

Route \_\_\_\_\_  
County \_\_\_\_\_  
Project No. \_\_\_\_\_

**(NAME OF LOCAL AGENCY)  
UTILITY AGREEMENT - ACTUAL COST**

THIS AGREEMENT is entered into by the (*Name of Local Agency*) (hereinafter, "Local Agency") and \_\_\_\_\_ (hereinafter, "Company").

WITNESSETH:

WHEREAS, the Local Agency proposes to construct and improve a section of roadway designated as Project No. \_\_\_\_\_, Route \_\_\_\_\_, \_\_\_\_\_ County, in the vicinity of \_\_\_\_\_ in accordance with certain road plans; and

WHEREAS, in order to improve said highway in accordance with said plans, it will be necessary to adjust certain facilities, such changes being generally shown in legend on plan marked Exhibit "A", and estimate of cost marked Exhibit "B" attached hereto and each made a part hereof;

NOW, THEREFORE, in consideration of these mutual covenants, the parties agree as follows:

(1) **RELEASE:** The Company grants to the Local Agency such right, title and interest which the Company may have in and to the right of way of said roadway, as specifically described in a separate easement for highway construction.

(1) **RELEASE:** The Company grants to the Local Agency such right, title and interest which the Company may have in and to the right of way of said roadway.

**(NOTE: Use applicable paragraph 1, if necessary.)**

(2) **COMPLY WITH FEDERAL AID POLICY GUIDE (FAPG):** The Company agrees that the detail plan and estimate of cost for the required adjustment of the Company's facilities have been prepared in accordance with FAPG 23 CFR 645A and any amendments which by reference are made a part of this Agreement. The Company also agrees that the work will be performed in accordance with said regulation.

(3) **COMMENCEMENT AND COMPLETION OF WORK:** After approval of the detail plan and estimate of cost and upon notification by the Local Agency, the Company will commence, without unnecessary delay, to make changes to its facilities. The Company will actively pursue completion of the work to reach the earliest possible completion date and to minimize interference with the Local Agency's roadway

contractor. The Company agrees to provide a written estimated time schedule of its planned work and a written notification to the Local Agency's engineer at least five (5) days prior to beginning the work. If the Company falls behind in its work schedule, it shall submit a revised work schedule to the Local Agency's engineer. The Company will make every effort to get back on schedule and complete its work. The Company has an affirmative duty to cooperate and coordinate its activities with those of the Local Agency's roadway contractor. The Local Agency's contractor has a contractual requirement to cooperate and coordinate its activity with the Company and other utility companies on this job.

(4) AUDIT OF RECORDS: The Company shall develop the adjustment cost of the work by using the actual and related indirect cost accumulated in accordance with an established accounting procedure used by the Company in its regular operations and shall keep a detailed and accurate account of all labor, materials, supplies, incidentals, and other necessary costs involved in making such changes. The Local Agency's engineer in charge of said project, or any authorized agent of the Local Agency or the Federal Highway Administration, shall have access during normal business hours to such Company records. These records must be available during the contract period and any extension, and for three (3) years from the date of final payment at no charge.

(5) SUBCONTRACT: The Company intends to perform this work with its own forces, but if it becomes necessary to contract any of the work of adjusting its facilities, it shall furnish the Local Agency with evidence that it is not adequately staffed or equipped to perform the work and shall comply with the procedures outlined in FAPG 23 CFR 645A relating to performing part or all of the work by contract. Furthermore, if the Company solicits bids for the work, the Company is to furnish to the Local Agency a tabulation of bids received, a copy of the proposal used in securing the bids, and any other information to support the Company's recommendation for award to the lowest qualified bidder prior to any contract work being performed.

(5) SUBCONTRACT: The Company is not adequately staffed or equipped to perform all work and intends to contract portions and will comply with FAPG 23 CFR 645A relating to performing part or all of the work by contract. Furthermore, if the Company solicits bids for the work, the Company is to furnish to the Local Agency a tabulation of bids received, a copy of the proposal used in securing the bids, and any other information to support the Company's recommendation for award to the lowest qualified bidder prior to any contract work being performed.

