Washington State Department of Transportation

Utility Construction Agreement
Work by WSDOT — Shared Cost

Utility Name & Address					
Agreement Number **UTC**	Region	Control Section			
			Project Title/Location		
State Route	Mileposts **From** **to**				
Estimated Agreement Amount **$**	Advance Payment Amount **$**	State Share **$**	%	Utility Share **$**	%

This Utility Construction Agreement (Agreement) is between the Washington State Department of Transportation (WSDOT) and the above-named Utility (Utility), also referenced as the "Party" and "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 that are located pursuant to a documented ownership interest in real property, such as an easement, fee title, 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 preliminary engineering 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. The Work includes ☐ Betterments; ☐ Relocation of Facilities with Property Rights; ☐ Facilities without Property Rights; and/or ☐ Removal of Existing Facilities from WSDOT right of way.
5. 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.
6. 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 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 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 has incorporated 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 the with all applicable standards, codes, regulations, or any other requirements the Utility is obligated to meet, unless otherwise noted.

1.5 The Utility has reviewed and approved the Work Special Provisions and Plans that have been 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 that are 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.

1.6 WSDOT will provide the Utility with written notification of the bid price on the day of bid opening 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.

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

1.7.1 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.

1.7.2 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 cost of either

WSDOT or Utility, whichever is responsible for such costs. Utilities abandoned, deactivated, or disconnected must be done in a manner in accordance with WSDOT's Utilities Manual.

2.3 Salvage: All materials removed by WSDOT shall be reclaimed or disposed of by WSDOT and shall become the property of WSDOT. If the Utility desires to retain such materials and WSDOT agrees, the value of salvaged materials will be paid to WSDOT in an amount not less than that required by the Program Guide.

2.4 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.

2.5 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.

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

2.7 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.

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

2.9 Upon completion and acceptance of the Work pursuant to Sections 2.6 or 2.7, 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.

2.10 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 2.6 or 2.7, 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 for (1) betterments, and/or (2) Work where the Utility does not have a documented ownership of and/or interest in real property, such as an easement, fee title, or a court finding of prescriptive right for its facilities. 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 WSDOT agrees that it shall be responsible for all Work costs where the Utility does have a documented ownership of and/or interest in real property identified in Exhibits B and D. Exhibit B contains an itemized estimate of WSDOT-responsible costs for Work to be performed by WSDOT on behalf of the Utility.

3.3 The Utility agrees to pay WSDOT the "Advance Payment Amount" Stated above within twenty (20) 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.

3.4 The Parties acknowledge and agree that WSDOT does not have the legal authority to advance WSDOT funds for the Utility's cost portion of the 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 1.7.2.

3.5 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, contract administration and overhead costs. WSDOT shall invoice the Utility and provide supporting documentation therefore, and the Utility agrees to pay WSDOT within thirty (30) days of receipt of an invoice, including proper documentation of all charges. 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.

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 the time limits identified in Exhibit A. The UTILITY agrees to pay all change order Work costs for which it is responsible, 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 State 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, PERMIT OR EASEMENT

5.1 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.

5.2 For facilities located by easement, 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.

5.3 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 State right of way shall be included in Exhibit A.

6. RIGHT OF ENTRY

6.1 The Utility hereby grants to WSDOT a right of entry onto all lands in which it has an interest in construction of 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.

6.2 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 _____ ( ) 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.

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 (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.

7.2 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.

7.3 If this Agreement is terminated prior to the fulfillment of the terms stated herein, both Parties agree to reimburse the other Party 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.

8. GENERAL PROVISIONS

8.1 Indemnification:

8.1.1 To the fullest extent permitted by law, each Party to this Agreement will protect, defend, indemnify, and save harmless the other Party, 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, each Party's negligent acts or omissions with respect to the provisions of this Agreement. Neither Party will be required to indemnify, defend, or save harmless the other Party if the

claim, suit, or action for injuries, death, or damages (both to persons and property) is caused by the sole negligence of the other Party. 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.

8.1.2 The Parties agree 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 Parties, by mutual negotiation, hereby waive, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

8.1.3 This indemnification and waiver will 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 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.

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 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.

8.10 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.

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

8.12 Site Security and Safety: While on WSDOT premises, 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.

8.13 Audit and Records: The Parties to this Agreement shall maintain books, records, and documents, that properly reflect the work and all direct and indirect costs expended in the performance of this Agreement for a period of not less than 6 (six) years from the end date of the Agreement. These records shall be subject to inspection, review, or audit by personnel of both Parties. The Office of the State Auditor, federal authorities, and any persons duly authorized by the Parties shall have full access and the right to examine any of these materials.

8.14 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.

8.15 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: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____