



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

This Utility Preliminary Engineering Agreement (Agreement) is entered into between the Washington State Department of Transportation (WSDOT) and the above named Utility (Utility) hereinafter referred to individually as the ‘Party’ and collectively as 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 or construct certain Utility facilities.
2. It is deemed to be in the best public interest for WSDOT to develop the preliminary engineering, including the preparation of plans, specifications and cost estimate, herein the “Work,” for the removal, relocation and/or construction of the Utility’s facilities as part of WSDOT’s Project.
3. 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.
4. The Utility is responsible for (1) the cost of the Work associated with Utility facilities located without a documented ownership of and/or interest in real property, such as being located pursuant to a franchise, a permit, or undocumented permission, (2) all betterments, and (3) new facilities.

Now, Therefore, pursuant to RCW 47.01.210 and chapter 47.44 RCW 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 for this Agreement. By this reference said 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 WSDOT agrees to perform, at the Utility’s sole cost and expense, the preliminary engineering, including the preparation of plans, specifications and cost estimate, herein the “Work,” for the removal, relocation and/or construction of the Utility’s facilities as part of WSDOT’s Project to the Utility’s specifications and/or requirements. The Utility agrees to provide WSDOT all applicable standards, industry requirements, regulations, codes, or other pertinent information prior to performing the Work. Exhibit A, Special Provisions, including a Scope of Work, and Exhibit C, Plans, are attached.

- 1.4 The Utility agrees that when WSDOT performs the Work and a consultant is designing WSDOT Project, WSDOT consultant may also be utilized for the purposes of performing the Work, including incorporating the Work into WSDOT construction contract.
- 1.5 WSDOT shall provide the Work to the Utility for review and approval. The Utility agrees to review the Work within _____(_____) working days and shall: (a) 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, or (b) deliver to WSDOT written reasons why the Work does not comply with the applicable standards, industry requirements, regulations, codes or other pertinent information supplied by the Utility. The Utility agrees to work diligently and in good faith with WSDOT to resolve any issues so as not to delay advertisement of WSDOT Project. If all issues are resolved, the Utility agrees to deliver to WSDOT a letter of acceptance of the Work which includes a release and waiver of all future claims or demands of any nature resulting from the performance of the Work.
- 1.6 The Utility shall be responsible for all costs it incurs in reviewing the Work.
- 1.7 The Parties agree that WSDOT is under no obligation to the Utility to perform the Work, except as agreed to under this Agreement. Therefore, if the inclusion of the Utility Work threatens to delay WSDOT's Project, WSDOT shall have the unilateral authority to delete the Utility Work from WSDOT Project and terminate this Agreement. WSDOT shall immediately notify the Utility of such actions. The Utility agrees that it will be responsible for costs incurred by WSDOT up to the date of termination, and WSDOT agrees to provide to the Utility all Work-related documents upon final payment by the Utility.
- 1.8 The Utility agrees that should the Work be terminated, it shall continue to be obligated to timely design remove, relocate and/or construct its facilities as required by WSDOT Project. The Utility further agrees that should its actions delay or otherwise damage WSDOT Project, it shall be liable for such costs.

2. Payment

- 2.1 The Utility agrees that it shall be responsible for the actual direct and related indirect costs of the Work to be performed by WSDOT. An itemized estimate of Utility-responsible costs for Work to be performed by WSDOT on behalf of the Utility is included in Exhibit B, Cost Estimate, attached.
- 2.2 The Utility agrees to pay WSDOT the "Advance Payment Amount" stated above within twenty (20) calendar days after WSDOT submits its first partial payment request to the Utility. The advance payment represents fifteen (15) percent of the estimate of cost for which the Utility is responsible. The advance payment will be carried throughout the life of the Work with final adjustment made in the final invoice.
- 2.3 The Parties acknowledge and agree that WSDOT does not have the legal authority to advance state funds for the Utility's Work under this Agreement. Should the Utility fail to make payment according to the terms of this Agreement, WSDOT shall have the right to terminate this Agreement, charging the Utility for all costs up to the date of termination and all non-cancellable items. WSDOT agrees to provide to the Utility all Work-related documents upon final payment by the Utility.
- 2.4 The Utility, in consideration of the faithful performance of the Work to be performed by WSDOT, agrees to pay WSDOT for the actual direct and related indirect cost of all Work for which the Utility is responsible. WSDOT shall invoice the Utility and provide supporting documentation therefore, and the Utility agrees to pay WSDOT within thirty (30) calendar days of receipt of an invoice. A partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of final payment, the Parties will resolve any discrepancies.

3. Change in Work or Cost Increase

- 3.1 Increase in Cost: In the event unforeseen conditions require an increase in the cost of the Work for which the Utility is responsible, the Exhibit B, Cost Estimate (including sales tax, engineering, and contingencies) by more than _____ (_____) percent, the Parties agree to modify Exhibit B to include such cost increase.
- 3.2 If a change in Project design occurs that will affect the Work, WSDOT will inform the Utility, in writing, of such change and the Utility shall respond giving notice of its acceptance or rejection of the change, in writing within _____ (_____) working days of receiving the notice. If the Utility rejects the change, the Parties agree to diligently and in good faith work together to reach a mutual resolution. Otherwise, either Party may terminate this Agreement. If terminated, the Utility agrees to pay all costs incurred up to the date of termination, including non-cancellable items, and WSDOT agrees to provide to the Utility all Work-related documents upon final payment by the Utility. The Utility agrees that should the Work be terminated, it shall continue to be obligated to timely design, remove, relocate and/or construct its facilities as required by WSDOT Project. The Utility further agrees that should its actions delay or otherwise damage WSDOT Project, it shall be liable for such costs.

4. Right of Entry

- 4.1 The Utility agrees to arrange for rights of entry upon all privately owned lands upon which the Utility has an easement, documented property interest, or permit that are necessary to perform the Work. The Utility also agrees to obtain all necessary permissions for WSDOT to perform the Work on such lands, which may include reasonable use restrictions on those lands. 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.

5. General Provisions

- 5.1 Indemnity: To the extent authorized by law, the Utility and WSDOT 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) WSDOT, their 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 WSDOT, and provided further, that nothing herein shall require the Utility or WSDOT 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.
- 5.2 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 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:

5.4.1 Unless otherwise provided herein, the Utility may terminate this Agreement upon thirty (30) calendar days written notice to WSDOT. If this Agreement is terminated by the Utility prior to the fulfillment of the terms stated herein, WSDOT shall be reimbursed for all actual direct and related indirect expenses and costs incurred up to the date of termination associated with the Utility Work. Further, the Utility acknowledges and agrees that should it terminate this Agreement, such termination shall not relieve the Utility from its responsibility to design, remove, relocate and/or construct its facilities so as not to delay or conflict with WSDOT's project. WSDOT agrees to provide to the Utility all Work-related documents upon final payment by the Utility.

5.4.2 Unless otherwise provided herein, WSDOT may terminate this Agreement, upon thirty (30) days written notice to the Utility. Should WSDOT terminate this Agreement, the Utility shall reimburse WSDOT for all actual direct and related indirect expenses and costs incurred by WSDOT up to the date of termination. The Utility acknowledges and agrees that should WSDOT terminate this Agreement, such termination shall not relieve the Utility from its responsibility to design, remove, relocate and/or construct its facilities so as not to delay or conflict with WSDOT's Project. WSDOT agrees to provide to the Utility all Work-related documents upon final payment by the Utility.

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, 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, Washington State, 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 are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050

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: _____