Washington State Department of Transportation

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

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 listed WSDOT Project, and in connection therewith, it is necessary to remove and/or relocate and/or construct certain Utility facilities, herein the (Work).

2. The Utility is responsible for (1) the cost of the Work for 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, and (2) all betterments.

3. The Work shall be defined as all materials, equipment, labor, contract administration and any other efforts required to perform the relocation, construction, and/or removal of the Utility's facilities.

4. The Work includes ☐ Betterments; ☐ Relocation of Facilities without Property Rights; ☐ Removal of Existing Facilities from WSDOT right of way; and/or ☐ Protect in Place.

5. It is deemed to be in the best public interest for WSDOT to include the Work in WSDOT's Project.

Now therefore, pursuant to 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 BIDS

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 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 WSDOT, acting on behalf of the Utility, agrees to perform the Utility facilities Work in accordance with Exhibit A, Special Provisions, and Exhibit C, Plans, where either: (1) Utility supplied the Work plans and special provisions to WSDOT, or (2) WSDOT developed the Work plans and special provisions from Utility-provided information. WSDOT will incorporate the Plans and Special Provisions into WSDOT Project in accordance with Utility requirements. The Utility agrees that it is solely responsible for ensuring that all Special Provisions, Plans and Utility standards are met and that it has supplied WSDOT with all applicable standards, codes, regulations, or any other requirements the Utility is obligated to meet, unless otherwise noted.

1.4 The Utility has reviewed and approved the Work Special Provisions and Plans that will be incorporated into WSDOT Project. WSDOT will advertise the Work and Project for bids. WSDOT will be the Utility's representative during the Ad and award period. When requested by WSDOT, the Utility shall timely assist WSDOT in answering bid questions and resolving any design issues that may arise associated with the Work. All comments and clarifications must go through WSDOT. If the Utility supplied the Work plans and special provisions, the Utility agrees to provide WSDOT with any addenda required for the Work during the Ad period, to the Parties' mutual satisfaction.

1.5 WSDOT will provide the Utility with written notification of the bid price no later than five (5) days after award for all Work items for which the Utility is responsible for the cost. The Utility shall respond in writing to WSDOT, stating its Acceptance or Rejection of the Work items, within two (2) working days.

1.6 Should the Utility reject the bid Work items for which it has cost responsibility:

1.6.1 WSDOT shall delete said items from the Project. The Utility agrees to reimburse WSDOT for engineering costs and direct and related indirect costs incurred by WSDOT associated with deleting the bid Work items from the Project, including any redesign, reengineering or re-estimating, if necessary, to delete the Work items, and the Utility agrees to pay such costs upon receipt of a WSDOT invoice.

1.6.2 The Utility agrees that should it reject the bid Work items for which it has cost responsibility, it shall continue to be obligated to timely relocate 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. CONSTRUCTION, INSPECTION, AND ACCEPTANCE

2.1 WSDOT agrees to administer the Work on behalf of the Utility in accordance with the terms and conditions of the design bid build contract executed with WSDOT's contractor.

2.2 The Utility agrees to disconnect and/or reconnect its facilities as required by WSDOT when such disconnection or reconnection is required to be performed by the Utility. The Parties agree to define disconnect and/or reconnection requirements, including notification and response in Exhibit A. WSDOT agrees, as part of the Work, to remove disconnected and/or abandoned facilities at the Utility's cost. Utilities abandoned, deactivated, or disconnected must be done in a manner in accordance with WSDOT's Utilities Manual.

2.3 The Utility may furnish an inspector for the Work. The Utility agrees that it is solely responsible for all such inspection costs. The Utility's inspector shall not directly contact WSDOT's contractor. All contact between the Utility's inspector and WSDOT's contractor shall be through WSDOT's representatives. WSDOT's Project Construction Engineer may require the removal and/or replacement of the Utility's inspector if the inspector interferes with WSDOT's Project, WSDOT's contractor and/or the Work.

2.4 The period of performance of this Agreement shall commence upon execution by all Parties, and continue until the end of construction, estimated to be completed on _____, 20____, unless terminated sooner as provided in this Agreement, or extended through an executed amendment or email confirmation.

2.5 WSDOT shall promptly notify the Utility in writing when the Work is completed.

2.6 The Utility shall, within _____( ) working days of being notified that the Work is completed: (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 and WSDOT's administration thereof, or (b) deliver to WSDOT written reasons why the Work does not comply with the previously approved Plans and Special Provisions. The Utility agrees to work diligently and in good faith with WSDOT to resolve any issues so as not to delay WSDOT's Project. If all issues are resolved, the Utility agrees to deliver to WSDOT a letter of acceptance as provided herein.

