



**Washington State
Department of Transportation**

Construction Agreement Construction by Public Agency on State Highway Right of Way at Public Agency Expense			Public Agency Contact Name Bill Lindauer Title Engineering Services Manager Address 555 Israel Road SW Tumwater, WA 98501 Phone 360-754-4140 Email BLindauer@ci.tumwater.wa.us
			Agreement Number Project Title I-5 / Trosper Rd / Capitol Blvd Reconfiguration
State Route Number 005	Mile Post 102.86	Control Section	Description of Improvements The project includes constructing three roundabouts and a new street (6th Avenue) between Trosper Road and Lee Street. The roundabouts are located at: Capitol Boulevard/Trosper Road; Trosper Road/6th Avenue; the northbound I-5 ramp terminal and 6th Avenue. The project will construct pedestrian facilities, bicycle facilities, stormwater facilities, sanitary sewer, water, joint utility trench for private utilities, power overhead conversion, lighting, irrigation, landscaping.
Exhibits Attached Exhibit A: Special Provisions Exhibit B: WSDOT R/W Plans Exhibit C: Contract Special Provisions Exhibit D: Contract Plan Sheets Exhibit E:			

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

Recitals

1. The Agency wishes to construct certain improvements on state highway right of way located within (a) a county, (b) a state limited access facility inside city limits, or (c) on areas under state jurisdiction within city streets that form part of the state highway system, hereinafter referred to as "Improvements."
2. WSDOT is willing to authorize the Agency to construct the Improvements subject to the terms and conditions of this Agreement.
3. In addition to the provisions below, construction, maintenance, and/or operation of the Improvements are subject to the Special Provisions, attached as Exhibit A, which set forth Agency and Improvements requirements specific to the type of state highway facility on which the Improvements will be constructed.

Now therefore, pursuant to RCW 47.28.140 and/or chapter 39.34 RCW, the above recitals, which are incorporated herein as if set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, and in the Exhibits attached hereto and hereby made a part of this Agreement, it is mutually agreed as follows:

1.0 Purpose of Agreement

The Agency provided WSDOT with its Plans and Specifications for the proposed Improvements. WSDOT has reviewed and agreed with the plans and specifications, unless otherwise modified pursuant to the terms of this Agreement. The Agency agrees to and shall construct, operate and/or maintain the Improvements in accordance with the terms of this Agreement.

2.0 Right of Entry

2.1 Agency

Subject to the terms of this Agreement, WSDOT hereby grants to the Agency, its authorized agents, contractors, subcontractors, and employees, a right of entry upon state-owned highway right of way or upon state highway right of way under WSDOT jurisdiction, onto which access is necessary to construct, operate and/or maintain the Improvements. While on WSDOT

premises, the Agency, its agents, employees, or subcontractors shall comply with all WSDOT safety and security policies and regulations. Including requirements for the prevention of transmission of communicable diseases (such as Covid). Granting of such right of entry in no way relieves the Agency of its permitting obligations set forth in Section 3.7 herein.

2.2 If WSDOT has approved any limited access breaks for the Improvements, the Agency shall comply with the terms and conditions of such approval.

2.3 WSDOT

The Agency hereby grants to WSDOT, its employees, authorized agents, contractors, and subcontractors, a right of entry upon all Agency-owned property necessary for WSDOT's design review, inspection, and, as applicable, maintenance and/or operation of the Improvements as provided in Section 6, below.

3.0 Construction

3.1 Documents on Site

Copies of this Agreement shall be kept at the Agency's project office and by the Agency 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 Agency, and the Agency's contractor (if applicable) shall be present. The Agency shall give 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 Agency shall construct the Improvements after review and prior written approval by WSDOT, in its sole discretion, and as shown on the attached Exhibits. All design and construction shall be at the Agency's sole cost and expense; WSDOT shall not be required to contribute to the Improvements' construction. Any proposed changes to the Improvements' plans or specifications previously approved by WSDOT require further WSDOT review and prior written approval before implementing the changes.

3.3.2 The Agency agrees and shall construct the Improvements to the satisfaction of WSDOT. All material and workmanship shall conform to the Washington State Department of Transportation's Standard Specifications for Road, Bridge, and Municipal Construction, current edition, and amendments thereto (Standard Specifications), and shall be subject to WSDOT inspection. All terms and conditions of the Standard Specifications shall be satisfied in every respect by the Agency and its contractors, unless the prior written approval of WSDOT has been obtained authorizing such changes. 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 Agency, the Agency's contractor (if any), or any third party.

