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200.01 General

This chapter is intended to be a resource for guidance in processing and administering utility agreements: specifically, Preliminary Engineering Agreements and Construction Agreements. These agreements are typically associated, directly or indirectly, with a transportation improvement project. An agreement is required to define the roles, requirements, and cost responsibilities between the Washington State Department of Transportation (WSDOT) and the utility.

(1) Preliminary Engineering Agreements

Preliminary Engineering (PE) Agreements are normally used when a utility requests reimbursement for preparing a cost estimate and a relocation plan where WSDOT is obligated for all or a portion of the utility relocation costs (see [200.02](#), Utility Property Rights). PE Agreements can also be used by the department to obtain reimbursement for design costs when the utility requests that work be included in a WSDOT contract.

For guidelines, examples, and the approving authority on PE Agreements, see [200.03](#), Preliminary Engineering Agreements.

(2) Construction Agreements

Construction Agreements are the most common agreements and are used for several different types of applications. Examples of when to use this type of agreement include the following:

- When a WSDOT project impacts a utility facility in which the utility has an easement or some type of compensable property interest (see [200.02](#), Utility Property Rights), WSDOT is obligated to pay for its relocation costs and replacement easement and/or fee title property interest. Typically, the utility would perform the removal of its facilities and construct its new facilities within its replacement property. Work would be covered under a Utility Construction Agreement, Work by Utility – State Cost (DOT Form 224-053 EF).
- When a utility requests that WSDOT include construction of the utility’s facilities, such as conduits, water, or sewer lines, as part of a WSDOT project, that work would be covered under a Utility Construction Agreement, Work by State – Utility Cost (DOT Form 224-062 EF). The utility in this case would be responsible for all actual direct and indirect costs, including, but not limited to, WSDOT contract administration, mobilization engineering, and overhead costs.

For guidelines, examples, and the approving authority on Construction Agreements, see [200.04\(1\)](#), Construction Agreement Forms.

(3) Scoping Phase

During the Scoping Phase, specifically on projects requiring new rights of way, the region Utilities Office shall review the project in detail. If utilities are present within the proposed right of way take, there is a good chance a utility agreement and a replacement easement and/or fee title property interest will need to be addressed in the project. Addressing potential agreements early will help build and generate better schedules and estimates.

Early in the Design Phase, each utility shall be notified in writing of the WSDOT project so that it can budget, schedule, and address its relocation needs, and perhaps request to include utility work in the WSDOT project's contract. This will provide WSDOT time to properly schedule and incorporate the agreement work into the project schedule. All utility agreements shall be fully executed prior to contract advertisement.

(4) Definitions

For definitions, see [Appendix A](#), Glossary.

(5) Policies Governing State and Federal-Aid Agreements

[23 Code of Federal Regulations \(CFR\) Part 172](#), Administration of Engineering and Design Related Service Contracts

[23 CFR Part 645](#), Subpart A, Utility Relocations, Adjustments, and Reimbursement

[23 CFR Part 645](#), Subpart B, Accommodation of Utilities

Program Guide: Utility Relocation and Accommodation on Federal-Aid Highway Projects, Federal Highways Administration (FHWA). Regions will inform utilities of the location of this Program Guide: www.fhwa.dot.gov/reports/utilguid/index.htm

Utilities Accommodation Policy M 22-86, WSDOT

For further information, see [Appendix C](#), Policy Guidance.

(6) Applicable State Laws

[Chapter 8.26](#), Revised Code of Washington (RCW), Relocation assistance – real property acquisition policy

[Chapter 47.12 RCW](#), Acquisition and disposition of state highway property

[RCW 47.24.020\(8\)](#), City franchise on city streets that form part of a non-limited access state highway

[Chapter 47.28 RCW](#), Construction and maintenance of highways

[Chapter 47.44 RCW](#), Franchises on state highways

For further legal references, see [Appendix D](#) and the RCW and WAC References.

200.02 Utility Property Rights

The region Utilities Office should work closely with Real Estate Services to ensure all utility property rights issues are addressed as early as possible.

(1) *Compensable Real Property Interest*

A utility is entitled to cost reimbursement for facility relocation and/or adjustment, as well as a replacement property interest, when the utility owns a compensable real property interest. The utility must produce the following to be eligible for cost reimbursement or replacement:

- A deed showing fee title ownership to the property.
- A deed showing easement rights to use the property.
- A court finding of prescriptive easement rights.

A city- or town-owned utility that is located within its street right of way along a nonlimited access state highway within city limits is entitled to utility relocation and/or adjustment cost reimbursement.

Note: Although [RCW 47.44.030](#) provides for a utility cost reimbursement under certain circumstances, all but the first sentence of this statute has been found unconstitutional by the Washington State Supreme Court. Therefore, the utility is only entitled to reimbursement under the conditions listed above.

(2) *Determining Utility Property Rights*

A utility's compensable real property interest must be verified in order to determine whether an agreement is required and to select the proper agreement form.

- (a) **Utilities Located Within WSDOT Right of Way** – The first step in determining utility property rights is to generate a franchise and permit listing for the project from the Utility Franchise and Permit (UFP) database. Where utilities are located within WSDOT right of way by franchise or permit, the cost for any adjustment or relocation will be at the expense of the utility. If the utility or its contractor performs the adjustment or relocation work, a utility agreement should not be required. If the utility would like any portion of the work to be performed by WSDOT or its contractor, a utility agreement will be required.

Adequate accommodation of utilities must be considered during development of a highway project. When determining right of way needs for a highway project, adequate space should be made available to locate utility facilities in a manner that does not interfere with the safe and efficient operation of the highway. To accomplish this goal, WSDOT may acquire the additional right of way necessary to provide a corridor for relocation of utilities.

Not all utilities located within WSDOT right of way have been authorized by a *current* franchise or permit. A utility is illegally located if it does not have a *current* franchise or permit or documented property right. In these cases, the utility must pay all its own costs and apply for a franchise or permit from WSDOT if the utility chooses to remain within the right of way. A utility's application for a franchise or permit and/or to maintain existing facilities within the right of way does not guarantee that WSDOT can issue a franchise or permit for such facilities.

In some instances, utilities are located within WSDOT right of way by easement, or WSDOT may have an easement across property owned by others. If a documented easement exists, it should be shown on the official right of way plan for that section of highway. The cost for any adjustment or relocation will be at WSDOT expense, and a utility agreement will be required. Utilities located within WSDOT right of way by easement are not listed in the UFP database. Utility representatives should provide documentation defining where their facilities are located within an easement. If possible, WSDOT should verify whether the utility-provided easement legal description actually covers the area in which the utility is located, to ensure the utility occupies the claimed easement location. Sometimes, a utility does not occupy a claimed easement location.

