DOT FORM 224-065 PUBLIC AGENCY PARTICIPATING AGREEMENT WORK BY WSDOT - ACTUAL COST

Note to Agreement Writer: The WSDOT Agreements Manual (M 22-99.13) requires that when an agreement assigns maintenance and/or operational obligations those obligations shall be addressed in a Maintenance Agreement (GM agreement). Use of the GC contract provision above is mandatory for all GC agreements used by Developer Services Division and the Contracts Office. No modification of this provision is permitted without the written approval of the relevant Region Maintenance Division supervisor and the AGO.

JUNE 1, 2025

Washington State Department of Transportation

Public Agency Participating Agreement Work by WSDOT — Actual Cost		Public Agency Name & Address	
Agreement Number		Section/Location	
State Route	Control Section Number	Plans, Specifications and Cost Estimates (PS&E) for Work by Public Agency?	☐ Yes ☐ No
Region		PS&E Due Date:	
Advance Payment Required? ☐ Yes ☐ No		Description of Project/Improvements/Work:	
Advance Payment Amount			

WSDOT REPRESENTATIVE	PUBLIC AGENCY REPRESENTATIVE
Name:	Name:
Title:	Title:
Address:	Address:
Email Address:	Email Address:
Phone:	Phone:

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

Recitals

1. WSDOT is planning the construction or Project/Improvement/Work of a section of the state route as shown above, and in connection therewith, the Agency has requested that WSDOT perform certain work for the Agency as described above under Description of Work and/or further described in Exhibit B, (Work).
2. It is deemed to be in the public's best interest for WSDOT to include the requested Work in WSDOT's construction contract for the state route improvement.
3. The Agency is obligated for the cost of the Work described herein.
4. WSDOT is prohibited from the costs of mitigating utilities without a real property right under chapter 47.44 RCW

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

1. Plans, Specifications, and Cost Estimates

1.1 WSDOT, on behalf of the Agency, agrees to perform the Work, as further provided herein and pursuant to the attached exhibits. Exhibit A is the Cost Estimate and Exhibit B, if included as an attachment, further defines the Work to be constructed for the Agency. The combination of the Agency's Work and WSDOT's improvements hereinafter constitute the Project.

1.2 If indicated in the above heading, the Agency shall provide WSDOT with plans, specifications and cost estimates (PS&E) for the Work.

1.2.1 The PS&E shall be in accordance with the state of Washington Standard Specifications for Road, Bridge and Municipal Construction, and its amendments thereto (Standard Specifications), current at the time of Project advertisement, mutually acceptable design standards, or the Agency's standards, if applicable and specified by the Agency. Backup calculations for quantities and breakdowns for lump sum items shall be included with the PS&E for the Work.

1.2.2 If the PS&E for the Work, with backup calculations and breakdowns, is not delivered by the above PS&E due date, WSDOT, at its sole discretion, may proceed without the Agency Work included with WSDOT's improvements. The Agency agrees to reimburse all WSDOT costs incurred up to and as a result of the Agency's failure to timely provide the PS&E. This Agreement shall terminate upon receipt of all reimbursement payments in accordance with Section 6.

1.3 WSDOT will incorporate the Agency's Work or Work PS&E into WSDOT's PS&E for WSDOT's improvements to produce a combined advertisement (Ad) ready PS&E for the Project. WSDOT will document WSDOT-performed engineering design work required to incorporate the Work or Work PS&E into WSDOT's PS&E (Design Documentation). WSDOT shall provide up to two intermediate review sets of the PS&E and Design Documentation at mutually agreeable milestones. WSDOT will provide the Agency with one (1) reproducible copy of the stamped final Design Documentation prior to the proposed Ad date.

1.4 WSDOT will provide the Agency with one (1) reproducible copy of the Ad ready PS&E for the Project a minimum of thirty (30) working days prior to the proposed Ad date. The Agency will have fifteen (15) working days to review the Ad ready PS&E for the Project, resolve any concerns, and provide WSDOT with written approval, conditional approval, or rejection of the Ad ready PS&E for the Work portion of the Project. In the event the Work portion of the Ad ready PS&E is conditionally approved or rejected, the Agency shall include the reasons for conditional approval or rejection. The Agency may request an extension of time in writing, provided that WSDOT receives the written request not later than fifteen (15) working days after the Agency has received the Ad ready PS&E. WSDOT shall provide a written response, indicating the number of working days extended, if any.

