

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY RELOCATION MASTER AGREEMENT
(AT THE DEPARTMENT'S EXPENSE)

FORM 710-010-15
UTILITIES
07/95
Page 1 of 5

THIS AGREEMENT, made and entered into this ~~7th~~ 23 day of October, 1996, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the DEPARTMENT, and THE CITY OF FORT MYERS, with its principal place of business in the City of FORT MYERS, County of LEE, State of FLORIDA, hereinafter referred to as UTILITY OWNER.

WITNESSETH:

WHEREAS, the DEPARTMENT proposes to engage in certain projects for constructing, reconstructing or otherwise changing a portion of the State Highway System, hereinafter referred to as the "Projects", which shall call for the location (vertically and horizontally), protection and/or relocation and adjustment of the UTILITY OWNER's facilities on said Projects, hereinafter referred to as "Relocation Work"; and

WHEREAS, the plans for the said construction, reconstruction or other changes are to be reviewed by the DEPARTMENT and the UTILITY OWNER, and

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, it is agreed by the parties as follows:

1. Upon service of an Order by the DEPARTMENT, the UTILITY OWNER shall make or cause to be made all arrangements for the "Relocation Work" in accordance with the plans, designs and specifications of the DEPARTMENT for the construction or reconstruction of the Projects and the provisions of the DEPARTMENT's current "Utility Accommodation Manual".
2. Upon issuance of the DEPARTMENT's Notice to Proceed to the UTILITY OWNER, the UTILITY OWNER shall perform all "Relocation Work" so as to cause no delay to the DEPARTMENT or its contractors in the prosecution of the Projects, and all such "Relocation Work" shall be done under the direction of the DEPARTMENT's engineer. All "Relocation Work" will be subject to any applicable rights of the Federal Highway Administration with the cost of all improvements made by the UTILITY OWNER and subject to the DEPARTMENT's obligation for reimbursement. The UTILITY OWNER agrees that it will be directly responsible for any legal claims that the Projects' contractors may initiate due to delays caused by the "Relocation Work"; provided, however, the UTILITY OWNER shall not be responsible for delays beyond its control.
3. The UTILITY OWNER agrees to locate (vertically and horizontally), and protect its facilities throughout the Projects life. The UTILITY OWNER also agrees to relocate its facilities upon the DEPARTMENT's right-of-way according to the terms of the Utility Relocation Schedule and the DEPARTMENT's Utility Permit.
4. The UTILITY OWNER agrees to fully comply with the provisions of Title VI of the Civil Rights Act of 1964 and any subsequent revisions thereto in connection with the "Relocation Work" covered by this agreement, and such compliance will be governed by one of the following methods:
 - (a) The UTILITY OWNER will perform all or part of such "Relocation Work" by a contractor paid under a contract let by the UTILITY OWNER, and the Appendix "A" of Assurances attached to this agreement will be included in said contract let by UTILITY OWNER.
 - (b) The UTILITY OWNER will perform all of such "Relocation Work" entirely with UTILITY OWNER's forces, and Appendix "A" of Assurances is not required.
 - (c) The "Relocation Work" involved is agreed to by way of just compensation for the taking of the UTILITY OWNER's facilities on right of way in which the UTILITY OWNER holds a compensable interest, and Appendix "A" of Assurances is not required.
 - (d) The UTILITY OWNER will perform all such "Relocation Work" entirely by continuing contract, which contract to perform all future Relocation Work was executed with UTILITY OWNER's contractor prior to August 3, 1965, and Appendix "A" of Assurances is not required.

5. The **DEPARTMENT** agrees to reimburse the **UTILITY OWNER** for all costs incurred by it in the relocation and/or adjustment of said facilities, in accordance with the provisions set forth in **DEPARTMENT** rules and procedures. It is understood and agreed by the parties that preliminary engineering costs not incorporated in the **UTILITY OWNER**'s plans and estimates, as approved by the **DEPARTMENT**, shall not be subject to payment by the **DEPARTMENT**.

6. All "Relocation Work" performed by the **UTILITY OWNER** pursuant hereto, shall be performed according to the plans and specifications as reviewed by the **DEPARTMENT**. All "Relocation Work" covering facilities to be relocated to a position within the **DEPARTMENT**'s right of way will be accommodated in accordance with the provisions of the **DEPARTMENT**'s current "Utility Accommodation Manual".

7. All labor, services, materials, and equipment furnished by the **UTILITY OWNER** in carrying out the "Relocation Work" shall be billed by the **UTILITY OWNER** directly to the **DEPARTMENT**. Separate records as to the cost of contract bid items and force account items performed for the **UTILITY OWNER** shall also be furnished by the **UTILITY OWNER** to the **DEPARTMENT**.

