisement of the work/project.

2. 23 CFR Part 635.117 prohibits the use of convict labor on a federally funded highway construction project. Therefore, when using federal funds on a D Agreement, inmate/convict labor is prohibited unless the work is not part of the construction project. WSDOT can use convict labor on a D Agreement if the work is state-funded and the following criteria are met:
   - The demolition of homes is done prior to construction.
   - The demolition of homes is not included in the construction contract.

3. When right of way is purchased with federal funds, and a state-funded D Agreement will include demolition work on that right of way, convict labor can be used if:
   - There are no federal issues when using state-funded convict labor for plant re-establishment/litter pickup after the federally funded construction contract has been closed. However, there may be state requirements that must be followed with respect to the highway construction contract and convict labor. Contact the HQ Assistant State Design Engineer assigned to your region.
   - Project advertising/contracting procedures must comply with all federal requirements when federal funds are used on a D Agreement. If you have questions, contact the HQ Assistant State Design Engineer assigned to your region.

4. For Sole Source D Agreement contracts, the following criteria must apply:
   - There is only one contactor that can do the work.
   - They are approved on a contract-by-contract basis by the HQ Assistant State Design Engineer assigned to your region.
   - FHWA approval is required before bids are solicited.

(e) **Small Works Roster**

For Small Works Roster contracts please consult the Advertisement and Award Manual M 27-02, Appendix 11. [http://www.wsdot.wa.gov/Publications/Manuals/M27-02.htm](http://www.wsdot.wa.gov/Publications/Manuals/M27-02.htm)

(f) **Agreement Distribution by Agreement Manager**

- One fully executed original is sent to the region Financial Services Office for processing and records retention.
- The second executed original is sent to the other entity.
- A copy is sent to the originating office.
(g) Agreement Closure

- The Agreement Manager provides notification to the region Financial Services Office for closure of the D Agreement and work order in the accounting system.
- Confirmation is obtained that the Affidavit of Wages Paid was sent to the Department of Labor and Industries.
- Confirmation is obtained that notification was sent to the Department of Revenue that the agreement was completed.

8.03 Standard Form D Agreement

Any changes made to the standard form D Agreement (DOT Form 520-001) will result in a nonstandard agreement (see Chapter 3).

8.04 Nonstandard Agreement

Nonstandard D Agreements must be:
- Developed in the region.
- Reviewed by the HQ Agreements or the Ad and Award Office.
- Approved as to form by the Attorney General’s Office.

8.05 Management of the D Agreement

(1) Agreement Execution

- The D Agreement is executed by the Regional Administrator or designee.

(a) Oversight of Work Performed

- The Agreement Manager will be the main contact to determine that the work has been performed.

(b) Agreement Closure

- The Agreement Manager submits a closure request to the region Financial Services Office when work has been completed.

(c) Record Retention

- The responsibility to retain the original D Agreement lies with the region Financial Services Office, and must comply with RCW 40.14.

(d) Audit of Agreement

- All agreements are subject to audits at any time.
8.06 References

D Agreements are used in compliance with the following:

- Executive Order E 1012.02 Delegation of Authority (signatory or approval authorities), dated November 12, 2012
- RCW 39.04.155 Small works roster contract procedures – Limited public works process – Definition
- RCW 47.28.030 Contracts – State forces – Monetary limits – Small businesses, minority, and women contractors – Rules
- RCW 39.26 Procurement of Goods and Services
- Advertisement and Award Manual M 27-02, WSDOT
- Emergency Relief Procedures Manual M 3014, WSDOT
- Purchasing Manual M 72-80, WSDOT
- DES master contracts list: http://des.wa.gov/services/ContractingPurchasing/CurrentContracts/Pages/default.aspx

WSDOT is responsible for many diverse activities that require support from the business community or from other public entities. The following laws apply when contracting for other categories of support.

- RCW 47.28 Construction and Maintenance of Highways
- RCW 39.04 Public Works
- RCW 39.80 Contracts for Architectural and Engineering Services
- RCW 39.34 Interlocal Agreement Act

It is the purchaser’s responsibility to know the correct purchase authority and policies and procedures before making a purchase.
Chapter 9  J Agreements – Reimbursable Agreements With Private Entities or Other Government Agencies

9.01 Introduction

J Agreements are sometimes referred to as Jx Agreements due to the variable region designation, represented by the “x.”

