

**STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES**

**UTILITY AGREEMENT
(WORK BY STATE OR UTILITY)**

Region: <DOT&PF Region>

Agreement No.: <1-#####-##-###>

Project No.: <Project Number>

RSA No.: <RSA No.>

Utility Work Order No.: <Utility Work Order No.>

This Agreement made and entered into this _____ day of _____, by and between the State of Alaska, acting by and through the Department of Transportation and Public Facilities, hereinafter called the DEPARTMENT, and <Utility Company Name> (<Acronym>) hereinafter called the COMPANY.

WITNESSETH:

WHEREAS, the DEPARTMENT, in the interest of public safety and convenience proposes to construct, reconstruct or otherwise improve a portion of the DEPARTMENT facility known as <Project Name> which shall require the adjustment, relocation or removal of the COMPANY's facilities along, over, under or within said DEPARTMENT facility such adjustment, relocation or removal work to hereinafter be described as "relocation work", and

WHEREAS, the DEPARTMENT, under the provisions of Alaska Statute (AS) 19.25.020(c), is authorized to reimburse the COMPANY for the costs of said relocation work, and

WHEREAS, the DEPARTMENT and the COMPANY have reviewed the plans for said highway improvements and are in mutual agreement as to the scope of the relocation work to be performed, as described in the attached "Certificate of Finding", marked "Exhibit B";

NOW THEREFORE, in consideration of the mutual undertaking as herein recited, the DEPARTMENT and the COMPANY do hereby agree as follows:

SECTION I. RELOCATION WORK TO BE ACCOMPLISHED

- A. The COMPANY and DEPARTMENT hereby agree to the relocation of the required facilities in accordance with the provisions set forth in the United States Code of Federal Regulations 23 C.F.R. Part 645, Subpart A Utility Relocations, Adjustments and Reimbursement, dated April 1, 1992, and any supplements and revisions thereto, which by reference are made a part thereof, and hereinafter called 23 C.F.R. Part 645.

- B. The plans and specifications of the relocation work to be performed, attached hereto as "Exhibit C" and "Exhibit D" and by reference made a part of this Agreement, are to be included in and made a part of any DEPARTMENT or COMPANY administered contract for accomplishing any part or all of said relocation work.
- C. The betterments and/or additions for the COMPANY as specified in this Agreement and are part of the DEPARTMENT's contract will be accomplished in accordance with REIMBURSABLE SERVICE AGREEMENT (RSA) No. <RSA No.> attached hereto and by reference made a part of this Agreement.

SECTION II. METHODS OF RELOCATION

It is in the best interest of the DEPARTMENT and the COMPANY for the said relocation work to be accomplished by the method(s) described and checked hereinafter:

- X (1) By force account with the COMPANY's regular construction or maintenance forces.
- X (2) By an approved and qualified contractor paid under a contract let by the COMPANY.
- (3) By a contract let by the DEPARTMENT either as a utility contract or as an item in the general project contract.

SECTION III. COMPANY LIABILITY

- A. The COMPANY shall indemnify, defend and hold harmless the DEPARTMENT from liability resulting from injuries or damages sustained by any person or persons or property as a direct result of an act of commission or omission of the COMPANY in the performance of the relocation work undertaken by the COMPANY.
- B. The COMPANY shall assume all legal liability which is related in any way to the presence, operation, or maintenance of said relocation facilities.
- C. The COMPANY shall assume all direct and out-of-pocket costs incurred by the DEPARTMENT caused as a direct result of a failure of the COMPANY to perform the relocation work within the time required by this Agreement unless due to causes beyond the control of the COMPANY, including, if DOT&PF expressly agrees it was beyond the COMPANY's control, the inability to procure materials required to comply with the applicable domestic preference provisions referenced in Section III.D.
- D. The COMPANY's relocation work is part of a project funded by the Federal Highway Administration (FHWA) and therefore required to comply with the applicable Domestic Material Preference provisions contained in the Buy America Act, 23 U.S.C. §313, 23 C.F.R. §635.410, and the Build America, Buy America Act (BABA), adopted in Title IX of the Infrastructure Investment and Jobs Act, Public Law No. 117-58 (IIJA) and implemented through 2 C.F.R. Part 184. For additional terms regarding the referenced domestic preference requirements, see Appendix A, incorporated into this Agreement by reference.

SECTION IV. UTILITY CONSTRUCTION PHASE

- A. The COMPANY shall give the DEPARTMENT's Regional Utilities Engineer prior notice before commencing with the relocation work.
- B. The relocation work shall be performed in a workmanlike manner and in compliance with the provisions of the Utility Permit, this Agreement and applicable Federal, State and Local Statutes, Codes, and Regulations.
- C. Both parties will allow duly authorized inspectors free access to all stages of the work and all disputes arising from such inspection will be settled by the Commissioner, or his delegated representative.
- D. During the performance of the work being performed under the DEPARTMENT's general contract, the COMPANY or its authorized representative shall make all construction orders or changes to the construction through the DEPARTMENT's Project Engineer. Any negotiated changes to the contract between the COMPANY and the Contractor shall be made through the DEPARTMENT's Project Engineer.
- E. All relocation work by the COMPANY shall be completed on or before _____**
_____ or within _____ days by the above indicated METHOD OF RELOCATION, in accordance with the plans and specifications included in "Exhibit C" and "Exhibit D", subject to the following conditions beyond the control of the COMPANY which may adversely affect this date/time:
_____.

