

UT 01357
UTILITY CONSTRUCTION AGREEMENT
WORK BY UTILITY – ACTUAL COST

Agreement Number: UT 01357

Organization and Address:

Snohomish County PUD #1
P.O. Box 1107
Everett, WA 98206-1107

Project Title & Control Section Number:

SR 532, Corridor Improvements, C.S. 314100

Region: Northwest Region

This Agreement is made and entered into between the STATE OF WASHINGTON, Department of Transportation, hereinafter the "STATE," and the above named organization, hereinafter the "UTILITY."

WHEREAS, the STATE is planning the construction of a portion of State Route 532 between mileposts 3.07 and 3.72, specifically, the replacement of the Gen. Mark W. Clark Memorial Bridge (532/2), as a design-build project, using a design build contractor (Design-Builder), and in connection therewith, it is necessary for the UTILITY to relocate four (4) poles, and

WHEREAS, the UTILITY will relocate the UTILITY's four (4) poles (the Work), and

WHEREAS, the UTILITY will relocate one of the four (4) poles, which is currently located on an existing UTILITY-owned easement, and

WHEREAS, the UTILITY will relocate three of the four (4) poles, located presently on STATE-owned right of way pursuant to Franchise # 10439, and

WHEREAS, the UTILITY will install a temporary pole system necessary for the relocation of the (4) poles, and

WHEREAS, the UTILITY, for the relocation, will install four (4) new steel poles, and

WHEREAS, the UTILITY will remove the temporary pole system necessary for the relocation, the existing four (4) poles and the existing associated poles to accommodate the power line transfer, and

WHEREAS, the STATE acknowledges that the UTILITY will be contracting the Work to a contractor, and

WHEREAS, the UTILITY is responsible for (1) the cost of the Work for UTILITY poles located without a documented ownership interest in real property, such as being located pursuant to a franchise, a permit, or undocumented permission, (2) all betterments, (3) new utility facilities, (4) power disruptions and any resulting damages to the UTILITY's customers, (5) repairs and provisions for highway elements in the STATE's interest, and (6) all utility removals, and

WHEREAS, the STATE is responsible for the cost of the Work affecting the UTILITY's pole located pursuant to a documented Utility-owned easement,

NOW, THEREFORE, pursuant to chapter 39.34 RCW and RCW 47.01.210 and in consideration of the terms, conditions, covenants, and performances contained herein, and Exhibits A, B and C, that are attached hereto and incorporated and made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. PLANS, CONSTRUCTION AND SCHEDULES

1.1 The STATE will review the UTILITY's final relocation plans, specifications, cost estimate and construction schedule in light of the STATE's project design and construction schedule. The UTILITY's relocation Work shall be complete and operational by July 15, 2009. The UTILITY acknowledges and agrees that should it not complete its relocation Work by July 15, 2009, it could be subject to financial liability for Design-Builder project delay claims or other claims that might arise from or may be related to project conflicts between the UTILITY's failure to complete its relocation Work by July 15, 2009 and the Design-Builder's project work. Baring any unforeseen conditions that would cause a delay beyond the UTILITY's control, the UTILITY shall remove temporary and abandoned existing facilities by July 15, 2009.

1.2 The UTILITY shall furnish, material, equipment and tools, including using a contractor and labor, required to relocate four (4) poles in accordance with the minimum Federal Safety Standards and adopted STATE and power industry design standards, unless otherwise noted, in accordance with and as described in the Scope of Work, marked Exhibit A and Plans marked Exhibit C.

1.3 The UTILITY agrees to and shall adhere to its construction schedule as provided to the STATE and work diligently with the STATE's Design-Builder to relocate the poles without causing delays to the STATE's project construction schedule.

1.4 The UTILITY and STATE shall respond in writing within five (5) working days to each other's written inquiries and requests.

