

Agreement Template (updated 3/28/22)
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Contact Tracy Estel, WVDOH Railroads &
Utilities Manager, at (304) 382-6786 with any
questions concerning correctness of the
template.

Agreement Date
Utility Company
Project Name
County
State Project No.
Federal Project No.
Relocation Design By
Construction Performed By
Agreement Amount

THIS AGREEMENT, made this day by and between the above, hereinafter referred to as "ENTITY", and WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS, hereinafter referred to as "DEPARTMENT."

WITNESSETH:

WHEREAS, DEPARTMENT proposes construction as part of the referenced project, to cross or affect certain facilities of ENTITY. The DEPARTMENT has determined that ENTITY's facilities hereinafter referred to shall be designed, removed, relocated and/or altered in order to accommodate the construction of the aforesaid Project and has been given due notice of such determination. ENTITY has been requested to design relocations and/or relocate its facilities. DEPARTMENT is obligated to reimburse ENTITY for its actual cost for designing and/or relocating its existing facilities to conform with DEPARTMENT's improvements. ENTITY and DEPARTMENT do hereby mutually covenant and agree as follows:

- (A) FEDERAL FUNDING PROVISIONS – IF CHECKED, the following provisions apply:
- (1) The design and/or relocation cost of the work herein contemplated is to be financed from funds provided by the State and expended under Federal regulations; and
 - (2) Under the conditions hereof Federal-Aid funds are eligible to pay a share of said cost.
 - (3) The construction work provided for in this Agreement will be performed by the method(s) as specified below, and in accordance with the provisions of Sec. 645.115 of the Federal Highway Administration's Federal-Aid Policy Guide, Subchapter G, Part 645, Subpart A:

BY ENTITY'S REGULAR FORCES – the ENTITY proposed to use its regular construction or maintenance crews and personnel at its standard schedule of wages and working hours in accordance with the terms of its agreement with such employees; or

BY EXISTING WRITTEN CONTINUING CONTRACT – the ENTITY proposes to use an existing written continuing contract under which certain work shown by the ENTITY's estimate is regularly performed for the ENTITY and under which the lowest available costs are developed; or

BY CONTRACT – the ENTITY does not have adequate staff or equipment to perform the necessary

work with its own forces. The ENTITY proposes to award a contract to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed as set forth in an appropriate solicitation for bids.

- (4) ENTITY agrees that the method of developing the cost of work performed under this agreement shall be in accordance with the work order accounting procedures as prescribed by the Public Service Commission of West Virginia and Federal-Aid Policy Guide 23 CFR 645A and B, and supplements and amendments thereto.
- (5) The ENTITY will not participate directly or indirectly in any practice which subject persons to discrimination because of their race, color, religion, sex, disability, or national origin.
- (6) The ENTITY will observe and comply with the provisions of all Federal, State, and Municipal laws and regulations as the provisions are applicable hereto in the performance to the work hereunder, including, but not limited to, the American with Disabilities Act, specifically Title II, and the Federal Highway Administration, Title VI.
- (7) Payment for all work done hereunder shall be made in accordance with the requirements of FAPG unless payment is being made pursuant to a supplemental agreement attached to and made a part of this Agreement.
- (8) ENTITY agrees that DEPARTMENT and the Federal Highway Administration, US Department of Transportation, shall have the right to inspect all work done under this agreement during the course of this project and inspect and audit all records of ENTITY. Additionally, ENTITY agrees to retain all records concerning the aforementioned work for a period of three (3) years following receipt of final payment from DEPARTMENT.
- (9) In accordance with Title 23, USC § 313, Buy America, steel and iron materials, and products used on this utility relocation, shall comply with the Buy America requirements of 23 CFR 635.410. Eligibility for reimbursement is subject to audit for compliance with Buy America Requirement.

