



<b>Utility Construction Agreement</b> Work by Utility – State Cost		Utility Name and Address <b>Portland Water Bureau (PWB)</b>
Key Number <b>20208</b>	Region <b>1</b>	Project Title/Location <b>US30: St Johns to Kittridge</b>
Highway/Roadway <b>US30</b>	Milepoint/location <b>St. Johns to Kittridge</b>	

This Utility Construction Agreement is made and entered into between the Oregon Department of Transportation (“STATE” or “ODOT”) and Portland Water Bureau (“UTILITY”), a governmental entity, each herein referred to individually as “Party” or both collectively as “Parties”.

**RECITALS**

1. The STATE is planning the construction or improvement of the Highway as shown above for the identified STATE project (“State Project”), and in connection therewith, it is necessary to remove, relocate and construct certain UTILITY facilities (“Work”). The Work includes all materials, equipment, labor, contract administration and any other effort required to perform the relocation, construction, and removal of the UTILITY’s facilities. The work will be further defined in the Approved Relocation Plan referenced in Section 1.1 of this Agreement.
2. The Highway is a state highway under the jurisdiction and control of the Oregon Transportation Commission.
3. The State notified UTILITY that its facilities were in conflict with the STATE Project and instructed the UTILITY to relocate its facilities, pursuant to ORS 366.321. The locations of the UTILITY’s facilities are attached hereto and incorporated herein as Exhibit A (“Conflict Letter and Matrix”).
4. Pursuant to ORS 366.321, the STATE is responsible for the cost of the Work affecting the UTILITY’s facilities when the UTILITY has a documented ownership or interest in real property, such as an easement, fee title, or a judgment of prescriptive rights issued by a court of competent jurisdiction attached hereto and incorporated here in as Exhibit E (“Documented Ownership Interest”), which is impacted by the STATE project.
5. It is deemed to be in the public interest for the UTILITY to perform the relocation, removal, or construction of its facilities.
6. Pursuant to Oregon Revised Statutes(ORS) 190.110, ORS 366.205 and ORS 366.400, STATE may enter into contracts deemed necessary for the construction, maintenance, operation, improvement or betterment of highways or for the accomplishment of the purposes of ORS 366. UTILITY represents that it is a unit of local government for purposes of ORS 190.110.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**1.0 CONSTRUCTION, INSPECTION, AND ACCEPTANCE**

- 1.1 The UTILITY shall perform the WORK identified in Recitals Paragraph 1 in accordance with all applicable laws, permits, ordinances, rules and regulations and in accordance with a relocation plan approved by the STATE (“Approved Relocation Plan”). Upon executing this Agreement, UTILITY shall develop and submit to the STATE the Relocation Plan. Upon the STATE’S approval of the Relocation Plan, the Parties agree that the Approved Relocation Plan shall be attached to this Agreement as Exhibit B and incorporated herein by this reference.

- 1.2 UTILITY shall furnish the labor, materials, equipment, and tools required for performance of the Work.
- 1.3 UTILITY shall complete the WORK in accordance with, and by the dates specified in a notice (“Time Requirement Letter”) that ODOT’s Engineer issues to UTILITY. The Engineer will issue the Time Requirement Letter subsequent to the execution of this agreement, and upon issuance, the Parties agree to attach hereto and incorporate herein as Exhibit C.
- 1.4 The State shall reimburse UTILITY for all work performed at locations upon which the UTILITY has a Documented Ownership Interest, in accordance with Section 4 of this agreement and the Program Guide: *Utility Relocation and Accommodation on Federal Aid Highway Projects* (“Program Guide”) shall determine and establish the definitions and applicable standards and payments under this Agreement. By this reference the Program Guide, including the definitions, process, and standards outlined within, is adopted and made a part of this Agreement as if fully contained herein. The Program Guide is available at:
- <https://www.fhwa.dot.gov/reports/utilguid/index.cfm>
- 1.5 Betterment: A “betterment” is any improvement to the UTILITY’s facilities not required by code, statute, regulation, standard industry practice, or any other applicable law. If any of the Work constitutes a betterment as defined in the Program Guide, the UTILITY is solely responsible for the costs of such improvement.
- 1.6 Accrued Depreciation: Accrued depreciation may be applied to any of the UTILITY’s major facilities, such as a building, pump station, power plant, etc. Accrued depreciation shall not apply to the UTILITY’s primary facilities, such as pipelines, conductors, poles, cable, conduit, etc. If any UTILITY facility does qualify for an adjustment due to accrued depreciation as defined in Program Guide, the costs are calculated according to the formula in the Program Guide and the result is shown as a cost that the UTILITY is responsible for (“Utility Cost”) in Exhibit D Cost Estimate, as referenced in Section 4.1 of this Agreement.
- 1.7 If the UTILITY is not adequately staffed or equipped to perform all the Work required herein, the UTILITY may have all or part of this Work done by a contract let by the UTILITY, as follows:
- 1.7.1 Before contracting out any Work, the UTILITY shall obtain written authorization from the STATE, and the STATE may require the UTILITY to advertise and solicit bids for the contract Work.
  - 1.7.2 If the STATE requires the Work to be advertised and bid, the UTILITY shall provide a copy of all bid documents to the STATE fourteen (14) calendar days prior to the UTILITY advertisement date, for STATE comment.
  - 1.7.3 The UTILITY shall notify the STATE at least seven (7) working days in advance of the location and time of the bid opening so that a STATE representative may attend the bid opening.
  - 1.7.4 The UTILITY shall supply a copy of the three lowest bids with itemized bid amounts to the STATE within seven (7) calendar days of bid opening. UTILITY shall obtain written authorization from the STATE to award the UTILITY contract.
  - 1.7.5 If the UTILITY elects to use other than the lowest bid contractor, the UTILITY shall provide written justification to the STATE for the use of that contractor and bid price. The STATE shall review the UTILITY’s written justification, and if the STATE does not agree therewith and the UTILITY awards the bid to other than the lowest bid contractor, the UTILITY shall be responsible for the cost difference between the amount of the lowest bid and the amount of the awarded contract.
- 1.8 If the UTILITY desires to have the Work performed under an existing contract between UTILITY and a contractor, the STATE may require the UTILITY to provide the STATE with a copy of the contract for the STATE’s written approval of the contractor and contract charges. If STATE requests the UTILTIY contract, UTILITY shall provide said contract within seven (7) working days.
- 1.9 The Parties agree that nothing in the STATE’s approval of a UTILITY contractor or bid shall be for the benefit of the UTILITY; all such approvals shall be solely for the benefit of the STATE and shall not establish a contractual relationship among the STATE, the UTILITY, and the UTILITY’s contractor.

