Washington State Department of Transportation

Utility - Vegetation/Timber Removal and Mitigation Payment Agreement			Utility Name & Address
Agreement Number			Section/Location
State Route	Milepost	Control Section	Permit/Franchise
Total Vegetation Mitigation Payment to State **$**			
Total Merchantable Tree Value Payment to State **$**			

This 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. The Utility will perform/has performed work (Project) on WSDOT right of way authorized by a utility permit or franchise (Permit/Franchise) granted by WSDOT pursuant to RCW 47.44.
2. The Project required/will require the removal or destruction of certain trees or other vegetation from the WSDOT right of way (Work), as identified in the attached Exhibit A.
3. The terms and conditions of the Permit/Franchise, WAC 468-34-340, and WSDOT’s Roadside Policy Manual (M3110), Chapter 2, Section 6, requires the Utility to replace trees or other vegetation removed or destroyed as a result of the Project.
4. WSDOT and the Utility agree that it is impracticable undesirable, or impossible to replace in kind within the Project footprint trees or other vegetation removed or destroyed because of the Project.
5. The trees or other vegetation removed or destroyed because of the Project are an asset of the Motor Vehicle Fund and the value thereof must be returned to the Motor Vehicle Fund.
6. The Utility has agreed to pay the estimated replacement and restoration cost of trees or other vegetation removed or destroyed because of the Project in lieu of Utility’s obligation to replace the trees or other vegetation, as set forth in Exhibit B.
7. If the Project requires the removal of trees that have merchantable value (Merchantable Timber), the Utility has agreed to pay the fair market value of the Merchantable Timber.

Now therefore, pursuant to the above recitals that are incorporated as if fully set forth below and in consideration of the terms, conditions, covenants, and performance contained herein, including any Exhibits attached which are incorporated and made a part hereof, it is mutually agreed as follows:

1. REMOVAL OF TREES AND OTHER VEGETATION

1.1 Subject to the terms and conditions herein, Utility is authorized to remove the trees and other vegetation identified on the attached Exhibit A.

1.2 In performing the Work, the Utility shall comply with the following:

1.2.1 The Utility shall perform the Work in a manner consistent with this Agreement obtaining any necessary permit(s) and otherwise complying with applicable Federal and State of Washington laws, regulations, and rules for the Work.

1.2.2 The Utility shall remove the trees or other vegetation from the WSDOT right of way in a workmanlike manner.

1.2.3 All Work performed within WSDOT right of way shall be subject to the terms of the Permit/ Franchise, including but not limited to terms that cover right of entry and access restrictions, notification requirements, indemnification, relocation, damage to the highway, etc.

1.3 The Utility shall pay to WSDOT the sum of _____ Dollars ($_____) representing the estimated costs of replacing the trees or other vegetation removed or destroyed, and all associated direct and indirect costs, as a result of the Project in lieu of Utility's obligation to replace the trees or other vegetation, as set forth in Exhibit B. Payment shall be made by cash or check payable to the Washington State Department of Transportation (for deposit into the Vegetation Mitigation Fund) and shall be delivered to the WSDOT representative listed in Section 5 a minimum of 15 calendar days prior to commencing the Work.

2. MERCHANTABLE TIMBER

2.1 If the Work includes the removal of Merchantable Timber, the terms and conditions of Sections 2.2 – 2.4 shall apply.

2.2 The Utility shall comply with the following:

2.2.1 The Merchantable Timber Requirements in the current Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction, Section 1-07.3(2), including obtaining any necessary permit(s) and otherwise complying with applicable Federal and State of Washington laws, regulations, and rules for the Work.

2.2.2 The Utility understands and agrees that Merchantable Timber removed from WSDOT land is export restricted. Further, the Utility agrees to be responsible for, and shall ensure that its contractor, if any, complies with, the requirements of the Washington State Department of Revenue regarding Timber Sale/Log Export certifications, as follows: "Purchaser Certificate for Export Restricted Timber" (REV 62 0077e) and a "Disposition Certificate for Export Restricted Timber" (REV 62 0084). To ensure the current versions of the forms are used, Utility shall download the forms through the Washington State Department of Revenue website:

https://dor.wa.gov/taxes-rates/other-taxes/forest-tax/log-export-regulations

2.2.3 The Utility shall provide copies of the completed and signed certifications to the WSDOT representative listed in Section 5 on or before substantial completion of the Work. Utility shall include the WSDOT Permit/Franchise number in its submittal.

2.3 The fair market value of the Merchantable Timber shall be calculated by the Utility using the latest U.S. Forest Service stumpage value determination tables. The Merchantable Timber removed/to be removed and the calculation of the fair market value of that Merchantable Timber is set forth in Exhibit A, and all associated direct and indirect costs.

2.4 The Utility shall pay to WSDOT the sum of _____ Dollars ($_____) for the fair market value of Merchantable Timber, and all associated direct and indirect costs, as shown in Exhibit A. Payment shall be made by cash or check payable to the Washington State Department of Transportation (for deposit into the Motor Vehicle Fund) and shall be delivered to the WSDOT representative listed in Section 5 a minimum of 15 calendar days prior to commencing the Work.

3. UTILITY OBLIGATIONS

3.1 Except with respect to the form of compensation payable to WSDOT as set forth above, nothing in this Agreement shall diminish the Utility's obligation under the Permit/Franchise, the Roadside Policy Manual, and WAC 468-34-340 to restore that part of the WSDOT right of way disturbed by the Project.

4. SUBCONTRACTORS

4.1 The Work may be performed by the Utility or a qualified contractor on its behalf; provided, that if the Work is performed by a contractor on behalf of the Utility, the Utility shall include the terms and conditions of this Agreement in said contract and ensure the contractor complies with all applicable terms and conditions.

5. REPRESENTATIVES

5.1 The persons responsible for administration of this Agreement on behalf of each party shall be as set forth below and can be changed in writing with email being acceptable. All correspondence, letters or other notices shall be directed to the foregoing parties at the following addresses/phone numbers, or to their established agency designee:

The Designee for Utility is:	The Designee for WSDOT is:
(Name & Title) (Address) Phone: Email:	(Name & Title) (Address) Phone: Email:

6. STATUS OF AGREEMENT

6.1 This Agreement is in addition to, and is not intended to replace, substitute, modify or otherwise amend any other agreement, including the Permit/Franchise or any other permits issue by the WSDOT to the Utility. This Agreement is limited to the purposes stated herein. Any other agreements, including, but not limited to permits or franchises, continue in effect according to the specific terms of those agreements.

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.

8. DISPUTES

8.1 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:

8.1.1 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.

8.1.2 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.

8.1.3 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.

8.1.4 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. GOVERNING LAW AND VENUE

9.1 This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought under this Agreement shall be in Superior Court for ☐ County.

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: _____