

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

This Utility Preliminary Engineering Agreement “Agreement” is entered into between the Washington State Department of Transportation “WSDOT” and the above-named Utility, hereinafter the “Utility”; collectively the “Parties” and individually the “Party”.

Recitals

1. WSDOT is planning the construction or improvement of WSDOT Route as shown above for the listed WSDOT project, and in connection therewith, it is necessary to remove, relocate or construct certain Utility facilities.
2. WSDOT is responsible for the cost of the preliminary engineering 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 is impacted by WSDOT project, but WSDOT is not responsible for preliminary engineering costs associated with facility betterments.
3. It is deemed to be in the best public interest for the Utility to develop the preliminary engineering, including the preparation of plans, specifications and cost estimate “PS&E”, herein the “Work,” for the removal, relocation or construction of the Utility’s facilities as part of WSDOT’s project.
4. WSDOT and the Utility intend to enter into a Utility Construction Agreement to cover the actual construction, relocation, and/or removal of the Utility’s facilities.

Now, Therefore, pursuant to RCW 47.01.210 and chapter 47.44 RCW, 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. Plans, Specifications, and Cost Estimates

- 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 preliminary engineering costs of such improvement.

- 1.3 The Utility agrees to perform the preliminary engineering, including the preparation of PS&E, herein the "Work", for the removal, relocation, and/or construction of the Utility's facilities impacted by WSDOT's project. Should the Work include betterments to the facilities, the Utility shall identify such betterments for WSDOT review.
- 1.4 The Utility agrees to provide WSDOT a copy of its PS&E, including the identification of betterments, if any. WSDOT will review for acceptance of the PS&E to ensure that it complies with WSDOT requirements and standards prior to incorporating it into WSDOT project plans. The Parties agree to comply with the document submission and review process as identified in Exhibit A, Special Provisions, including the Scope of Work.
- 1.5 If the Utility is not adequately staffed or equipped to perform all of the Work required herein, the Utility may have all or part of the Work performed by consultant(s) under a contract let by the Utility or have the Work performed under an ongoing contract with a Utility consultant. Utility consultant(s) shall be in good standing with WSDOT, and the Utility shall provide to WSDOT for WSDOT review a cost estimate for the Work to be performed by the Utility's consultant(s).

2. Payment

- 2.1 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.
- 2.2 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.
- 2.3 The Utility shall submit a final billing to WSDOT within 90 calendar days following completion of the Work.

3. Change in Work or Cost Increase

- 3.1 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, the Utility shall immediately notify WSDOT before performing any Work in excess of the Exhibit B estimate. 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.
- 3.2 Should it be necessary to modify the Scope of Work, 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.

4. Right of Entry

- 4.1 WSDOT hereby grants to the Utility a right of entry onto all lands in which it has an interest for the Work as defined in Exhibits A and C. Upon completion and acceptance of the Work, this right of entry shall terminate except as otherwise provided in Section 5.4.
- 4.2 The Utility agrees to obtain rights of entry, if needed, upon all privately owned lands necessary to perform the Work. The Utility also agrees to obtain all necessary permissions for WSDOT to enter upon such lands, if required, for the duration of this Agreement. The Utility agrees to provide the rights of entry and applicable permissions to WSDOT within _____(_____) calendar days of entering into this Agreement. Upon completion of the Work on such lands, the rights of entry and permissions shall terminate, except as otherwise provided in Section 5.4.

5. General Provisions

- 5.1 **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

- 5.2 **Disputes:** If a dispute occurs between the Utility and WSDOT at any time during the performance of the Work pursuant to this Agreement, 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.
- 5.3 **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.
- 5.4 **Termination:** Neither WSDOT nor the Utility may terminate this Agreement without the concurrence of the other Party. Termination shall be in writing and signed by both Parties
- 5.5 **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.
- 5.6 **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.
- 5.7 **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 the 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.
- 5.8 **Working Days:** Working days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050.

5.9 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 Party’s date last signed below.

Utility	Washington State Department of Transportation
Signature: _____	Signature: _____
By: _____ Print Name	By: _____ Print Name
Title: _____	Title: _____
Date: _____	Date: _____