- 1.10 All of the UTILITY's work, construction procedures, materials, and utility installation, as provided under this Agreement, shall be subject to STATE inspection for solely the benefit of the STATE's payment, and STATE project. The UTILITY shall promptly notify the STATE in writing when the Work is completed. The STATE shall inspect the Work for compliance with the Exhibits attached to this Agreement. The STATE will notify the UTILITY in writing of any non-compliance that would impact the STATE's payment, or STATE project. The UTILITY agrees to make the necessary changes to satisfy the STATE requirements or adjust the invoice. The STATE's inspection shall not reduce or modify the UTILITY's responsibility for the Work.
- 1.11 UTILITY agrees that, upon completion of the Work, UTILITY shall be solely responsible for all future ownership, operation and maintenance costs of its facilities, without STATE liability or expense.

## **2.0 AUTHORITY TO BEGIN WORK AND WORK SCHEDULE**

- 2.1 The UTILITY agrees not to begin Work until the STATE has provided written notice to proceed ("Notice to Proceed") authorizing the UTILITY to begin that Work. The STATE is not obligated to reimburse the UTILITY for any Work performed before the date of the Notice to Proceed. Depending on the Work and the terms of the Exhibit B Approved Relocation Plan, the Notice to Proceed may include, but is not limited to a Notice to Proceed for: Preliminary Engineering, Construction, Competitive Bidding, Award and Construction, Purchase of Materials.
- 2.2 The UTILITY agrees to schedule and perform the Work in such manner so as not to delay or interfere with the performance of the STATE's project. The UTILITY shall be responsible for any costs resulting from delay of, or interference with, the STATE's project, to the extent the delay or interference is attributable to the UTILITY or the UTILITY's contractor. Any mutually agreed conditions or requirements for avoidance of delay of, or interference with, the STATE's project are included in the Exhibit C, Time Requirement Letter.

## **3.0 COMPLIANCE**

- 3.1 The UTILITY agrees to comply with all applicable requirements of the STATE in accordance with the Utilities Accommodation Policy, OAR 734-055, and amendments thereto, and said policy and amendments are hereby incorporated in and made a part of this Agreement as if fully set forth herein.
- 3.2 The UTILITY agrees to comply with all applicable laws and environmental requirements of any agency with jurisdiction over the location of the Work and is responsible for obtaining any necessary environmental permits required in order to perform the Work.
- 3.3 The UTILITY agrees to obtain and comply with any other permits from any agency with jurisdiction over the location of the Work that are required for performance of the Work.