On nonlimited access highways within city or town limits, only the city or town has the authority to issue franchises or permits. Therefore, utility facilities located on these rights of way will not show up in the UFP database unless an “informational” permit or franchise has been filed and entered. Typically, when utilities that are not owned by the city are located within the city street/state highway right of way, they have been issued a permit or franchise by the city or town. You should research the city or town records for such franchises or permits. Utility adjustment or relocation should be at the utility’s expense. However, read the city or town franchise and/or permit conditions; if there is a question, seek legal assistance. If a city-owned utility requires adjustment or relocation, WSDOT is responsible for the cost of relocation because the city or town owns the underlying right of way.

- (b) **Utilities Located Outside WSDOT Right of Way** – In order to determine utility property rights outside WSDOT right of way, title reports for each affected parcel must be obtained and reviewed. Review of the title reports should include a search for utility easements. Where utilities hold easement rights on private property, the cost for adjustment or relocation will be at WSDOT’s expense. It may speed up the process during the scoping phase (see 200.01(3)) to request that the utilities produce copies of relevant deeds.

Title reports may not always describe an easement in enough detail. A copy of the actual easement document may be required in order to determine its exact location.

If WSDOT or its contractor performs the adjustment or relocation work when the utility has a documented property interest, reimbursement for the relocation work will not be necessary because WSDOT is responsible for the costs. In this instance, a utility agreement will be required to specify contract terms covering the engineering design, plans, specifications, construction, and acceptance of the utility work. The agreement may include provisions for WSDOT to reimburse utility costs for design review or inspection. If the utility or its contractor performs any portion of the work, a utility agreement will be required because WSDOT is responsible for the costs.

Where utilities are located on their own property by fee title, the property should be identified by its own parcel number on the official right of way plan and a title report obtained for the parcel. In this case the cost of adjustment or relocation of the utility will also be at WSDOT’s expense, including a possible replacement property interest.

Where utilities are located on another public agency's right of way by permit, franchise, or city ordinance, and adjustment or relocation is required by a WSDOT project, the cost of the work is typically at the expense of the utility. However, in order to verify this, a review of the permit, franchise, or city ordinance should be made. If there is a question, seek legal advice.

(3) Compensation and Replacement of Utility Property Rights

A utility is entitled to just compensation for its compensable real property interest when: the utility documents its existing compensable real property interest; facility adjustment or relocation is required by a highway project; or the property interest is taken to the extent that the facility adjustment or relocation cannot be accomplished inside the utility's existing property right. Under these circumstances, WSDOT will follow (a) or (b) below:

- (a) **Compensation** – The first option should be for WSDOT to compensate the utility for its property rights and issue a permit or franchise to authorize the utility to locate within WSDOT right of way. The region Real Estate Services Office will negotiate the compensation to be paid and prepare a quitclaim deed (see Quitclaim Deeds below) for execution by the utility, in conjunction with the region Utilities Office issuing the permit or franchise.
- (b) **Replacement** – If unable to utilize option (a), WSDOT replaces the utility's property rights with the same type of property rights, in accordance with the guidelines listed below.

1. **Utility to Remain Within the Limits of Its Existing Property Rights and Within the New State Right of Way Limits** – The utility conveys its fee title or easement rights within the new highway right of way limits to WSDOT by quitclaim deed. In turn, WSDOT conveys by quitclaim deed a replacement easement to replace all or a portion of property acquired by the WSDOT, subject to appropriate conditions (see Replacement Easements below). If WSDOT replaces a fee title ownership with an easement, the utility may be entitled to some compensation; the region Real Estate Services Office will negotiate the compensation to be paid.

Note: Where the utility's existing property right is an easement, WSDOT still conveys a new easement rather than acquiring the right of way subject to the existing easement. This procedure is recommended so the easement can include language applicable to the new conditions.

2. **Utility to Be Relocated Outside the Limits of Its Existing Property Rights and Outside State Right of Way**
 - **Utility possesses powers of eminent domain** – Utility conveys to WSDOT by quitclaim deed property rights within the new highway right of way limits. WSDOT acquires on behalf of the utility an easement or fee title (as appropriate) and transfers it to the utility, or the utility acquires an easement or fee title (as appropriate) and is reimbursed by WSDOT for the new corridor outside the state's new right of way limits.
 - **Utility does not possess powers of eminent domain** – Utility conveys to WSDOT by quitclaim deed property rights within the new highway right of way limits. WSDOT acquires additional right of way and

thereafter conveys an easement to the utility located within the state's new right of way. If WSDOT replaces a fee title ownership with an easement, the utility may be entitled to some compensation; the region Real Estate Services Office will negotiate the compensation to be paid.

Note: Where the utility's existing property right is an easement, WSDOT still conveys a new easement rather than acquiring the right of way subject to the existing easement. This procedure is recommended so that the easement can include language applicable to the new conditions.

- (c) **Quitclaim Deeds** – Quitclaim deeds are prepared by the region Real Estate Services Office. This process must be completed for Real Estate Services to obtain clear title to the right of way. The quitclaim deed may indicate a monetary value for which the utility is to be compensated for relinquishing its rights.
- (d) **Replacement Easements** – When WSDOT is acquiring an easement for transfer to a utility or granting an easement within WSDOT right of way, the easements are shown on WSDOT's official right of way plan. The replacement easement deed granted to the utility is described in accordance with the terms of an agreement.

Replacement easements remaining within WSDOT's right of way are subject to specific conditions, which will be negotiated with Real Estate Services.

200.03 Preliminary Engineering Agreements

A Preliminary Engineering (PE) Agreement is required when a utility requests reimbursement for design work, preparation of a cost estimate, and/or preparation of a relocation/construction plan. This applies only if WSDOT is financially responsible for all or a portion of the utility's facility relocation costs. Prior to entering into such an agreement, the utility must be proven to have a documented property right showing that it is eligible for reimbursement (see 200.02, Utility Property Rights). A PE Agreement is also required if WSDOT includes the relocation or construction of the utility's facility in a WSDOT project's contract, regardless of whether or not WSDOT is responsible for the utility's costs.

Federal Highway Administration (FHWA) policies and procedures, with respect to the preliminary engineering for phases of federal-aid highway projects, are explained in plain language in the *Program Guide: Utility Relocation and Accommodation on Federal-Aid Highway Projects* (www.fhwa.dot.gov/reports/utilguid/index.htm). The Program Guide includes the sections pertaining to utilities contained in the Code of Federal Regulations ([CFR Title 23](#)) that is interpreted in the Program Guide's plain language section. Observance of the federal regulations is required on projects involving any amount of federal funding. WSDOT has adopted this Program Guide and the attendant federal regulations for application to all fully WSDOT-funded highway projects as well.

