

Route _____
County _____
Project No. _____

(Name of Local Agency)
UTILITY AGREEMENT - LUMP SUM

THIS AGREEMENT is entered into by the 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 roadway 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 and each made a part of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations in this Agreement, 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 state roadway, as specifically described in a separate easement for roadway 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 state 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 C.F.R. 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 (Name of 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 (Name of 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 (Name of 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 (Name of 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 (Name of Local Agency)'s roadway contractor. The (Name of Local Agency)'s contractor has a contractual requirement to cooperate and coordinate its activities with the Company and other utility companies on this job.

(4) 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 (Name of 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 C.F.R. 645A.

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

(6) 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.

(7) SAFETY DEVICES: At all times when work is being performed by the Company under such conditions as will affect traffic on the public roadways, 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).

(8) COST: The total cost of the work required for the roadway construction is estimated to be \$ _____. The (Name of Local Agency)'s obligation toward the total cost of the work under this Agreement shall be _____ percent (%), no more or no less \$ _____. 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.

(9) 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 the 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.)

(10) Local Agency REPRESENTATIVE: The (Name of Local Agency)'s engineer is designated as the (Name of Local Agency)'s representative for the purpose of administering the provisions of this Agreement. The (Name of Local Agency)'s representative may designate by written notice other persons having the authority to act on behalf of the Local Agency in furtherance of the performance of this Agreement.

(11) 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.

(12) 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.

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

(14) COOPERATION: When the Company relocation work is being done concurrent with the (Name of 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.

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

(16) 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 C.F.R. 645A. The Company shall promptly return to the Local Agency any funds in excess of those actually incurred prior to the date 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 _____

Title _____

ATTEST:

ATTEST:

By _____

By _____

Title _____

Title _____

Approved as to Form:

Approved as to Form:

Local Agency Counsel

Title _____

(Company Seal, if available)

Ordinance No. _____