## **4.0 PAYMENT**

- 4.1 The STATE is responsible for the cost of the Work, excluding all betterment work, for the UTILITY's facilities that are located pursuant to a Documented Ownership Interest which are impacted by the STATE project, not to exceed the total cost estimate set forth in Exhibit D, Cost Estimate, attached hereto and incorporated herein by reference. The Cost Estimate may be amended, as described in Section 5.1 below, to incorporate a Cost Estimate for each Notice to Proceed.
- 4.2 The STATE, in consideration of the faithful performance of the Work by the UTILITY, agrees to reimburse the UTILITY for the actual cost of the Work, excluding all betterment work, the total cost of which shall not exceed the amount detailed in the Exhibit D Cost Estimate. The UTILITY agrees to invoice the STATE and provide supporting documentation for all charges, and the STATE agrees to pay the UTILITY within forty-five (45) calendar days of the STATE'S approval of an invoice and all required supporting documentation. Payments shall not be more frequent than one per month. A partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of final invoice, the Parties will resolve any discrepancies.
- 4.3 The UTILITY shall submit a final invoice, with all required supporting documentation to the STATE within one hundred and twenty (120) calendar days following completion of the Work. In the event that the final invoice

reveals an overpayment to the UTILITY, the UTILITY agrees to refund such overpayment to the STATE within thirty (30) calendar days after written notification.

## 5.0 CHANGE IN WORK OR COST INCREASE

5.1 The Parties agree that should unforeseen conditions or circumstances require additional or changes in Work from what Exhibit B provide, or increases in costs above the Exhibit D Cost Estimate, an Amendment to this Agreement is required. If the additional or change in Work must be immediately performed in order to avoid project schedule delays or to avoid additional project costs, the STATE Representative identified in this agreement may authorize such additional or change in Work and increased costs in advance of formal Amendment execution; provided that, (a) the cost of such additional Work does not exceed \$50,000, (b) the UTILITY submits to the STATE a written description of the additional or change in Work and the additional cost estimate, (c) the STATE Regional STIP Coordinator verifies that funds are available within the project budget to cover the additional costs. Once the Regional STIP Coordinator verifies the funds, the STATE Representative shall provide the UTILITY with a written authorization. The STATE Representative's written authorization shall be subject to all the terms and conditions of this Agreement. The State will not reimburse UTILITY for any costs above the Exhibit D Cost Estimate until an Amendment has been executed.

5.2 Should it be necessary to modify Exhibit B, Approved Relocation Plans, the UTILITY agrees to immediately notify the STATE of all proposed changes, and the STATE agrees to provide written notice of its acceptance or rejection of the change(s), in writing, within fourteen (14) calendar days. The changes will not become final and the STATE will not reimburse UTILITY for WORK performed pursuant to the changes to the Approved Relocation Plans until the Parties execute an Amendment to this Agreement.

## 6.0 PERMIT

6.1 The UTILITY shall apply for a permit for those new or modified UTILITY facilities that will be located within the right of way of the applicable State, County, or City. After receiving the application, the STATE will issue the UTILITY a permit.

## 7.0 GENERAL PROVISIONS

7.1 This agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the STATE to enforce any provision of this Agreement shall not constitute a waiver by the STATE of that or any other provision.

### 7.2 INDEMNIFICATION

**7.2.1 Subject to the provisions of the Oregon Tort Claims Act, ORS 30.260 et seq.,** UTILITY shall indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the UTILITY or any of the officers, agents, employees or contractors of the Utility in the performance of this Agreement. It is the specific intention of the Parties that the STATE shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the STATE, be indemnified by the UTILITY from and against any and all claims.

7.2.2. Neither the UTILITY nor any attorney engaged by the UTILITY shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative

of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that UTILITY is prohibited from defending the State of Oregon, or that UTILITY is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against the UTILITY if the State of Oregon elects to assume its own defense.

7.2.3. Subject to the provisions of the Oregon Tort Claims Act, ORS 30.260 *et seq.*, the State of Oregon shall indemnify, defend, save and hold harmless the UTILITY and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the State of Oregon or any of the officers, agents, employees or contractors of the State of Oregon in the performance of this Agreement. It is the specific intention of the Parties that the UTILITY shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the UTILITY, be indemnified by the State of Oregon from and against any and all claims.

7.2.4. Neither the State of Oregon nor any attorney engaged by the State of Oregon shall defend any claim in the name of the UTILITY or any agency of the UTILITY, nor purport to act as legal representative of the UTILITY or any of its agencies, without the prior written consent of the UTILITY. The UTILITY may, at any time at its election assume its own defense and settlement in the event that it determines that State of Oregon is prohibited from defending the UTILITY, or that State of Oregon is not adequately defending the UTILITY's interests, or that an important governmental principle is at issue or that it is in the best interests of the UTILITY to do so. The UTILITY reserves all rights to pursue claims it may have against the State of Oregon if the UTILITY elects to assume its own defense.

7.3 If UTILITY enters into a construction contract for performance of work on the Project, then UTILITY will require its contractor to provide the following:

7.3.1 To the fullest extent permitted by law and except to the extent otherwise void under ORS 30.140, Contractor shall indemnify, defend and hold harmless STATE from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract. Any such indemnification shall also provide that neither the contractor nor any attorney engaged by the contractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that contractor is prohibited from defending the State of Oregon, or that contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against the contractor if the State of Oregon elects to assume its own defense.

