Washington State Department of Transportation

Developer / Local Agency Agreement

Construction by Developer
At Developer Expense

	Developer & Address & Email
	Local Agency & Address & Email

Agreement Number		Section/Location	Exhibits
State Route No.	Control Section No.	Region	
Surety Bond		Work Hours	

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

Recitals

1. The Developer wishes to construct an intersection and/or related improvements within WSDOT's rights-of-way.
2. WSDOT, Local Agency, and Developer now wish to define responsibility for construction and maintenance of the proposed improvements.

Now Therefore, by virtue of Title 47.50 RCW and Title 47.24 RCW it is mutually agreed between the parties hereto as follows:

1. WSDOT agrees to grant the Developer permission to construct the work within WSDOT right-of-way described in Exhibit _____ at the location described in Exhibit _____, both attached hereto and by this reference made a part of this Agreement.
2. The Developer agrees to construct the project as shown on Exhibit _____, at 100 percent Developer expense and responsibility. Exhibit _____ is attached hereto and by this reference made a part of this Agreement.

   The responsibility of the Developer for performance, safe conduct, and adequate policing and supervision of the project shall not be lessened or otherwise affected by WSDOT's approval of plans, specifications, or work, or by the presence at the worksite of WSDOT's representative(s), or by compliance by the Developer with any requests or recommendations made by such representative(s).
3. Any change of work from that shown on Exhibit _____ must be approved by WSDOT prior to beginning such work. Plan revisions may be required by WSDOT if design standards change between the time of the Agreement approval and the beginning of construction.
4. Upon receipt of this Agreement by the Developer WSDOT may request a construction schedule showing critical dates and activities that will lead to the timely completion of the work required under this Agreement.

   Failure by the Developer to provide the construction schedule within 30 days may cause cancellation of the Agreement. Cancellation of this agreement will not lessen the Developer's responsibility to reimburse WSDOT for those costs agreed to by item 13.

5. Prior to beginning of construction, a preconstruction conference shall be held with WSDOT, Local Agency, Developer, and the Developer's contractor.

6. Should the Developer choose to perform the work outlined herein with other than its own forces, a representative of the Developer shall be present at all times unless otherwise agreed to by the Region Administrator. All contact between WSDOT and Developer's contractor shall be through the representative of the Developer. Where the Developer chooses to perform the work with its own forces, it may elect to appoint one of its own employees engaged in the construction as its representative. Failure to comply with this provision shall be grounds for restricting any further work by the Developer within WSDOT right-of-way, until said requirement is met.

   The Developer, at its own expense, shall adequately police and supervise all work on the project by itself, its contractor(s), subcontractor(s), agent(s), and others, so as to not endanger or injure any person or property.

7. Work within WSDOT right-of-way shall be restricted to the above specified hours and no work shall be allowed on the right-ofway Saturdays, Sundays, or Holidays, unless otherwise authorized by WSDOT.

8. In the construction and/or maintenance of this facility, the Developer shall comply with the "Manual on Uniform Traffic Control Devices for Streets and Highways", current edition. Any closures or restrictions of the highway shall require a WSDOT approved traffic control plan.

9. All material and workmanship shall conform to the Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction, current edition, and shall be subject to inspection by WSDOT.

10. All disturbed right-of-way shall be seeded, fertilized, mulched, and protected from erosion.

11. The Developer shall provide an executed surety bond acceptable to WSDOT in the amount stated above. The bond shall:

    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.

    Be conditioned upon faithful performance of the Agreement.

    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.

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

    The surety bond shall remain in full force and effect until released in writing by WSDOT.

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

12. The Developer shall obtain and keep in force for the duration of the work under this Agreement, public liability and property damage insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW. WSDOT and Local Agency shall be specifically named as an insured in a policy with the same company which insures the Developer or by an endorsement to an existing policy. The amount of coverage shall be not less than a single limit of $1,000,000 for bodily injury, including death and property damage per occurrence. The Developer shall furnish WSDOT proof of insurance prior to undertaking any work covered by this Agreement.

13. 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.

    The Developer agrees to make payment for the work to be done by WSDOT within thirty (30) days from receipt of billing from WSDOT.

    Payment not made within thirty (30) days after receipt of billings shall bear interest at the rate of one percent per month or fraction thereof until paid pursuant to RCW 43.17.240.