****Relocation work shall be coordinated with the DEPARTMENT's Contractor in accordance with Section(s) <Applicable Sections> of the Special Provisions included in "Exhibit D" and the Standard Specifications for Highway Construction (2020 Edition).**

SECTION V. COSTS BY COMPANY

- A. The COMPANY shall develop the relocation and/or engineering and inspection costs by the method described and checked hereafter:
- | | | |
|---------------------|-----|---|
| Either _____ | (1) | Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body. |
| Or <u> X </u> | (2) | Actual and related indirect costs accumulated in accordance with an accounting procedure established by the COMPANY and approved by the DEPARTMENT. |
- B. The DEPARTMENT shall receive fair and adequate credit for any salvage value, including scrap, which will accrue to the COMPANY as a result of said relocation work.

C. The costs of any betterments to the facilities being relocated not required to accommodate the DEPARTMENT's project construction and made at the election of the COMPANY shall be borne by the COMPANY.

(1) When the betterment is accomplished under the DEPARTMENT's general contract, the COMPANY shall reimburse the DEPARTMENT in accordance with RSA No. <RSA No.> attached hereto and made a part of this Agreement.

D. Records of all reimbursable costs for labor services, materials and equipment incurred by the COMPANY shall be available to the DEPARTMENT by the COMPANY, with separate records as to the costs of contract bid items and force account items. On Federal-aid projects, these records shall be in conformance with the requirements of 23 C.F.R. Part 645A, Relocations, Adjustments and Reimbursement, and shall be available for inspection by the appropriate Federal agency.

E. Records of all reimbursable costs for labor, materials, and equipment shall be retained for three years after the receipt of final payment in accordance with 23 C.F.R. Part 17.5(c)(2), Recordkeeping and Retention Requirements for Federal-aid Highways, Records of State Highway Agencies.

SECTION VI. REIMBURSEMENT

Consistent with the terms of this Agreement the DEPARTMENT will reimburse the COMPANY upon the presentation of certified bills prepared in accordance with the requirements of 23 C.F.R. Part 645 and the provisions of this Agreement. As shown in the attached Estimate, "Exhibit A", the estimated amount of reimbursement, after deduction for any credit due the DEPARTMENT, is <\$#,##0>.

SECTION VII. BILLINGS BY COMPANY

Billings and payments shall be made as follows:

A. Preliminary Engineering Billings.

1. When the COMPANY receives the Authority-to-Proceed (ATP) letter, all reimbursable Preliminary Engineering (PE) billings shall be submitted to the DEPARTMENT within 90 days. PE Authority is cutoff when the Agreement is executed by the DEPARTMENT.

B. Partial Billings.

1. At the request of the COMPANY, the DEPARTMENT will accept Partial Billings. Such billings shall show backup, including the Project, Agreement, and COMPANY assigned Work Order numbers, the Termini, and the dates covering the period that the billed work was performed.
2. Each Billing shall contain a recapitulation showing the total cost to date, and the amount of previous billings.

C. Final Billings.

1. The COMPANY, upon completion of all its relocation work and/or upon notification by the DEPARTMENT that all relocation or improvement work performed by the DEPARTMENT is completed, shall submit its Final Billing with appropriate backup as soon as practical and not later than 120 days.
2. The Final Billings shall show backup as required, including the Project, Agreement, and Utility Work Order numbers, the Termini, the dates on which the first and last billed item of expense occurred, and the location where the accounts and records may be audited.

D. Certification

All billings shall contain a statement prepared on the COMPANY's letterhead as follows:

“The Utility hereby certifies that the attached Billing No. _____ (Partial or Final) is a true and just statement of costs incurred by our Company in adjusting or relocating our facilities on the above referenced project during the period from _____ to _____, and that payment has not been received.

The Utility hereby certifies that this billing complies with the Buy America provisions set forth in 23 US Code 313, 23 Code of Federal Regulations, Part 635.410, and the Build America, Buy America Act (BABA), adopted in Title IX of the Infrastructure Investment and Jobs Act, Public Law No. 11758 (IIJA) and implemented through 2 C.F.R. Part 184, and that material certifications will be retained for three years after the receipt of final payment.

CERTIFIED AS BEING CORRECT:

BY: _____
TITLE: _____
DATE: _____”

E. Payment

1. Payment of billings properly prepared, submitted and approved for payment will be made within 45 days.
2. Billings are subject to a retainage for disputed amounts until resolved.
3. The DEPARTMENT reserves the right to perform an audit.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above mentioned.

CONTRACT REVIEW:

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

By: _____

Title: Utility Lead

Date: _____

*

*** UTILITY COMPANY ACCEPTANCE:**

*

*** <UTILITY COMPANY NAME>**

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* By: _____

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* Title: _____

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* Date: _____

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RECOMMENDED FOR APPROVAL:

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

By: _____

Title: Regional Utilities Engineer

Date: _____

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*** NOTICE TO PROCEED:**

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* STATE OF ALASKA
* DEPARTMENT OF TRANSPORTATION
* AND PUBLIC FACILITIES

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* By: _____

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* Title: Preconstruction Engineer

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* Date: _____

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