Washington State Department of Transportation

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

This Utility Construction Agreement (Agreement) is between the Washington State Department of Transportation (WSDOT) and the above-named Utility (Utility), also referenced as "Party" and 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, or a city or county-owned utility facility inside that jurisdiction's right-of-way, which is impacted by the WSDOT project. The utility has provided the documented ownership interest in real property to WSDOT, included as Exhibit D to this agreement. WSDOT is not responsible for costs associated with facility betterments.
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 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, 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, 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 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 C, and D. 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 current applicable 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 shall include proper documentation of 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 calendar (90) 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, and this Agreement will be modified by an amendment, as provided for in this Agreement.

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 For facilities located by a permit or franchise: 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 modified Utility facilities that will be located within WSDOT's right of way. After receiving the application, WSDOT will issue the Utility a permit, franchise, or amended franchise.

6.2 For facilities located by easements, fee title, or court finding of prescriptive right: 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. TERMINATION

8.1 This Agreement may be terminated for cause by either Party if the other Party does not fulfill in a timely and proper manner its obligations under this Agreement, or if the other Party violates any of the terms and conditions of this Agreement. The notice of intent to terminate for cause shall be issued by a Party in writing and the other Party shall have the opportunity to correct the violation or failure within fifteen (15) working days of the date of the notice. If the failure or violation is not corrected within the time allowed, this Agreement will automatically terminate.

8.2 This Agreement may be terminated by WSDOT if WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement. The notice of intent to terminate for withdrawal of authority shall be issued by WSDOT in writing no less than ten (10) working days in advance of termination. No penalty shall accrue to WSDOT in the event termination under this section is exercised.

8.3 If this Agreement is terminated prior to the fulfillment of the terms stated herein, WSDOT agrees to reimburse the Utility for the actual direct and related indirect expenses and costs it has incurred up to the date of termination, as well as the costs of non-cancelable obligations.

8.4 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

9. GENERAL PROVISIONS

9.1 Indemnification:

9.1.1 To the fullest extent permitted by law, the Utility, will protect, defend, indemnify, and save harmless WSDOT, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, the Utility's negligent acts or omissions with respect to the provisions of this Agreement. The Utility will be required to indemnify, defend, or save harmless WSDOT if the claim, suit, or action for injuries, death, or damages (both to persons and property) is caused by the sole negligence of the Utility. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their agents, officials, or employees, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein will be valid and enforceable only to the extent of the negligence of the indemnifying Party, its agents, officials, or employees.

9.1.2 The Utility agrees that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees, or agents. For this purpose only, the Utility, by mutual negotiation, hereby waives, with respect to WSDOT, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

9.1.3 This indemnification and waiver will survive the termination of this Agreement.

9.2 Disputes: The Parties shall work collaboratively to resolve disputes and issues arising out of, or related to, this Agreement. Disagreements shall be resolved promptly and at the lowest level of hierarchy. To this end, following the dispute resolution process shown below shall be a prerequisite to the filing of litigation concerning any dispute between the Parties:

9.2.1 The representative, as shown herein designated in this Agreement shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. The representatives shall communicate regularly to discuss the status of the tasks to be performed hereunder and to resolve any disputes or issues related to the successful performance of this Agreement. The representatives shall cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any disputes or issues arising during the term of this Agreement.

9.2.2 A Party's representative shall notify the other Party in writing of any dispute or issue that the representative believes may require formal resolution according to this Section. The representatives shall meet within five (5) working days of receiving the written notice and attempt to resolve the dispute.

9.2.3 In the event the representatives cannot resolve the dispute or issue, the entity, and WSDOT's Region Administrator, or their respective designees, shall meet and engage in good faith negotiations to resolve the dispute.

9.2.4 In the event the entity and WSDOT's Region Administrator, or their respective designees, cannot resolve the dispute or issue, the entity and WSDOT shall each appoint a member to a Dispute Board. These two members shall then select a third member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. All expenses for the third member of the Dispute Board shall be shared equally by both Parties; however, each Party shall be responsible for its own costs and fees.

9.3 Insurance:

9.3.1 The Utility warrants that it is self-insured pursuant to a self-insurance "risk pool" duly authorized by the State of Washington and agrees to provide acceptable evidence of its self-insured status to WSDOT. The Utility self-insurance risk pool insurance policy must provide liability coverage for its operations under this Agreement, including but not limited to all additional insured coverages for the benefit of WSDOT, as required under Section 1-07.18 of the Standard Specifications.

9.3.2 In the event the Utility is not a party to a state approved self-insurance "risk pool", it shall secure insurance coverage in conformance with the requirements of this section and promptly provide a certificate of insurance from an insurer licensed to conduct business in the State of Washington, evidencing the procurement of the required insurance coverages. WSDOT shall be named as an additional insured by endorsement of the liability policy required, utilizing ISO Form 2026 (Additional Insured – Designated Person or Organization) or its equivalent without modification on any such general liability policies.

9.4 Assurances: The Parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, state, and local laws, rules, and regulations as they currently exist or as amended.

9.5 Interpretation: This Agreement shall be interpreted in accordance with the laws of the state of Washington. The titles to paragraphs and sections of this Agreement are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

9.6 Amendments: This Agreement may be amended only by the mutual written agreement of the Parties executed by personnel authorized to bind each of the Parties.

9.7 Waiver: A failure by a Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this

Agreement unless stated to be such in writing signed by an authorized representative of the waiving Party and attached to the original Agreement.

9.8 All Writings Contained Herein: This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties.

9.9 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.

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

9.11 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.

9.12 Subcontracting: "Subcontractor" means one not in the employment of a Party to this Agreement, who is performing all or part of those services under this Agreement under a separate contract with a Party to this Agreement. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier. Except as otherwise provided in the Agreement, the Utility shall not subcontract any of the contracted services without the prior approval of the Agency. The Utility is responsible to ensure that all terms, conditions, assurances, and certifications set forth in this Agreement are included in any and all Subcontracts. Any failure of the Utility or its Subcontractors to perform the obligations of this Agreement shall not discharge the Utility from its obligations under this Agreement.

9.13 Site Security and Safety: While on WSDOT premises, the Utility, its agents, employees, or subcontractors shall comply with WSDOT safety and security policies and regulations. Including requirements for the prevention of transmission of communicable diseases such as Covid.

9.14 Audit and Records: During the progress of the Work and for a period of not less than six 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.

9.15 Severability: If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

9.16 Authority to Bind: The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

10. COUNTERPARTS AND ELECTRONIC SIGNATURE

10.1 This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each Party, for all purposes. Electronic signatures or signatures transmitted via e-mail 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 parties are relying on its electronic or "PDF" signature.

In witness whereof, the parties have executed this Agreement.

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