



ALABAMA DEPARTMENT OF TRANSPORTATION

Bureau of County Transportation

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Robert Bentley
Governor

John R. Cooper
Transportation Director

November 26, 2013

MEMORANDUM FY 2014-03

To: All County Engineers and Division County Transportation Engineers

From: Mr. D.E. Phillips, Jr., P.E.
State County Transportation Engineer

By: Joshua A. Sanford
Joshua A. Sanford, P.E.
County Transportation Design Engineer

RE: **Buy America Requirements for Reimbursable Utility Agreements**

The County Form No. 2 Reimbursable Utility Agreement shown in the 2007 edition of the **Procedural Guidelines for County Projects** has been revised due to recent legislation that requires steel and iron materials used in utility relocations to meet the new Buy America requirements of 23 CFR 635.410. The revised version of the Form No. 2 Agreement now includes a statement enforcing this requirement that is located in the last paragraph of page 5.

This change also requires the utility owner to send the county a Buy America Certificate of Compliance in with the final invoice for reimbursement. The Buy America requirement will continue to apply to all Form No. 3 Agreements as required in Article 106.01(a) of the ALDOT Standard Specifications.

As stated in the Buy America Certificate of Compliance, the utility owner will be required to have certified material test reports on file for a period of two (2) years from the completion of the project for examination and audit purposes. Electronic copies of the revised agreement and certificate of compliance will be provided on the Bureau of County Transportation webpage at www.dot.state.al.us. This change will be effective with any County Form No. 2 Reimbursable Utility Agreements sent to our office from this point forward and will also be reflected in the new edition of the Procedural Guidelines for County Projects once it has been completed.

Please feel free to contact me should you have any questions or comments concerning this matter.

DEP/JAS

Attachment

CC: Mr. Ed Austin, P.E., State Innovative Programs Engineer

PC: File

**REIMBURSABLE AGREEMENT
FOR RELOCATION OF UTILITY FACILITIES
ON PRIVATE OR PUBLIC RIGHT-OF-WAY**

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

PROJECT NUMBER _____
COUNTY NUMBER _____
COUNTY _____

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

WITNESSETH:

WHEREAS, the **COUNTY** 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 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 **COUNTY** 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, the Alabama Department Of Transportation will use Federal funds allocated to the County, if available, that are provided to it by the Federal Highway Administration pursuant to 23 CFR 645 to reimburse the County's expenses incurred in adjusting the utilities facilities;

NOW, THEREFORE, the parties hereto agree as follows:

1. The **UTILITY** will relocate its facilities presently located within the right-of-way limits of the above referenced project in accordance with the **UTILITY'S** plans and specifications as approved by the **COUNTY**, so as to occasion the least possible interference with the progress of the project. The **UTILITY'S** plans, specifications and estimate of relocation cost are transmitted herewith and made a part hereof by reference.
2. 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.
3. 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.
4. 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.
5. 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.

6. The **UTILITY** will perform the work of relocation:
- (a) _____ by **UTILITY'S** own forces
 - (b) _____ by contract let by the **UTILITY**
 - (c) _____ by an existing written continuing contract where the work is regularly performed for the **UTILITY**
 - (d) _____ by combination of the preceding (as shown in detail on the estimate).

7. The detailed relocation cost estimate will be itemized and attached to this agreement. With respect to facilities located on the **UTILITY'S** private right-of-way, the **COUNTY** will reimburse the **UTILITY** for the actual cost of relocation, as may be adjusted below. With respect to facilities located on public right-of-way, the **COUNTY** will reimburse the **UTILITY** for all or part of the actual cost of relocation as required by the laws of Alabama, as may be adjusted below.

- a. The **STATE'S** share of the engineering charges shall be limited to the "in-kind" work only.
- b. The total actual cost of relocation, including Engineering, whether the facilities are on private or public right-of-way, shall be adjusted for betterment, if any, as defined and provided for in 23 CFR 645 above noted. Excluding betterment costs, the total estimated cost of relocation, including Engineering, is \$ _____. The total estimated cost including betterment is \$ _____.
- c. If an adjustment for betterment is applicable, the **COUNTY** will reimburse the **UTILITY** for _____ percent of the actual cost of relocation and the remaining _____ percent thereof shall be for the account of the **UTILITY** for betterment. If there are changes during construction and/or the actual construction cost percentage becomes substantially different from the construction estimate, the **COUNTY** reserves the right to recalculate the percentages at any time.