7.3.2 Contractor and UTILITY shall name STATE as a third party beneficiary of the resulting contract.

7.3.3 Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to STATE. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined

single limit per occurrence will not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit will not be less than \$ 2,000,000.

- 7.3.4 Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.
  - 7.3.5 Additional Insured. The liability insurance coverage will include STATE and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under the contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.
  - 7.3.6 Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to STATE. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.
- 7.4 Amendments: This Agreement may be amended by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless put in writing and signed by persons authorized to bind each of the Parties.
- 7.5 Audits and Records: During the progress of the Work and for a period of not less than six (6) years from the date of final payment or termination of this Agreement, whichever is later. The UTILITY shall maintain the records and accounts pertaining to the Work and shall make them available during normal business hours and as often as necessary, for inspection and audit by the STATE, State of Oregon, or Federal Government and copies of all records, accounts, documents or other data pertaining to the Work will be furnished upon request. The requesting Party shall pay the cost of copies produced. If any litigation, claim or audit is commenced, the records and accounts along with supporting documentation shall be retained until any litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past the six-year retention period.
- 7.6 Calendar Days: Calendar days for this Agreement are defined as any day shown on the calendar, beginning and ending at midnight, excluding work performed on Saturday or Oregon State holidays specified in ORS 279C.540.
- 7.7 Term: The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the WORK, as detailed in the Approved Relocation Plan, and final payment to UTILITY from the STATE or five (5) calendar years following the date all required signatures are obtained, whichever is sooner.
- 7.8 Termination:
- 7.8.1 This Agreement may be terminated by mutual written consent of both Parties.
  - 7.8.2 This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
  - 7.8.3 STATE may terminate this Agreement effective upon delivery of written notice to UTILITY, or at such later date as may be established by STATE, under any of the following conditions:
    - 7.8.3.1 If UTILITY fails to provide Work called for by this Agreement within the time specified herein or any extension thereof.
    - 7.8.3.2 If UTILITY fails to perform any of the other provisions of this Agreement, or so fails to pursue the Work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from STATE fails to correct such failures within ten (10) days or such longer period as STATE may authorize.

- 7.8.3.3 If STATE fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow STATE, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
- 7.8.3.4 If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or STATE is prohibited from paying for such work from the planned funding source.
- 7.8.4 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- 7.9 Worker's Compensation: All employers, including UTILITY, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS [656.017](#) and provide the required Workers' Compensation coverage unless such employers are exempt under ORS [656.126](#). Employers Liability insurance with coverage limits of not less than \$500,000 must be included. UTILITY shall ensure that each of its contractors complies with these requirements.
- 7.10 Compliance with Law: UTILITY shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS [279C.505](#), [279C.515](#), [279C.520](#), [279C.530](#) and [279B.270](#) incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, UTILITY expressly agrees to comply with (i) [Title VI of Civil Rights Act of 1964](#); (ii) [Title V and Section 504 of the Rehabilitation Act of 1973](#); (iii) the [Americans with Disabilities Act of 1990](#) and ORS [659A.142](#); (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- 7.11 ADA:
- a. **When the UTILITY performs work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:**
- i. Utilize ODOT standards to assess and ensure that the WORK complies with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
  - ii. Follow ODOT's processes for design, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
  - iii. At WORK completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to the STATE'S Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the WORK. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:  
  
<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx>.
- b. UTILITY shall ensure that temporary pedestrian routes are provided through or around any work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. UTILITY shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction.
- 7.12 Default: If either party defaults by failing to perform any act required of it under this Agreement, the non-defaulting Party may exercise any legal rights or remedies available to it.

Should the UTILITY fail to perform the WORK in accordance with the terms of this Agreement, STATE may perform the work and UTILITY will be responsible for all costs incurred by STATE above the Cost Estimate. Should UTILITY'S failure to perform the WORK in accordance with the terms of this Agreement cause a delay to the State Project and thereby result in the STATE paying extra compensation to its contractors as a result of that delay, UTILITY shall be liable to STATE for the payment amount paid to the STATE'S contractor that STATE incurred as a direct result of UTILITY'S failure to comply with this Agreement.

