



Utility Construction Agreement Work by Utility – WSDOT Cost			Utility Name & Address
Agreement Number UTB	Region	Control Section	Project Title/Location
State Route Number SR	Mileposts From	to	
Estimated Agreement Amount \$ _____			

This Utility Construction Agreement is between the Washington State Department of Transportation (WSDOT) and the above-named Utility; hereinafter individually the “Party” and collectively the “Parties.”

Recitals

1. WSDOT is planning the construction or improvement of the State Route as shown above for the identified WSDOT project, and in connection therewith, it is necessary to remove and/or relocate and/or construct certain Utility facilities (Work).
2. WSDOT is responsible for the cost of the Work affecting the Utility’s facilities located pursuant to a documented ownership of and/or interest in real property, such as an easement, fee title, or court finding of prescriptive right, which is impacted by WSDOT project.
3. The Work shall be defined as all materials, equipment, labor, contract administration and any other effort required to perform the relocation, construction, and/or removal of the Utility’s facilities.
4. It is deemed to be in the best public interest for the Utility to perform the relocation, removal, or construction of its facilities.

Now therefore, pursuant to RCW 47.01.210 and chapter RCW 47.44, 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, as well as the attached Exhibits which are incorporated and made a part hereof,

It Is Mutually Agreed As Follows:

1. Construction, Inspection, and Acceptance

- 1.1 Program Guide: *Utility Relocation and Accommodation on Federal Aid Highway Projects* shall determine and establish the definitions and applicable standards and payments under this Agreement. By this reference this document is adopted and made a part of this Agreement as if fully contained herein.
- 1.2 Betterment: A betterment is any improvement to the Utility’s facilities not required by code, regulation, standard industry practice, or any other applicable regulation. If any of the Work constitutes 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 improvement.
- 1.3 Accrued Depreciation: Accrued depreciation may be applied to any of the Utility’s major facilities, such as a building, pump station, power plant, etc. Accrued depreciation shall not apply to the Utility’s primary facilities, such as pipelines, conductors, poles, cable, conduit, etc. If any Utility facility does qualify for an adjustment due to accrued depreciation as defined in Program Guide: *Utility Relocation and Accommodation on Federal Aid Highway Projects*, the costs are calculated according to the formula in the Program Guide and the result is shown as a Utility cost in Exhibit B Cost Estimate.

- 1.4 The Utility shall furnish the labor, materials, equipment, and tools required for and perform the Work in constructing, removing and/or relocating the Utility facilities, in accordance with Exhibit A, Special Provisions, and Exhibit C, Plans.
- 1.5 If the Utility is not adequately staffed or equipped to perform all the Work required herein, the Utility may have all or part of this Work done by a contract let by the Utility, as follows:
 - 1.5.1 Before contracting out any Work, the Utility shall obtain written authorization from WSDOT, and WSDOT may require the Utility to advertise and solicit bids for the contract Work.
 - 1.5.2 If WSDOT requires the Work to be advertised and bid, the Utility shall provide a copy of all bid documents to WSDOT seven (7) calendar days prior to the advertisement date, or as specified in Exhibit A, for WSDOT comment.
 - 1.5.3 The Utility shall notify WSDOT at least three (3) working days in advance of the location and time of the bid opening so that a WSDOT representative may attend the bid opening.
 - 1.5.4 The Utility shall supply a copy of the three lowest bids with itemized bid amounts to WSDOT within seven (7) calendar days of bid opening.
 - 1.5.5 If the Utility elects to use other than the lowest bid contractor, the Utility shall provide written justification to WSDOT for the use of that contractor and bid price. WSDOT shall review the Utility's written justification, and if WSDOT does not agree therewith and the Utility awards the bid to other than the lowest bid contractor, the Utility shall be responsible for the cost difference between the amount of the lowest bid and the amount of the awarded contract.
- 1.6 If the Utility desires to have the Work performed under an existing contract, WSDOT may require the Utility to provide WSDOT with a copy of the contract for WSDOT's written approval of the contractor and contract charges.
- 1.7 The Parties agree that nothing in WSDOT's approval of a Utility contractor or bid shall be for the benefit of the Utility; all such approvals, whether written or verbal, shall be solely for the benefit of WSDOT and shall not establish a contractual relationship among WSDOT, the Utility, and the Utility's contractor.
- 1.8 All of the Utility's Work, construction procedures, materials, and/or utility installation, as provided under this Agreement, shall be subject to WSDOT inspection for solely the benefit of WSDOT's payment, state highway and/or WSDOT project. The Utility shall promptly notify WSDOT in writing when the Work is completed. WSDOT shall inspect the Work for compliance with the Exhibits attached to this Agreement. WSDOT will notify the Utility in writing of any non-compliance that would impact WSDOT's payment, state highway and/or WSDOT project. The Utility agrees to make the necessary changes to satisfy WSDOT requirements or adjust the invoice. WSDOT's inspection shall not reduce or modify the Utility's responsibility for the Work.
- 1.9 Upon completion of the Work, the Utility agrees that it shall be solely responsible for all future ownership, operation and maintenance costs of its facilities, without WSDOT liability or expense.