(1) Preliminary Engineering Cost

The region Utilities Engineer and the utility may jointly determine the estimated cost of preliminary engineering. Preliminary engineering shall include a breakdown of labor hours, rates, materials, equipment, and any overhead costs with their percentages. Preliminary engineering can be performed by the utility, by a consultant hired by the utility, or by WSDOT.

If the utility has a consultant perform the preliminary engineering on its behalf, the utility and its consultant must agree in a written contract on the services to be provided and the fees for these services. Instead of a project-specific consultant agreement, the utility may use its existing continuing consultant contract for preliminary engineering services. However, the utility will need to demonstrate to WSDOT that such work is performed regularly by that consultant and that the costs are reasonable. The split in percentage of the work to be performed by the consultant and the utility is included in the heading of the PE Agreement.

The contract between the utility and its consultant, whether continuing or project-specific, may be subject to review by WSDOT. The utility is required to provide a copy of the consultant contract when requested to do so by the department. Contracts and associated preliminary engineering costs are subject to an audit by WSDOT or the FHWA, as appropriate. The utility and its consultant will be responsible for producing all the required records for any such audit.

(2) Preliminary Engineering Agreement Preparation

A cost estimate for the work to be performed is provided to you by either the utility, if it is doing its own design work, or by the Project Design Engineer, if WSDOT is doing design work for the utility. The estimate from the utility should have as much detailed cost information as possible. You should review the estimate to ensure the costs presented by the utility are reasonable. Overhead percentages are especially important because the overhead rates are often audited, and we want to make sure we are being charged appropriately. If you have questions about whether or not an overhead rate is reasonable, [HQ Utilities](#), Railroad, and Agreements can assist with that determination.

The first step after receiving a cost estimate for the agreement, whether from the utility or WSDOT's Project Design Engineer, is to obtain an agreement number. This is done by initiating an Agreement Review Transmittal (ART) form in the ART system, which will automatically generate your agreement number. Information you need to provide on the transmittal includes:

- State Route Number.
- Project title.
- Dollar amount of the agreement.
- Contractor (use the name of the utility the agreement is with).
- Contact person and phone number (list yourself).
- Agreement Manager and org. code
- Start and end dates
- Milepost limits
- Vendor number
- If Chapter 39.34 RCW applies
- Retention time for the agreement
- Reason for the agreement (for example, relocation of a utility waterline on an easement or inclusion of utility waterline construction in a WSDOT project)

Indicate (by checking the box) whether the agreement is reportable under the contracting policy, and select the agreement type under the pull-down menu. (Utility agreements associated with a construction project will be Public Works/Capital Projects.)

Following its issuance, include the UT number in the header of the agreement, on each page of the agreement, and on each of the exhibits prior to sending the agreement to Headquarters for review or to the utility for signature.

(a) **Preliminary Engineering Agreement Forms** – There are two types of Utility Preliminary Engineering Agreement forms: Work by State and Work by Utility. The variations of these forms depend on who is paying for the relocations or new installations.

The standard form Utility Preliminary Engineering Agreement variations are:

- Work by State – Utility Cost (DOT Form 224-301 EF)
- Work by Utility – State Cost (DOT Form 224-072 EF)

1. **Utility Preliminary Engineering Agreement – Work by Utility** – Standard form agreements are used when preliminary engineering is performed by the utility’s own forces or by a consultant retained by the utility, and some or all of the cost is WSDOT’s responsibility. The standard form agreement is used whenever possible; however, unique circumstances may require the use of a nonstandard agreement. If a standard form agreement is altered in any way after the statement “IT IS MUTUALLY AGREED AS FOLLOWS,” it is a nonstandard agreement and requires “approval as to form” by the Attorney General’s Office (AGO). AGO approval as to form is also required if the exhibit changes the terms of the standard form agreement.
2. **Utility Preliminary Engineering Agreement – Work by State** – Standard form agreements are used when a utility requests that WSDOT include utility relocations or construction of its facilities in the WSDOT project contract. In these cases, at least a minimal amount of preliminary engineering work will have to be performed by WSDOT. The financial responsibility may be the utility’s or WSDOT’s, depending on the utility’s property rights. Even if WSDOT is not doing the actual design of the utility’s facilities, WSDOT should recover the costs it incurs to incorporate the utility’s plans into WSDOT’s project contract unless the costs are WSDOT’s responsibility.

If the utility is responsible for any preliminary engineering cost for work to be performed by WSDOT, a utility agreement is required. If WSDOT is responsible for all costs, an agreement may or may not be required, depending on the individual circumstances.

(b) **Preliminary Engineering Agreement Elements** – The appropriate standard form agreement or nonstandard agreement will be used for the main body of the agreement. The legally binding sections of the agreement begin after the statement “IT IS MUTUALLY AGREED AS FOLLOWS.” The “WHEREAS” sections explain the conditions and any relevant information pertaining to why the agreement is being entered into. These sections can be modified without being considered a change to the standard form agreement or requiring a nonstandard agreement, only as long as the changes do not modify the terms of the agreement.

- (c) **Exhibit A: Special Provisions** – Exhibit A is used to further define those items of work that may be generally addressed in the body of the agreement or to clarify the specific work to be done. An Exhibit A should be limited to the actual work to be done and not used to modify or create agreement terms that address, for example, payment, right of entry, or indemnification. An Exhibit A is required if a standard form agreement is used. If a nonstandard agreement is used, work specifications may be included in the body of the agreement as long as it is appropriate to do so. Caution should be used to ensure the language in Exhibit A does not contradict the language in the standard form or nonstandard agreements; otherwise, the agreement could be found null and void and be indefensible in court. It is particularly important to avoid inconsistent terms between the Exhibit A and the standard form agreements, as they are usually not reviewed by the Attorney General’s Office.

Exhibit A includes a statement of the reason the agreement is being entered into (usually needed if a standard form agreement is used). Do not repeat an agreement term in Exhibit A if it is the same. Remember to number each paragraph section.

Sections that Exhibit A should or may contain are as follows:

1. **Scope of Work** – This section defines the work to be accomplished under the agreement, with a statement of the cost responsibilities of that work.
2. **Division of Work** – This section describes the proposed work separately under the headings “Work to Be Performed by the State” and “Work to Be Performed by the Utility.” Under each heading, the description of work should have sufficient detail to allow an accurate comparison between the work described in this section and the plan sheet exhibit. If no work is performed under one of the above headings, the heading is followed by the word “None.” A comparison between this Exhibit A, the cost estimate exhibit, and the plan sheet exhibit must show continuity among all three.
3. **Betterment** – This section states whether or not there is a “betterment” of the utility’s facility that is not due to a statute, industry standards, or other justification acceptable to WSDOT. A betterment is any upgrade in a utility facility that is in excess of the “replacement in kind” (see [Appendix A](#), Glossary) that the utility is entitled to as a result of its documented property right. When there is a betterment, the utility is responsible for all costs, including preliminary engineering costs, in excess of those it is entitled to for “replacement in kind.”
Note: It is not a betterment if the increased capacity is due solely to a statute, industry standard, or other acceptable requirement that the utility has to meet.
4. **Financial Responsibility** – This section states which party is responsible for the costs of the work and, if there is a shared cost, explains how the “proportional share” of cost responsibility for each party was determined. Percentages are often used for this purpose, and the percentages are derived from the estimated costs and applied to the actual costs. The percentages are most often determined by dividing the work between those portions of the facility to be relocated that are currently located with documented property rights (such as an easement, fee title, or court finding of prescriptive right) and those portions of the facility that have no documented property rights.