8. The method to be used in calculating the cost of relocation and/or adjustment shall be one of the methods below:

- (a) Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.
- (b) Actual and related indirect costs accumulated in accordance with an established accounting procedure developed by the **UTILITY OWNER** and approved by the **DEPARTMENT**.
- (c) An agreed lump sum as supported by the detailed analysis of estimated costs attached hereto. (Note: this method is not applicable where the estimated cost of relocation exceeds \$100,000.00.)

9. If the new facility will remain in useful service, or if an entirely new facility is constructed and the old facility retired, credit for expired service life applies.

10. If upgrading and/or non-reimbursable relocation work is involved at the option of the **UTILITY OWNER**, then credit against the cost of the "Relocation Work" is required and will be determined as follows:

(a) An agreed percentage or dollar amount will be applied to the final billing of work actually accomplished to determine required credit for (betterment) and/or (expired service life) and/or (nonreimbursable segments).

(b) All "Relocation Work" involving nonreimbursable segments will be performed by special utility work or job order number apart and separate from reimbursable work. The **UTILITY OWNER** further agrees to clearly identify such work areas in the **UTILITY OWNER**'s plans and estimates for the "Relocation Work" covered by this agreement.

11. It is specifically agreed by the **DEPARTMENT** and **UTILITY OWNER** that the **DEPARTMENT** shall receive fair market value credit for any salvage which shall accrue to the **UTILITY OWNER** as a result of the above "Relocation Work". It is **UTILITY OWNER**'s responsibility to ensure recovery of salvageable materials and to report the fair market value of same to **DEPARTMENT**.

12. The **UTILITY OWNER** may submit prior to the completion of the "Relocation Work" three (3) copies of its partial billing of all costs incurred for the period covered by the billing. The **DEPARTMENT** requires thirty (30) working days after the receipt of a detailed invoice to approve goods and services received under this agreement. The **DEPARTMENT** will retain ten (10%) percent of such partial billings.

a. The **UTILITY OWNER** shall submit invoices to the **DEPARTMENT** for payment of "Relocation Work" completed within one hundred eighty (180) days after final acceptance of the work. The **UTILITY OWNER** acknowledges that it waives all rights and interests to payments pursuant to invoices submitted more than one hundred eighty (180) days after final acceptance of the "Relocation Work". The **UTILITY OWNER** also acknowledges that the **DEPARTMENT** does not waive its right to reject future untimely invoices by acceptance and payment of any invoices not submitted within one hundred eighty (180) days after final acceptance of the "Relocation Work".

b. The **UTILITY OWNER** shall furnish the **DEPARTMENT** three (3) copies of its final and complete billing of all costs incurred in connection with the "Relocation Work" performed hereunder, in the order of items contained in the estimate. Upon the **UTILITY OWNER**'s failure to submit proper billing, the **DEPARTMENT** may, at its discretion, audit the **UTILITY OWNER**'s records and thereby determine the reimbursable amount. The totals for labor, overhead, travel expenses, transportation, equipment, materials and supplies, handling costs, and all other services shall be shown in such a manner as will permit ready comparison with the approved plans and estimates. Materials shall be itemized where they represent major components of costs in the relocation following the pattern set out in the approved estimate. Salvage credits from recovered and replaced permanent and recovered temporary materials shall be reported in said bill in relative position with the charge for the replacement or the original charge for temporary use.

c. Billings shall show the description and site of the project; the date on which the first "Relocation Work" was performed, or, if preliminary engineering or right-of-way items are involved, the date on which the earliest item of billed expense was incurred; the date on which the last work was performed or the last item of billed expenses were incurred; and, the location where the records and accounts billed can be audited. Adequate reference shall be made in the billing to the **UTILITY OWNER**'s records, accounts, and other relevant documents. All costs records and accounts shall be maintained in auditable condition for a period of three years after final payment is received by the **UTILITY OWNER** and shall be subject to audit by a representative of the **DEPARTMENT** at any reasonable time during this three year period.