2. Authority to Begin Work and Work Schedule

- 2.1 After execution of this agreement, WSDOT will notify the Utility to apply for a permit, franchise or an amendment to its current franchise, upon which the Utility agrees not to begin Work until WSDOT has provided written notice, authorizing the Utility to begin Work. WSDOT shall not be obligated to reimburse the Utility for any Work performed before the date of notification.
- 2.2 The Utility agrees to schedule and perform the Work in such manner as not to delay or interfere with WSDOT's contractor in the performance of WSDOT's project. The Utility shall be responsible for any costs resulting from delay of, or interference with, WSDOT's project contractor, to the extent the delay or interference is attributable to the Utility or the Utility's contractor. Any mutually agreed conditions or requirements for avoidance of delay of, or interference with, WSDOT's project contractor shall be included in Exhibit A.

3. Compliance

- 3.1 The Utility agrees to comply with all applicable requirements of WSDOT in accordance with the Utilities Accommodation Policy, Chapter 468-34 WAC, and amendments thereto, and said policy and amendments are hereby incorporated in and made a part of this Agreement for all intents and purposes as if fully set forth herein.
- 3.2 The Utility agrees to comply with all applicable laws and environmental requirements of any jurisdictional agency and is responsible for obtaining any necessary environmental permits required in order to perform the Work.
- 3.3 The Utility agrees to obtain and comply with any other permits from any jurisdictional agency that are required in order for the Utility to perform the Work.

4. Payment

- 4.1 WSDOT is responsible for the cost of the Work, excluding all betterment work, for the Utility's facilities that are located pursuant to a documented ownership interest in real property, such as an easement, fee title, or court finding of prescriptive right, which are impacted by WSDOT project, as shown in Exhibits A and B. Exhibit B, Cost Estimate, contains an itemized cost estimate of WSDOT-responsible costs for the Work to be performed by the Utility.
- 4.2 WSDOT, in consideration of the faithful performance of the Work to be done by the Utility, agrees to reimburse the Utility for the actual direct and related indirect cost of the Work, excluding all betterment work, for which WSDOT is responsible as defined in Exhibits A and B. The Utility agrees to invoice WSDOT and provide supporting documentation for all charges, and WSDOT agrees to pay the Utility within thirty (30) days of receipt of an invoice. Payments shall not be more frequent than one per month. A partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of final invoice, the Parties will resolve any discrepancies.
- 4.3 The Utility shall submit a final invoice to WSDOT within ninety (90) calendar days following completion of the Work. In the event that the final invoice reveals an overpayment to the Utility, the Utility agrees to refund such overpayment to WSDOT within thirty (30) days.

5. Change in Work or Cost Increase

- 5.1 WSDOT agrees that the amount shown in Exhibit B may not reflect the actual costs of the Work. Should the Utility determine that the Work costs for which WSDOT is responsible might exceed the cost estimate by more than _____(_____) percent, the Utility shall immediately notify WSDOT before performing any Work in excess of the Exhibit B estimate plus the additional percentage. WSDOT and the Utility will, if necessary, amend Exhibit B to revise the cost estimate before the Utility incurs costs above the amount shown in Exhibit B plus the additional percentage.
- 5.2 Should it be necessary to modify Exhibit A, Special Provisions, the Utility agrees to immediately notify WSDOT of all proposed changes, and WSDOT agrees to provide written notice of its acceptance or rejection of the change(s), in writing, within _____(_____) working days.