Note: Care needs to be taken with this method. If you divide based on just the lineal feet of the facility *on easements* versus the number of feet *not on easements*, the proportion may not reflect a real shared cost. The reason is that more expensive facilities may exist on one site and not on the other; for example, where a power facility has all the poles and aerial lines, except for one large vault not on an easement. If the shared cost does not recognize the higher cost of the vault in calculating the percentages, the shared cost will be skewed to the benefit of the utility facility on the easement.

- (d) **Exhibit B: Cost Estimate** – Exhibit B must include the position title of the person doing the work (specific employee names are not to be used, as personnel may change during the life of the agreement), the rate per hour, the number of estimated hours, and the total for each position. It may also include such items as consumables (such as paper or printing), equipment, and transportation. When possible, the costs supplied by the utility should be used; however, the region Utilities Agreements Engineer may choose to transfer the information over to a WSDOT format for clarification. If this is done, a copy of the utility’s estimate must accompany the agreement when you send the agreement to Headquarters. If the work is performed by WSDOT at the utility’s expense, sales tax is not applied to engineering costs. Advance payments for work to be performed by the utility are not legally authorized (see Article 8, Section 5, Washington State Constitution, Gift of State Funds).
- (e) **Exhibit C: Plan Sheets** – Exhibit C must consist of at least a vicinity map and the current location of any facility being relocated. The plans may show the proposed route for relocation, if known, with the understanding that this route may change during the course of the design of the relocation. If a new facility is being constructed where there was no existing facility, include a right of way plan showing the proposed area where the facility will be placed.
- (f) **Agreement Binding** – The agreements are to be bound in light blue jackets with 40-pound bond paper backing. The jackets for the originals of the agreements are to be labeled “State Original” and “Utility Original.” If a nonstandard agreement is with a city, the word CITY may be substituted for UTILITY in all appropriate sections of the agreement, including the label on the jacket of the agreement.
- (g) **Preparation of a Nonstandard Preliminary Engineering Agreement** – The usual reason nonstandard agreements are required is because a utility’s legal department has objected to the standard “Legal Relations” clause in the standard form agreement. When this is the case, the utility’s legal representative will need to provide alternate language to be included in the agreement. If the language supplied by the utility is unacceptable to WSDOT, some negotiations involving both legal representatives may be necessary. Since it is a change to the agreement’s legal language, this kind of change cannot be addressed in Exhibit A, Special Provisions, without creating a conflict in the agreement’s language. Such a change would nullify the terms of the agreement, rendering it invalid and indefensible; therefore, a nonstandard agreement must be written.
 - 1. There is no format prescribed for nonstandard PE Agreements. The method typically used is to copy the standard form agreement language for the type of agreement being written into a separate Microsoft Word document and then make modifications to the agreement form as necessary. The nonstandard agreement should contain all of the information and exhibits

from the standard form agreement that are relevant to the nonstandard agreement.

Note: It is required that any nonstandard agreement be reviewed by Headquarters and, if necessary, be approved as to form by the Attorney General's Office before the agreement is sent to the utility for signature.

2. If the Exhibit A is not used in a nonstandard agreement because everything was covered in the main body of the agreement, Exhibit B, Cost Estimate, may become Exhibit A, and the plan sheets that are normally Exhibit C become Exhibit B.

Note: This is applicable only to an original agreement and may not be applied to an amended agreement where an Exhibit A, titled Special Provisions, was included in the original agreement.

3. If it is a nonstandard Agreement Amendment, the references must remain consistent with the original exhibit designations of Exhibits A, B, and C, with the number of the amendment added; for example, an Amendment 1 would have Exhibit A-1, Exhibit B-1, or Exhibit C-1 if the exhibits are modified. If the original nonstandard agreement referenced Exhibit A as the Cost Estimate, Exhibit A-1 must also be Cost Estimate. However, if final actual costs are known and are shown in the exhibit, the title should change to Exhibit (A or B) of Costs instead of Cost Estimate, since it is no longer an estimate. This applies whether the cost exhibit is Exhibit A or B.

(3) Preliminary Engineering Agreement Amendments

Typically, PE Agreements are amended whenever WSDOT or the utility will exceed the allowable cost estimates of the original and any previous amendments to the PE Agreement. Such amendments to the agreement should be finalized prior to the utility or WSDOT exceeding the cost estimate of the original agreement or prior amendments. It is not always possible to amend the agreement in time to avoid a project delay. If this is the case, the region Project Design Engineer, or the appointed authority for that project, needs to write a letter to the utility giving it permission to proceed with its design. The letter must inform the utility that WSDOT will not be able to reimburse the utility for its work until the Agreement Amendment is executed.

Amendments to standard and nonstandard Preliminary Agreements are written in the form of a nonstandard agreement and are sent to Headquarters for review. If the language, scope of work, and/or intent of the standard form agreement does not change, Headquarters can recommend region execution. If the amendment to the standard form does change the scope of work, intent, and/or language of the agreement, the amendment may require approval as to form by the Attorney General's Office (AGO). An Agreement Amendment's references to the exhibits must remain faithful to the original exhibit, with the number of the amendment added after the alphabetic exhibit designation; for example, if it is Amendment 1, it would have Exhibit A-1, Exhibit B-1, or Exhibit C 1. The review procedures for amendments to all nonstandard agreements will follow the same process as the original agreement, which requires review by Headquarters and the AGO.

Note: Previously, Agreement Amendments were called Agreement Supplements. The AGO determined that we should be amending agreements and not supplementing them. Therefore, if you see older agreements that either refer to or are named supplements, they were completed prior to this change in terminology.

