

ODOT USE ONLY

AGREEMENT NO: _____

MASTER UTILITY REIMBURSEMENT AGREEMENT

THIS MASTER UTILITY AGREEMENT between the State of Ohio, acting by and through the Director of the Ohio Department of Transportation (ODOT), 1980 West Broad Street, Columbus, Ohio, 43223 and the City of Napoleon (UTILITY), acting by and through its duly authorized representative, shall be effective on the date of approval and execution by and on behalf of ODOT.

1. PURPOSE

- 1.1 ODOT proposes to construct and improve numerous sections of state highways designated by PID, County, Route and Section, in accordance with road plans filed in the appropriate ODOT district office.
- 1.2 In order to improve the highway in accordance with project plans, it will be necessary to adjust, remove, and/or relocate certain facilities of the UTILITY.
- 1.3 ODOT will participate in the cost of the adjustment, removal, and/or relocation of the UTILITY's facilities to the extent as may be eligible for State and/or Federal participation.
- 1.4 ODOT, upon receipt of sufficient evidence as outlined in Section 8204.02 of the Department's Utility Manual, acknowledges UTILITY's interest in certain lands and/or facilities that entitle it to reimbursement for the adjustment, removal, and relocation of certain of its facilities.
- 1.5 ODOT is obligated under Ohio Revised Code 5501.51 to reimburse the UTILITY for its actual cost of altering existing facilities to conform to the new improvement, but not including any betterment of facilities.

2. DURATION OF TERM

- 2.1 This agreement shall automatically renew each year on July 1 and shall end on June 30 to correspond with the State's fiscal year, unless ODOT or the UTILITY gives written notice of its intention not to renew at least One Hundred Twenty (120) calendar days prior to June 30.
- 2.2 If this agreement is terminated in accordance with Section 2.1, any projects initiated while the agreement was in effect will be governed by the terms and conditions in this agreement until the project is completed.

3. PLANS AND ESTIMATES

- 3.1 ODOT shall provide the UTILITY with a copy of the plans for the highway improvement contemplated which will affect the facilities of the UTILITY as described in ODOT's Project Development Process.
- 3.2 The UTILITY shall prepare relocation plans and estimates for altering its facilities, temporarily, if necessary, and permanently to conform to the new highway improvement and submit same to ODOT. Such plans and estimates shall be prepared in conformance with and as required by 23 CFR 645,

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Subparts A and B, and all other applicable Federal and State laws, rules and regulations as outlined in ODOT's Office of Real Estate Utilities Manual as required by both parties. Plans shall clearly show the existing facilities as well as the existing right of way, proposed right of way and centerline.

- 3.3 If the UTILITY's estimate contains costs for betterments that are not necessitated by the requirements of the project then those betterment costs shall be deducted from the estimated costs of altering the facilities to conform to the highway improvement.
- 3.4 The UTILITY shall prepare and submit a completed estimate using the most recent version of ODOT Form RE 75-1 "Preliminary Estimate". The estimate shall be properly formatted and contain the appropriate signatures and date of preparation. The RE 75-1 Form can be found on the ODOT web site (http://www.odot.state.oh.us/real_estate/) in the Real Estate Section under the Production column.

4. PERFORMANCE OF WORK

- 4.1 Acceptance of the UTILITY plans and estimates shall be given by means of written authorization by ODOT. After acceptance of the plans and estimates, the UTILITY shall promptly perform the work necessary to conform to the highway improvement, as set forth in plans referenced in Section 3.2.
- 4.2 Both parties shall cooperate with the other party and/or its contractor in the performance of the work and the UTILITY shall backfill all trenches in accordance with provisions of the appropriate sections of the Ohio Department of Transportation's Construction and Material Specifications Manual.

5. CHANGE ORDERS

- 5.1 **Change in Scope.** In the event conditions or circumstances require a change in scope of the UTILITY's work on the project as set forth in Section 3.2, all changes must be made in writing and approved by both parties, including payment responsibilities, prior to performance of the work. ODOT shall not be responsible for any costs associated with any change in the scope of the UTILITY's work until the ODOT District Utility Coordinator approves the change in writing. Should the UTILITY request a change in the scope of work, the schedule for completion of UTILITY's work shall accommodate the time necessary for ODOT to process the change request. Should the changes to UTILITY'S scope of work be requested by ODOT or a third party, ODOT and the UTILITY shall work together to accommodate ODOT's completion date.
- 5.2 **Cost Increases.** ODOT's written approval is required for total project costs plus any approved changes which exceed the cost estimate (ODOT Form RE 75-1 "Preliminary Estimate"). The UTILITY must use the same RE 75-1 form to submit an updated cost estimate to ODOT for approval prior to incurring any additional cost.