1.5 If WSDOT does not receive the Agency's written approval, conditional approval or rejection of the Work portion of the Ad ready PS&E within fifteen (15) working days and any approved extension of time pursuant to Section 1.4, or if WSDOT cannot accept the Agency's condition(s) of approval, or if the Agency has not acquired all right of way and permits required to construct, maintain, and operate the Work, WSDOT may, at its sole discretion, delete the Work from the Project and advertise WSDOT's improvements. The Agency agrees to reimburse WSDOT for engineering costs and actual direct and related indirect costs incurred by WSDOT associated with either WSDOT or Agency deleting the Work from the Project. This Agreement shall then terminate upon receipt of all reimbursement payments in accordance with Section 6.

2. Bid, Award, and Cost Adjustments

2.1 WSDOT will advertise the Project for bids. WSDOT will be the Agency's representative during the Ad and Project contract award period. When requested by WSDOT, the Agency shall timely assist WSDOT in answering bid questions and resolving any design issues that may arise that are associated with the Work. All comments and clarifications must go through WSDOT.

2.2 If the Agency is responsible for preparing the Work PS&E, the Agency agrees to provide WSDOT with any addenda required for the Work during the Ad period, to the Parties' mutual satisfaction.

2.3 WSDOT shall provide the Agency with written notification of the bid price for the Work. The Agency shall have five (5) working days from the date of written notification to provide WSDOT written approval of the bid price for the Work, or request the Work be deleted from the Project. The Agency may request an extension of time in writing, provided that WSDOT receives the written request not later than five (5) working days after the Agency has received the written notification. WSDOT shall provide a written response indicating the number of working days extended, if any.

2.4 The Agency acknowledges that if it fails to provide WSDOT with written approval of the bid price for the Work or request that the Work be deleted from the Project within five (5) working days and any approved extension of time pursuant to Section 2.3, WSDOT shall delete the Work from the Project. In this event, the Agency agrees to reimburse WSDOT for engineering costs and actual direct and related indirect costs incurred by WSDOT associated with deleting the Work from the Project. The Agency understands that deleting the Work from the Project may require an equitable adjustment to the Project contract and agrees to reimburse WSDOT for costs associated with the equitable adjustment. This Agreement shall then terminate upon receipt of all reimbursement and equitable adjustment payments in accordance with Section 6.

2.5 If the Agency approves the bid price for the Work and WSDOT does not award or execute the Project contract, but thereafter re-advertises the Project for bids, WSDOT agrees to pay all WSDOT costs to re-advertise the Project. The Agency agrees that WSDOT is not responsible for increased bid prices or delay to the Work or other impacts to the Agency resulting from re-advertising the Project.

2.6 If the Agency approves the bid price for the Work and WSDOT does not award or execute the Project contract and does not re-advertise the Project for bids, this Agreement shall terminate upon receipt of all reimbursement payments in accordance with Section 6. The Agency agrees that WSDOT is not responsible for potential increased costs for the Work, delay to the Work or other impacts to the Agency resulting from not awarding the Project.

3. Construction

3.1 WSDOT will be the Agency's representative during construction and will act as owner in the administration of the contract for the Work. WSDOT will designate a WSDOT Project Engineer to provide all services and tools, including but not limited to construction administration, inspection, materials testing, and representation, necessary to administer and manage the contract to ensure that the Work is constructed in accordance with the contract.

3.2 The Agency may consult with and inquire of WSDOT Project Engineer, attend all meetings, and have access to all documentation concerning the Work. The Agency shall not provide direction, directly or indirectly, to WSDOT's contractor. All formal contacts between the Agency and the contractor shall be through WSDOT's representative.

3.3 When it becomes known that quantities for a unit bid item will exceed plan quantity for the Work by ten (10) percent or result in a cost increase for the Work exceeding the total amount by the percentage listed under Section 6.6, WSDOT shall consult with the Agency on possible courses of action within three (3) working days in accordance with Section 4.