(4) Agreement Processing for Region Approval

(a) Agreement Processing for Work by Utility's Own Forces or Work by State

1. The region prepares the standard form PE Agreement. The region then sends two originals (one labeled "State" and one labeled "Utility" or "City") of the agreement to the utility requesting signature by its designated authority. The designated authority is the person who has the right to sign the agreement on behalf of the utility. It is best to confirm who has such authority before sending the agreement to the utility for signature. The request needs to inform the utility to return BOTH (if you don't emphasize "both," you may get back only one) of the originals for final execution by WSDOT and that, upon final execution, the duplicate original marked "Utility Original" (or "City Original") will be returned to the utility.
2. Following signature by the utility and return to the region of the duplicate originals, the Regional Administrator or a delegated representative signs the duplicate originals of the agreement. This authority varies from region to region.
3. Upon approval of a Work Order Authorization, the region notifies the utility that preliminary engineering work covered under the agreement may proceed as of the effective date of the agreement.
4. The region transmits the original of the fully executed PE Engineering Agreement to the HQ Division of Accounting & Financial Services (AFS), with a completed copy of the current Agreement Review Transmittal form.

Note: The Agreement Review Transmittal form is required to set up the agreement in the accounting system and must accompany every agreement sent to the AFS. The effective date on the front or last page of the agreement and the Start Date in the Agreement Review Transmittal form must match. The Start Date is the date from which the utility can be reimbursed. If advanced authorization was given to the utility to perform the work prior to the execution date, the date it was authorized to start work—not the execution date—must show on the last page of the agreement.

(5) Agreement Processing

(a) Standard Form Agreement: Headquarters Review

1. The only time it is required that a standard form agreement be reviewed by Headquarters is when the facility is to be located longitudinally within Interstate right of way or there is to be open cutting of the roadway or shoulder by the utility. In these cases, the region prepares the standard form PE Agreement and electronically transmits the complete agreement to Headquarters in its preferred format. The region retains standard form agreement originals pending HQ Utilities review and approval.
2. HQ Utilities prefers that all agreements to be reviewed be electronically submitted using level-playing-field software such as, but not limited to, MS Word, MS Excel, and, for scanned Exhibit C plans, Adobe PDF files. An Agreement Review Transmittal form is added to the database by the agreement writer, and the agreement documents are attached to an e-mail and sent to the Headquarters reviewer. The e-mail must include the request for review and the reason for the agreement.

(b) Nonstandard Agreements

1. An Agreement Review Transmittal form is added to the database by the agreement writer. The region prepares the nonstandard PE Agreement and electronically (by email attachment) submits the documents to HQ Utilities for review using level-playing-field software such as, but not limited to, MS Word, MS Excel, and, for scanned Exhibit C plans, Adobe PDF files.
 2. HQ Utilities reviews the agreement and secures approval as to form from the Attorney General's Office for nonstandard agreements. The review includes, but is not limited to:
 - Inclusion of necessary documents: cost sheet, plan sheet, scope of work, Memorandums of Understanding (MOUs), Letters of Understanding (LOUs), and other documents mentioned in the body of the agreement.
 - Engineering issues: location of facility (vertical and horizontal), crossing locations, access breaks, material quantities, easements, and quantities.
 - Compliance with the *Utilities Accommodation Policy*.
 - Financial accuracy: materials, quantities, unit costs, hourly rates, benefits, travel costs, overhead rates, and calculations. Be sure the appropriate percentages are applied for engineering, contingencies, mobilization, and sales tax.
- Note:* LOUs do not create legally binding commitments.
3. The HQ Design Office obtains FHWA review/approval for all nonstandard PE Agreements for projects on the Interstate System.

(6) Headquarters Approval

HQ Utilities reviews the agreement for completeness, accuracy, acceptability of accounting, and compliance with applicable laws and policies. Upon completion of the Headquarters review, the agreement is returned to the region for consideration of Headquarters' suggestions/comments and for the opportunity to make changes. After region consideration, the agreement is returned to Headquarters. HQ Utilities then submits the nonstandard agreement to Attorney General's Office (AGO) for "approval as to form" (see [Appendix A](#), Glossary). The language of the standard form agreement is preapproved as to form and no AGO review is required. However, you must make sure that the language in the exhibits does not contradict the language in either the standard form or nonstandard agreements, as this could render the agreement null and void and make it indefensible in court. If you have questions about whether or not language you are using in an exhibit is going to conflict, it is best to consult HQ Utilities for assistance and a determination.

The HQ Utilities Unit will either notify the region that the originals of the standard form agreement may be sent to the utility for signature or will return the originals of the nonstandard agreement with the AGO approval signature to the region for the utility's signature.

Do not have the utility sign the agreement until HQ Utilities review and approval are completed.

(7) Post-Headquarters Processing

- (a) **Region Processing Following Headquarters Review** – The region sends the duplicate originals of the agreement to the utility requesting signature by its designated authority. The request also needs to inform the utility that it must return BOTH of the originals for final execution by WSDOT and that, upon final execution, the duplicate original marked “Utility Original” (or “City Original”) will be returned to the utility.

Following signature by the utility and return to the region, the Regional Administrator or delegated representative signs the duplicate originals of the agreement. This constitutes “final execution” of the agreement, and it is now a legally binding document. The region then sends the Utility/City original to the Utility/City and the WSDOT original to HQ Utilities, which will attach the Agreement Review Transmittal form and deliver it to the HQ Division of Accounting & Financial Services. This is for reviewed agreements only.

(8) Region Disbursement

Copies of the agreements are sent to the appropriate region recipients according to the requirements or needs as determined by each region. For Preliminary Engineering (PE) Agreements, the minimum dispersal would be to the Project Design Engineer and region Program Management. Other recipients could include the plan review staff, Project Construction Engineer, region Real Estate Services Office, and region Financial Services Office. The region Utilities Office shall maintain copies of all PE Agreements in its files.

- (a) **Programming of Funds** – The region must have an approved Work Order Authorization and, when federal funds are involved, an approved Request for Federal-Aid Project Approval and Authorization. These forms are usually filled out and submitted by region Program Management when setting up the agreement in the accounting system.
- (b) **Authorization to Proceed** – The date on the front or last page of the fully executed PE Agreement is the effective date of that agreement and must reflect the start of the work covered by the agreement. The effective date of the agreement and the start of work date on the Agreement Review Transmittal form must match. The Start Date is the date from which the utility can be reimbursed. If advanced authorization was given to the utility to perform the work prior to the execution date, the date it was authorized to start work—not the execution date—must show on the first page of the agreement.

Note: It is acceptable to send a scanned or faxed copy to the utility so the work can proceed without waiting for the mailed copy.

200.04 Construction Agreements

A Construction Agreement is required to be completed when:

- A WSDOT project impacts existing utility facilities located pursuant to a documented property right (see [200.02](#), Utility Property Rights); or
- A utility requests that its facility relocation and/or new installation work be included in the construction contract for a WSDOT project.