14. WSDOT shall have ownership and control of the completed facility within WSDOT right-of-way and related traffic signal induction loops outside WSDOT's right-of-way, all subject to final acceptance by WSDOT with the exception that the Developer, their assigns, and successors, shall be responsible for the construction and maintenance of the private connections and appurtenances between the shoulder line of the highway and the right-of-way line inclusive of surfacing and drainage, when applicable. Future construction or maintenance within the areas of responsibility by the Developer, their assigns, and successors which will affect the traffic signal induction loops, and related appurtenances shall require WSDOT review and approval. The Local Agency shall be responsible for continued ownership and maintenance of the completed facility outside of WSDOT right-of-way within right-of-way that the Local Agency has interest.

15. The Local Agency, if applicable, hereby grants and conveys to WSDOT the right of entry upon all land which the Local Agency has interest, within or adjacent to the right-of-way of the highway, for the purpose of maintaining and if necessary, reconstructing said traffic signal induction loops, and related appurtenances.

16. 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 in the construction and maintenance work provided for herein, shall subject this Agreement to be canceled 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 expense.

17. General Provisions

17.1 Indemnification:

17.1.1 To the fullest extent permitted by law, the Developer, will protect, defend, indemnify, and save harmless WSDOT, its officers, officials, employees, and 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 property), arising out of, or in any way resulting from, the Developer's negligent acts or omissions with respect to the provisions of this Agreement. The Developer will be required to indemnify, defend, or save harmless WSDOT if the claim, suit, or action for injuries, death, or damages (both to persons and property) is caused by the sole negligence of the Developer. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their agents, officials, or employees, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein will be valid and enforceable only to the extent of the negligence of the indemnifying Party, its agents, officials, or employees.

17.1.2 The Developer agrees that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees, or agents. For this purpose only, the Developer, by mutual negotiation, hereby waives, with respect to WSDOT, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

17.1.3 This indemnification and waiver will survive the termination of this Agreement.

17.2 Disputes: The Parties shall work collaboratively to resolve disputes and issues arising out of, or related to, this Agreement. Disagreements shall be resolved 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:

17.2.2 The representative, as shown herein designated in this Agreement shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. The representatives shall communicate regularly to discuss the status of the tasks to be performed hereunder and to resolve any disputes or issues related to the successful performance of this Agreement. The representatives shall cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any disputes or issues arising during the term of this Agreement.

17.2.3 A Party's representative shall notify the other Party in writing 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.

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

17.2.5 In the event the entity and WSDOT's Region Administrator, or their respective designees, cannot resolve the dispute or issue, the entity 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 fees.

17.3 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.

17.4 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.

17.5 Amendments: This Agreement may be amended only by the mutual written agreement of the Parties executed by personnel authorized to bind each of the Parties.

17.6 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.

17.7 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.

17.8 Venue: In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in the superior court situated in County, Washington unless filing in another county is required under any provision of the Revised Code of Washington. Further, the Parties agree that each shall be responsible for its own attorneys' fees and costs.

17.9 Working days: Working days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050.

17.10 Independent Contractor: Both Parties shall be deemed independent contractors for all purposes, and the employees of each Party and any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be the employees of the other Party.

17.11 Subcontracting: "Subcontractor" means one not in the employment of a Party to this Agreement, who is performing all or part of those services under this Agreement under a separate contract with a Party to this Agreement. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier. Except as otherwise provided in the Agreement, the Developer shall not subcontract any of the contracted services without the prior approval of the Agency. The Developer is responsible to ensure that all terms, conditions, assurances, and certifications set forth in this Agreement are included in any and all Subcontracts. Any failure of the Developer or its Subcontractors to perform the obligations of this Agreement shall not discharge the Developer from its obligations under this Agreement.

17.12 Site Security and Safety: While on WSDOT premises, the Developer, its agents, employees, or subcontractors shall comply with WSDOT safety and security policies and regulations. Including requirements for the prevention of transmission of communicable diseases such as Covid.

17.13 Audit and Records: During the progress of the Work and for a period of not less than six years from the date of final payment. The Developer shall maintain the records and accounts pertaining to the Work and shall make them available during normal business hours and as often as necessary, for inspection and audit by WSDOT, state of Washington, and/or federal government and copies of all records, accounts, documents, or other data pertaining to the Work will be furnished upon request. The requesting Party shall pay the cost of copies produced. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until any litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past the six-year retention period.

17.14 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.

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

18. Counterparts and Electronic Signature

18.1 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 parties are relying on its electronic or "PDF" signature.

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

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

Local Agency
Signature: _____
By: _____ Print Name
Title: _____
Date: _____