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6. SUBCONTRACTORS AND VENDORS

6.1 Subcontracting. The UTILITY may, if not adequately staffed or equipped to perform the work required under this agreement, subcontract the work using a continuing contract or a proper competitive bidding providing that 23 CFR 645 is applicable to the utility with respect to this agreement.

- a) **Continuing contract.** If the UTILITY elects to use a vendor under a continuing contract, the UTILITY must provide a copy of the continuing contract to ODOT with the project estimate, if not previously provided. ODOT reserves the right to reject ineligible costs, i.e a betterment, in accordance with this agreement.
- b) **Competitive bidding process.** The UTILITY agrees to furnish bid amounts of all bids to ODOT upon request. If the UTILITY wishes to subcontract to other than the lowest responsible bidder, the UTILITY is not eligible for reimbursement for costs in excess of the low bid amount(s).

7. SCHEDULE

7.1 Utility Construction Schedule. The UTILITY shall endeavor to perform the required relocation in accordance with the project scope. The project scope is defined in working days from start of relocation to completion.

7.2 Schedule Changes. The UTILITY shall not be authorized to extend the time schedule beyond the time frame designated in the project scope unless or until authorized, in writing, by ODOT. The UTILITY shall not be responsible for delays beyond the schedule time frame if such delay is caused by ODOT, a third party or any Force Majeure event.

7.3 Failure to Meet Schedule. Except due to a Force Majeure event, if the UTILITY does not complete its relocation in accordance with the project timeline and/or any subsequent authorized extension to said schedule, and the delay is caused solely by the UTILITY's negligent acts or negligent failure to act, and ODOT notifies the UTILITY in writing of a conflict or interference with ODOT's contractor, then UTILITY shall be responsible and may be charged by ODOT for any reasonable actual costs incurred by ODOT or by ODOT's contractor as a result of such delay. Despite any such delay, UTILITY shall work as expeditiously as possible under the circumstances to complete the work. If UTILITY's work is impacted by circumstances considered by ODOT to be beyond the UTILITY's control, a written extension shall be provided by ODOT.

8. SUBMISSION OF INVOICES

8.1 If UTILITY reimbursement is not subject to a lump sum payment approved by ODOT, the UTILITY may submit to ODOT partial invoices provided that the invoices are submitted no more frequently than one hundred twenty (120) calendar days or upon incurring ten thousand dollars (\$10,000) in incremental costs. The sum of all partial invoices may not exceed fifty percent (50%) of the approved estimate. Partial bills will be paid within thirty (30) calendar days of approval by ODOT. Costs incurred in

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excess of fifty percent (50%) of the approved estimate shall be billed as a final invoice. The final invoice shall account for all prior costs included in the partial invoices. All partial and final invoices shall be properly formatted and submitted using the most recent version of ODOT Form RE 75-2 "Summary of Bills". The RE 75-2 Form can be found on the ODOT web site (www.odot.state.oh.us) in the Real Estate Section under the Engineering column.

- 8.2 The UTILITY'S preliminary engineering design costs incurred for verifying and locating existing facilities, including but not limited to test pits, correspondence, meetings and exchanges of engineering information are eligible for reimbursement and ODOT will accept billing of these costs after this agreement is fully executed.
- 8.3 The UTILITY is required to submit to ODOT a complete and final invoice for the reimbursable relocation work covering all incurred costs that are properly charged and supported in detail, within one year upon completion of the work. ODOT will pay the final bill within thirty (30) calendar days of receipt of the executed Special Agreement and Waiver of Damages Document from the UTILITY which signifies approval and acceptance of the final billing. All costs incurred as a result of Section 8.4 will be removed from partial and final invoices.
- 8.4 Costs incurred by the UTILITY prior to written authorization by ODOT are not eligible for reimbursement as a direct or indirect cost.

9. TERMS AND CONDITIONS

- 9.1 The following documents, or specified portions thereof, are hereby incorporated into and made a part of this Agreement as though expressly rewritten herein:
- a) Federal-Aid Policy Guide 23 CFR 645;
 - a. Ohio Department of Transportation, Office of Real Estate Utility Relocation Manual, #8100 and #8200
 - b) "Buy America" requirements of 23 USC 313 and 23 CFR 635.410
 - c) 48 CFR 31, Contract Cost Principles and Procedures; and
 - d) Laws of the State of Ohio.
- 9.2 In accordance with Executive Order 2007-01S, the UTILITY, by signing this Agreement certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The UTILITY understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this contract and may result in the loss of other contracts with the State of Ohio.