3.4 The Agency may inspect the Work. Any costs for such inspection shall be borne solely by the Agency. All contact between said inspector and the contractor shall be only through WSDOT's inspector or WSDOT's representative.

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

4. Contract Changes

4.1 Changes to the Project contract will be documented by change order in accordance with the Standard Specifications. WSDOT shall process change orders for all changes affecting the Work in the manner set forth in the WSDOT Construction Manual (M41-01) current edition, Approval of Changes/Checklist, Change Order Checklist (DOT Form 422-003) .

4.2 Required changes involve such changes in quantities or alterations to the Work as are necessary to satisfactorily complete the Project. All other changes affecting the Work shall be considered elective changes.

4.3 The Agency authorizes WSDOT to initiate all required changes affecting the Work and to negotiate, document and execute the associated change orders. The Agency agrees to pay for the increases in cost, if any, for the required changes affecting the Work in accordance with Section 6.

4.4 WSDOT will advise the Agency of any proposed required changes affecting the Work as soon as possible and provide it with an opportunity, if time permits, to review the change before implementation. WSDOT will determine the length of the review time based upon the need to expedite the change to avoid delay to the contractor.

4.5 The Agency may request additions to the Work through WSDOT in writing. WSDOT will implement the requested changes as elective changes, provided that a change does not negatively impact WSDOT's transportation system and complies with the Standard Specifications, Project permits, state and/or federal law, applicable rules and/or regulations, and/or WSDOT design policies, and does not unreasonably delay critically scheduled Project contract activities.

4.6 All elective changes to the Work shall be approved in writing by the Agency before WSDOT directs the contractor to implement the changes, even if an executed change order is not required by the Project contract. The Agency agrees to pay for the increases in cost, if any, for such elective changes in accordance with Section 6.

4.7 WSDOT will make available to the Agency all change order documentation related to the Work.

4.8 In the event it is determined that the Agency does not have sufficient funds to complete the Work, WSDOT and the Agency shall negotiate to determine the future of the Work. If it is determined that the Work cannot proceed, the Work shall be brought to a level that is safe for public use and WSDOT will terminate the remainder of the Work from the Project contract. In the event the Work is terminated, Section 5 shall apply for that portion of the Work completed up to the time of termination. The Agency agrees to pay all costs associated with termination, including contractor claims, in accordance with Section 6.

5. Acceptance

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

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

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

6. Payment

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

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

6.3 In the event the Agency entity fails to make payment by the due date of the invoice, WSDOT may charge interest on outstanding balances at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by law, whichever is greater. If interest is charged, it will be calculated from the Due Date to the date of payment.

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

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

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

7. Right of Entry

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

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

8. Claims

8.1 Claims for Additional Payment:

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

8.1.2 The Agency shall not be obligated to pay such claims or their cost of defense to the extent that the claims are caused by the negligent acts or omissions of WSDOT in administering the Work.

8.1.3 The Agency shall have the right to review and comment on any settlement for claims associated with the Work. However, WSDOT shall have the ultimate right to settle such claims. In the event the Agency does not agree with the claim settlement as negotiated by WSDOT, the Agency shall reserve the right to not financially participate in the negotiated claim settlement. If agreement cannot be reached between the Agency and WSDOT on a claim settlement, the Parties agree to follow the dispute resolution procedure in Section 10.10.

8.1.4 If WSDOT agrees, the Agency may defend contractor claims associated with the Work at its own cost, and in doing so, the Agency agrees to pay any resulting settlement, court judgment or arbitration award. WSDOT will cooperate with the Agency in the Agency's defense of the claims. The Agency agrees to reimburse any WSDOT costs, including attorney's fees, incurred in providing such assistance in accordance with Section 6.

8.2 Claims for Damages: After Work acceptance, in the event of claims for damages or loss attributable to bodily injury, sickness, death, or injury to or destruction of property that occurs within the limits of the Work located on the Agency's right of way, the Agency shall defend such claims and indemnify and hold harmless WSDOT therefrom, and WSDOT shall not be obligated to pay any claim, judgment or cost of defense. Nothing in this Section, however, shall remove from WSDOT any responsibility defined by the current laws of the state of Washington or from any liability for damages caused by WSDOT's own negligent acts or omissions independent of the Work performed pursuant to this Agreement.

