

**NON-REIMBURSABLE AGREEMENT
FOR RELOCATION OF UTILITY FACILITIES
ON PRIVATE OR PUBLIC RIGHT-OF-WAY
WORK TO BE DONE BY STATE CONTRACTOR**

_____ Private Right-of-Way
_____ Public Right-of-Way

PROJECT NUMBER _____
CITY _____

THIS AGREEMENT is entered into by and between the **CITY** of _____ acting by and through its **CITY COUNCIL**, hereinafter referred to as the **CITY**, and _____, hereinafter referred to as the **UTILITY**.

WITNESSETH:

WHEREAS, the **CITY** proposes a project of certain highway improvements in _____ **CITY**, Alabama, said project being designated as Project No. _____ and consisting approximately of the following: _____ ; and

WHEREAS, the **UTILITY** is the owner of certain facilities located on private or public right-of-way, as applicable, at places where they will interfere with the construction of said project unless said facilities are relocated; and

WHEREAS, the **CITY** has determined that the relocation of the facilities hereinafter referred to is necessitated by the construction of said project and has requested or ordered, as applicable, the **UTILITY** to relocate same; and

WHEREAS, under the laws of Alabama, the **UTILITY** will be invoiced for the expense to relocate said facilities performed by the State Contractor;

NOW, THEREFORE, the parties hereto agree as follows:

1. The **UTILITY** has requested that the relocation work hereinabove referred to, be performed by the **STATE'S** Contractor in order to avoid potential conflicts within the limited working area of the project. The relocation, subject to payment to be made as hereinafter provided, will be included in the **STATE'S** Contract and the work performed by the **STATE'S** Contractor. The relocation of the facilities will be accomplished in conformance with and to the reproducible mylar plans and the detailed estimate for the work developed by the **UTILITY** and approved by the **STATE**, which plans are incorporated in and made a part hereof by reference. The estimated cost of the "In-Kind" relocation is \$ _____ as shown in detail on the attached detailed estimate.

2. This adjustment work will also be accomplished in accordance with the latest edition of the Alabama Department of Transportation Standard Specifications for Highway Construction, designated State of Alabama Highway Department Standard Specifications for Highway Construction, which Specifications are of record in the Alabama Department of Transportation and are hereby made a part hereof by reference, and to be applied to the work as applicable.

3. The **UTILITY** will conform to the provisions of the latest edition of the State of Alabama Department of Transportation Utility Manual, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such Utility Manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.

4. The **UTILITY** will conform to the provisions of the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD), latest edition, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.

5. The engineering layout of all work if required will be the responsibility of the **UTILITY** and/or **CITY**, in keeping with its usual procedures.

6. The **UTILITY** will pay the **STATE** as hereinafter provided all cost for the utility facility adjustment to be performed by the **STATE** contractor at the cost and expense of the **UTILITY**, based on bid prices accepted by the **STATE**.

7. With respect to the adjustment to be accomplished, the following provisions will be applicable to the letting, contract award and payment:

a. The **STATE** will notify the **UTILITY** in advance of the date that bids will be opened for construction of the project.

b. Following receipt of bids, the **STATE** will tabulate the bids and furnish the **UTILITY**, in writing, the result of the bidding and invoice the **UTILITY** for the sum of the acceptable prices bid for the adjustment items of work listed in the proposal.

c. Within ten (10) calendar days following receipt of notification of bid results, the **UTILITY** will pay to the Alabama Department of Transportation the total sum of the invoiced bid price for the adjustment of utility facilities. This payment will be made by bank cashier check to the State of Alabama. These funds will be used by the **STATE'S** normal practices and procedures.

d. The items of work for which the **UTILITY** is responsible for payment are estimated quantities only. The **STATE** will monitor or inventory the work from time to time for which the **UTILITY** is responsible, and again at the completion of the project. If it is determined that the total units of work are less than that estimated, the **STATE** will make restitution to the **UTILITY** in the amount of money due the **UTILITY** for the lesser units of work based on unit cost; conversely, if it is determined that the total units of work exceed the estimated units, the **STATE** will invoice the **UTILITY** accordingly and the Utility will promptly pay to the **STATE** the amount of the increased cost determined to be payable based on unit cost.