- 7.13 Dispute Resolution: The parties shall attempt to resolve any disputes arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- 7.14 Authorized Parties: The STATE and UTILITY represent to the other that (i) each has the full right, power and authority to execute this Agreement and perform their respective obligations under this Agreement, and (ii) the execution and delivery of this Agreement has been duly authorized, and no further action or approval is required to cause this Agreement to be valid, binding and enforceable against the respective party in accordance with its terms.
- 7.15 Counterparts: This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

**UTILITY**

By \_\_\_\_\_

Printed Name Gabriel Solmer

Title Director, City of Portland Water Bureau

Date \_\_\_\_\_

**Utility Contact:**

Gabriel Solmer, Director  
City of Portland Water Bureau  
Director  
503.823.8691 mobile  
[Gabriel.Solmer@portlandoregon.gov](mailto:Gabriel.Solmer@portlandoregon.gov)

**OREGON DEPARTMENT OF  
TRANSPORTATION**

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By Stacy Posegate by email  
Assistant Attorney General

Date 4/26/22

**State Contact:**

Nicole Frankl, State Utility Liaison  
ODOT – Technical Services  
4040 Fairview Ind. Drive SE MS#2  
Salem OR 97302  
(503) 986-3658  
[Nicole.Frankl@odot.state.or.us](mailto:Nicole.Frankl@odot.state.or.us)



## EXHIBIT A – Conflict Letter & Matrix



July 29, 2020

Portland Water Bureau  
1120 SW 5th Avenue, Room 600  
Portland, OR 97204

Subject: Conflict Letter with Reimbursable Work  
US30: NW Saltzman Rd. – NW Bridge Ave.  
US 30  
Multnomah County  
Key Number: K20208

Attention: Cherri Warnke

WSP has been retained by the Oregon Department of Transportation (ODOT) to provide design engineering services during the design phase of the subject project located in Portland, Oregon. Casso Consulting is providing the utility coordination services.

Bids will be received for the above named project on Thursday, October 21, 2021. Facilities owned by your company conflict with the construction of this project and should be relocated or adjusted before construction begins. Please refer to the enclosed preliminary plan sheet(s) that note and highlight the conflicting facilities.

Facilities noted as "potential conflict" are assumed to be in conflict and are required to be relocated within the schedule listed below until further investigation can positively rule out the conflict. We ask your cooperation to further investigate any potential conflicts by having your company pothole the sites to determine the exact depth and horizontal location as soon as possible.

The conflicting facilities are located on public right of way. Your company will be reimbursed for the cost of relocating those facilities shown to have a compensable property right, or prior rights.

Your company must provide evidence, such as easements, fee title, "X" permit, or service agreement to verify your company's eligibility for reimbursement. Reimbursement will be in accordance with the provisions of the Code of Federal Regulations, 23 CFR 645A, which can be viewed at the following website: [www.fhwa.dot.gov/reports/utilguid/](http://www.fhwa.dot.gov/reports/utilguid/).

The list of conflicts may not be complete. Your company should review the project plans for completeness and accuracy, and contact me immediately with any errors or omissions. Timely communications and coordination is critical to keeping the project on schedule so your assistance and cooperation is greatly appreciated.

The conflicting facilities must be completely relocated or adjusted by Thursday, October 21, 2021, so as not to delay the construction of the project.

**If your company cannot comply with the above completion date, you must contact me immediately to obtain written agreement on a revised relocation schedule. No changes can be made to the relocation schedule after Friday, March 19, 2021.** The relocation schedule will be specified in the project contract documents and your company will be responsible to meet the schedule. Your company may be held responsible for any delay claims that are caused by your company's failure to meet the specified relocation schedule(s).

734-5155 (04/2020)

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office: 503.350.0663 | PO Box 49 | Beaverton, OR 97075-0049

## EXHIBIT A – Conflict Letter & Matrix (Cont.)

Conflict Letter with Reimbursable Work

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All reimbursable relocations must comply with 23 CFR 635.410 Buy America. If your company has any questions or concerns, or is unable to acquire materials compliant with the Buy America Program, please contact the State Utility Liaison at 503-986-3658.

PLEASE NOTE: PRELIMINARY ENGINEERING AND/OR CONSTRUCTION WORK CANNOT BEGIN UNTIL YOU RECEIVE WRITTEN AUTHORIZATION TO PROCEED FROM THE STATE UTILITY LIAISON. ANY WORK COMPLETED PRIOR TO THE AUTHORIZATION WILL NOT BE REIMBURSED.

Your company is required to complete the attached "Reimbursement Information Form" (RIF), provide written evidence of property right, provide a detailed cost estimate for preliminary engineering and later for construction and construction engineering, and sign the utility agreement that will be provided once the above information is provided. You will receive a written "Notice to Proceed" only after all documentation has been submitted.

The completed RIF, written evidence of a property right, and detailed cost estimate may be sent via mail, electronically or by fax to:

ATTN: John Tudisco  
4905 SW Griffith Dr., Suite 107  
Beaverton, OR 97005  
John.tudisco@cassoinc.com

For questions regarding this notification and its requirements, please call me at 503-994-4197.