This chapter applies only to the following J prefixes:

- JZ – Northwest Region
- JB – North Central Region
- JC – Olympic Region
- JD – Southwest Region
- JE – South Central Region
- JG – Eastern Region

Other J prefixes are used by WSDOT Headquarters (HQ) divisions; however, they do not follow the procedures in this chapter. (See the WSDOT Chart of Accounts for those prefixes.)

(1) Description

J Agreements are established by the region to bill costs for sales and services to cities, counties, and other entities. These agreements are assigned to region-level Jx work orders. Each region is responsible for assigning, establishing, and billing for the costs under these agreements.

(a) When Used

The J Agreement is used for activities such as:

- Inspection of work performed by others (utilities/developers).
- Services for Local Agencies (project review, technical assistance, or training).
- Sale of supplies and materials.
- Sale of miscellaneous services.
(b) **Examples**

Exhibit 9-1, J Agreement Work Type Examples, shows some examples of the types of work that can be covered under a J Agreement.

(c) **Restrictions**

All of the following must be true in order for a J agreement to be used:

- The work cannot be related to a WSDOT project.
- The work must be 100% reimbursable.
- The funds cannot be administered by WSDOT.

### 9.02 Agreement Preparation and Closure

After reviewing the preceding criteria, if it is determined that a J Agreement is appropriate, proceed as follows:

1. **Agreement Number**

   To obtain a J Agreement number, contact the region Financial Services Office and provide the following:

   - Customer name
   - Customer billing address
   - Contact name/phone number
   - Federal tax identification number
   - Estimated costs
   - Title of agreement
   - Agreement manager name
   - Description of work

2. **Agreement Review, Set Up, and Closure**

   (a) **J Agreement**

      When using a standard form agreement (see Section 9.03), no review is required by the Agreements of the HQ Utilities, Railroad, and Agreements Section. Any changes made to a standard form agreement will result in a nonstandard agreement.

   (b) **Nonstandard Agreement**

      When using a nonstandard agreement, a review is required by the HQ Agreements.

   (c) **Agreement and Work Order Establishment in the Accounting System**

      The J Agreement Writer is responsible for sending the executed WSDOT original to the region Financial Services Office for setting up the J Agreement and work order in the accounting system.

      Administrative overhead will be charged at the current rate.
(d) Agreement Distribution

- One fully executed original is sent to the region Financial Services Office for processing and records retention.
- The second executed original is sent to the other entity.
- A copy is sent to the originating office.

(e) Agreement Closure

The Agreement Manager provides notification to the region Financial Services Office for closure of the J Agreement and work order in the accounting system.

9.03 Agreement Forms

Examples of agreement forms that can be used as J Agreements include, but are not limited to, the following:

- Maintenance Agreement – DOT Form 224-093
- Superload Assistance and Traffic Control Agreement – DOT Form 224-094
- Developer/Local Agency Agreements – DOT Form 224-063
- Developer Agreement – DOT Form 224-064
- Application for Utility Permit or Franchise – DOT Form 224-696
- Equipment Rental Without Operator Agreement – DOT Form 224-720
- Project Review Reimbursable Agreement – DOT Form 224-102

9.04 Management of Agreement

(1) Agreement Execution

The J Agreement is executed by the Executive/Regional Administrator or designee.

(a) Oversight of Work Performed

The Agreement Manager will be the main contact to determine that the work has been performed.

(b) Agreement Closure

The Agreement Manager submits a closure request to the region Financial Services Office when work has been completed.

(c) Record Retention

The responsibility to retain the original J Agreement lies with the region Financial Services Office and it must comply with the WSDOT records retention policy.