9. Ownership, Operation, and Maintenance

9.1 Prior to substantial completion of the Work authorized herein, the Parties shall enter into a separate written maintenance agreement addressing ownership, operation, and maintenance of the Work.

10. Utility Mitigation

10.1 The Parties agree that should there be any utilities in conflict with the Work, which are located within the Agency's jurisdiction, they shall be identified in a timely manner that does not delay the Work. The Parties agree to Work together in good faith to identify all utilities in conflict with the Work. The Agency shall develop a utility listing of all facilities in conflict with the work and include the mode of occupation or accommodation for each utility, including but not limited to a franchise, permit, lease, easement, etc. The Parties agree to work together to conduct a thorough utility conflict analysis. Further, the Agency agrees that they shall adequately mitigate all utilities so as to not be in conflict with the work, including temporary or permanent relocation. This includes mitigating all utilities who occupy the underlying right-of-way via franchise, permit, ordinance, lease, easement, or any other mode of occupation, in a timely manner that does not delay the Work.

10.2 State law prohibits WSDOT from expending any funds to mitigate a utility conflict unless the utility's facilities occupy the underlying right-of-way via a compensable, real property interest, such as an easement. WSDOT does not recognize Agency issued franchises, permits, ordinances, or other similar accommodation agreements issued by Agency as instruments that convey a compensable, real property interest to a utility. WSDOT, at its sole discretion, reserves the right to alter, de-scope or terminate any of the work within the Agency's jurisdiction at any time if the terms of this section are not satisfied.

11. General Provisions

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

11.2 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.

11.3 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.

11.4 Termination: Neither WSDOT nor the Agency may terminate this Agreement without the written concurrence of the other Party, except as otherwise provided under Sections 1.2.2, 1.5, 2.4, and 2.6.

11.4.1 If this Agreement is terminated prior to the fulfillment of the terms stated herein, the Agency agrees to reimburse WSDOT for the actual direct and related indirect expenses and costs it has incurred for the Work up to the date of termination, as well as the costs of non-cancelable obligations.

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

11.5 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.

11.6 Independent capacity: The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.

11.7 Indemnification: Each Party to this Agreement will protect, defend, indemnify, and save harmless the other Party, 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, each Party's negligent acts or omissions with respect to the provisions of this Agreement. Neither Party will 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 property) is caused by the sole negligence of the other Party. 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.

The Parties agree 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 Parties, by mutual negotiation, hereby waive, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

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

11.8 Acceptance of Liability: The Agency agrees and accepts full liability for (1) the PS&E provided for the Work to WSDOT, if any; and (2) for any Work the Agency has provided direction to WSDOT to design and/or construct outside WSDOT's right of way and/or WSDOT's jurisdiction that does not meet WSDOT standards. This section shall survive the termination of this Agreement.

11.9 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.

11.10 Disputes: In the event that a dispute arises under this Agreement, it shall be resolved as follows: WSDOT and the Agency shall each appoint a member to a Dispute Board, these two members shall select a third board member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. The Parties shall equally share in the cost of the third Dispute Board member; however, each Party shall be responsible for its own costs and fees.

An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute.

11.11 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.

11.12 Audits/Records: All Project records for the Work in support of all costs incurred shall be maintained for a period of six (6) years. Each Party shall have full access to and 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 state of Washington and/or the federal government. 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 the termination of this Agreement.

11.13 Term of Agreement: Unless otherwise provided herein, the term of this Agreement shall commence as of the date this Agreement is fully executed and shall continue until the Work is accepted by the Agency pursuant to Section 5, or as otherwise provided herein, and all obligations for payment have been met.

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

11.15 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.

11.16 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 email 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.

Washington State Department of Transportation	**Public Agency**
By: _____	By: _____
Printed: _____	Printed: _____
Title: _____	Title: _____
Date: _____	Date: _____