Sincerely,

*John Tudisco*

John Tudisco, EIT, Utility Coordinator

Attachment: Plans Sheet(s), 67 pages  
Conflict Maps, 14 pages  
Conflict List, 1 page  
Utility Relocation Information Sheet

CC: Tammy Saldivar, State Utility and Rail Liaison ([UtilityandRailProgra@odot.state.or.us](mailto:UtilityandRailProgra@odot.state.or.us))  
Stephanie Turner, ODOT Project Manager  
James Bohanek, WSP Project Manager  
District 2B Permit Specialist ([d2bup@odot.state.or.us](mailto:d2bup@odot.state.or.us))

US 30 Kittridge\_odot\_utility\_conflict\_list.xls

PWB

7/29/2020

Utility Conflict Matrix - PWB

Project Owner : ODOT  
 Project No.: 20208  
 Project Description: US 30: NW Saltzman Rd to NW Bridge Ave  
 Highway or Route: US 30

Note: refer to subsheet for utility conflict cost analysis.

Utility Conflict Matrix Developed/Revised By: John Tudisco, Casso Consulting, Inc.  
 Date: 7/29/2020  
 Reviewed By: Cory Burlingame, Casso Consulting, Inc.  
 Date: 7/27/2020

Utility Owner and/or Contact Name	Conflict ID	Drawing or Sheet No.	Note	Utility Type	Size and/or Material	ROW	Prior Rights	Project Element Conflict	Utility Conflict Description	Start Station	Start Offset	End Station	End Offset	UIL Provided	UIL Needed	Relocation Cost	Test Hole	Recommended Action or Resolution	Estimated Time for Utility Work	Delay to Construction?	Staging Requirements	Notice Required	Estimated Resolution Date	Resolution Status
FWB	1	CD1		Water	4 Valves	ODOT	Yes	Grind & Inlay	Potential conflict with 4" grind and inlay	Varies	Varies			QLC				Adjust to finish grade						Conflict created
FWB	2	CD2		Water	3 Valves	ODOT	Yes	Grind & Inlay	Potential conflict with 4" grind and inlay	Varies	Varies			QLC				Adjust to finish grade						Conflict created
FWB	3	CD2	1	Water	Water Line	ODOT	Yes	Roadway Widening	Potential conflict with 19" depth roadway widening	314+65	31 R	315+69	28 R	QLC				Confirm pipe can be protected						Conflict created
FWB	4	CD3		Water	1 Valve	ODOT	Yes	Grind & Inlay	Potential conflict with 4" grind and inlay	324+96	26 R			QLC				Adjust to finish grade						Conflict created
FWB	5	CD4	4	Water	Meter and lateral	ODOT	Yes	Sewer	Potential conflict with sewer pipe	335+01	35 L			QLC				Confirm meter and lateral can be protected						Conflict created
FWB	6	CD4	3	Water	Lateral	ODOT	Yes	Roadway Widening	Potential conflict with 19" depth roadway widening	334+89	30 R			QLC				Confirm lateral can be protected						Conflict created
FWB	7	CD4		Water	4 Valves	ODOT	Yes	Grind & Inlay	Potential conflict with 4" grind and inlay	Varies	Varies			QLC				Adjust to finish grade						Conflict created
FWB	8	CD4	5	Water	Meter and lateral	ODOT	Yes	Sewer	Potential conflict with sewer pipe	336+02	36 L			QLC				Confirm meter and lateral can be protected						Conflict created
FWB	9	CD4	3	Water	Water Line	ODOT	Yes	Roadway Widening	Potential conflict with 19" depth roadway widening	338+29	29 R	338+97	29 R	QLC				Confirm pipe can be protected						Conflict created
FWB	10	CD5		Water	Water Line	ODOT	Yes	Roadway Widening	Potential conflict with 19" depth roadway widening	338+97	29 R	343+98	27 R	QLC				Confirm pipe can be protected						Conflict created
FWB	11	CD5		Water	Manhole and lateral	ODOT	Yes	Roadway Widening	Potential conflict with 19" depth roadway widening	341+67	27 R			QLC				Project to protect manhole. Confirm lateral can be						Conflict created
FWB	12	CD5	11	Water	Water Line	ODOT	Yes	Sewer	Potential conflict with sewer pipe	345+70	38 L			QLC				Confirm manhole and lateral can be protected						Conflict created
FWB	14	CD6		Water	3 Valves	ODOT	Yes	Grind & Inlay	Potential conflict with 4" grind and inlay	Varies	Varies			QLC				Adjust to finish grade						Conflict created
FWB	15	CD6		Water	Meter and lateral	ODOT	Yes	Sewer	Potential conflict with sewer pipe	350+80	34 R			QLC				Confirm meter and lateral can be protected						Conflict created
FWB	16	CD7	2	Water	Meter	ODOT	Yes	Roadway Widening	Potential conflict with 19" depth roadway widening	Varies	Varies			QLC				Confirm meter can be protected						Conflict created
FWB	17	CD7	2	Water	Lateral	ODOT	Yes	Roadway Widening	Potential conflict with 19" depth roadway widening	362+28	28 R			QLC				Confirm lateral can be protected						Conflict created
FWB	20	CD7		Water	1 Valve	ODOT	Yes	Grind & Inlay	Potential conflict with 4" grind and inlay	370+21	22 R			QLC				Adjust to finish grade						Conflict created
FWB	21	CD7	2	Water	Lateral	ODOT	Yes	Roadway Widening	Potential conflict with 19" depth roadway widening	370+21	32 R			QLC				Confirm lateral can be protected						Conflict created
FWB	83	CD7		Water	Meter	ODOT	Yes	Grind & Inlay	Potential conflict with 4" grind and inlay	364+51	28 L			QLC				Adjust to finish grade						Conflict created
FWB	22	CD8		Water	3 Valves	ODOT	Yes	Grind & Inlay	Potential conflict with 4" grind and inlay	Varies	Varies			QLC				Adjust to finish grade						Conflict created
FWB	23	CD8		Water	Meter	ODOT	Yes	Grind & Inlay	Potential conflict with 4" grind and inlay	374+96	28 L			QLC				Confirm meter can be protected						Conflict created
FWB	24	CD8	2	Water	Lateral	ODOT	Yes	Roadway Widening	Potential conflict with 19" depth roadway widening	380+56	29 R			QLC				Confirm lateral can be protected						Conflict created
FWB	25	CD9		Water	1 Valve	ODOT	Yes	Grind & Inlay	Potential conflict with 4" grind and inlay	384+54	28 R			QLC				Adjust to finish grade						Conflict created
FWB	27	CD9		Water	Meter	ODOT	Yes	Grind & Inlay	Potential conflict with 4" grind and inlay	386+40	28 L			QLC				Confirm meter can be protected						Conflict created
FWB	28	C10	3	Water	2 Meters	ODOT	Yes	ADA Ramp Construction	Potential conflict with ADA ramp construction	402+43	39 L			QLC				Confirm meters can be protected or relocate						Conflict created
FWB	29	C10		Water	7 Valves	ODOT	Yes	Grind & Inlay	Potential conflict with 4" grind and inlay	Varies	Varies			QLC				Adjust to finish grade						Conflict created