(1) Construction Agreement Forms

There are two types of Construction Agreement forms: Work by State and Work by Utility. The variations of these forms depend on who is paying for the relocations or new installation work (see [200.02](#), Utility Property Rights). The standard form Utility Construction Agreement variations are:

- Work by State – Utility Cost (DOT Form 224-062 EF)
- Work by State – Shared Cost (DOT Form 224-071 EF)
- Work by Utility – State Cost (DOT Form 224-053 EF)
- Work by State – State Cost (DOT Form 224-077 EF)
- City Construction and Maintenance Permit (DOT Form 224-035 EF)

These standard forms may not be altered in any way after the statement “IT IS MUTUALLY AGREED AS FOLLOWS”; otherwise, a nonstandard agreement must be used. Which standard agreement form to use will be determined by which party is responsible for what costs, whether a utility occupies state right of way by franchise/permit, or whether the utility is located on a documented property right (see [200.02](#), Utility Property Rights).

(2) Letter of Understanding (LOU)

The LOU is used by WSDOT to establish the scope, schedule, and responsibility of costs for adjusting utility facilities (such as manholes, valve boxes, or vaults) to finished grade as required by a department paving project. The utility has the option of adjusting its own facilities or letting WSDOT adjust the utility facilities under the WSDOT project. The department generally prefers to adjust these utility facilities as part of the paving project; as a result, the LOU is written to encourage the utility to allow WSDOT the right to adjust its facilities.

The use and application of the LOU for utility adjustments is at the region’s discretion. (LOUs do not create legally binding commitments.) The document(s) are numbered and tracked according to each region’s requirements.

(3) Nonstandard Agreement

When unusual or unique conditions exist, or when a standard form agreement is not applicable, a nonstandard agreement may be used. However, it should be used with the understanding that this type of agreement will need to be reviewed by [HQ Utilities](#) and approved as to form by the Attorney General’s Office, thereby increasing the time required to complete the agreement.

(4) Agreement Exhibits

The Construction Agreement contains Exhibit A, Exhibit B, and Exhibit C, which are described in detail as follows:

(a) Exhibit A: Special Provisions

Exhibit A includes a description of work and a division of work. Please make sure the provisions of Exhibit A do not contradict the provisions of the standard form agreement or nonstandard agreement. Such contradictions cause ambiguity in the agreement, which will make it not enforceable. There is no need to repeat an agreement term in Exhibit A if it is the same. Further, number each paragraph

section. The following are brief summaries of some of the items that can be included in this exhibit:

1. **Scope of Work** – This section defines the work to be accomplished under the agreement, with a statement of the cost responsibilities of the work to be done.
2. **Division of Work** – This section describes the proposed work separately under the headings “Work to Be Performed by the State” and “Work to Be Performed by the Utility.” Under each heading, the description of work should have sufficient detail to allow an accurate comparison between the work described in this section and the Exhibit C Plans. If no work is performed under one of the above headings, the heading is followed by the word “None.” A comparison between Exhibit A, Exhibit B (Cost Estimate), and Exhibit C (Plans) must show continuity, not inconsistencies, among all three.
3. **Work by Contract** – When the utility has a valid and continuing contract with a contractor(s) to perform utility facility relocation or new work, and if WSDOT has reviewed and approved the contract, the following statement is included in this exhibit:

The work shall be performed by (name and address of contractor) under a continuing contract authorized by the state.

If the utility enters into a specific contract or agreement with a contractor to perform all or part of the work required under the agreement, a reference is not required in Exhibit A. However, written approval of the bid and the contractor by WSDOT may be required. Submit the contractor’s contract or agreement along with the bid documents to [HQ Utilities](#) for approval if required.

4. **Salvage** – If salvage is anticipated, and the utility is expected to see a cost benefit from the salvage materials, that cost benefit is to be credited to the state. A brief description of the salvage is shown in Exhibit A and an estimate of salvage credit is included in Exhibit B, Cost Estimate. In a nonstandard agreement, the salvage issue may be addressed in the body of the agreement.
5. **Disconnect and Removal** – If utility facilities will be removed by WSDOT’s contractor and if WSDOT is liable for the costs, the following statement is included as part of Exhibit A:

The utility agrees to disconnect the facilities shown on Exhibit C that will be removed by the state’s contractor at state expense within (___) days of the request by the state.

When a nonstandard agreement is used, the “disconnect and removal” statement may be included in the body of the agreement.

6. **Betterments** – A “betterment” is any upgrade in a utility facility in excess of the “replacement in kind” (see [Appendix A](#), Glossary) that the utility is entitled to as a result of its documented property right. When there is a betterment, the utility is responsible for all costs in excess of those it is entitled to for “replacement in kind.” It is not a betterment if the increased capacity is due solely to a statute, industry standard, or other acceptable

requirement that the utility has to meet. This section states whether or not there is a betterment of the utility's facility that is not due to a statute, industry standard, or other justification acceptable to WSDOT.

If the work involved does not contain a betterment, include a statement in Exhibit A stating that no betterment is involved in the work. In nonstandard agreements, this statement may be included in the body of the agreement.

Betterment credits are the financial obligation of the utility. No betterment credit is required when an existing facility's size or capacity is increased if the increase is required by governmental policy or regulations, local ordinance, or current design practices regularly followed by the utility in its own work or when there is a direct benefit to the WSDOT project. The region must retain copies of these regulations, ordinances, policies, and so on, as supporting project documentation. Documentation should show whether the betterment is for WSDOT's benefit or for the benefit of the utility.

7. **Accrued Depreciation Credit** – This credit is required when there is a replacement of a major facility such as a building, pumping station, filtration plant, power plant, substation, or any other similar operational unit. The credit, if applicable, is included by an explanation in Exhibit A. A credit is not required for a segment of a utility's mains, pipelines, service, distribution, transmission lines, or similar facility, regardless of length. The accrued depreciation credit is based on a ratio between the period of actual facility service and the total useful life expectancy applied to the original cost. The value of the accrued depreciation credit and the calculations used to compute this credit shall be included in Exhibit B, Cost Estimate.
 8. **Easements** – When WSDOT grants a replacement easement to the utility for its relocated facilities, Exhibit A shall include a legal description of the easement, as well as the terms and conditions of the easement.
 9. **Permit or Franchise** – If a permit, franchise, or amendment to a franchise or permit will be issued to the utility for relocation or new work done under the agreement, include a statement that the utility shall apply for, and WSDOT will grant, the necessary permits, franchises, and franchise amendments ([Chapter 47.44 RCW](#)).
- (b) **Exhibit B: Cost Estimate** – Exhibit B details the cost of utility relocation work or new installation work to be performed under the agreement. If the costs are known, this exhibit shall be titled "Cost Estimate." For Work by Utility Agreements, the cost estimate must show removal costs separate from installation costs. Removal and installation costs should be further broken down by labor, materials, and equipment. The cost estimate supplied by the utility for a Work by Utility Agreement is used in the format provided by the utility. As a guide, WSDOT may provide an example cost estimate for the utility to use in constructing its estimate. However, the utility is not required to follow the department's format. If WSDOT reformats the cost estimate prepared by the utility, include the original utility cost estimate as part of Exhibit B. Standard Bid Items, with their corresponding Standard Bid Item Numbers, are contained in the cost estimate when the agreement is for Work by State. Specific portions of some of the items in the cost estimate are as follows:

1. **Labor, Materials, and Equipment** – Provide labor costs for the number of hours estimated for each job title such as foreman, lineman, operator, and so on. The hourly rate for each title may include labor overhead, or the percentages for these may be added to the total direct labor costs. In either case, provide a breakdown list of these percentages in the estimate. List the material and supply costs in sufficient detail so it can be determined by review whether or not estimated costs are reasonable. The material items shall be identified by a common name (such as 50-foot wooden pole, 8-foot cross-arm, or 6-inch gate valve) and not just a letter or number code designation.