2. FINANCIAL RESPONSIBILITY AND PAYMENT

2.1 The STATE shall be financially responsible only for the relocation of the one (1) pole currently located on a UTILITY-owned easement, pursuant to the Cost Estimate, Exhibit B.

2.2 The STATE, in consideration of the faithful performance of the Work to be done by the UTILITY, agrees to pay the UTILITY Three Hundred Eighty Thousand, One Hundred Fifty Seven and 14/100 Dollars, (\$380,157.14), which is twenty-five (25) percent of the actual direct and related indirect costs associated with the non-betterment Work, as described in Exhibit B, Cost Estimate, as accumulated in accordance with a work order accounting procedure developed by the UTILITY and used by it for all external billings. The system was developed in accordance with the Federal Energy Regulatory Commission uniform system of accounts

2.3 The UTILITY shall provide detailed invoices to the STATE for the Work performed for which the STATE is responsible, and the STATE agrees to make payment within thirty (30) days from receipt of an invoice. The UTILITY shall not invoice the STATE more than once per month. The Parties agree that a payment will not constitute agreement as to the appropriateness of any item and that at the time of a final invoice, the Parties will resolve any discrepancies. In the event that a review reveals an overpayment to the UTILITY, the UTILITY agrees to refund such overpayment to the STATE within thirty (30) days.

2.4 The UTILITY shall submit a final billing to the STATE within ninety (90) calendar days following completion of UTILITY's Work.

3. COST INCREASE

3.1 Reimbursement for costs in excess of the total amount shown on Exhibit B shall be limited to costs authorized by a written modification to this Agreement approved by the STATE.

4. COMPLIANCE

4.1 The UTILITY agrees to comply with all applicable requirements of the STATE's Utilities Accommodation Policy, Chapter 468-34 WAC, and amendments thereto, and said policy and any amendments are hereby incorporated in and made a part of the Agreement for all intents and purposes as if fully set forth herein.

5. FRANCHISE/EASEMENT

5.1 Upon completion of the Work covered under this Agreement, the UTILITY shall prepare, execute and deliver a quit claim deed for the existing easement currently located or to be located within STATE-owned right-of-way of SR 532 between milepost 3.07 and milepost 3.72.

5.2 The UTILITY shall apply for an amendment to Franchise #10439 for those UTILITY facilities which will be relocated outside of the STATE's right of way. The application shall be made within two months from the end date of the Work. After receiving the franchise amendment application, the STATE will issue the UTILITY an amended franchise, within 60 days, for those UTILITY poles which will be relocated outside of the STATE's right-of-way.

6. GENERAL PROVISIONS

6.1 Indemnification: To the extent authorized by law, the UTILITY and STATE shall indemnify and hold harmless one another and their, employees, and/or officers from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or costs, of whatsoever kind or nature, brought against the one Party arising out of, in connection with, or incident to the other Party's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the UTILITY and (b) the STATE, and their respective employees, and/or officers, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the UTILITY or STATE; and provided further, that nothing herein shall require the UTILITY or STATE to hold harmless or defend the other or its employees and/or officers from any claims arising from that Party's sole negligence or that of its employees and/or officers. The terms of this section shall survive the termination of this Agreement.

6.2 Disputes: If a dispute occurs between the UTILITY and the STATE at any time during the performance of the Work, the Parties agree to negotiate at the management level to resolve any issues. Should such negotiations fail to produce a satisfactory resolution, the Parties agree to enter into arbitration and/or mediation before proceeding to any other legal remedy. Each Party shall be responsible for its own fees and costs. The Parties agree to equally share in the cost of a mediator or arbiter.

6.3 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 hereto agree that any such action or proceedings shall be brought in a court with appropriate jurisdiction situated in Snohomish County, Washington, unless the filing in Snohomish County conflicts with the provisions of RCW 47.28.120.

6.4 Termination: Neither the STATE nor the UTILITY may terminate this Agreement without the concurrence of the other Party. Termination shall be in writing and signed by both Parties.

