

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

PROJECT NUMBER

Utilities _____

Construction _____

THIS AGREEMENT is entered into by and between the Alabama Department of Transportation acting by and through its Transportation Director, hereinafter referred to as the STATE, and _____, hereinafter referred to as the UTILITY.

WITNESSETH:

WHEREAS, the STATE proposes a project of certain highway improvements in _____ County, 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 public right-of-way at places where they will interfere with the construction of said project unless said facilities are relocated; and

WHEREAS, the Transportation Director has determined that the relocation of the facilities hereinafter referred to is necessitated by the construction of said project and has ordered, the UTILITY to relocate same; and

WHEREAS, under the laws of Alabama, the UTILITY is required to relocate said facilities at its own expense;

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 relocation is \$ _____ as shown in detail on the attached detailed estimate.

2. The relocation work will consist primarily of the adjustment of manhole covers and valve boxes or similar work near the paving surface. 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 STATE, 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 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 will 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 is responsible, and will not hold 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 responsible for damages to private property, public utilities or the general public, caused by the conduct, in accordance with Alabama and/or Federal law, of the UTILITY, its agents, servants, employees or facilities.

12. 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.

13. 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.

14. 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.

15. 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 Governor of Alabama.

THIS AGREEMENT HAS BEEN LEGALLY
REVIEWED AND APPROVED AS TO
FORM AND CONTENT.

WITNESS: _____

(Legal Name of Utility)

BY: _____

William F. Patty
Chief Counsel,
Alabama Department of
Transportation

BY: _____
(Signature)

(Name)

(Title)

RECOMMENDED FOR APPROVAL:

(Address)

BY: _____

(Address)

(Telephone)

BY: _____

Philip A. Shamburger
Right of Way Bureau Chief

STATE OF ALABAMA DEPARTMENT OF
TRANSPORTATION ACTING BY AND
THROUGH ITS TRANSPORTATION DIRECTOR

John R. Cooper
Transportation Director

The within and foregoing Agreement is hereby approved on this _____ day of _____, 20____.

Kay Ivey
GOVERNOR
STATE OF ALABAMA

DETAILED ESTIMATE

1. The Utility desires to be notified twenty-four (24) hours in advance of the State's Contractor beginning work.

Yes

No

2. The Utility will have an Inspector on the project, during operations affecting the Utility.

Yes

No

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

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