2.7 If the Utility does not respond within _____( ) working days as provided in section 2.6, the Work and the administration thereof will be deemed accepted by the Utility, and WSDOT shall be released from all future claims and demands.

2.8 Upon completion and acceptance of the Work pursuant to Sections 2.5 or 2.6, 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.

2.9 WSDOT will prepare the final construction documentation in general conformance with WSDOT's Construction Manual. WSDOT will maintain one set of plans as the official "as-built" set, then make notations in red of all plan revisions typically recorded per standard WSDOT practice, as directed by WSDOT's Construction Manual. Once the Utility has accepted the Work per Section 2.5 or 2.6, WSDOT upon request by the Utility will provide one reproducible set of contract as-builts to the Utility, and the Utility agrees to pay the cost of reproduction upon receipt of a WSDOT invoice.

3. PAYMENT

3.1 The Utility agrees that it shall be responsible for the actual direct and related indirect costs, including mobilization, construction engineering, contract administration and overhead costs, associated with the Work. The cost of this Work is estimated to be _____Dollars ($_____). 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.

3.2 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.

3.3 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 associated costs of termination, including non-cancellable items, as well as associated Project delay and contractor claims. Such termination shall not relieve the Utility's obligation to timely relocate its facilities as provided under section 1.6.2.

3.4 The Utility, in consideration of the faithful performance of the Work to be done by WSDOT, agrees to pay WSDOT for the actual direct and related indirect cost of all Work for which the Utility is responsible, including mobilization, construction engineering, administration and overhead costs. WSDOT shall invoice the Utility and provide supporting documentation, 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 invoice, the Parties will resolve any discrepancies.

4. CHANGE IN WORK OR COST INCREASE

4.1 In the event unforeseen conditions require an increase in the cost of the Work for which the Utility is responsible, above the Exhibit B, Cost Estimate, (including sales tax, engineering, and contingencies) by more than _____( ) percent, this Agreement will be modified by an amendment, as provided for in this Agreement.

4.2 If WSDOT determines that additional Work or a change in the Work is required, prior written approval must be secured from the Utility; however, where the change is required to mitigate a Project emergency or safety threat to the traveling public, WSDOT will direct the change without the Utility's prior approval. WSDOT will notify the Utility of such change as soon as possible thereafter. The Utility agrees to respond to all WSDOT change order requests in writing and within five (5) working days. WSDOT notification shall not be required for Utility-requested changes. The Utility agrees to pay all costs associated with the changed Work, as well as the costs of Project or Work delays and/or subsequent contractor claims associated with the Utility's failure to timely respond as required.

4.3 The Utility may request additions to the Work through WSDOT in writing. WSDOT will implement the requested changes as elective changes, provided that a change does not negatively impact WSDOT's transportation system and complies with the Standard Specifications, Project permits, state and/or federal law, applicable rules and/or regulations, and/or WSDOT design policies, and does not unreasonably delay critically scheduled Project contract activities.

4.4 All elective changes to the Work shall be approved in writing by the Utility before WSDOT directs the contractor to implement the changes, even if an executed change order is not required by the Project contract. The Utility agrees to pay for the increases in cost, if any, for such elective changes in accordance with Section 3.

4.5 WSDOT will make available to the Utility all change order documentation related to the Work.

5. FRANCHISE OR PERMIT

5.1 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 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 a new or amended franchise.

6. RIGHT OF ENTRY

6.1 The Utility agrees to arrange for rights of entry upon all privately owned lands upon which the Utility has a claimed property right and which 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 under this section 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.

7. TERMINATION

7.1 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 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.

7.2 This Agreement may be terminated by WSDOT in the event that 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 working days in advance of termination. No penalty shall accrue to WSDOT in the event termination under this section is exercised.

7.3 If this Agreement is terminated prior to the fulfillment of the terms stated herein, the Utility agrees to reimburse WSDOT 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.

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

7.5 The Utility acknowledges and agrees that any Agreement 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.

8. GENERAL PROVISIONS

8.1 Indemnification:

8.1.1 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 Agency, its agents, contractors, and/or employees.

8.1.2 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.

8.1.3 This indemnification and waiver shall survive the termination of this Agreement.

8.2 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:

8.2.1 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.

8.2.2 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.

8.2.3 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.

8.2.4 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.

8.3 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.

8.4 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.

8.5 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.

8.6 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.

8.7 All Writings Contained Herein: This Agreement contains all 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.

8.8 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.

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

8.10 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.

8.11 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.

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

9. COUNTERPARTS AND ELECTRONIC SIGNATURE

9.1 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: