Washington State Department of Transportation

Utility Preliminary Engineering 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 Preliminary Engineering 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 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, 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. 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 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, 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, identified in Exhibits B and D. 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 B and D. 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.

2.3 The Utility shall submit a final billing to WSDOT within ninety (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 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.

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 Exhibit A and Exhibit C, Preliminary Plans. 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. TERMINATION

5.1 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.

5.2 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.

5.3 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.

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

6. GENERAL PROVISIONS

6.1 Indemnification:

6.1.1 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.

6.1.2 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 only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

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

6.2 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.

6.2.1 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.

6.2.2 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.

6.2.3 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.

6.2.4 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.

6.3 Insurance:

6.3.1 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.

6.3.2 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.

6.4 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.

6.5 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.

6.6 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.

6.7 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.

6.8 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.

6.9 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.

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

6.11 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.

6.12 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.

6.13 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.

6.14 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.

6.15 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.

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

7. COUNTERPARTS AND ELECTRONIC SIGNATURE

7.1 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 hereto have executed this Agreement as of the Party's date last signed below.

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