8. Following tabulation of the bids received by the **STATE** and the notification to the **UTILITY** of the amount due for the adjustment work to be performed by the **STATE** at the cost and expense of the **UTILITY**, and upon receipt of an aforementioned check from the **UTILITY** to the **STATE** for the work as above provided, including the work provided for as utility adjustment, the award of a contract, for the project, will be made.

a. In the event the **STATE** is not in receipt of the correct amount of money due from the **UTILITY** prior to contract award for the adjustment work provided for in this agreement to be performed by the **STATE** at the cost and expense of the **UTILITY**, such work may be deleted by the **STATE** from the contract award for the project construction, and the contract will be awarded by the **STATE** without the adjustment work. No liability will arise against the **STATE** as a result of such deletion.

b. In the event the **STATE'S** invoice, based on the bid tabulation is unacceptable to the **UTILITY**, the **UTILITY** shall so notify the **STATE** in writing within (10) days of notice to it of the bid amount; or in the event the **UTILITY** fails to pay the **STATE** the bid price amount due from it prior to time for contract award, the **UTILITY** will adjust its facilities with either its Utility Forces or by the utilization of Contract Forces (other than the **STATE'S** Contract Forces) which are available to the **UTILITY**. The **UTILITY** will coordinate this adjustment work with the **STATE'S** Contractor.

c. All other utility facilities owned by the **UTILITY**, which are not in conflict with construction of the **STATE'S** project will be retained in place and no separate agreement will be required for such retention.

9. The **UTILITY** will be notified by the **STATE** Project Engineer, twenty-four (24) hours in advance of the commencement of the facility adjustment by the **STATE** Contractor. The **STATE** Project Engineer shall have final authority in all matters affecting the work of the **STATE'S** Contractor. In the event the **UTILITY** has an Inspector on the project, such Inspector will not issue any instructions to the **STATE'S** Contractor. All instructions to the **STATE'S** Contractor with regard to the work provided for under this agreement will be issued by the **STATE** Project Engineer, after consultation with the **UTILITY** Inspector or Representative if found necessary by the **STATE** Project Engineer.

10. Reimbursement for future relocation of the **UTILITY'S** facilities will be in accordance with State law in effect at the time such relocation is made.

11. The **UTILITY** will be responsible at all times for all of the work performed under this agreement and, the **UTILITY** will protect, defend, indemnify and hold harmless the State of Alabama. The Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all action, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement. By entering into this agreement, the **UTILITY** is not an agent of the State, its officers, employees, agents or assigns. The **UTILITY** is an independent entity from the State and nothing in this agreement creates an agency relationship between the parties.

12. Nothing contained in this Agreement, or in its execution, shall be construed to alter or affect the title of the **STATE** to the public right-of-way nor to increase, decrease or modify in any way the rights of the **UTILITY** provided by law with respect to the construction, operation or maintenance of its facilities on the public right-of-way.

13. The Code of Federal Regulations 23 CFR 645 is hereby made a part hereof by reference and will be conformed to by the **UTILITY** as the provisions thereof are applicable hereto.

14. The **UTILITY** will observe and comply with the provisions of all Federal, State and Municipal laws and regulations as the provisions thereof are applicable hereto in the performance of work hereunder, including the Clean Water Act of 1987, the Alabama Nonpoint Source Management Program of 1989, and the regulations of the Environmental Protection Agency (EPA) and the Alabama Department of Environmental Management (ADEM). The **UTILITY** will procure and pay for all licenses and permits that are necessary for its performance of the work.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, officials and persons thereunto duly authorized, and the agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the State Local Transportation Engineer.

WITNESS:

(Legal Name of Utility)

BY:

(Signature)

(Type or Printed Name)

(Type or Printed Title)

(Address)

(Address)

RECOMMENDED FOR APPROVAL:

(Telephone)

BY: _____
CITY ENGINEER/ENGINEER-OF-RECORD

BY: _____
REGION ENGINEER

CITY OF _____

BY: _____
MAYOR

APPROVED:

BY: _____
STATE LOCAL TRANSPORTATION ENGINEER

DATE: _____

DETAILED ESTIMATE

ITEM NO.	UNIT	EST. COST PER UNIT	QUANTITY	DESCRIPTION	TOTAL EST. COST/ITEM
-------------	------	-----------------------	----------	-------------	-------------------------

Total Estimated Cost _____
(Enter here and on the Agreement form)