3.3.3 No excavation shall be made, or obstacle placed within the limits of the state-owned, or under state jurisdiction, highway right of way in such a manner as to interfere with the construction of, operation of, maintenance of and/or travel over the state highway, unless the Agency obtains 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 Agency, showing critical dates and activities that will lead to the timely completion of the Improvements. The Agency 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 Agency Representative

Should the Agency choose to perform the work outlined herein with other than its own forces, an Agency representative shall be present on-site at all times during performance of the work, unless otherwise agreed to, in writing, by WSDOT. Where the Agency 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. Should the Agency fail to comply with this section, WSDOT, in its sole discretion, may restrict any further Agency work within state highway right of way until the requirements of this section are met. All contact between WSDOT and the Agency's contractor shall be through an authorized representative of the Agency.

3.6 Supervision of Work

The Agency, 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 Agency'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 Agency'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 Agency 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 Agency 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 the Agency's city streets that form part of the state highway system, the Agency may apply its own clear zone guidelines in lieu of WSDOT's guidelines.

3.9 Protection of Property

Unless authorized by WSDOT or other affected property owner in writing, the Agency shall assure that all public and private property, including but not limited to signal equipment, signs, guide markers, lane markers, and utilities, are not damaged, destroyed, or removed. If any such property is damaged, destroyed, or removed without prior written authorization, the Agency shall notify WSDOT's construction representative within eight (8) hours of such damage, destruction or removal.

The Agency shall replace, repair, or fully restore any private or public property that is damaged, destroyed, or removed to WSDOT's and/or the property owner's sole satisfaction.

The Agency shall not disturb, remove, or destroy any existing Survey Monument before first obtaining a Washington State Department of Natural Resources (DNR) permit. The Agency agrees that resetting Survey Monuments shall 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

If any archaeological or historical resources are revealed in the work vicinity, the Agency shall immediately stop work, notify WSDOT's construction representative and retain a US Secretary of the Interior's qualified archaeologist. Said archaeologist shall evaluate the site and make recommendations to WSDOT regarding the continuance of the work.

3.11 Clean Up

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

3.12 Failure to Complete Project

Should for any reason, the Agency decide not to complete the Improvements in a timely manner after construction has begun, WSDOT shall determine what work must be completed to restore WSDOT facilities and right of way to a condition and configuration that is safe for public use. If the Agency or its contractor is not able to restore facilities and right of way, WSDOT may perform, or contract to perform, the restoration work at the Agency's sole expense. The Agency agrees that 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 Agency.

This section shall survive Agreement termination.

4.0 Acceptance of Improvements

4.1 Final Inspection

The Agency shall notify WSDOT, in writing, of its completion of the Improvements within five (5) working days of such completion. The Agency shall include in the written notice a proposed date on which to meet with WSDOT for the purpose of conducting a final inspection of the Improvements.

WSDOT will not make its final inspection of the Improvements until all Agency construction work required under this Agreement has been completed.

4.2 WSDOT's Acceptance

4.2.1 WSDOT will provide the Agency with a Letter of Acceptance for the Improvements after the following items have been completed:

- (a) Satisfactory completion of the Improvements and all Agency obligations hereunder;
- (b) Final inspection of the Improvements;
- (c) Submittal by the Agency to WSDOT of a complete set of as-built plans for the Improvements;
- (d) Receipt of material acceptance documentation by WSDOT (if required under the Special Provisions hereto); and
- (e) Final payment pursuant to Section 7.

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

- 4.2.2 WSDOT may withhold acceptance of the Improvements by submitting written notification, including the reason(s) for withholding acceptance, to the Agency, 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 notification, the Parties mutually agree to seek resolution of the issues through the process described in Section 8.7.
- 4.2.3 Upon resolution of the outstanding issues, WSDOT will deliver the Letter of Acceptance to the Agency.
- 4.2.4 The Agency 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.

