Washington State Department of Transportation

Developer Agreement Construction by Developer at Developer Expense			Developer Business Name / Address
Agreement Number			Developer Representative / Email / Phone Number
State Route	Mileposts	Region	
Control Section	Bond		Project Name / Description of Work
Exhibits Attached Exhibit A: Special Provisions Exhibit B: Right of Way Plan Sheet(s)/Vicinity Map			Exhibit C: Exhibit D: Exhibit E:

This Agreement is between the Washington State Department of Transportation (WSDOT) and the Developer named above, hereinafter collectively referred to as the "Parties" and individually as the "Party."

Recitals

1. The Developer plans to construct an intersection and/or related improvements within WSDOT's right-of-way (ROW) as described above under Project Name / Description of Work and further described in the attached Exhibit(s) (Work).
2. WSDOT and the Developer wish to define responsibilities for construction and maintenance of the proposed Work.

Now Therefore, by virtue of Title 47.50 RCW, and in consideration of the terms, conditions, and performances contained herein, the recitals as stated above, and the attached Exhibits which are incorporated and made a part hereof, it is mutually agreed as follows:

Terms of Agreement

1. WSDOT agrees to grant the Developer permission to perform Work within WSDOT ROW at the location described in Exhibit B – Project Location.

2. The Developer agrees to perform the Work, as shown on the Exhibit(s), at one hundred percent (100%) Developer expense and responsibility.

2.1 The responsibility of the Developer for performance, safe conduct, and adequate policing and supervision of the Work being performed on WSDOT ROW shall not be lessened or otherwise affected by WSDOT's approval of plans, specifications, or the Work, or by the presence of WSDOT's representative(s) at the worksite, or compliance by the Developer with any requests or recommendations made by such representative(s).

3.0 Construction

3.1 Documents on Site
Copies of this Agreement shall be kept at the Developer's project office and by the Developer or its contractor at the construction site. The Agreement shall be shown, upon request, to any state representative or law enforcement officer.

3.2 Pre-Construction Conference

Prior to the beginning of construction, a preconstruction conference shall be held at which WSDOT, the Developer, and the Developer's contractor (if applicable) shall be present. The Developer shall provide a minimum of ten (10) working days' notice to WSDOT's construction representative prior to holding the pre-construction conference. 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.

3.3 Construction of Improvements

3.3.1 The Developer shall construct the Improvements only after review and prior written approval by WSDOT, in its sole discretion, and as shown on the attached exhibits. Any changes to work plans or specifications must be approved by WSDOT before such Work may proceed. All design and construction shall be at the Developer's sole cost and expense; WSDOT shall not be required to contribute to the Improvements' construction.

3.3.2 The Developer agrees to construct improvements in accordance to the WSDOT Standard Specifications for Road, Bridge, and Municipal Construction Manual, M 41-10 (Standard Specifications), with such improvements subject to final WSDOT inspection and approval. Developer is responsible for seeking WSDOT approval if it intends to deviate from the Standard Specifications in any manner. The Developer understands and agrees that WSDOT may require plan revisions if design standards change between the time this Agreement is executed and prior to beginning the Work or due to plan omissions/errors. The Parties agree that WSDOT inspections and acceptances regarding the Improvements are solely for the benefit of WSDOT and not for the benefit of the Developer, its contractor (if any), or any third party.

3.3.3 The Developer may not park construction vehicles, trucks, or store materials or equipment on or within the limits of the state highway right of way, or perform other activities that may interfere with the construction, operation, or maintenance of and/or travel over the state highway without WSDOT's prior written authorization.

3.4 Construction Schedule

In addition to the requirements in Section 3.2, WSDOT may, at any time, request a construction schedule or updates thereto from the Developer, showing critical dates and activities that will lead to the timely completion of the Improvements. The Developer shall notify WSDOT's construction representative of any changes to the construction schedule at least five (5) working days prior to implementation. Working days are defined in Section 3.2.

3.5 Public Developer Representative

A Developer Representative, who shall be an officer or employee of the Developer, shall be present on-site at all times during performance of the work, unless otherwise agreed to, in writing, by WSDOT. The Developer Representative shall serve as a channel of communication between WSDOT and the Developer's employees, agents, and contractors. Should the Developer fail to comply with this section, WSDOT, in its sole discretion, may restrict any further Developer work within state highway right of way until the requirements of this section are met.

