



<b>Utility Construction Agreement Work by WSDOT – WSDOT Cost</b>		Utility Name & Address
Agreement Number <b>UT</b>	Region	Project Title/Location
State Route Number <b>SR</b>	Mileposts <b>From</b> <b>to</b>	
Estimated Agreement Amount <b>\$</b>		

This Utility Construction Agreement (Agreement) is entered into by and between the Washington State Department of Transportation, hereinafter “WSDOT”, and the above-named Utility, hereinafter “Utility”, collectively the “Parties” and individually the “Party”.

#### **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 all Work under this Agreement because the Utility’s facilities are located pursuant to a documented ownership of and/or interest in real property, such as an easement, fee title, or court finding of prescriptive right, which is impacted by WSDOT Project.
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. 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 by this reference 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 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.
- 1.3 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.

## **2. Construction, Inspection, and Acceptance**

- 2.1 WSDOT agrees to administer the Work on behalf of the Utility.
- 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.
- 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: Utility Relocation and Accommodation on Federal Aid Highway Projects.
- 2.4 The Utility may furnish an inspector for the Work. WSDOT agrees that it is 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 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 2.6 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.
- 2.9 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 2.6 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 WSDOT 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 WSDOT-responsible costs for Work to be performed by WSDOT on behalf of the Utility is included in Exhibit B, Cost Estimate.
- 3.2 If the Utility chooses to have an inspector for the Work, the Utility will provide a detailed estimate of such costs to be included in Exhibit B. The Utility agrees to provide a detailed invoice to WSDOT for Utility inspector costs in accordance with the estimate included in Exhibit B, and WSDOT agrees to make payment within thirty (30) calendar days of receipt of the invoice.
- 3.3 Pursuant to Section 4, if additional Work or a change in the Work is required and Utility review is necessary, the Utility agrees to provide a detailed invoice to WSDOT, and WSDOT agrees to make payment for all reasonable costs within thirty (30) calendar days of receipt of the invoice.

#### **4. Change in Work**

- 4.1 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.
- 4.2 WSDOT will make available to the Utility all change order documentation related to the Work.

#### **5. Franchise or Permit**

- 5.1 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 which will be vacated as a result of the relocation of Utility facilities.
- 5.2 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 WSDOT 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 for 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 or court finding of a prescriptive right 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. General Provisions**

- 7.1 Indemnification: 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.

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.

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

- 7.2 **Disputes:** If a dispute occurs between the Utility and WSDOT at any time during the prosecution of the Work, 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 the cost of a mediator or arbiter.
- 7.3 **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.
- 7.4 **Termination:** In the event funding for the Project or Work is withdrawn, reduced, or limited in any way after the execution date of this Agreement and prior to normal completion, WSDOT may terminate the Agreement upon \_\_\_\_\_ ( ) calendar day notice. In the event of such termination, WSDOT and Utility shall consult, if necessary, on how the Work shall be brought to a level that is safe for the Utility's operation and maintenance. In the event the Work is terminated, the provisions of Sections 2 and 5 shall apply to the Work completed.
- 7.5 **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.
- 7.6 **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.
- 7.7 **Audit and Records:** During the progress of the Work and for a period of not less than six (6) years from the termination or completion of this Agreement, WSDOT 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 Utility and copies of all records, accounts, documents or other data pertaining to the Work will be furnished upon request. The Utility 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.
- 7.8 **Working Days:** Working days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050.
- 7.9 **Counterparts:** This Agreement may be executed in multiple counterparts or in duplicate originals. Each counterpart or each duplicate original shall be deemed an original copy of this Agreement signed by each Party, for all purposes. Electronic signatures or signatures transmitted by email 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 Party is 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: _____