5.0 Insurance and Indemnification

5.1 Insurance

In addition to any required workers compensation insurance, the Agency and its contractors must provide proof of the following insurance coverage prior to performing any work within state highway right of way:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability; this coverage may be any combination of primary, umbrella and/or excess coverage affording total liability limits of not less than \$3 million per occurrence/\$3 million general aggregate;
- b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability; this coverage may be any combination of primary, umbrella and/or excess coverage affording total liability limits of not less than \$1 million per accident;
- c) Employers Liability (Stop Gap) insurance covering the risks of Agency's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
- d) Such insurance policies or related certificates of insurance shall name the Washington State Department of Transportation (WSDOT) as an additional insured on all general liability, automobile liability, employers' liability, and excess policies, and shall only be provided pursuant to form CG-20-10 (1985 edition) or a combination of the following: CG 2010 entitled "Additional Insured - Owners, Lessees or Contractors - Scheduled Person or Organization" and CG 2037 entitled "Additional Insured - Owners, Lessees or Contractors - Completed Operations"; or CG 2033 entitled "Additional Insured - Owners, Lessees or Contractors - Automatic Status When Required in Construction Agreement With You" and CG 2037 entitled "Additional Insured - Owners, Lessees or Contractors - Completed Operations". No form shall contain limitations or exclusions with respect to "products/completed operations" or ongoing operations coverage. No additional insured endorsement shall seek to limit coverage for the additional insureds for their own negligence with respect to liability arising out of Project operations and/or solely to vicarious liability arising out of the ongoing or completed operations of the named insured, its contractors, subcontractors of any tier, consultants, agents or employees. The additional insured coverage afforded shall be "primary and non-contributory" with respect to any other coverage which may be available to WSDOT. All coverages afforded to WSDOT as an additional insured shall also contain a waiver of subrogation endorsement made in favor of WSDOT.
- e) In lieu of satisfying the insurance requirements of a. - d. above, the Agency may comply with these insurance requirements through a program of self-insurance that meets or exceeds these minimum limits. The Agency must provide WSDOT with adequate documentation of self-insurance prior to performing any work within state highway right of way. Should the Agency no longer benefit from a program of self-insurance, the Agency agrees to promptly obtain insurance as provided above.
- f) A forty-five (45) Calendar Day written notice shall be given to prior to termination of or any material change to the policy(ies) as it relates to this Agreement.

g) 5.2 Indemnification

To the extent permissible under law, the Agency, 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 Agency, 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 Agency, its contractors, agents, and/or employees. The Agency, its successors and 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 Agency, 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 Agency, its agents, contractors, and/or employees.

The Agency 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 Improvements under this Agreement. For this purpose, the Agency, 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 chapter 51.12 RCW.

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

6.0 Maintenance

6.1 General Maintenance Responsibilities

Unless otherwise agreed to pursuant to a separate written agreement between WSDOT and Agency, upon completion of the Improvements authorized herein, all future operation and maintenance of the Improvements shall be in accordance with each Party's ownership and/or jurisdictional responsibilities as follows:

- a) For Improvements on state-owned highway right of way located within unincorporated county limits and/or within any limited access highway rights of way:
WSDOT has sole ownership, operation and maintenance responsibilities for the Improvements.
- b) For Improvements located inside city limits within managed access highway rights of way:
Ownership, operation and maintenance responsibilities shall be apportioned between the city and WSDOT pursuant to chapter 47.24 RCW and the City Streets as Part of State Highways Guidelines developed between the Association of Washington Cities and WSDOT, as may be revised from time to time.

6.2 Emergency Work by WSDOT

If WSDOT determines in good faith that emergency work to any Improvements is immediately needed to protect (a) any aspect of the state highway, or (b) to secure the safety of the traveling public, as a result of a failure of the Agency's Improvements, such work may be performed by WSDOT without prior approval of the Agency, and the Agency agrees to pay all of WSDOT's direct and related indirect costs for performing the work. The Agency will be notified of the emergency work and the necessity for it at WSDOT's earliest opportunity. WSDOT shall provide to the Agency a detailed invoice for such emergency work.

The terms of this section shall survive the termination of this Agreement.

7.0 Payment

7.1 Reimbursable Costs

The Agency shall reimburse WSDOT for all actual direct and related indirect costs incurred by WSDOT under this Agreement. Such costs include, but are not limited to, agreement preparation, plan review, including review of proposed revisions to plans and specifications contained in the Exhibits, construction inspection, and administrative overhead.

Costs incurred under this Agreement may be billed under the following account: WSDOT to provide a specific account

7.2 Invoices

The Agency agrees to reimburse WSDOT for the actual direct and related indirect costs, within thirty (30) calendar days from receipt of an invoice (the "Due Date"). In the event the Agency fails to make payment by the Due Date, the Agency will pay WSDOT 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. Interest shall be calculated from the Due Date to the date of payment.

