Washington State Department of Transportation

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

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 the State Route as shown above for the identified WSDOT Project, and in connection therewith, it is necessary to remove and/or relocate or construct certain Utility facilities.
2. It is deemed to be in the best public interest for WSDOT to develop the preliminary engineering, including the preparation of plans, specifications, and cost estimate, herein the "Work," for the removal, relocation and/or construction of the Utility's facilities as part of WSDOT's Project.
3. 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.
4. The Utility is responsible for (1) the cost of the Work associated with 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, (2) and all betterments

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 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 for this Agreement. By this reference said 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: *Utility Relocation and Accommodation on Federal Aid Highway Projects*, the Utility is solely responsible for the preliminary engineering costs of such improvement.

1.3 WSDOT agrees to perform, at the Utility's sole cost and expense, the preliminary engineering, including the preparation of plans, specifications, and cost estimate, herein the "Work," for the removal, relocation and/or construction of the Utility's facilities as part of WSDOT's Project to the Utility's specifications and/or requirements. The Utility agrees to provide WSDOT all applicable standards, industry requirements, regulations, codes, or other pertinent information prior to performing the Work. Exhibit A, Special Provisions, including a Scope of Work, and Exhibit C, Plans, are attached.

1.4 The Utility agrees that when WSDOT performs the Work and a consultant is designing WSDOT Project, WSDOT consultant may also be utilized for the purposes of performing the Work, including incorporating the Work into WSDOT construction contract.

1.5 WSDOT shall provide the Work to the Utility for review and approval. The Utility agrees to review the Work within _____ ( ) working days and shall: (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, or (b) deliver to WSDOT written reasons why the Work does not comply with the applicable standards, industry requirements, regulations, codes or other pertinent information supplied by the Utility. The Utility agrees to work diligently and in good faith with WSDOT to resolve any issues so as not to delay advertisement of WSDOT Project. If all issues are resolved, the Utility agrees to deliver to WSDOT a letter of acceptance of the Work which includes a release and waiver of all future claims or demands of any nature resulting from the performance of the Work.

1.6 The Utility shall be responsible for all costs it incurs in reviewing the Work.

1.7 The Parties agree that WSDOT is under no obligation to the Utility to perform the Work, except as agreed to under this Agreement. Therefore, if the inclusion of the Utility Work threatens to delay WSDOT's Project, WSDOT shall have the unilateral authority to delete the Utility Work from WSDOT Project and terminate this Agreement. WSDOT shall immediately notify the Utility of such actions. The Utility agrees that it will be responsible for costs incurred by WSDOT up to the date of termination, and WSDOT agrees to provide to the Utility all Work-related documents upon final payment by the Utility.

1.8 The Utility agrees that should the Work be terminated, it shall continue to be obligated to timely design remove, relocate and/or construct 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. Payment

2.1 The Utility agrees that it shall be responsible for the actual direct and related indirect costs of the Work to be performed by WSDOT. 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, attached.

2.2 The Utility agrees to pay WSDOT the "Advance Payment Amount" stated above within 20 calendar days after WSDOT submits its first partial payment request to the Utility. The advance payment represents 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.

2.3 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 costs up to the date of termination and all non-cancellable items. WSDOT agrees to provide to the Utility all Work-related documents upon final payment by the Utility.

2.4 The Utility, in consideration of the faithful performance of the Work to be performed by WSDOT, agrees to pay WSDOT for the actual direct and related indirect cost of all Work for which the Utility is responsible. WSDOT shall invoice the Utility and provide supporting documentation therefore, and the Utility agrees to pay WSDOT within 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 payment, the Parties will resolve any discrepancies.

3. Change in Work or Cost Increase

3.1 Increase in Cost: 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.

3.2 If a change in Project design occurs that will affect the Work, WSDOT will inform the Utility, in writing, of such change and the Utility shall respond giving notice of its acceptance or rejection of the change, in writing within _____ ( ) working days of receiving the notice. If the Utility rejects the change, the Parties agree to diligently and in good faith work together to reach a mutual resolution. Otherwise, either Party may terminate this Agreement. If terminated, the Utility agrees to pay all costs incurred up to the date of termination, including non-cancellable items, and WSDOT agrees to provide to the Utility all Work-related documents upon final payment by the Utility. The Utility agrees that should the Work be terminated, it shall continue to be obligated to timely design, remove, relocate and/or construct

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.

4. Right of Entry

4.1 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 _____ ( ) calendar days of entering into this Agreement. Upon completion of the Work on such lands, the rights of entry and permissions shall terminate.

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 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 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 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, 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.

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

5.5 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.

6. General Provisions

6.1 Indemnity:

6.1.1 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.

6.1.2 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.

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

6.2 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:

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 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 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.

6.4 Amendments: This Agreement may be amended by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless put in writing and signed by persons authorized to bind each of the Parties.

6.5 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.

6.6 Audit and Records: During the progress of the Work and for a period of not less than 6 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 the 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.

6.7 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.

6.8 Working Days: Working days are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050

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
Signature: _____	Signature: _____
By: _____ Print Name	By: _____ Print Name
Title: _____	Title: _____
Date: _____	Date: _____