(B) RELOCATION BY ENTITY – IF CHECKED, the following provisions apply:

- (1) Any work performed under this Agreement shall comply with DEPARTMENT's most current manual titled "Accommodation of Utilities on Highway Right of Way." The work to be performed by the ENTITY shall conform with Federal Highway Administration's Federal-Aid Policy Guide, Subchapter G, Part 645, Subpart A, hereinafter referred to as FAPG, and such amendments thereto as may be in effect at the time of this Agreement. The provisions of FAPG and amendments thereto are incorporated in this Agreement by reference as if fully set forth herein. Any work performed under this Agreement not in compliance with FAPG shall constitute unauthorized work and the

DEPARTMENT shall be relieved of participating in the costs of such unauthorized work unless such work is done pursuant to a supplemental agreement attached to and made part hereof.

- (2) ENTITY agrees to design or have designed the relocation of its facilities affected by this project.
- (3) ENTITY agrees to prepare estimates for the design and/or relocation and/or inspection of its facilities to be relocated to conform to the new highway improvement. ENTITY agrees to provide DEPARTMENT the complete relocation plans of its facilities for incorporation into DEPARTMENT's project plans.
- (4) ENTITY agrees to relocate its facilities as shown on the plans attached hereto, including any temporary work, to accommodate the construction and maintenance of the DEPARTMENT's project. All this is to be read, treated, and considered a part hereof. ENTITY agrees to provide a comprehensive detailed explanation of the work to be performed. The plans attached hereto show clearly the proposed relocated facilities.

(C) IF CHECKED, ENTITY is a publicly-owned, public utility, and the following provisions apply:

- (1) ENTITY may not have the personnel, forces, or equipment necessary to perform the design or construction of its facilities which are in conflict with the Project. DEPARTMENT agrees to reimburse ENTITY for the DEPARTMENT's share of the actual expense of services indicated below, to be performed by ENTITY. The DEPARTMENT is legally obligated to pay, up to, but not exceeding, the referenced Agreement Amount, as described in the estimate documents attached hereto and made a part hereof. No additional costs shall be presented to DEPARTMENT for reimbursement unless approved by Department in writing prior to actual incurrence of said costs.

a. Relocation Design to be performed by DEPARTMENT ENTITY
ENTITY agrees the party selected above will be responsible for the design of the relocation of its facilities.

b. Relocation Design Review to be performed by DEPARTMENT ENTITY
If DEPARTMENT designed, ENTITY will be given the opportunity to review and approve the proposed relocations prior to being constructed. If ENTITY designed, DEPARTMENT shall review and approve the proposed relocations prior to being constructed.

c. Relocation Construction to be performed by DEPARTMENT ENTITY
ENTITY agrees that the party selected above will be responsible to perform the relocation construction activities of its facilities.

d. Constructed Relocation Inspection to be performed by DEPARTMENT ENTITY
If constructed by DEPARTMENT, ENTITY will have the right to periodically inspect the

relocation construction. If constructed by ENTITY, DEPARTMENT will inspect according to standard procedures.

e. ENTITY's Associated Administrative Costs ENTITY

(2) ENTITY agrees that DEPARTMENT shall have the right to inspect and audit all records of ENTITY concerning the removal, relocation, inspection, or alteration, of said facilities.

(3) ENTITY shall submit, by proper invoices, any amounts due to it for work done by it under this Agreement. All submitted costs are to be itemized in detail including properly approved time sheets, invoices and other documents substantiating the actual incurred cost and under the categories as set forth below.

ADDITIONAL PROVISIONS:

ENTITY and DEPARTMENT do hereby mutually covenant and agree as follows:

(1) As between ENTITY and DEPARTMENT, ENTITY agrees that it shall be responsible for any and all suits, claims, liabilities, losses, liens and demands, fines, costs, civil penalties, causes of action or any other obligation, arising out of or in any manner connected with the work performed by ENTITY, its agents, employees, consultants, or contractors, under this Agreement, during or any time after such work is being or has been performed, or for failure to maintain its facilities after the work performed under this Agreement, including (without limitation) liability involving bodily injury, death, property damage or violation of any Federal, State or local law or regulation, except for any liability or damages due to the willful or intentional unlawful acts or the sole negligence of the DEPARTMENT or its employees.

