

UTILITY AGREEMENT

Contract ID No. _____ Route (or Road No.) _____
F. A. Project No. _____ State Project No. _____

This Agreement made this ____ day of _____, 20_____, by and between the South Carolina Department of Transportation, hereinafter called "Department" and the _____ hereinafter called "Company".

The Department and Company acknowledge that this Agreement and any Agreement amendment documents requiring signatures may be transmitted electronically. Department and Company stipulate that if this Agreement is transmitted electronically, the electronic transmittal of the original execution signatures shall be treated as original signatures and given the same legal effect as an original.

W I T N E S S E T H:

- 1. It is mutually agreed by and between the parties hereto that the Company shall perform or cause to be performed, the following work to its utility property facilities as shown on the attached plans and estimate (referred to herein as the "Project"):

General description: _____

- 2. Pursuant to Section 57-5-380 of the S.C. Code of Laws (1976), as amended, the Department has the authority to condemn lands, rights-of-way, and easements of the Company, provided it does not impair the ability of the Company to operate.
- 3. The Company hereby agrees to relocate its utility facilities in conflict with highway construction in accordance with the provisions set forth in the Federal Highway Administration's FAPG 23 CFR 645A; and also in accordance with the Department's "A Policy for Accommodating Utilities on Highway Rights-of-Way" in the estimated amount of:
\$ _____
State Share _____ Utility Share _____

- (a) The Company(does, does not) have the right of occupancy in its existing location by reason of holding the fee, and easement, or other real property interest, the damaging or taking of which is compensable in eminent domain. If the Company does not have the right of occupancy in its existing location by reason of holding the fee, an easement or other real property interest, (Explain)

Easement for this project is filed in _____
(County)

(City and State)

- (b) This section of line (for purpose of establishing right-of-way priorities only) has been in service for approximately _____ years or more.

- (c) Such work as is necessary to relocate, alter or maintain the facility will be done in such a manner that it will not in any way interfere with or endanger the safety of the general public in their use of the roads as a highway. Traffic control and signing will be coordinated with the Department's contractor and will be in accordance with "The South Carolina Manual on Uniform Traffic Control Devices for Streets and Highways" (SCMUTCD).

- (d) The Company shall meet the Buy America requirements specified in 23 USC 313. The Company shall provide a definitive statement (mill test certification report) about the origin of all products which are permanently incorporated into the work and covered under the Buy America requirements. No payment shall be made for any products which do not comply with the Buy America requirements.

4. The Company shall begin said work promptly upon notification in writing by the Department and dispatch to its completion as promptly as is practicable. The Company shall provide advance notice to the Department's Resident Construction Engineer of the date on which work is expected to begin.
5. The Company will perform the work provided for in this agreement by the method checked below, in accordance with the provisions of Sec.645.115 of FAPG 23 CFR 645A:

- BY COMPANY'S REGULAR FORCES
- BY CONTRACT: (State one of recognized reasons for necessity of performing work in this manner)
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The Company, therefore, subject to prior approval, proposes to contract a portion of or all of the work covered by this agreement. The items of work to be accomplished by contract are noted in the estimate. Where the Company elects to solicit competitive bids from a list of qualified contractors rather than through advertising in a publication, the names and addresses of those contractors so circularized shall be noted on the estimate or furnished to the Department in advance of the Company's solicitation of bids.

- BY EXISTING CONTINUING CONTRACT: Subject to prior approval and inspection by the Department and the prior approval of the contract method by the Federal Highway Administration, the Company proposes to use an existing continuing contract under which it is demonstrated that such work is regularly performed for the Company under such contracts at reasonable costs. The provisions relating to contracts under this paragraph also apply to Contract Engineering.
6. The Department will reimburse the Company for costs incurred in accordance with the agreement as shown and on accurate records supporting all expenditures incurred on account of said work. The method of developing the relocation costs shall be one of the following alternatives.
 - (a) Actual and related direct costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.
 - (b) Unit costs, such as broad gauge units of property, as used in own operations. (This method must have prior approval.)
 - (c) Lump Sum

The Department may not pay for any item of work not provided for in the plan or in the cost estimate except as modified by the Department Engineer followed by written notification to the Department.

7. All work performed by the Company pursuant hereto, shall be performed according to the plans and estimates approved by the Department.
8. Attached hereto, and by reference made a part hereof, is one copy of plans and estimates of the work to be performed by the Company showing the existing facilities, permanent changes to be made therein, and the stages by which these changes are to be accomplished.
9. Credits for accrued depreciation (expired service life) and/or betterment of the facility have been allowed as outlined in Sec.645.117(h) of FAPG 23 CFR 645A.

- 10. Periodic progress billings of incurred costs may be made by the Company to the Department not to exceed monthly intervals and amounting to at least \$2500.00; however, total progress billing payments shall not exceed the approved nonbetterment estimated amount.

Upon completion of the work and no later than six months thereafter, the Company shall, at the earliest date practicable, furnish the Department with one electronic copy of its final and complete billing of all costs incurred in connection with the work performed hereunder, such statement to follow as closely as possible the order of the items contained in the estimate. The totals for labor, overhead construction cost, travel expense, transportation, equipment, material and supplies, handling cost and other services shall be shown in such a manner as will permit ready comparison with the approved plans and estimates.

Credit shall be given for usable materials recovered from permanent or temporary installations. The final billing shall show the description and site of the project, the Federal Aid Project Number, the date on which the first work was performed; or, if preliminary engineering or right-of-way items are involved, the date on which the earliest item of billed expense was incurred, the completion date and the location where the records and accounts billed can be audited. The Company shall make adequate reference in the billing to its records, accounts and other documents. Contractors and any subcontractors are to maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the contract for inspection by the Department, Federal Highway Administration or any authorized representatives of the Federal Government and copies thereof shall be furnished if requested.

Final billings of incurred costs submitted by the Company shall carry a statement certifying that all items claimed have been reviewed and are in conformity with the provisions of the agreement; that credits have been given for all salvaged materials as required, and that all contractor's bills incurred have been paid in full. This statement shall be signed by an authorized representative of the Company.

In the event a final and complete billing has not been received by the Department prior to six months following the completion of work and the Company has not during that period demonstrated to the Department's satisfaction a hardship in completing that billing, the Department may, in its sole discretion, consider the last payment made to be the final payment due under this Agreement.

- 11. The Department and the Federal Highway Administration shall have the right to inspect recovered materials from the permanent facility prior to disposal by sale or scrap. This requirement will be satisfied by the Company giving notice to the Department of the time and place the materials will be available for inspection. This notice is the responsibility of the Company and it may be held accountable for full value of materials disposed of without notice. The Department and the Federal Highway Administration shall have the right to inspect all recovered materials, which are not reusable by the Company, for temporary use. The Company shall furnish a listing on final billings of major items not eligible for salvage credit, and reasons therefor.
- 12. The Company will abide by the contract cost principles as set forth in FAPG 23 CFR 645A.
- 13. The Company will not participate directly or indirectly in any practice which subjects persons to discrimination because of their race, color, religion, sex or national origin.

COMPANY: _____
ADDRESS: _____

INSTRUCTIONS: Submit one electronic copy of the agreement form and one electronic print of drawings showing present location and proposed location of pole(s) or lines with reference to highway survey stations and centerline with offsets.

BY: _____
TITLE _____

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

BY: _____
Assistant Director of Rights of Way for Utilities and Railroads