6.5 Amendments: This Agreement may be amended by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless put in writing and signed by persons authorized to bind each of the Parties.

6.6 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.

6.7 Audit and Records: During the progress of the Work and for a period of not less than three (3) years from the date of final payment, both Parties 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 the other Party, 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 three-year retention period.

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

6.9 Betterment: A portion of the work being performed as part of the relocation is considered by the Parties to be a betterment as defined in the Program Guide: *Utility Relocation and Accommodation on Federal Aid Highway Projects*, the UTILITY is solely responsible for the costs of such betterment.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year last signed below by the Parties.

**WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION**

By: William S. Vicek, P.E.

Print: WILLIAM S. VICEK

Title: DEPUTY REGION ADMIN.

Date: 12 Aug 2009

APPROVED AS TO FORM

Date: 7-7-09

By: Ann E. Salay
Assistant Attorney General

SNOHOMISH COUNTY PUD # 1

By: [Signature]

Print: Christopher Lee

Title: Transmission, Joint Use and Standards

Date: 7-27-09

APPROVED AS TO FORM

Date: 7-21-09

By: [Signature]
UTILITY Attorney

**UT 01357 EXHIBIT A
UTILITY CONSTRUCTION AGREEMENT
SCOPE OF WORK**

SCOPE OF WORK

1. The UTILITY will relocate the UTILITY's four (4) poles located north of SR532 between MP 3.00 and MP 3.50 in Snohomish County.
2. The UTILITY shall submit a Work start notification to the STATE fourteen (14) working days prior to the start of Work. The UTILITY shall submit a Work completion notification to the STATE three (3) working days following the completion of Work.
3. The UTILITY shall install a temporary pole system.
4. The UTILITY shall transfer the existing power lines from the existing poles to the temporary pole system.
5. The UTILITY shall install new steel poles and new power lines. The UTILITY will activate the power to the new pole and line facility upon completion of the UTILITY relocation.
6. The UTILITY shall remove the existing four (4) power poles, the existing associated poles to accommodate the power line transfer, the temporary pole system and other Work items including non-permanent environmental protection systems.
7. The UTILITY will coordinate with and provide advance notification to all power service customers, regarding the Work and potential power disruptions.
8. The UTILITY shall photo document, in coordination with the STATE, the highway and right-of-way area condition seven (7) working days prior to the start of the Work. The UTILITY and STATE shall review the highway and right-of-way area condition seven (7) working days after the completion of the Work and make a joint written determination as to the repairs, if any, needed to restore the highway and right-of-way to its condition prior to the UTILITY Work. The UTILITY shall make highway repairs within fourteen (14) working days of the joint determination according to STATE standards. Potential damage to highway and right-of-way elements include but are not limited to: guardrail, pavement, soil slopes, vegetation, marking, and striping. The STATE will provide written notification to the UTILITY as to the acceptance or rejection of the completed repairs. If the repairs are not accepted, the UTILITY shall make corrections within seven (7) working days of the STATE's notice.
9. The Utility shall submit a Traffic Control Plan to the STATE for approval thirty (30) calendar days prior to the start of Utility work. The UTILITY may not begin Work until the UTILITY has received an approved Traffic Control Plan from STATE.
10. The UTILITY shall comply with all Environmental regulations in the performance of the Work. The STATE reserves the right to inspect any and enforce all environmental compliance issues including but not limited to erosion control needed for Work that is within the STATE right-of-way.
11. The STATE will provide inspection of UTILITY facilities within STATE right-of-way to ensure that the Work is in accordance with STATE Utility Accommodation Policy pursuant to Section 4 of the Agreement, as well as to ensure that the Work does not adversely affect the construction, operation, maintenance of the highway or endangers the safety of the traveling public. The STATE's inspections are solely for STATE purposes and do not relieve the UTILITY's responsibilities under this Agreement.