(2) ENTITY agrees to defend, indemnify and hold harmless the DEPARTMENT, its officers, agents and employees from and against any and all claims, damages, liability, losses and expenses, including but not limited to attorney's fees, brought because of any injuries or damages received or sustained by any person, persons, or property on account, arising out of or resulting from the ENTITY's removal, relocation or alteration of ENTITY's facilities or the ENTITY's subsequent failure to maintain its facilities, whether caused either in whole or in part by the negligent acts or omissions of the ENTITY, its Contractor, or Subcontractor or anyone directly or indirectly employed by the ENTITY, its Contractor, or Subcontractor or anyone whose acts the ENTITY may be liable, except for any liability or damages due to the willful or intentional unlawful acts or the sole negligence of the DEPARTMENT or its employees.

(3) This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of West Virginia. Any civil action pursuant to this contract must be commenced and heard in the State of West Virginia.

(4) ENTITY and its contractors and subcontractors and engineering consultants shall furnish evidence of having at

least the minimum amounts of insurance required of the Contractor in Section 103.6 through and including Section 103.6.5 of the "West Virginia Division of Highways, Standard Specifications, Roads and Bridges, Adopted 2017," and supplements thereto for any work arising from, relating to or pertaining to, in any way, to the Project. ENTITY shall also require that any contractor(s), subcontractor(s), engineers, and agents have a current license and be licensed to conduct business in West Virginia. ENTITY shall name the Department as an additional insured on all policies of insurance required by the aforementioned Specifications, except for worker's compensation. ENTITY shall also require that its contractor(s) and subcontractor(s) name the Department as an additional insured on all policies of insurance, except worker's compensation.

- (5) Upon execution of this agreement by both parties by endorsement hereon, the DEPARTMENT will, by written notice, authorize ENTITY to proceed with work. ENTITY agrees to prosecute such work diligently to completion.
- (6) Upon completion of such facility relocation, ENTITY agrees to maintain its facilities located within DEPARTMENT's right of way in accordance with DEPARTMENT's current manual "Accommodation of Utilities on Highway Right of Way" and when applicable, Paragraph (7) of the American Association of State Highway and Transportation Officials' publication "Policy on the Accommodation of Utilities Within Freeway Right-of-Way" and supplements and amendments thereto.
- (7) The terms "Total actual cost" and "Actual costs" are hereby defined to include, for final reimbursement, all actual costs incurred, and monies expended for the various categories enumerated in the estimate attached hereto, including insurance premium cost, and further shall include reasonable and customary costs which cannot be estimated, anticipated or approved in advance for final reimbursement.
- (8) After completion of the work as herein provided and upon receipt of proper billing, DEPARTMENT shall reimburse ENTITY for its actual cost incurred for the work performed hereunder as described in schedules attached hereto and made a part hereof, not including any bettering of facilities and giving proper allowances for materials salvaged.
- (9) Upon completion of such facility relocation and after reimbursement has been received, ENTITY shall release unto DEPARTMENT all its right, title and interest in and to the property, land or easement, if applicable, and all liability related to warranty, maintenance, or other interest of installed facilities by DEPARTMENT which accommodated the old facilities which were situated within the right of way limits of the highway project for which the relocation was made.

IN WITNESS WHEREOF, ENTITY and DEPARTMENT have caused their respective names to be signed and their respective seals affixed hereto by their duly authorized officers.

ENTITY:

By _____

Its _____

ATTEST:

By _____

Its _____

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION,
DIVISION OF HIGHWAYS

By _____

Jimmy Wriston, P. E.
Secretary of Transportation/
Commissioner of Highways

APPROVED AS TO FORM ON

ATTORNEY LEGAL DIVISION
WEST VIRGINIA DEPARTMENT
OF TRANSPORTATION,
DIVISION OF HIGHWAYS

NUMBER: _____