8.0 Miscellaneous Terms

8.1 Failure to Comply with Terms and Conditions

Any breach of the terms and conditions of this Agreement, or failure on the part of the Agency to proceed with due diligence

and in good faith in the construction and maintenance of the Improvements provided for herein, shall subject this Agreement to be terminated. In case of termination WSDOT, in its sole discretion, may require the Agency to remove all or part of the Improvements constructed hereunder at the Agency's sole expense. If the Agency fails to remove its Improvements, removal may be performed by WSDOT without prior approval of the Agency. The Agency agrees to pay WSDOT's direct and related indirect costs for performing the work. WSDOT shall provide to the Agency a detailed invoice for such removal work.

8.2 Term of Agreement

Should the Agency not begin construction within eighteen (18) months after the date of execution, the Agreement shall automatically terminate, unless WSDOT, in its sole discretion, grants a prior, written time extension. As part of any time extension granted by WSDOT, the Plans and Specifications attached hereto must be revised to meet WSDOT's most current design and construction standards. If this Agreement is terminated, the Agency may be required to repeat the entire application, review, and approval process in WSDOT's sole discretion.

Unless otherwise provided herein, the term of this Agreement shall commence as of the date this Agreement is fully executed by the Parties and shall continue until the Improvements are accepted by WSDOT pursuant to Section 4 or as otherwise provided herein.

8.3 Assignment of Agreement

No assignment or transfer of this Agreement in any manner whatsoever shall be valid, nor vest any rights hereby granted, until WSDOT consents thereto in advance and in writing, and the assignee accepts all terms of this Agreement.

8.4 Non-Exclusivity

This Agreement shall not be deemed or held to be an exclusive one and shall not prohibit WSDOT from granting permits or franchise rights; or entering into other Agreements of like or other nature with other public or private companies or individuals, nor shall it prevent WSDOT from using any of its highways, streets, or public places, or affect its right to full supervision and control over all or any part of them, none of which is hereby surrendered.

8.5 Records Retention and Audit

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 the termination of this Agreement.

8.6 Modification

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 agreed to in advance and in writing and signed by persons authorized to bind each of the Parties.

8.7 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 in the cost of the third Dispute Board member; however, each Party shall be responsible for its own costs and fees.

8.8 Venue and Attorney's Fees

In the event that either Party to this Agreement deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement upon completion of the dispute resolution process set forth in Section 8.7 above, the Parties hereto agree that any such action or proceedings shall be brought in Thurston County, Washington Superior Court. Further, the Parties agree that each will be solely responsible for payment of its own attorney's fees, witness fees, and costs.

8.9 Independent Contractor

The Agency shall be deemed an independent contractor for all purposes under this Agreement, and the employees of the Agency or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees or agents of WSDOT.

8.10 Termination of Agreement

WSDOT may terminate this agreement in whole or in part, without penalty or further liability in the event of the following:

a) Termination for Default

Upon prior written notice, WSDOT may terminate this Agreement for failure to perform or abide by any provision of this Agreement.

b) Termination for Cause

If for any cause either Party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either Party violates any of these terms and conditions, the aggrieved Party will give the other Party written notice of such failure or violation. The responsible Party will be given the opportunity to correct the violation or failure within fifteen (15) working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved Party to the other.

c) Termination for Withdrawal of Authority

In the event that either Party's authority to perform any of its duties is withdrawn, reduced, or limited in any way, or if funding is withdrawn after the commencement of this Agreement, either Party may terminate this Agreement by seven (7) calendar days written notice. No penalty shall accrue to the terminating Party in the event this section shall be exercised.

If this Agreement is terminated prior to the fulfillment of the terms stated herein, the Agency shall reimburse WSDOT for its actual direct and related indirect expenses and costs incurred up to the date of termination. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

8.11 Counterpart and Electronic Signature

This Agreement may be signed in multiple counterparts, each of which constitutes an original and all of which taken together constitute one and same agreement. Electronic signatures or signatures transmitted via e-mail in a "PDF" may be used in place of original signatures on this Agreement. The Parties intend to be bound by its electronic or "PDF" signature on this Agreement, are aware that the other Parties are relying on its electronic or "PDF" signature and waives any defenses to the enforcement of this Agreement based upon the form of signature.

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

Public Agency	Washington State Department of Transportation
Signature: _____	Signature: _____
By: <u>Bill Lindauer</u> Print Name	By: _____ Print Name
Title: <u>Engineering Services Manager</u>	Title: _____
Date: _____	Date: _____



**Washington State
Department of Transportation**

Exhibit Instructions

The following three exhibits are being made available to be used as Exhibit A. It is up to the at the Agreement writer if they so choose to use one of these as an Exhibit A and to determine which version is appropriate for their situation.