**(NOTE: Use applicable Paragraph 5.)**

(6) CHANGE ORDER: If any substantial change is made in the original plan and extent of the work, the Company agrees that reimbursement shall be limited to costs covered by a supplemental agreement or change order prepared by the Local Agency's engineer or his/her representative and having approval of the Local Agency

and Federal Highway Administration PRIOR to the performance of the work, as set out in FAPG 23 CFR 645A.

(7) BACKFILL: The Company agrees to compact backfill of all excavation within the roadway limits in accordance with the Local Agency's adopted Standard Specifications for Highway Construction, current edition, or as approved by the Local Agency's engineer.

(8) CONDITION OF RIGHT OF WAY: Upon completion of the work provided in this Agreement, the Company shall remove all leftover materials and debris resulting from the work and leave the right of way in a neat, workmanlike condition, free of holes, mounds of dirt, or other objectionable material.

(9) SAFETY DEVICES: At all times when work is being performed by the Company under such conditions as will affect traffic on the public highways, the Company will display warning signs, barricades, flags, lights and/or flares as circumstances may require and shall employ and use a flagger when required for safety of the traveling public, all in accordance with the standards set forth in the "Manual on Uniform Traffic Control Devices" (MUTCD).

(10) COST: The total cost of the work required for the highway construction is estimated to be \$\_\_\_\_\_. **(Describe specific costs).**

The Local Agency's obligation toward the cost of the work under this Agreement shall be \_\_\_\_\_ percent of the actual cost, which obligation is now estimated to be \$\_\_\_\_\_.

The Local Agency's obligation shall extend only to those costs incurred under the provisions of FAPG 23 CFR 645A.

(11) PERMIT REQUIREMENT: The Company shall obtain a no cost permit from the Local Agency's engineer prior to adjusting or relocating its property from, within, or onto the Local Agency's right of way. The permit shall be signed by an authorized Company representative.

**(NOTE: Use when work will be performed on right of way owned by the Local Agency at the time the work is to be performed.)**

(12) LOCAL AGENCY REPRESENTATIVE: The Local Agency's engineer is designated as the Local Agency's representative for the purpose of administering the provisions of this Agreement.

(13) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the state of Missouri. The Company shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(14) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of (*applicable County*), Missouri.

(15) FINAL INVOICE SUBMITTAL: After completion of the utility work, the Company agrees to submit a final invoice for the cost of the work to the Local Agency within sixty (60) days or as mutually agreed to by the Local Agency's engineer or his/her representative. The final invoice shall be in as much detail as possible to verify the cost of the completed work. It should follow the format of the original cost estimate (Exhibit B) when possible to promote faster processing by the Local Agency. The Local Agency's engineer will process the final invoice as soon as possible after receipt. If the final invoice is greater than the Local Agency's payment provided in paragraph (10), the Local Agency shall promptly pay the Company the additional Local Agency obligation. Conversely, if the final invoice is less than the Local Agency's payment, the Company shall promptly remit the Local Agency's overpayment.

(16) ASSIGNMENT: The Company shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Local Agency.

(17) COOPERATION: When the Company relocation work is being done concurrent with the Local Agency's roadway contractor operation, the Company agrees to cooperate and coordinate its work to minimize disturbance to the roadway contractor or other utility companies working on the project.

(18) HIGHWAY IMPROVEMENT INFORMATION: The Local Agency agrees to furnish the Company all necessary information on the highway improvement in order to properly carry out the utility relocation. Known hazardous waste sites will be identified on the right of way.

(19) WORK CANCELED: If the Local Agency instructs the Company not to proceed with the work, the Local Agency shall reimburse the Company for the Local Agency's percentage share of the Company's costs incurred prior to the date the work is canceled, as allowed pursuant to FAPG 23 CFR 645A. The Company shall promptly return to the Local Agency any funds in excess of those actually incurred prior to the date the work is canceled.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the Company this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Executed by the Local Agency this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Name of Local Agency)

COMPANY

By \_\_\_\_\_

Title \_\_\_\_\_

ATTEST:

Signed \_\_\_\_\_

Title \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Local Agency Counsel

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

Title \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Title \_\_\_\_\_

(Company Seal, if available)