(d) Audit of Agreement

All agreements are subject to audits at any time.
9.05 References

J Agreements are used in compliance with the following:

- Chapter 39.34 RCW, Interlocal cooperation act
- WAC 468-38-405, Superloads
- TRAINS Accounts Receivable Manual

Exhibit 9-1  J Agreement Work Type Examples

<table>
<thead>
<tr>
<th>Work Types</th>
<th>Standard Form</th>
<th>Other Agreement Form Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bridge Painting and Maintenance</td>
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<td>Nonstandard</td>
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<tr>
<td>Button Installation</td>
<td>224-093</td>
<td></td>
</tr>
<tr>
<td>Collision Data</td>
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<td>Nonstandard</td>
</tr>
<tr>
<td>Culvert Cleaning</td>
<td>224-093</td>
<td></td>
</tr>
<tr>
<td>Equipment Rental (with or without operator)</td>
<td></td>
<td>Nonstandard</td>
</tr>
<tr>
<td>Fence Installation</td>
<td></td>
<td>Nonstandard</td>
</tr>
<tr>
<td>Guardrail Installation</td>
<td></td>
<td>Nonstandard</td>
</tr>
<tr>
<td>Inspection for Utility Permits</td>
<td>224-696</td>
<td></td>
</tr>
<tr>
<td>Landscaping</td>
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<td></td>
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<tr>
<td>Luminaire Maintenance</td>
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<td>Nonstandard</td>
</tr>
<tr>
<td>Mowing</td>
<td>224-093</td>
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<tr>
<td>Overlays</td>
<td>224-093</td>
<td></td>
</tr>
<tr>
<td>Patching</td>
<td>224-093</td>
<td></td>
</tr>
<tr>
<td>Pavement Testing</td>
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<td>Nonstandard</td>
</tr>
<tr>
<td>Plan Reviews</td>
<td></td>
<td>Nonstandard</td>
</tr>
<tr>
<td>Printing Services</td>
<td></td>
<td>Nonstandard</td>
</tr>
<tr>
<td>Project Review (services for Local Agencies including project review and technical assistance.)</td>
<td>224-102</td>
<td></td>
</tr>
<tr>
<td>Sale of Deicer</td>
<td></td>
<td>Field Order/Purchase Order</td>
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<tr>
<td>Sale of Sand</td>
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<td>Field Order/Purchase Order</td>
</tr>
<tr>
<td>Sale of Signs</td>
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<td>Field Order/Purchase Order</td>
</tr>
<tr>
<td>Sale of Signs (with installation)</td>
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</tr>
<tr>
<td>Sale of Stores/Stockpile Supplies</td>
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<td>Field Order/Purchase Order</td>
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<tr>
<td>Signal Maintenance</td>
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<td>Nonstandard</td>
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<tr>
<td>Snow and Ice Control</td>
<td>224-093</td>
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<tr>
<td>Striping</td>
<td>224-093</td>
<td></td>
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<tr>
<td>Superload/Building/ House Moves</td>
<td>224-094</td>
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</tr>
<tr>
<td>Sweeping</td>
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<tr>
<td>Traffic Control/Events</td>
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<td>Nonstandard</td>
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<tr>
<td>Traffic Counts</td>
<td></td>
<td>Nonstandard</td>
</tr>
<tr>
<td>Training</td>
<td></td>
<td>Nonstandard</td>
</tr>
<tr>
<td>Weed Spraying</td>
<td></td>
<td>Nonstandard</td>
</tr>
</tbody>
</table>
Chapter 10  N Agreements – Reimbursable Agreements With Washington State Agencies Only

10.01 Introduction

N Agreements are sometimes referred to as Nx Agreements due to the variable region designation, represented by the “x.”

This chapter applies only to the following N prefixes:

• NA – Northwest Region
• NB – North Central Region
• NC – Olympic Region
• ND – Southwest Region
• NE – South Central Region
• NG – Eastern Region

Other N prefixes are used by WSDOT Headquarters (HQ) divisions; however, they do not follow the procedures in this chapter. (See the WSDOT Chart of Accounts for those prefixes.)

(1) Description

An N Agreement is a reimbursable agreement executed by the region for the work and/or sale of goods and services performed by WSDOT for another Washington State agency.

(a) When Used

The N Agreement is used for the sale of goods or services.