The utility may use code designations in the estimate if the utility provides WSDOT with a list of the corresponding common names for the material codes used. Overhead or handling costs for materials may be included in the estimate if the utility routinely charges these costs as a part of doing business and this can be supported by the utility's records. Under equipment costs, include the name or description of each piece of equipment, the unit rate of charge (such as miles or hours), and the estimated number of units.

2. **Betterment Credit** – Additional costs resulting from the upgrade in size, material, or capacity of utility facilities, other than what is currently required by governmental policy or regulations, local ordinance, or design practices followed by the utility, shall be the responsibility of the utility. These additional costs shall be reflected in the cost estimate as a credit to WSDOT.
3. **Salvage Credit** – When utility items removed from service are sold or reused by the utility, the value of these items shall be shown as a salvage credit in Exhibit B, which should list the description, quantity, and value of the items. The total salvage value shall be subtracted from the costs shown in Exhibit B, resulting in a decrease in the bottom line of the cost estimate.
4. **Accrued Depreciation Credit** – A credit to WSDOT is required for the accrued depreciation of a utility facility being replaced, such as a building, pumping station, filtration plant, power plant, substation, or any other similar operational unit. Find a detailed discussion on accrued depreciation in FHWA's *Program Guide: Utility Relocation and Accommodation on Federal-Aid Highway Projects*, Publication No. FHWA-IF-03-014: www.fhwa.dot.gov/reports/utilguid/index.htm

A separate estimate detailing the computation of the credit is required as part of Exhibit B. If original cost figures for the facility being replaced are not available, contact [HQ Utilities](#) for the procedures used to establish the amount of accrued depreciation credit.

5. **Mobilization** – In Work by State Agreements, the utility is financially responsible for a portion of the total WSDOT mobilization costs if the utility does not have a documented property right. Mobilization is shown in Exhibit B as a cost to the utility based upon a proration of the cost of the work attributed to the utility to the total cost of the project. This proration is based on the actual bid prices received for the awarded WSDOT contract.

The cost estimate for Work by Utility Agreements may or may not include mobilization costs. When the utility uses its own labor and equipment, the mobilization costs may be included in the hourly rate submitted for labor and

equipment. Include a note in Exhibit B, after the Agreement Cost Summary, explaining the mobilization costs used in the agreement.

6. **Sales Tax Applicability** – Use the following guide to determine whether state sales tax is appropriate as an added item in the cost estimate. Use the Control Section Tax Tables (contact region Program Management for the current tables or rates) to determine the applicable sales tax rate. This is especially useful in determining whether sales tax is appropriate for work to be done inside the corporate limits of a city.

Conditions	Highway Owned by the State	Highway Not Owned by the State
The readjustment of utilities by utility forces at state expense (no sale made).	No	No
The readjustment of utilities by a contractor procured by the utility at state expense.	Yes	No
The readjustment of utilities by WSDOT's contractor at WSDOT's expense.	Yes	No
The readjustment of utilities by WSDOT's contractor at the utility's expense.	Yes	Yes

Sales Tax Applicability

Figure 200-1

To further clarify when sales tax should be added to the estimate, see Sections 107.2(1) and 1-07.2(2) of the *Standard Specifications for Road, Bridge, and Municipal Construction*.

7. **Engineering Costs** – Engineering costs for Work by State Agreements are computed as a proration of the total cost of the agreement to the total cost of the project. The engineering percentage rate to be used for estimating and progress payment purposes shall be taken from the *Plans Preparation Manual*. Include a note in Exhibit B, after the Agreement Cost Summary, explaining the engineering costs used in the agreement.
8. **Administrative Overhead**
- Indirect Cost Rate** – When WSDOT performs work for a utility, WSDOT shall apply its current Indirect Cost Rate to the total project costs. The current Indirect Cost Rate is calculated by the HQ Division of Accounting & Financial Services (AFS). New rates must be approved by FHWA prior to WSDOT being able to charge them. The rates are then effective during the current federal fiscal year, which is July 1 through June 30 of the following year.
 - Reciprocating Overhead Agreement** – If the utility is owned and operated by a municipality, and a Reciprocating Overhead Agreement¹ exists between the municipality and WSDOT, then the Indirect Cost Rate

¹ In a Memorandum from the Chief Engineer on April 29, 2010, the department was instructed that as of July 1, 2011, these agreements are no longer in effect, and as of June 2013, the use of Overhead Agreements will be discontinued.

is not applied. Include a note in Exhibit B, at the end of the Agreement Cost Summary, explaining that the Indirect Cost Rate was not applied to the agreement costs due to the existence of a Reciprocating Overhead Agreement. Show the agreement number and the effective date.

Regions request approval for new Reciprocating Overhead Agreements from the HQ AFS. New agreements will not be approved by the AFS unless WSDOT will actually receive a benefit by doing so. New agreements will also not be approved solely for the benefit of the city, town, or county. The region Accounting Office maintains a current list of Reciprocating Overhead Agreements.

9. **Cost Sharing** – When WSDOT and the utility share the cost of the relocation, the method of establishing each party’s share must be shown in Exhibit B. Show the shared costs in percentages using one of the following two methods:

- The percentage was established by comparing cost estimates of work for which each party is responsible.
- The percentage was established by comparing the length of the facility for which each party is responsible. This is acceptable only if the construction features are reasonably similar for each party’s portion of the facility.

The first method is preferred because it eliminates the impact that variables can have on the cost of the work. Exhibit B should note that this percentage split is fixed and shall be applied to the actual cost of the work.

10. **Agreement Summary Sheet** – A page titled “Agreement Summary Sheet” may be included as the last page of Exhibit B of a Construction Agreement or an Agreement Amendment. The Agreement Summary Sheet will contain all costs attributed to a single agreement number, such as the original Construction Agreement and all subsequent Agreement Amendments.