3.6 Supervision of Work

The Developer, at its own expense, shall adequately supervise construction of the Improvements by itself, its contractor, subcontractor, agent, and others, so as not to endanger or injure any person or property. The Developer's responsibility for the proper performance, safe conduct, and adequate supervision of the work shall not be lessened or otherwise affected by WSDOT's review and concurrence with the Developer's plans, specifications, or work, or by WSDOT's construction representative's presence at the work site to assist in determining that the work and materials meet this Agreement's requirements.

3.7 Required Permits

The Developer shall obtain all necessary Federal, State, and Local Permits including, but not limited to, permits required by the Washington State Department of Ecology, the Washington State Department of Fish and Wildlife, U.S. Army Corps of Engineers, and the National Environmental Policy Act (NEPA) prior to beginning construction.

3.8 Compliance with Clear Zone Guidelines

The Developer hereby certifies that the Improvements described in this Agreement are in compliance with the WSDOT's Clear Zone Guidelines as specified within WSDOT's Utilities Manual (publication

M 22-87.01). If applicable, for Improvements constructed within city streets that form part of the state highway system, the Developer may apply its own clear zone guidelines in lieu of WSDOT's guidelines.

3.9 Protection of Property
Developer is responsible for not damaging, destroying, or removing any public or private property, including but not limited to signal equipment, signs, guide markers, lane markers, and utilities. If any such property is damaged, destroyed, or removed without prior written authorization, the Developer shall notify WSDOT's construction representative within eight (8) hours of such damage, destruction or removal, and the Developer shall then replace, repair, or fully restore such private or public property to WSDOT's and/or the property owner's sole satisfaction. The Developer shall not disturb, remove, or destroy any existing Survey Monument before first obtaining a Washington State Department of Natural Resources (DNR) permit. The Developer agrees that resetting Survey Monuments must be done by or under the direct supervision of a Licensed Professional Land Surveyor. Information on Survey Monuments can be found at WSDOT's Geographic Services Office Website: https://www.wsdot.wa.gov/Monument/gis/index.html.

3.10 Cultural Resources
The Developer shall immediately stop work and notify WSDOT's construction representative upon discovery of any archaeological or historical resources in the work vicinity. The Developer must then retain a US Secretary of the Interior qualified archaeologist to evaluate the site and make recommendations to WSDOT regarding continuance of the work.

3.11 Clean Up
Upon completion of the work, the Developer shall immediately remove all rubbish and debris and leave the state highway right of way neat and presentable to WSDOT's sole satisfaction. The Developer agrees to take corrective action if directed by WSDOT.

3.12 Failure to Complete Project
Should the Developer not complete the Improvements in a timely manner after construction has begun, WSDOT shall determine what work the Developer must complete to restore WSDOT facilities and right of way to a condition and configuration that is safe for public use. WSDOT reserves the right to perform, or contract to perform, the restoration work at the Developer's sole expense If the Developer or its contractor is unable to restore the facilities and right of way in accordance to WSDOT standards.

4. In the construction and/or maintenance of this facility, the Developer shall comply with the Manual on Uniform Traffic Control Devices (MUTCD) and/or the WSDOT's Work Zone Traffic Control Guidance M54-44. Any closures or restrictions of the State Route require a WSDOT approved traffic control plan subject to WSDOT restrictions on days and time that such work may be performed.

5. All disturbed ROW shall be seeded, fertilized, mulched, and protected from erosion.

6. The Developer shall provide a signed surety bond acceptable to WSDOT in the amount stated above under Surety Bond (Surety Bond). The Surety Bond shall:

a. Be signed by a surety that is registered with the Washington State Insurance Commissioner and appears on the current authorized list published by the Office of the Insurance Commissioner.

b. Be conditioned upon faithful performance of this Agreement.

c. Guarantee that the surety shall indemnify and defend WSDOT against any loss resulting from the Developer's failure to faithfully perform all the terms under this Agreement.

d. Guarantee that the Developer or the Developer's contractor shall pay all laborers, mechanics, subcontractors, and materialmen, or any person who provides supplies or provisions for carrying out the Work.

e. The Surety Bond shall remain in full force and effect until released in writing by WSDOT. Release of the Surety Bond will occur one (1) year after completion of the Work by the Developer and acceptance of the Work by WSDOT.

f. WSDOT will recover from the Developer and its surety such damages as WSDOT may sustain by reason of the Developer's failure to comply with the provisions of this Agreement.

