Washington State Department of Transportation

Public Agency Preliminary Engineering Participating Agreement Work by WSDOT - Actual Cost		Local Agency Name & Address
Agreement Number		Section/Location
State Route	Control Section Number	
Region	Surety Bond	Attachments made a part of this agreement. Exhibit A Estimate of Costs Exhibit B Description of Work Exhibit C Plan / Vicinity Map
Advance Payment Amount		

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. The Agency has requested that WSDOT perform certain work as described herein.
2. The Agency is obligated for the cost of work described herein.
3. WSDOT is prohibited from incurring the costs of mitigating utilities without a real property right under chapter 47.44 RCW.

Now therefore, by virtue of 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, or attached and incorporated and made a part hereof, it is mutually agreed as follows:

1. General

1.1 WSDOT, as agent acting for and on behalf of the Agency, agrees to perform the work as shown in Exhibit B Description of Work (Work).

1.2 Plans, specifications, and cost estimates shall be prepared by WSDOT in accordance with the current Standard Specifications for Road, Bridge, and Municipal Construction M 41-10, amendments thereto, and adopted design standards, unless otherwise noted.

1.3 WSDOT shall notify the Agency in writing, with email being acceptable, that the Work is complete. The Agency agrees, upon satisfactory completion of the Work, to deliver a letter of acceptance to WSDOT which shall include a release and waiver of all future claims or demands of any nature resulting from the performance of the Work.

1.4 If a letter of acceptance is not received by WSDOT within 90 days following completion of the Work, the Work will be considered accepted by the Agency and shall release WSDOT from all future claims and demands of any nature resulting from the performance of the Work.

1.5 The Agency may withhold this acceptance of Work by submitting written notification to WSDOT within the 90-day period, with such acceptance not to be unreasonably withheld. This notification shall include the reasons for withholding acceptance.

2. PAYMENT

2.1 The Agency, in consideration of the faithful performance of the Work to be done by WSDOT, agrees to reimburse WSDOT for the actual direct and related indirect cost of the work as shown in Exhibit A Estimate of Cost.

2.2 Partial payments shall be made by the Agency, upon request of WSDOT, to cover costs incurred. These payments are not to be more frequent than one (1) per month. It is agreed that any such partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of the final audit, all required adjustments will be made and reflected in a final payment.

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

2.4 The Agency agrees that if payment for the Work is not made within ninety (90) days after receipt of invoice, WSDOT may withhold any tax monies which the Agency is entitled to receive from the Motor Vehicle Fund until payment for the Work is received by WSDOT.

If the Agency is not entitled to receive Motor Vehicle Funds, a surety bond in the amount shown above written by a surety company authorized to do business in the state of Washington shall be furnished to WSDOT, prior to execution by WSDOT of this agreement. The bond shall remain in force until written release by WSDOT.

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

2.6 The Agency agrees to pay WSDOT the “Advance Payment Amount” stated above within 20 days after WSDOT submits its first partial payment request to the Agency, when applicable.

2.7 The advance payment represents approximately _____ (_____) percent of the estimate of cost and covers costs incurred by WSDOT in the initial stages of the project. The advance payment will be carried throughout the life of the project with final adjustment made in the final payment.

3. INCREASED COSTS AND EXTRA WORK

3.1 In the event unforeseen conditions require an increase in the estimated costs, as shown in Exhibit A, of 25 percent or more this Agreement will be amended to include new estimated costs.

3.2 In the event it is determined that any change from the description of Work contained in this Agreement is required, written approval must be secured from the Agency prior to the beginning of such Work.

3.3 Reimbursement for increased work and/or a substantial change in the description of Work shall be limited to costs covered by a written modification, change order or extra work order approved by the Agency.

4. RIGHT OF ENTRY

4.1 The Public Agency hereby grants and conveys to WSDOT the right of entry upon all land which the Public Agency has interest, within or adjacent to the right of way of the highway, for the purpose of performing the preliminary engineering under this Agreement.

5. GENERAL PROVISIONS

5.1 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 made in advance, in writing, and signed by persons authorized to bind each of the Parties.

5.2 Termination:
This Agreement may be terminated, without penalty or further liability in the event of the following:

5.2.1 Termination for Convenience
This Agreement may be terminated for convenience by either Party at any time. The notice of intent to terminate for convenience shall be issued by a Party in writing no less than thirty (30) working days in advance of termination. The Party terminating for convenience shall not be liable to the other Party for any direct, indirect, or consequential damages arising solely from termination of this Agreement.

5.2.2 Termination for Cause
This Agreement may be terminated for cause by either Party if the other Party does not fulfill in a timely and proper manner its obligations under this Agreement, or if the other Party violates any of the terms and conditions of this Agreement. The notice of intent to terminate for cause shall be issued by a Party in writing and the other Party 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.

5.2.3 Termination for Withdrawal of Authority
This Agreement may be terminated by WSDOT in the event that WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement. The notice of intent to terminate for withdrawal of authority shall be issued by WSDOT in writing no less than seven (7) calendar days in advance of termination. No penalty shall accrue to WSDOT in the event termination under this section is exercised. This section shall not be construed to permit WSDOT to terminate this Agreement in order to acquire similar services from a third-party.

5.2.4 Termination for Non-Allocation of Funds
This Agreement may be terminated by either Party if insufficient funds are allocated or appropriated to the Party to continue its performance of this Agreement in any future period. The notice of intent to terminate for non-allocation of funds shall be issued in writing no less than seven (7) calendar days in advance of termination.

5.2.5 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 up to the date of termination, as well as the costs of non-cancelable obligations.

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

5.3 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.

5.4 Indemnification:

5.4.1 To the extent as allowed in law, 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, or that Party's contractors, subcontractors or consultants, 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, or that Party's contractors, subcontractors, or consultants. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their agents, officials or employees, or the Party's contractors, subcontractors, or consultants 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.

5.4.2 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.

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

5.5 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. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share the cost of the third dispute board member; however, each Party shall be responsible for its own costs and fees.

5.6 Venue: In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in ▼ County Superior Court. Further, the Parties agree that each will be solely responsible for payment of its own attorney fees, witness fees, and costs.

5.7 Audit Records: All financial records, including labor, material, and equipment records in support of all WSDOT costs shall be maintained by WSDOT for a period of six (6) years from the date of termination of this Agreement. The Agency 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 the federal government.

5.8 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.

5.9 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.

6. COUNTERPARTS AND ELECTRONIC SIGNATURE

6.1 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.

PUBLIC AGENCY	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
Signature: _____	Signature: _____
By: _____ Print Name	By: _____ Print Name
Title: _____	Title: _____
Date: _____	Date: _____