8. The **UTILITY** will keep accurate and true records of all expenditures made by it in the process of such relocation. Records will be kept in accordance with 23 CFR 645 above noted, or in accordance with Part 30 and 31, Federal Acquisition Regulations, or in accordance with accounting practices acceptable to the **STATE**.

9. The **UTILITY** will, during the progress of the work and for three years from the date final payment is made, make its records available during normal working hours for examination and audit by representatives of the **STATE** and of the Federal Highway Administration to verify amounts and items covered in the reimbursement for relocation of facilities covered herein. Said records will be available for examination at

_____.

10. The **UTILITY** will, within six (6) months following completion of the relocation, furnish the **COUNTY** such papers, records, supporting documents and invoices as may be required by the State showing the cost of said relocation. The **UTILITY** will furnish the **COUNTY** a copy of its "as built" plans for the **STATE'S** records.

11. Upon receipt of such documents and accounts as may be required by the preceding paragraph and upon completion and acceptance of such verification as the **COUNTY** may deem necessary, the **COUNTY** will reimburse the **UTILITY** for the actual cost of such relocation as verified by the **COUNTY**. In the event the actual verified cost, as accepted, exceeds the estimated cost, the **COUNTY** may require a Supplemental Agreement to be executed between the parties prior to reimbursement of any amount in excess of the estimated cost.

12. Paragraphs numbered 13 through 17 set forth below are applicable to this Agreement only if some or all of the **UTILITY** facilities to be relocated hereunder are located on private right-of-way of the **UTILITY**; otherwise, such paragraphs are considered inapplicable to this Agreement and null and void.

13. Where the **UTILITY** has a compensable property interest in its existing location (herein referred to as private right-of-way) by reason of holding the fee, an easement or other property interest, evidence of such compensable property interest will be submitted to the **COUNTY** by the **UTILITY** for review and approval.

14. If the **UTILITY** is required to move all of its facilities from a portion of its private right-of-way, upon completion of the relocation provided for herein, the **UTILITY** will convey to the **COUNTY** by Quitclaim Deed the portion of its private right-of-way located within the right-of-way limits of the above referenced project.

15. In the event the **UTILITY** is not required to relocate any of its facilities which are located on its private right-of-way, the following provisions shall apply:

- a. To the extent the **UTILITY** has the right to so agree the **COUNTY** will have the right to construct, operate and maintain a highway over and along the portion of the **UTILITY'S** private right-of-way located within the right-of-way limits of the above referenced project.
- b. The subordination of the **UTILITY'S** private right-of-way to the right of the **COUNTY** to construct, operate, and maintain said highway will be effective and operative only to such air, surface and sub-surface rights as may reasonably be required and are necessary for the construction, operation, and maintenance of said highway, and to enable the **COUNTY** to control access to the highway where such control is established; otherwise this subordination agreement will in no wise affect and impair the rights of the **UTILITY**, its successors and assigns, in or to its private right-of-way, including but not limited to the right to install additional facilities over, under and across the highway; provided, however, that any installation of additional facilities will be subject to the **STATE'S** responsibility and right to make prior determination that any such additional facilities are located so as not to impair the highway or any planned highway improvement and so as not to interfere with the free and safe flow of traffic thereon.
- c. It is mutually understood that the terms of this Agreement do not subordinate, affect or impair the rights of the **UTILITY** for reimbursement of the cost of such future relocation as may be required and necessitated by highway construction at some future date, as fully as if no subordination existed; however, such relocation will be in accordance with an additional agreement to be entered into at that time between the **UTILITY** and the **COUNTY**.

16. If the **UTILITY** is required to relocate any of its facilities which are located on its private right-of-way to a new location on the same private right-of-way, the following provisions shall apply:

- a. To the extent the **UTILITY** has the right to so agree, upon completion of the relocation provided for herein, the **COUNTY** will have the right to construct, operate and maintain a highway over and along the portion of the **UTILITY'S** private right-of-way located within the right-of-way limits of the above referenced project.
- b. The subordination of the **UTILITY'S** private right-of-way to the right of the **COUNTY** to construct, operate and maintain said highway will be effective and operative only to such air, surface and sub-surface rights as may reasonably be required and are necessary for the construction, operation and maintenance of said highway, and to enable the **COUNTY** to control access to the highway where such control is established; otherwise this subordination agreement will in no wise affect and impair the rights of the **UTILITY**, its successors and assigns, in or to its private right-of-way, including but not limited to the right to install additional facilities over, under and across the highway; provided, however, that any

installation of additional facilities will be subject to the **COUNTY'S** responsibility and right to make prior determination that any such additional facilities are located so as not to impair the highway or any planned highway improvement and so as not to interfere with the free and safe flow of traffic thereon.

