



<b>Utility - Vegetation/Timber Removal and Mitigation Payment Agreement</b>			Utility Name & Address
Agreement Number			Section/Location
State Route Number	Milepost	Control Section No.	Region
<b>Total Vegetation Mitigation Payment to State</b> \$			
<b>Total Merchantable Tree Value Payment to State</b> \$			

This Agreement, made and entered into between the Washington State Department of Transportation, hereinafter, "WSDOT" and the above named utility, hereinafter, "Utility."

**RECITALS**

- A. The Utility will perform/has performed work (the "Project") on WSDOT right of way pursuant to a utility permit or franchise granted by WSDOT pursuant to RCW 47.44.010, Permit/Franchise No. \_\_\_\_\_ ("Permit/Franchise").
- B. The Project required/will require the removal or destruction of certain trees or other vegetation from the WSDOT right of way, as identified in the attached Exhibit A.
- C. The terms and conditions of the Permit/Franchise, WAC 468-34-340, and WSDOT's Roadside Policy Manual (M3110), Chapter 2, Section 6, require that the Utility to replace trees or other vegetation removed or destroyed as a result of the Project.
- D. WSDOT and the Utility agree that it is impracticable undesirable, or impossible to replace in kind within the Project footprint trees or other vegetation removed or destroyed as a result of the Project.
- E. The trees or other vegetation removed or destroyed as a result of the Project are an asset of the Motor Vehicle Fund and the value thereof must be returned to the Motor Vehicle Fund.
- F. The Utility has agreed to pay the estimated replacement and restoration cost of trees or other vegetation removed or destroyed as a result of the Project in lieu of Utility's obligation to replace the trees or other vegetation, as set forth in Exhibit B.
- G. If the Project requires the removal of trees that have merchantable value (Merchantable Timber), the Utility has agreed to pay the fair market value of the Merchantable Timber.

NOW THEREFORE, pursuant to the above recitals that are incorporated as if fully set forth below and in consideration of the terms, conditions, covenants, and performance contained herein, including any Exhibits attached which are incorporated and made a part hereof,

**IT IS MUTUALLY AGREED AS FOLLOWS:**

- 1. PURPOSE: The purpose of this Agreement is to establish Utility responsibilities associated with the removal or destruction of trees or other vegetation from the WSDOT right of way as a result of the Project (the "Work").

## 2. REMOVAL OF TREES AND OTHER VEGETATION

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

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

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

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

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

2.3 The Utility shall pay to WSDOT the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) representing the estimated costs of replacing the trees or other vegetation removed or destroyed, and all associated direct and indirect costs, as a result of the Project in lieu of Utility's obligation to replace the trees or other vegetation, as set forth in Exhibit B. Payment shall be made by cash or check payable to the Washington State Department of Transportation (for deposit into the Vegetation Mitigation Fund) and shall be delivered to the WSDOT representative listed in Section 7 a minimum of 15 calendar days prior to commencing the Work.

## 3. MERCHANTABLE TIMBER:

3.1 If the Work includes the removal of Merchantable Timber, the terms and conditions of Sections 3.2 – 3.4 shall apply.

3.2 The Utility shall comply with the following:

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

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

[http://dor.wa.gov/content/findtaxesandrates/othertaxes/timber/forst\\_LogExportRegulations.aspx](http://dor.wa.gov/content/findtaxesandrates/othertaxes/timber/forst_LogExportRegulations.aspx)

The Utility shall provide copies of the completed and signed certifications to the WSDOT representative listed in Section 7 on or before substantial completion of the Work. Utility shall include the WSDOT Permit/ Franchise number in its submittal.

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

3.4 The Utility shall pay to WSDOT the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the fair market value of Merchantable Timber, and all associated direct and indirect costs, as shown in Exhibit A. Payment shall be made by cash or check payable to the Washington State Department of Transportation (for deposit into the Motor Vehicle Fund) and shall be delivered to the WSDOT representative listed in Section 4 a minimum of 15 calendar days prior to commencing the Work.

4. Except with respect to the form of compensation to payable to WSDOT as set forth above, nothing in this Agreement shall diminish the Utility's obligation under the Permit/Franchise the Roadside Policy Manual, and WAC 468-34-340 to restore that part of the WSDOT right of way disturbed by the Project.
5. The Work may be performed by the Utility or a qualified contractor on its behalf; provided, that if the Work is performed by a contractor on behalf of the Utility, the Utility shall include the terms and conditions of this Agreement in said contract and ensure the contractor complies with all applicable terms and conditions.
6. EXTENT OF AGREEMENT: This Agreement and all documents incorporated herein set forth all of the terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement.
7. REPRESENTATIVES: The persons responsible for administration of this Agreement on behalf of each party shall be as set forth below. All correspondence, letters or other notices shall be directed to the foregoing parties at the following addresses/phone numbers, or to their established agency designee:

ENTITY:

WSDOT:

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

9. DURATION AND TERMINATION:

- 9.1 The term of this Agreement begins upon execution by WSDOT and terminates upon receipt of payment by WSDOT and substantial completion of the Work.
- 9.2 This Agreement may be terminated by either party on 30 calendar days written notice, but such termination shall not prejudice any rights or obligations accrued to WSDOT or the Utility prior to the effective date of termination.

10. DISPUTES AND VENUE

- 10.1 In the event that a dispute arises under this Agreement, the WSDOT and the Utility representatives shall work in good faith to resolve the matter as expeditiously as possible.
- 10.2 The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this Agreement.

10.2.1 FOR WSDOT:

*{Insert name, title, mailing address, email & phone}*

10.2.2 FOR ENTITY:

*{Insert name, title, mailing address, email & phone}*

10.3 The Designated Representatives shall confer to resolve disputes that arise under this Agreement as requested by either party. The Designated Representatives shall use their best efforts and exercise good faith to resolve such disputes.

10.4 In the event the Designated Representatives are unable to resolve the dispute, the \_\_\_\_\_ or his/her designee for WSDOT, and the \_\_\_\_\_ or her/his designee for Utility shall confer and exercise good faith to resolve the dispute.

10.5 In the event the party representatives identified in Section 10.4 above are not able to resolve the dispute, either party may institute a legal action in the County of \_\_\_\_\_, State of Washington. The parties agree that they shall have no right to seek relief in a court of law until and unless each of the above procedural steps has been exhausted. Further, the parties agree that each will be solely responsible for payment of their own attorneys' fees, witness fees, and costs.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year last written below.

UTILITY	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
Signature: _____	Signature: _____
By: _____ Print Name	By: _____ Print Name
Title: _____	Title: _____
Date: _____	Date: _____