13. The **UTILITY OWNER** shall obtain written approval from the **DEPARTMENT** prior to performing "Relocation Work" which exceeds the estimated costs. The provisions of subsection 339.135(6)(a), F.S., are made a part of this contract. The **DEPARTMENT**, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year.

a. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The **DEPARTMENT** shall require a statement from the comptroller of the **DEPARTMENT** that funds are available prior to entering into any such contract or other binding commitment of funds.

b. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the **DEPARTMENT** which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year.

c. A provision that bills for fees or other compensation for services or expenses be submitted in detail sufficient for a proper preaudit and postaudit thereof. A provision that bills for any travel expenses be submitted in accordance with s.112.061. A state agency may establish rates lower than the maximum provided in s. 112.061. A provision allowing unilateral cancellation by the agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material subject to the provisions of chapter 119 and made or received by the contractor in conjunction with the contract.

d. The **UTILITY OWNER** should be aware of the following time frames. Upon receipt, the **DEPARTMENT** has thirty (30) working days to inspect and approve the goods and services. The **DEPARTMENT** has 30 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 30 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

e. If a payment is not available within 40 days, a separate interest penalty, as established pursuant to §215.422 Fla. Statute, will be due and payable, in addition to the invoice amount, to the **UTILITY OWNER**. Interest penalties of less than one (1) dollar will not be enforced unless the **UTILITY OWNER** requests payment. Invoices which have to be returned to a **UTILITY OWNER** because of **UTILITY OWNER** preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the **DEPARTMENT**.

f. No executive branch public officer or employee shall enter into any contract on behalf of the state, which contract binds the state or its executive agencies for the purchase of services or tangible personal property for a period in excess of one (1) fiscal year, unless the following statement is included in the contract: The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the legislature.

g. A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (904) 488-2924 or by calling State Comptroller's Hotline, 1-800-848-3792.

14. The **UTILITY OWNER** covenants and agrees that should the **DEPARTMENT** allow any of the **UTILITY OWNER's** existing facilities to be placed out of service rather than be removed, then **UTILITY OWNER** agrees that it will, indemnify, defend, save, and hold harmless the **DEPARTMENT** and all of the **DEPARTMENT's** officers, agents, and employees from any claim, loss, damage, costs, charge or expense which may arise as a result of this action including, but not limited to causes arising out of any future removal of the said facility.

15. To the extent provided by law, the **UTILITY OWNER** shall indemnify, defend, save harmless and exonerate the **DEPARTMENT**, its officers, agents and employees of and from all liability, claim, loss, damage, cost, charge, expense and demands arising out of the "Relocation Work" undertaken by the **UTILITY OWNER**, its employees, agents, representatives, or subcontractors due in whole, or in part to conditions, actions, or omissions done or committed by the **UTILITY OWNER**, subcontractors, employees, agents or representatives. It is specifically understood and agreed that this indemnification does not cover or indemnify the **DEPARTMENT** for its own negligence or breach of contract.

16. The **UTILITY OWNER** shall maintain the "Relocation Work" in good repair in accordance with the **DEPARTMENT's** current "Utility Accommodation Manual". This duty shall continue throughout the Project.

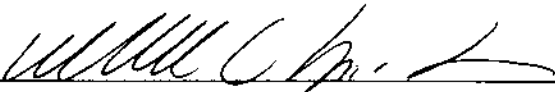
17. The **DEPARTMENT** shall furnish the **UTILITY OWNER** with all necessary construction plans that are required by the **UTILITY OWNER** to facilitate the "Relocation Work". The **UTILITY OWNER** shall be required to submit plans to the **DEPARTMENT** showing all "Relocation Work".

18. The **UTILITY OWNER** shall inform the **DEPARTMENT's** Resident Engineer in writing when it starts or resumes the "Relocation Work".


19. This agreement shall remain in full force and effect until cancelled, and may be cancelled by either party upon sixty (60) days written notice.

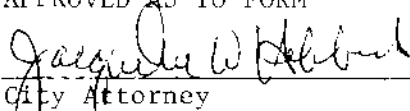
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers, the day and year first above written.

UTILITY: THE CITY OF FORT MYERS

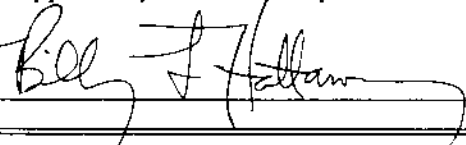
BY: 
(Title: Mayor Wilbur C. Smith, III)

DATE: 10/14/
(SEAL)

ATTEST(s): 
(Title: Dale Veneziano, City Clerk)

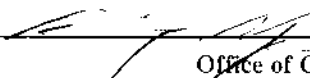
APPROVED AS TO FORM

City Attorney

Recommend Approval by the State Utility Office

BY: 

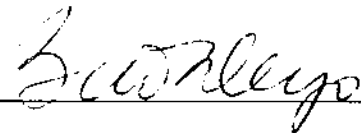
DATE: 10/22/96

FDOT Approved as to Form and Legality

BY: 
Office of General Counsel

DATE: 10.22.96

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: 
(Title: State Highway Engineer)

DATE: 10.23.96

ATTEST(s): _____
(Title: _____)

(SEAL)

FEDERAL HIGHWAY ADMINISTRATION (If Applicable)

BY: _____
(Title: _____)

DATE: _____