- c. It is mutually understood that the terms of this Agreement do not subordinate, affect or impair the rights of the **UTILITY** for reimbursement of the cost of such future relocation as may be required and necessitated by highway construction at some future date, as fully as if no subordination existed; however, such relocation will be in accordance with an additional agreement to be entered into at that time between the **UTILITY** and the **COUNTY**.

17. If the **UTILITY** is required to relocate any of its facilities which are located on its private right-of-way to a new location on public right-of-way or if any such facilities are to be retained in place within the public right-of-way due to this project, the following provisions will apply

- a. The cost of relocation will include reimbursement for acquisition of right-of-way by the **UTILITY** to place necessary guy wires and anchors on private lands adjacent to the highway right-of-way and the rights to cut, trim and remove, initially and from time to time as necessary, trees on private lands adjacent to the highway right-of-way which might then or thereafter endanger the facilities of the **UTILITY**.
- b. Reimbursement for future relocation of the **UTILITY'S** facilities will be in accordance with State laws in effect at the time such relocation is made; provided, however, the **UTILITY** will be reimbursed for the cost of any future relocation of the facilities, including the cost of acquisition of equivalent private right-of-way if such future relocation is outside the highway right-of-way and such relocation is required by the **COUNTY**, and provided that the prior relocation from private right-of-way to public right-of-way was without compensation to the **UTILITY** for its compensable property interest in its private right-of-way.

18. The **UTILITY** will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the **UTILITY**, its agents, servants, employees or facilities.

19. The **UTILITY** will have a copy of this Agreement on the project site at all times while work is being performed under this Agreement.

20. Nothing contained in this Agreement, or in its execution, shall be construed to alter or affect the title of the **COUNTY** 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.

21. Paragraph 22 set forth below is applicable to this Agreement only if Federal appropriated funds are available or will be available in the project by which the relocation required by this Agreement is necessitated.

22. In the event any Federal Funds are utilized for this work, the following certification is made:

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

23. In accordance with Title 23, U.S.C. Sec 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. Minor items of foreign steel may be used if their cost is less than \$2,500, or one-tenth of one percent of the agreement amount, whichever is greater. Eligibility for reimbursement is subject to audit for compliance with the Buy America Requirement.

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

The County requests that (_____ 100% County funds; _____ Federal participation) be used for utility work in this agreement.

WITNESS:

_____ (Legal Name of Utility)

_____ BY: _____
(Signature)

_____ (Type or Printed Name)

_____ (Type or Printed Title)

_____ (Address)

_____ (Address)

RECOMMENDED FOR APPROVAL:

BY: _____
COUNTY ENGINEER

BY: _____
DIVISION ENGINEER

_____ (Telephone)

COUNTY OF _____

BY: _____
CHAIRMAN, COUNTY COMMISSION

APPROVED:

BY: _____
STATE COUNTY TRANSPORTATION ENGINEER

DATE: _____

**ALABAMA
DEPARTMENT OF TRANSPORTATION
BUY AMERICA
CERTIFICATE OF COMPLIANCE**

Date _____, 20____

Project No. _____

County Select One _____

(UTILITY OWNER)

Address: _____

Hereby certifies compliance with the "Buy America" requirements of the Federal regulations 23 U.S.C. 313 and 23 CFR 635.410 of this project.

Certified material test reports are on file for a period up to 2 years from the completion of the project showing the country of origin and/or processing of the manufacture, rolling, and coating.

These files will be available for inspection and verification by the Department and/or FHWA.

We further certify that the total value of foreign steel as described in the Buy America requirements for this project does not exceed one-tenth of one percent (0.1%) of the total contract price or \$2,500.00, whichever is greater.

Signed by _____ Title _____
(Officer of Organization)

Subscribed and sworn to before me this ____ day of _____, _____.

Notary Public

My Commission Expires: _____