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10. RECORDS RETENTION AND AUDIT

- 10.1 All books, accounts, reports, files and other records relating to individual projects shall be subject at reasonable times to inspect and audit by ODOT for three (3) years subsequent to receipt of final payment by the UTILITY. Such records shall be provided by the UTILITY at a location designated by mutual agreement by both parties.

11. AVAILABILITY OF FUNDS

- 11.1 It is expressly understood by the parties that none of the rights, duties and obligations described in this Agreement shall be binding on either party until such time as the expenditure of funds for the adjustment, removal, and/or relocation of UTILITY facilities is certified by the Director of Budget and Management, pursuant to §126.07 of the Ohio Revised Code.

12. WAIVER

- 12.1 Notwithstanding the terms, conditions and obligations set forth within this agreement, the UTILITY does not waive or alter any rights it may have under federal, state or local law, including but not limited to ORC Section 5501.51 and applicable state and federal constitutional provisions, to seek just compensation for the taking of any UTILITY property by ODOT
- 12.2 Except as otherwise provided in this agreement, in no event shall either party be liable to the other party for any special, incidental, indirect, punitive, reliance or consequential damages, whether foreseeable or not, including, but not limited to, loss of profits or revenue, cost of capital, cost of replacement services, or claims of customers or of other third parties, occasioned by any cause whatsoever, including, without limitation, breach of contract, breach of warranty, negligence or strict liability.

13. SIGNATURES

- 13.1 Any person executing this Contract in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

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IN WITNESS WHEREOF, the parties hereunto have caused this agreement to be duly executed in duplicate as to the day and year first above written.

THE STATE OF OHIO,
DEPARTMENT OF TRANSPORTATION

UTILITY AUTHORIZED SIGNATURE

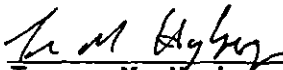
By _____
JERRY WRAY,
DIRECTOR

By _____
Name: _____
Title: _____

Date: _____

Date: _____

Approved as to form and correctness:



Trevor M. Hayberger, City Law Director

I hereby acknowledge that State or Federal funds will be used to reimburse the utility for the allowable costs of the utility relocation listed above.

Accordingly, I hereby certify that the costs used to create this estimate are in accordance with the executed Master Utility Reimbursement Agreement between ODOT and the Utility, all applicable laws, regulations and policies, including but not limited to 23 CFR 645, 48 CFR 31, the Buy America requirements contained in 23 USC 313 and 23 CFR 635.410, the ODOT Office of Real Estate Utilities Manual, and other applicable Federal, State, and ODOT regulations or policies. I also certify that this estimate contains no contingencies or premium labor costs unless clearly proposed in this estimate.

I further acknowledge that costs submitted for reimbursement that do not comply with the above guidance will not be reimbursed by ODOT.

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By checking box, utility agrees to conform to the "Buy America" policy. If box is unchecked, ODOT cannot process utility billing for final payment.

"Buy America" requires: "STEEL AND IRON PRODUCTS MADE IN THE UNITED STATES". Furnish steel and iron products that are made in the United States according to the applicable provisions of Federal regulations stated in CFR 635.410. "United States" means the United States of America and includes all territory, continental or insular, subject to jurisdiction of the United States.

Federal Requirements: All steel or iron products incorporated permanently into the utility relocation work must be made of steel or iron produced in the United States and all subsequent manufacturing must be performed in the United States. Manufacturing is any process that modifies the chemical content; physical shape or size, or final finish of a product. Manufacturing begins with the initial melting and mixing, and continues through the bending and coating stages. If a domestic product is taken out of the United States for any process, it becomes a foreign source material and is not acceptable.

Proof of Domestic Origin: Furnish documentation to the ODOT District Utility Coordinator showing the domestic origin of all steel and iron products covered by this section before they are incorporated into the utility relocation work. **If "Buy America" regulations are not adhered to, then any relocation work will not be reimbursed.**

(Utility Name - Print or Type)

Note: The completed Checklist and other required materials should accompany this estimate when sent to the ODOT District office.

(Print or Type)

Go To Checklist Tab

Name

Title

Phone #

Email

1/24/2013

Authorizing Signature

(Please print and submit with other requested documentation)

For ODOT Use Only

Print Name (ODOT Authorization)

Date

Signature of Acceptance of Estimate by Authorized ODOT Personnel