Key:  
 UIL: Utility Investigation Level  
 QLD: Existing records  
 QLC: Survey of aboveground utilities  
 QLB: Geophysical methods  
 QLA: Exposure (test holes/vacuum excavation)

## **EXHIBIT B – Approved Relocation Plan**

Upon executing this Agreement, UTILITY shall develop and submit to the STATE the Relocation Plan. Upon the STATE'S approval of the Relocation Plan, the Parties agree that the Approved Relocation Plan shall be attached to this Agreement as Exhibit B and incorporated herein by this reference.

The Exhibit is to be added in the future.

## **EXHIBIT C – Time Requirement Letter**

UTILITY shall complete the WORK in accordance with, and by the dates specified in a notice (“Time Requirement Letter”) that ODOT’s Engineer issues to UTILITY. The Engineer will issue the Time Requirement Letter subsequent to the execution of this agreement, and upon issuance, the Parties agree to attach hereto and incorporate herein as Exhibit C.

Exhibit to be added in the future.

## EXHIBIT D – Cost Estimate

<u>Type of work</u>	<u>Estimate Cost</u>	<u>Quantity</u>	<u>Total</u>
CIV Raise/Lower	\$ 1,327.00	43	\$57,061.00
Manhole Adjust	\$ 1,369.00	5	\$ 6,845.00
Air Valve Adjust	\$ 848.00	4	\$ 3,392.00
5433 NW St. Helens *	\$ 7,160.00	1	\$ 7,160.00
5909 NW St. Helens *	\$ 7,160.00	1	\$ 7,160.00
7881 NW St. Helens **	\$ 2,720.00	1	\$ 2,720.00
<b>Total</b>		<b>1</b>	<b>\$84,338.00</b>
* rate book 1" water service with paving			
** rate book linear adjustment			

Estimate Material, Labor and Equipment Breakdown      Estimate First Created:      Estimate Printed: 6:14 PM Thursday, November 5, 2020      Page 1 of 1  
 MANHOLE ADJUSTMENT IN HWY    adjust manhole for paving      PROJECT:      SAP CO:      EST #:      % Overhead 110.52    ENGINEER: Terry Wenz

**LABOR**

DESCRIPTION	EST HOURS	EST COST	EST BASE W/ BENEFIT	EST W/ PAY INCREASE	EST W/ TOTAL OVERHEAD
UTILITY WORKER II	6	\$166.72	\$333.16	\$333.16	\$701.38
APPRENTICE WATER SERVICE MECHANIC	2	\$63.97	\$127.83	\$127.83	\$269.11
WATER SERVICE MECHANIC	2	\$71.63	\$143.13	\$143.13	\$301.32
		\$302.32	\$604.12	\$604.12	\$1,271.81