(b) Examples

Exhibit 10-1, N Agreement Work Type Examples, shows some examples of the types of work that can be covered under an N Agreement.
10.02 Agreement Preparation and Closure

After reviewing the preceding criteria, if it is determined that an N Agreement is appropriate, proceed as follows:

(1) Agreement Number

To obtain an N Agreement number, contact the region Financial Services Office and provide the following:

• Customer name
• Customer billing address
• Contact name/phone number
• Agency identification number
• Estimated costs
• Title of agreement
• Agreement manager name
• Description of work

(2) Agreement Review, Set Up, and Closure

(a) Standard Form N Agreement

When a standard form agreement is used (see Section 10.03), no review is required by the Agreements of the HQ Utilities, Railroad, and Agreements Section. Any changes made to a standard form agreement will result in a nonstandard agreement.

(b) Nonstandard Agreement

When a nonstandard agreement is used, a review is required by the HQ Agreements.

(c) Agreement and Work Order Establishment in the Accounting System

The N Agreement Writer is responsible for sending the executed WSDOT original to the region Financial Services Office for setting up the N Agreement and work order in the accounting system.

Administrative overhead will be charged at the current rate at the time of billing.

(d) Agreement Distribution

• One fully executed original is sent to the region Financial Services Office for processing and records retention.
• The second executed original is sent to the other entity.
• A copy is sent to the originating office.

(e) Agreement Closure

The Agreement Manager provides notification to the region Financial Services Office for closure of the N Agreement and work order in the accounting system.
10.03 Agreement Forms (Examples)

Examples of agreement forms that can be used as N Agreements include, but are not limited to, the following:

- Maintenance Agreement – DOT Form 224-093
- Equipment Rental Without Operator Agreement – DOT Form 224-720

10.04 Management of Agreement

(1) Agreement Execution

The N Agreement is executed by the Executive/Regional Administrator or designee.

(a) Oversight of Work Performed

The Agreement Manager will be the main contact to determine that the work has been performed.

(b) Agreement Closure

The Agreement Manager submits a closure request to the region Financial Services Office when work is complete.

(c) Record Retention

The responsibility to retain the original N Agreement lies with the region Financial Services Office and it must comply with the WSDOT records retention policy.

(d) Audit of Agreement

All agreements are subject to audits at any time.
10.05 References

N Agreements are used in compliance with the following:

- Chapter 39.34 RCW Interlocal cooperation act
- TRAINS Accounts Receivable Manual

Exhibit 10-1  N Agreement Work Type Examples

<table>
<thead>
<tr>
<th>Work Types</th>
<th>Standard Form</th>
<th>Other Agreement Form Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collision Data</td>
<td></td>
<td>Nonstandard</td>
</tr>
<tr>
<td>Equipment Rental Without Operator</td>
<td>224-720</td>
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</tr>
<tr>
<td>Mowing</td>
<td>224-093</td>
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<tr>
<td>Overlays</td>
<td>224-093</td>
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</tr>
<tr>
<td>Patching</td>
<td>224-093</td>
<td></td>
</tr>
<tr>
<td>Pavement Testing</td>
<td></td>
<td>Nonstandard</td>
</tr>
<tr>
<td>Photogrammetry</td>
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<td>Nonstandard</td>
</tr>
<tr>
<td>Printing Services</td>
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<td>Nonstandard</td>
</tr>
<tr>
<td>Sale of Deicer</td>
<td></td>
<td>Field Order/Purchase Order</td>
</tr>
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<td>Sale of Sand</td>
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<td>Field Order/Purchase Order</td>
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<tr>
<td>Sale of Signs</td>
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<td>Field Order/Purchase Order</td>
</tr>
<tr>
<td>Sale of Signs (with installation)</td>
<td>224-093</td>
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<tr>
<td>Sale of Stores/Stockpile Supplies</td>
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<tr>
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<tr>
<td>Sweeping</td>
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<tr>
<td>Traffic Counts</td>
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<td>Nonstandard</td>
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<tr>
<td>Weed Spraying</td>
<td></td>
<td>Nonstandard</td>
</tr>
<tr>
<td>Work Study Employment</td>
<td></td>
<td>Work Study Agreement</td>
</tr>
</tbody>
</table>
Chapter 11  Other Agreement Prefixes

11.01  Introduction

This chapter applies only to agreement prefixes that are not covered in detail in this manual but are commonly entered into by WSDOT. The purpose of this chapter is to provide a brief description of these agreements, as well as references for more detailed information.

11.02  0P Agreements – Rental and Lease

(1)  Description

A 0P (zero P) Agreement is a payable agreement for rental of buildings, land, radio towers, and sundry sites.