7. **Liability and Property Damage Insurance**

The Developer and its contractor(s) shall maintain commercial general liability coverage which shall be written on Insurance Services Office (ISO) form CG0001 or its equivalent and shall have minimum limits of Three Million Dollars ($3,000,000) per occurrence and Five Million Dollars ($5,000,000) in the aggregate for each policy period for bodily injury, including death and property damage. Coverage limits may be met by a combination of primary and umbrella or excess coverage. The Developer shall ensure that its contractor(s) maintain auto liability coverage, which shall be written on ISO form CA0001 or its equivalent and shall have minimum limits of One Million Dollars ($1,000,000) per occurrence. WSDOT shall be expressly named as an additional insured under any and all general liability or automobile policies procured or required in connection with the performance of this AGREEMENT by the Developer and its contractors, by endorsing these policies with form CG 2010 or CA2048 or its equivalent (as appropriate), which shall contain no additional limitations with respect to completed operations or ongoing operations coverages, nor shall there be any limitation with respect to the negligence of WSDOT. The Developer shall furnish WSDOT proof of insurance prior to undertaking any work covered by this Agreement.

8. **Payment Provisions**

8.1 The Developer shall reimburse WSDOT for all actual direct and related indirect costs necessitated by this Agreement. Such costs include, but are not limited to, agreement preparation, plan review, and construction inspection.

8.2 The Developer agrees to make payment for the work performed by WSDOT within thirty (30) days of receipt of an invoice from WSDOT. Payment not made within thirty (30) days after receipt of invoices shall bear interest at the rate of one (1) percent per month or fraction thereof until paid pursuant to RCW 43.17.240.

8.3 If the Developer objects to all or any portion of an invoice, it shall notify WSDOT within twenty (20) calendar days from the date of receipt and shall pay only that portion of the invoice not in dispute. WSDOT and the Developer shall make every effort to settle the disputed portion, and if necessary utilize dispute resolution provided for herein. No interest shall be due on any portion of an invoice the entity is determined not to owe following settlement between the Parties or completion of dispute resolution process.

9. **Final Inspection and Acceptance of Work**

9.1 Final Inspection

The Developer shall notify WSDOT in writing, with email being acceptable, of its completion of the Work within five (5) working days of such completion. The Developer shall include in the written notice a proposed date to meet on-site with WSDOT to conduct a final inspection of the Work. WSDOT will not conduct a final inspection of the Work until all of the Developer's Work required under this Agreement has been completed.

9.2 WSDOT Acceptance

9.2.1 WSDOT will provide the Developer with a Letter of Acceptance for the Work performed within WSDOT's ROW after the following items have been completed:

(A) Satisfactory completion of the Work and all Developer obligations hereunder;

(B) Final inspection of the Work;

(C) Developer submittal of a complete set of as-built plans for the Work to WSDOT;

(D) Receipt of material acceptance documentation by WSDOT (if required); and

(E) Payment pursuant to Section 9.

The Letter of Acceptance shall not waive any potential claims against the Developer or its contractor for defective Work or materials, nor bar WSDOT from requiring the Developer to remedy any and all Work deficiencies not identified by WSDOT during its inspection.

9.2.2 WSDOT may withhold its acceptance of the Work by submitting written notification, with email being acceptable, including the reason(s) for withholding acceptance, to the Developer, within thirty (30) calendar days following the final inspection. The Parties shall work together in good faith to resolve the outstanding issues identified in WSDOT's written notification. If any issues cannot be resolved within forty-five (45) calendar days after WSDOT's written notification, the Parties mutually agree to resolve the remaining issues using the Dispute Resolution process described in Section 12.5.

9.2.3 Upon resolution of the outstanding issues, WSDOT will deliver the Letter of Acceptance to the Developer.

9.2.4 The Developer shall continue to be responsible for all actual direct and related indirect costs to WSDOT, including inspection and monitoring, until the outstanding issue(s) has been resolved and a Letter of Acceptance has been issued.

10. WSDOT shall have ownership and control of the completed facility within WSDOT ROW and related traffic signal induction loops outside WSDOT's ROW, all subject to final acceptance by WSDOT with the exception that the Developer, its assigns, and successors, shall be responsible for the construction and maintenance of the private connections and appurtenances between the shoulder line of the State Route and the ROW line inclusive of surfacing and drainage, when applicable. Future construction or maintenance within the areas of responsibility by the Developer, its assigns, and successors which will affect the traffic signal induction loops and related appurtenances shall require WSDOT review and approval.

11. Any breach of the terms and conditions of this Agreement, or failure on the part of the Developer to proceed with due diligence and in good faith for the Work provided for herein, shall subject this Agreement to termination and, at the option of WSDOT, may require the Developer to remove all or part of the facilities constructed hereunder at the Developer's sole cost and expense.