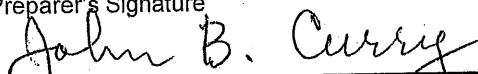
AGREEMENT UT 1357
MATERIAL PROCUREMENT AND CONSTRUCTION AGREEMENT
WORK BY UTILITY
EXHIBIT "B" - COST ESTIMATE

RELOCATION MATERIAL PROCUREMENT AND CONSTRUCTION

Unit	Description	Non-Betterment			With Betterment		
		Quantity	Rate*	Total	Quantity	Rate*	Total
	Construction Engineering	240	\$75.00	\$18,000.00	240	\$75.00	\$18,000.00
HRS	Professional Engineer	80	\$90.00	\$7,200.00	80	\$90.00	\$7,200.00
HRS	Engineering Manager	320	\$65.00	\$20,800.00	320	\$65.00	\$20,800.00
HRS	Line Inspector	80	\$65.00	\$5,200.00	80	\$65.00	\$5,200.00
	Surveying						
EA	Construction Engineering Consultant (bidding process involvement, construction meetings, as-built const drawings)		\$30,000.00	\$30,000.00		\$30,000.00	\$30,000.00
			Subtotal	\$81,200.00		Subtotal	\$81,200.00
HRS	District Transportation Line Inspector Vehicle	320	\$6.00	\$1,920.00	320	\$6.00	\$1,920.00
Various	Material Stock Coded Material		Lump Sum	\$50,000.00		Lump Sum	\$65,400.00
	(4) Direct Charged Steel Poles/Caissons (incl tax)		Lump Sum	\$226,169.00		Lump Sum	\$262,356.00
			Subtotal	\$276,169.00		Subtotal	\$327,756.00
EA	Line Construction Line Contractor PWC (incl tax)		Lump Sum	\$986,400.00		Lump Sum	\$986,400.00
				\$1,345,689.00			\$1,397,276.00
	Material and Construction Subtotal			\$174,939.57			\$181,645.88
	100% Capital A&G (13%)						
	Subtotal			\$1,520,628.57			\$1,578,921.88
	Total Estimated UTILITY Responsibility @ 75% (Non-betterment)			\$1,140,471.43			
	Total Estimated STATE Responsibility @25% (Non-betterment)			\$380,157.14			
	Total Estimated UTILITY Responsibility @ 75.92% (With betterment)						\$1,198,764.74
	Total Estimated STATE Responsibility @ 24.08% (With Betterment)				25% of cost w/ betterment	\$394,730.47	\$380,157.14
	TOTAL ESTIMATED AGREEMENT AMOUNT						\$380,157.14



Return this form and original executed agreement to HQ Accounting Services

Agreement Review <input checked="" type="radio"/> Region Approved and Executed <input type="radio"/> HQ Agreement Review Transmittal Required		Agreement Number UT 01357		Supplement Number 	
Agreement Retention <input type="radio"/> Retain Agreement for six (6) years after closure <input type="radio"/> Retain Agreement for Twenty-Fve (25) years after closure <input checked="" type="radio"/> Agreement requires permanent retention (75 years)		Agreement Manager Robyn Boyd, PE		Region Northwest	
Payor/Payee Name and Address Mark Simpson Snohomish County PUD No. 1 P. O. Box 1107 Everett, WA 98206		Org. Code 410011		All Reports will be sent to this Organization Number	
		Start Date 6/3/2009		Vouchers will not be paid for work performed before this date	
		End Date 8/13/2009		Vouchers will not be paid for work performed after this date	
Federal Employer ID Number OR Social Security Number 916001509					
Project Title SR 532 Corridor Improvements - Design-Build XL2770					
Project Description The WSDOT agrees to pay the UTILITY for relocation of poles. The relocation construction work was pre-authorized by the project engineer and commenced June 3rd, 2009 and was completed by July 15, 2009.					
Payable Agreement Work by Others to be PAID by WSDOT			Reimbursable Agreement Work by WSDOT to be REIMBURSED by OTHERS		
Maximum Amount Payable \$380,157.14			Amount Reimbursable to WSDOT		
Management Reserve Fund (Funds setup when requested)			Reciprocal Overhead Agreement Number (If applicable)		
Allowed Overrun Percent 0%			Allowed Overrun Percent		
Preparer's Signature 		Date 8/17/2009		Phone 206-440-4136	