(a)  When Used

0P Agreements are used when WSDOT leases or rents land and/or buildings from or to another party. Agreements for office and warehouse space are handled by the WSDOT Capital Facilities Office which coordinates with the Department of Enterprise Services Facilities and Leasing Division. Other land and building agreements are handled by WSDOT Real Estate Services.

(b)  Agreement Numbers

Agreement numbers (see Section 3.04(2)(a)) are automatically generated by the Agreement Review Transmittal (ART) system.

(c)  References

Purchasing Manual M 72-80, WSDOT
Right of Way Manual M 26-01 Section 6-13.4, WSDOT
WSDOT Capital Facilities Office wwwi.wsdot.wa.gov/operations/facilities
11.03 0Y Agreements – Personal or Consultant Services

(1) Description

A 0Y (zero Y) Agreement is a payable agreement for personal or consulting services. 0Y Agreements are further classified as: Personal Services Contract, Architectural and Engineering, Litigation Expert Witness, or Other.

(a) When Used

0Y Agreements are used with private entities that provide personal or consulting services to WSDOT.

(b) Additional Information

A 0Y Agreement can be either a master agreement with associated task assignments or a stand-alone agreement.

(c) Agreement Numbers

Master or stand-alone agreement numbers are assigned by the HQ Consultant Services Office.

Task assignment numbers are assigned by the Master Agreement Manager.

(d) References

Chapter 39.26 RCW Procurement of goods and services
Chapter 39.80 RCW Contracts for architectural and engineering services
Consultant Services Manual M 27-50, WSDOT
HQ Consultant Services Office www.wsdot.wa.gov/business/consulting

11.04 FP Agreements – Fire Protection Agreements

(1) Description

FP Agreements are payable agreements with fire districts for fire protection services.

(a) When Used

FP Agreements are used for agreements with fire districts that provide fire protection services for WSDOT buildings, structures, and equipment.

Regions have the option of using either an FP Agreement or a General Authority.

(b) Agreement Numbers

Agreement numbers are assigned by the region Financial Services Office.
(c) References

RCW 35.21.775 Provision of fire protection services to state-owned facilities
RCW 35.21.779 Mandatory fire protection contract negotiation
RCW 39.34.080 Authorization for individual agencies to enter into mutual service contracts
RCW 52.30.020 Fire protection services with county fire protection districts
RCW 84.36.010 Public, certain public-private and tribal property exempt
RCW 84.40.175 Valuation of exempt publicly owned property

11.05 K Agreements – Information Technology Contracts/Administrative Contracts (General)

(1) Description

K Agreements are used for information technology contracts and general administrative contracts.

(a) Agreement Numbers

Agreement numbers are assigned by HQ Administrative Contracts Office.

(b) References

Administrative Contracts Office [www.wsdot.wa.gov/business/contracts/default.htm](http://www.wsdot.wa.gov/business/contracts/default.htm)

11.06 LA Agreements – Local Programs-Local Agency

(1) Description

LA Agreements are between WSDOT and local agencies for work where the local agency is the lead. These agreements are processed through the HQ Highways and Local Programs (H&LP) Division. There may be both a payable and a reimbursable element in an LA Agreement.

(a) When Used

LA Agreements are used for local agency projects where the local agency is the recipient of federal or state funds, which are received and distributed by WSDOT. H&LP serves as the steward of the Federal Highway Administration funding that goes to public agencies throughout the state. While most of the dollars distributed to the agencies are federal, some may be from state programs administered by H&LP.

(b) Agreement Numbers

Agreement numbers are assigned by H&LP.

(c) References

HQ Highways and Local Programs Division [www.wsdot.wa.gov/localprograms](http://www.wsdot.wa.gov/localprograms)

*Local Agency Guidelines Manual* M 36-63, WSDOT
11.07 LM Agreements – Local Mitigation

(1) Description

LM Agreements are reimbursable agreements with counties, cities, towns, or other municipal corporations that allow payment by a developer for the cost of mitigating the impact of the development.

(a) When Used

The LM Agreement is used for mitigation work done by the department. Under the terms of the agreement, the developer pays the local agency and the local agency passes the money on to WSDOT. These funds must be associated with a specific project, and the payment must accompany the agreement.