12. **General Provisions**

12.1 Amendment: This Agreement may be amended by the mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

12.2 Termination:

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

12.2.2 If this Agreement is terminated prior to the fulfillment of the terms stated herein, the Developer agrees to be solely responsible for all direct and related indirect costs associated with Agreement termination, including engineering, completing WSDOT facility and right of way restoration, and contractor claims will be the sole responsibility of the Developer. This section shall survive Agreement termination.

12.2.3 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

12.3 Independent Contractor: The Parties shall be deemed independent contractors for all purposes, and the employees of the Parties or any of their contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the other Party.

12.4 Indemnification: To the extent permissible under law, the Developer, its successors and assigns, agree to indemnify, defend, and hold harmless WSDOT and the state of Washington and its officers and employees, from all claims, demands, damages (both to persons and/or property) expenses, regulatory fines, and/or suits that: (1) arise out of or are incident to any acts or omissions by the Developer, its agents, contractors, and/or employees, in the use of the state highway right of way as authorized by the terms of this Agreement, or (2) are caused by the breach of any of the conditions of this Agreement by the Developer, its contractors, agents, and/or employees. The Developer, its successors or assigns,

shall not be required to indemnify, defend, or hold harmless WSDOT or the state of Washington and its officers and employees, if the claim, suit, or action for damages (both to persons and/or property) is caused by the sole acts or omissions of WSDOT, its officers and employees; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) WSDOT, its officers and employees and (b) the Developer, its agents, contractors, and/or employees, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the concurrent acts or omissions of WSDOT, its officers and employees and the Developer, its agents, contractors, and employees.

12.4.1 The Developer 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 the Work and/ or operation of the Work under this Agreement. For this purpose, the Developer, by mutual negotiation, hereby waives, with respect to WSDOT only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Title 51 RCW.

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

12.5 Disputes: If a dispute occurs between the Developer and WSDOT during the performance of the Work, the Parties shall work to resolve the dispute promptly and at the lowest level of hierarchy. To this end, following the dispute resolution process shown below shall be a prerequisite to the filing of litigation concerning any dispute between the Parties:

12.5.1 The Developer's representative, designated in this Agreement, shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. The Parties representatives shall communicate regularly to discuss the status of the Work to be performed hereunder and to resolve any disputes or issues related to the successful performance of the Work. The Parties representatives shall cooperate in the resolution of any disputes or issues arising during the term of this Agreement.

12.5.2 A Party's representative shall notify the other Party in writing, with email being acceptable, of any dispute or issue that the representative believes may require formal resolution according to this Section. The representatives shall meet within five (5) working days of receiving the written notice and attempt to resolve the dispute.

12.5.3 In the event the representatives cannot resolve the dispute or issue, the Developer, and WSDOT's Region Administrator, or their respective designees, shall meet and engage in good faith negotiations to resolve the dispute.

12.5.4 In the event the Developer and WSDOT's Region Administrator, or their respective designees, cannot resolve the dispute or issue, the Developer and WSDOT shall each appoint a member to a Dispute Board. These two members shall then select a third member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. All expenses for the third member of the Dispute Board shall be shared equally by both Parties; however, each Party shall be responsible for its own costs and attorneys' fees.

12.6 Assurances: The Parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, state, and local laws, rules, and regulations as they currently exist or as amended.

12.7 Interpretation: This Agreement shall be interpreted in accordance with the laws of the state of Washington. The titles to paragraphs and sections of this Agreement are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

12.8 Waiver: A failure by a Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing signed by an authorized representative of the waiving Party and attached to the original Agreement.

12.9 All Writings Contained Herein: This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties.

12.10 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 , Washington, unless filing in another county is required under any provision of the Revised Code of Washington. Further, the Parties agree that each shall be responsible for its own attorneys' fees, witness fees, and costs.

12.11 Site Security and Safety: While on WSDOT premises, the Developer, its agents, employees, or contractors shall comply with WSDOT safety and security policies and regulations.

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

12.13 Severability: If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

12.14 All Writings Contained Herein: This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties.

12.15 Authority to Bind: The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

13. Counterparts And Electronic Signature

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

In Witness Whereof, the Parties hereto have executed this Agreement as of the day and year last written below.

Developer	**Washington State Department of Transportation**
Signature: _____	Signature: _____
By: _____ Print Name	By: _____ Print Name
Title: _____	Title: _____
Date: _____	Date: _____