**EQUIPMENT**

DESCRIPTION	EST HRS	EST COST	EST W/ TOTAL OVERHEAD
CONCRETE SAW	2	\$17.18	\$17.18
PICKUP, 3/4 & 1 TON UTIL	2	\$36.62	\$36.62
SERVICE TRUCK	2	\$43.84	\$43.84
		\$97.64	\$97.64
<b>GRAND TOTAL:</b>		\$399.96	\$1,369

Estimate Material, Labor and Equipment Breakdown      Estimate First Created:      Estimate Printed: 6:22 PM Thursday, November 5, 2020      Page 1 of 1  
 RAISING AND LOWERING CIV IN    adjust civ      PROJECT:      SAP CO:      EST #:      % Overhead 110.52    ENGINEER: Terry Wenz

**LABOR**

DESCRIPTION	EST HOURS	EST COST	EST BASE W/ BENEFIT	EST W/ PAY INCREASE	EST W/ TOTAL OVERHEAD
UTILITY WORKER II	3.5	\$97.26	\$194.35	\$194.35	\$409.14
APPRENTICE WATER SERVICE MECHANIC	1.5	\$47.98	\$95.87	\$95.87	\$201.83
AUTOMOTIVE EQUIPMENT OPERATOR 2	1.5	\$43.74	\$87.40	\$87.40	\$183.99
CONSTRUCTION EQUIPMENT OPERATOR	1.5	\$49.08	\$98.08	\$98.08	\$206.47
WATER SERVICE MECHANIC	1.5	\$53.72	\$107.35	\$107.35	\$225.99
		\$291.78	\$583.05	\$583.05	\$1,227.42

**EQUIPMENT**

DESCRIPTION	EST HRS	EST COST	EST W/ TOTAL OVERHEAD
DUMP TRUCK, 10-11 Cu Yd	1.5	\$39.57	\$39.57
SERVICE TRUCK	1.5	\$32.88	\$32.88
CONCRETE SAW	1	\$8.59	\$8.59
PICKUP, 3/4 & 1 TON UTIL	1	\$18.31	\$18.31
		\$99.35	\$99.35
<b>GRAND TOTAL:</b>		\$391.13	\$1,327

## EXHIBIT D – Cost Estimate (Cont.)

Estimate Material, Labor and Equipment Breakdown  
 AIR VALVE ADJUSTMENT IN HW    Adjust Air Valve

Estimate First Created:  
 PROJECT:

SAP CO:

Estimate Printed: 6:15 PM Thursday, November 5, 2020  
 EST #:    % Overhead 110.52    ENGINEER: Terry Wenz

Page 1 of 1

LABOR

DESCRIPTION	EST HOURS	EST COST	EST BASE W/ BENEFIT	EST W/ PAY INCREASE	EST W/ TOTAL OVERHEAD
APPRENTICE WATER SERVICE MECHANIC	2	\$63.97	\$127.83	\$127.83	\$269.11
UTILITY WORKER II	2	\$55.57	\$111.05	\$111.05	\$233.79
WATER SERVICE MECHANIC	2	\$71.63	\$143.13	\$143.13	\$301.32
		\$191.17	\$382.01	\$382.01	\$804.22

EQUIPMENT

DESCRIPTION	EST HRS	EST COST		EST W/ TOTAL OVERHEAD
SERVICE TRUCK	2	\$43.84	\$43.84	\$43.84
		\$43.84	\$43.84	\$43.84
GRAND TOTAL:		\$235.01	\$425.85	\$425.85

## EXHIBIT E – Documented Ownership Interest

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**From:** Warnke, Cherri <[Cherri.Warnke@portlandoregon.gov](mailto:Cherri.Warnke@portlandoregon.gov)>  
**Sent:** Tuesday, May 19, 2020 11:26 AM  
**To:** John Tudisco <[john.tudisco@cassoinc.com](mailto:john.tudisco@cassoinc.com)>  
**Subject:** RE: K20208: US30: NW Saltzman Rd - NW Bridge Ave

I was able to research the age of the existing water pipe in NW St Helens Rd. The oldest section is the 12-inch CI water main installed in 1895 which extends north from NW Kittridge Rd, and ties into a section of 12-inch CI water main installed in 1913 south of NW Doane St. That 1913 section extends north beyond NW 64<sup>th</sup> Ave, where 12-inch CI pipe dates from 1914, and that section extends to north of NW Bridge Ave. I traced the 1914 installed 12-inch CI water main as far north in NW St Helens Rd as NW 107<sup>th</sup> Ave, which from the plans you sent me, appears to be north of the project limits for K20208.

Looking at the ODOT history document I have, it appears that NW St Helens Rd had its second reading in 1916 and may have been incorporated in 1917. Which would mean the water system was in place prior to ODOT taking ownership of NW St Helens Rd.

**Cherri Warnke** (She/Her)  
**Interagency Liaison**  
Portland Water Bureau  
1120 S.W. 5th Avenue, Room 600  
Portland, OR 97204-1926

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Website: [www.portlandonline.com/water](http://www.portlandonline.com/water)