This agreement is NOT used for mitigation payments made directly to WSDOT (see UC Agreement).

(b) Agreement Numbers

Agreement numbers (see Section 3.04(2)(a)) are automatically generated by the ART system.

(c) References

RCW 82.02.020, Voluntary payments by developers

Development Services Manual M 3007, WSDOT

11.08 RR Agreements – Railroad

(1) Description

An RR Agreement is an agreement with a railroad company. This prefix is used by the Rail, Freight, and Ports Division, the PCC (Grain Train) rail line, the Railroad Liaison and by region agreement writers. All RR Agreements should be reviewed by the HQ Railroad Liaison. The agreement can be payable (work done by the railroad for WSDOT) or reimbursable (work done by WSDOT for the railroad).

(a) When Used

RR Agreements are typically used for the following activities:

- WSDOT construction projects where there are impacts to railroads or where WSDOT needs to obtain an easement or a temporary property right (typically called Construction and Maintenance Agreements). These agreements are developed by the Railroad Liaison and executed at HQ Development Division.

- Track construction/relocation, these agreements are typically initiated by the railroad and will be reviewed by the Railroad Liaison and executed at HQ Development Division.

- Railroad public grade crossing, overcrossing, and undercrossing construction or improvements. These agreements are developed by the Railroad Liaison and executed at HQ Development Division.
• Railroad private grade crossing construction or improvements. These agreements (typically called permits by railroads) are reviewed by the Railroad Liaison. They can be executed at HQ Development Division or at the region.

• Rail services and operations, these can include flagging or other types of work completed by the railroad for WSDOT. These agreements are typically short in duration, project specific, and low risk. These agreements are reviewed by the Railroad Liaison and executed at HQ Development Division or at region.

• Station platform construction, this would be considered a Construction and Maintenance agreements and will be developed by the Railroad Liaison and executed at HQ Development Division.

• Railroad Permits and Licenses are usually standard forms submitted by the railroad, must be reviewed by the Railroad Liaison, and are executed at HQ Development Division or at region.

• Safety/public education agreements are typically done by the Rail, Freight, and Ports Division with the assistance of the Railroad Liaison.

(b) Agreement Numbers

Agreement numbers (see Section 3.04(2)(a)) are automatically generated by the ART system.

(c) References

HQ Utilities, Railroad, and Agreements Section www.wsdot.wa.gov/utilities/default.htm

Utilities Manual M 22-87, WSDOT

11.09 S Service Agreements – Utility Service

(1) Description

An S Agreement is a payable agreement for utility service.

(a) When Used

An S Agreement is entered into whenever WSDOT requires a new utility service (such as water, power, or sewer) or modification to an existing service. Service agreements may be temporary or long term depending on need.

(b) Agreement Numbers

Agreement numbers are assigned by the region Utilities Office.

(c) References

Utilities Manual M 22-87, WSDOT
11.10 UC Agreements – Development Services

(1) Description
A UC Agreement is an agreement with a developer or private entity for highway purposes.

(a) When Used
Developer: A UC Agreement is used with a developer for constructing or paying for necessary mitigation improvements to state highway facilities such as structures, intersections, channelization, or roadway widening required because of the developer’s proposed development.

Private Party: A UC Agreement is used with nonpublic entities or individuals for highway purposes that benefit the state’s projects. This does not include agreements with utility companies (UT), railroads (RR), or personal services contracts (Y).

(b) Agreement Numbers
Agreement numbers (see Section 3.04(2)(a)) are automatically generated by the ART system.

(c) References
Development Services Manual M 3007, WSDOT

11.11 UT Agreements – Utility

(1) Description
A UT Agreement is an agreement with a utility company. The agreement can be payable (work done by the utility for WSDOT) or reimbursable (work done by WSDOT for the utility).

(a) When Used
UT Agreements are used for utility work with public or private utility companies, usually for relocation or improvements necessitated by a highway project.

(b) Agreement Numbers
Agreement numbers (see Section 3.04(2)(a)) are automatically generated by the ART system.

(c) References
HQ Utilities, Railroad, and Agreements Section www.wsdot.wa.gov/utilities/default.htm
Utilities Manual M 22-87, WSDOT