Following is an example of information on an Agreement Summary Sheet:

UT 97301 Construction Agreement	\$25,000
UT 97301 Amendment No. 1 Construction Agreement	\$15,000
<u>UT 97301 Amendment No. 2 Construction Agreement</u>	<u>\$10,000</u>
Total to Date	\$50,000

- (c) **Exhibit C: Plans** – Maps and plan sheets included as part of a Construction Agreement are labeled as Exhibit C. The plans are a necessary and valuable part of the agreement and should be prepared with the same care and attention to detail as WSDOT’s highway project plans. Plan exhibits must show the highway centerline and stationing, existing right of way line, new right of way line, and limited access line. If the utility work is involved in a current proposed highway project, the highway project plans may be used in place of the current right of way plan or combined right of way/limited access plans.
- Show existing facilities that are (1) to remain in place and in use, or (2) to remain in place but be deactivated (or abandoned, under limited circumstances), but still owned by the utility.

- Show existing facilities that are to be removed or relocated as a heavy solid green line.
 - Show relocated facilities or new facilities as a heavy solid red line.
- (d) **Construction Agreement Processing** – If a Construction Agreement is warranted, the following procedures apply to the preparation and execution of the agreement:
1. Obtain an agreement number by initiating an Agreement Review Transmittal (ART) form in the ART system, which automatically generates your agreement number.
 2. Prepare the agreement using one of the standard form agreements, or prepare a nonstandard agreement if necessary, and attach the appropriate exhibits. The agreement originals require jackets made of 40-pound light blue bond paper. The jackets of the original agreements are labeled as “State Original” and “Utility or City Original.”
 3. All Construction Agreements are executed by the Regional Administrator or a delegated representative.
 4. When utility work is included in a proposed highway project, the Construction Agreement will be compared to the preadvertisement Plans, Specifications, and Estimates (PS&E) by the region Utilities Office. Inconsistencies may require an agreement amendment.
 5. All Construction Agreements involving longitudinal work within the right of way of the Interstate System require review by HQ Utilities and FHWA for compliance with state and federal laws and policies and accounting provisions.
 6. A Headquarters review may include input from the following offices:
 - The Agreements section of HQ Utilities, Railroad, and Agreements will do an acceptability review. Any alterations to the agreement following the Agreements section acceptability review require a subsequent review by HQ Utilities.
 - Headquarters offices that have specific expertise in areas of work included in the agreement will review the agreement and PS&E when the work is associated with a proposed highway project.
 - HQ Real Estate Services will review the agreement when there are changes in property ownership, including easement and/or quitclaim deeds or right of way revisions.
 - The Attorney General’s Office will be asked for an “approval as to form” for all nonstandard agreements.
- (e) **Agreement Approval and Execution Procedure**
1. **Standard Form Agreement: No Interstate Issues** – Send two originals to the utility for signature: one for a “State Original” and another for a “Utility or City Original.” After both signed documents are received from the utility, obtain the signature of the Regional Administrator or delegated representative on both originals. Retain one copy for the region Utilities Office. Send the

executed State Original and a copy of the Agreement Review Transmittal form to the HQ Division of Accounting & Financial Services. Return the Utility or City Original to the utility. Send a copy of the agreement to region Program Management, the region Financial Services Office, and the Project Engineer's Office.

2. **Standard Form Agreement: Longitudinal Interstate Issues** – E-mail a copy of the agreement to HQ Utilities for Headquarters and FHWA review and concurrence. After resolving any concerns by HQ Utilities and FHWA, follow the procedure for agreement approval and execution as outlined under Standard Form Agreement: No Interstate Issues (above).
3. **Nonstandard Agreements** – E-mail a copy of the agreement to HQ Utilities for Headquarters review and concurrence. FHWA may need to review for an Interstate Agreement. After successful review by all interested parties, and an approval as to form by the Attorney General's Office, HQ Utilities will send a signed original back to the region. For approval and execution of the agreement, follow the procedure as outlined under Standard Form Agreement: No Interstate Issues (above).
4. **Letter of Understanding (LOU)** – Send the LOU, signed by the region Utilities Engineer, to the utility by Certified Mail. The signed Certified Mail receipt will document that the utility received the LOU and was aware of all the terms and conditions stated in the LOU. When the utility decides to adjust its own facilities, it will either not return the LOU by the required date or it will return the LOU, indicating its rejection of the terms and conditions. For these situations, send a copy of the LOU to:
 - The Project Design Engineer, with a letter stating that adjustment of the utility's facilities should not be included in the WSDOT contract and that any utility facilities may be paved over unless they are provided for adjustment.
 - The Project Construction Engineer, with a letter stating that the utility will adjust its own facilities and that the utility should be invited to the Preconstruction Conference.

When the LOU is returned from the utility with a signature of acceptance, the document(s) are numbered and tracked according to each region's requirements. (LOUs do not create legally binding commitments.)

5. **Authorization to Proceed** – The date shown on the last page of the agreement is established as the date of authorization to proceed. This date is set after all Headquarters requirements are met and after the agreement is executed and an approved Work Order Authorization (WOA) is completed. Without an approved WOA, costs incurred under this agreement may be ineligible for coverage.

(5) Utility Agreement Amendment

In the event that unforeseen conditions or circumstances result in the need for additional work beyond the scope of the agreement and associated increases in costs beyond the maximum payable amounts under the original agreement, an Agreement Amendment will be required to be executed between the parties prior to such additional costs being incurred. If it becomes necessary to commence such additional utility work immediately in order to avoid project schedule delays and/or avoid further project costs, the Agreement Manager may authorize such additional work in advance of formal execution of an Agreement Amendment, provided that the authorization is in writing. The Utility may not be reimbursed for any costs beyond the maximum payable amount under the original agreement unless an Agreement Amendment has been executed.

An amendment is needed when unforeseen conditions require an increase that exceeds a set percentage of overrun agreed to in the original agreement, above the cost estimate in Exhibit B, or when the scope of work is significantly changed. The original agreement is modified by an Agreement Amendment covering said increase.

Amendments to standard and nonstandard Construction Agreements are written in the form of a nonstandard agreement and are sent to Headquarters for review. If the language, scope of work, and/or intent of the standard form agreement does not change, Headquarters can recommend region execution. If the amendment to the standard form does change the scope of work, intent, and/or language of the agreement, the amendment may require approval as to form by the Attorney General's Office (AGO).

An Agreement Amendment's references to the exhibits must remain faithful to the original exhibit, with the number of the amendment added after the alphabetic exhibit designation; for example, if it is Amendment 1, it would have Exhibit A-1, Exhibit B-1, or Exhibit C-1. Review procedures for amendments to all nonstandard agreements will follow the same process as the original agreement, which requires review by Headquarters and the AGO.

The region must have an approved Work Order Authorization and, when federal funds are involved, an approved Request for Federal-Aid Project Authorization and Agreement prior to commencement of the amendment work.