6. Franchise, Permit or Easement

- 6.1 After execution of this agreement, WSDOT will notify the Utility to apply for a permit, franchise or an amendment to its current franchise, upon which the Utility shall apply for a permit, franchise or an amendment to its current franchise for those new or modified Utility facilities that will be located within WSDOT's right of way. After receiving the application, WSDOT will issue the Utility a permit or a new or amended franchise.
- 6.2 Upon completion of the Work covered under this Agreement, the Utility agrees to prepare, execute and deliver to WSDOT a quit claim deed for all existing easements, fee title, or court finding of prescriptive right, which will be vacated as a result of the relocation of Utility facilities and as identified in Exhibit A.

6.3 In exchange for the quit claim deed, WSDOT agrees to grant or issue the Utility an easement, permit, or franchise, as defined in Exhibit A, for those Utility facilities which will remain on or which cross WSDOT's right-of-way and for which the Utility had an easement, fee title or court finding of prescriptive right. A legal description of and use conditions for an easement to be granted encumbering WSDOT right of way shall be included in Exhibit A.

7. Right of Entry

- 7.1 Subject to the Utility obtaining all required permits and meeting any other requirements for Work conducted within state-owned right of way, WSDOT hereby grants the Utility a right of entry upon all land in which WSDOT has interest for the purpose of performing the Work. Upon completion of the Work, this right of entry shall terminate except as otherwise provided in Section 6.
- 7.2 A WSDOT grant of access and right of entry onto an interstate limited access right of way may require additional conditions, for example, a traffic control plan will be required if the Utility's Work will impact highway traffic. The Parties agree that all Utility access and right of entry provisions affecting an interstate limited access right of way will be identified in Exhibit A, Special Provisions. Upon completion of the Work, this right of entry shall terminate except as otherwise provided in Section 6.
- 7.3 The Utility shall not enter state-owned right of way without first having a WSDOT-issued written right of entry.

8. General Provisions

8.1 Indemnification: To the extent permissible under law, the Utility, 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 Utility, 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 Utility, its contractors, agents, and/or employees. The Utility, 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 Utility, 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 Utility, its agents, contractors, and/or employees.

The Utility 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 Utility, 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.

- 8.2 Disputes: If a dispute occurs between the Utility and WSDOT 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 the cost of a mediator or arbiter.
- 8.3 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 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.

8.4 Termination:

- 8.4.1 The UTILITY understands that WSDOT retains the right to terminate this Agreement for convenience upon thirty (30) calendar days written notice to the Utility. In the event that WSDOT exercises this termination right, WSDOT will reimburse the Utility for all allowable costs under this Agreement incurred prior to the date of termination.
- 8.4.2 In the event funding for the Work is withdrawn, reduced, or limited in any way after the execution date of this Agreement and prior to normal completion, WSDOT may terminate the Agreement upon less than the thirty (30) calendar day notice requirement in section 8.4.1, subject to renegotiation at WSDOT's sole option pursuant to the revised funding limitations and conditions.
- 8.5 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.
- 8.6 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.
- 8.7 Audit and Records: During the progress of the Work and for a period of not less than six (6) years from the date of final payment. The Utility shall maintain the records and accounts pertaining to the Work and shall make them available during normal business hours and as often as necessary, for inspection and audit by WSDOT, State of Washington, and/or Federal Government and copies of all records, accounts, documents or other data pertaining to the Work will be furnished upon request. The requesting Party shall pay the cost of copies produced. If any litigation, claim or audit is commenced, the records and accounts along with supporting documentation shall be retained until any litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past the six-year retention period.
- 8.9 Working Days: Working days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050.
- 9.0 Counterparts: This Agreement may be executed in multiple counterparts or in duplicate originals. Each counterpart or each duplicate original shall be deemed an original copy of this Agreement signed by each Party, for all purposes. Electronic signatures or signatures transmitted by 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 Party is relying on its electronic or "pdf" signature.

In Witness Whereof, the Parties hereto have executed this Agreement as of the day and year last written below.

Utility	Washington State Department of Transportation
By: _____	By: _____
Printed: _____	Printed: _____
Title: _____	Title: _____
Date: _____	Date: _____