Washington State
Department of Transportation
Paula J. Hammond, P.E.
Secretary of Transportation

Northwest Region
15700 Dayton Avenue North
P.O. Box 330310
Seattle, WA 98133-9710

206-440-4000 / Fax 206-409-7250
TTY: 1-800-833-6388
www.wsdot.wa.gov

July 13, 2009

Betty Tobin
Snohomish County PUD
P.O. Box 1107
Everett, WA 98206-1107

Subject: SR 532
Corridor Improvements
Utility Construction Agreement UT 01357 with Snohomish County
PUD No. 1

Dear Ms. Tobin:

Attached are two originals of Utility Construction Agreement UT 01357 for the SR 532 Corridor Improvements highway construction project. This agreement will reimburse Snohomish County PUD No. 1 (SnCPUD#1) for the agreed to State's responsibility costs for relocating a series of utility poles and temporary poles due to the requirements of this project.

Please sign both originals where indicated and return them to me for our signature. Please, do not fill in the date in the blanks at the top of the first page, as we will fill them in when we sign the documents.

We will return an executed original to you for your records.

If you have any questions or require additional information contact John Curry at curryjo@wsdot.wa.gov or by phone at (206) 440-4136. An alternate contact person is Heba Awad, email: awadh@wsdot.wa.gov.

Sincerely,

Donald K. Wills II
Northwest Region Utilities/Railroad Engineer

DKW:jbc
Enclosure

cc: Program Management, MS 105
Electronic file



**Washington State
Department of Transportation**
Paula J. Hammond, P.E.
Secretary of Transportation

Northwest Region
15700 Dayton Avenue North
P.O. Box 330310
Seattle, WA 98133-9710

206-440-4000
TTY: 1-800-833-6388
www.wsdot.wa.gov

August 13, 2009

Mark Simpson
Snohomish County PUD No. 1
P. O. Box 1107
Everett, WA 98206-1107

Subject: SR 532
Corridor Improvements – Bridge Replacement, MP 3.07 to MP 3.72
Utility Design and Construction Agreement UT 01357

Dear Mr. Simpson:

Attached is a fully executed original of Utility Construction Agreement No. 01357 for the SR 532 Corridor Improvements project. This agreement will reimburse the UTILITY for the agreed to STATE's responsibility costs for relocation of the UTILITY's poles within the STATE project.

The Construction Engineering office for this project is:

Robyn Boyd, PE
WSDOT
9025 El Capitan Way
Everett, WA, 98208
Phone: (425) 225-8754

All billings for this agreement will be handled through the Construction Engineering office and any questions about billings or procedures should be directed to that office. If you have any questions or require additional information contact Heba Awad at awadh@wsdot.wa.gov or by phone at (206) 440-4131.

Sincerely,

Donald K. Wills II
Northwest Region Utilities/Railroad Engineer

DKW:jbc
Enclosures



August 13, 2009

TO: Bev Runion
MS 47420

FROM: H. Awad / J. Curry

PHONE: 206-440-4131

THRU: D. Holman

SUBJECT: SR 532 - Corridor Improvements Project Utility Construction Agreement
No. 01357 with Snohomish County PUD No. 1

Attached are the State Original and Agreement Edit Sheet for UT 01357 for processing and entry into accounting. The UT Agreement is for the purpose of relocating a series of utility poles and temporary utility poles. This is necessary due to construction of the State's project.

If you have any questions or require additional information you may contact Heba Awad at 4131 or by e-mail: awadh@wsdot.wa.gov

Thank you.

HA:ags

Attachment: enclosed