

PARTICIPATING UTILITY (CONSTRUCTION)

DERRY - LONDONDERRY
IM-0931(201)
13065
(I-93; Exit 4A and Connecting Roadway)
(UTILITY WORK)

UTILITY AGREEMENT

This Agreement is made in triplicate this _____ day of _____, _____, by and between the STATE OF NEW HAMPSHIRE, by its Department of Transportation, party of the first part, hereinafter called the "State", Design-Builder, a Corporation duly organized and existing under the laws of the State of _____, and authorized to do business in the State of New Hampshire, party of the second part, hereinafter called the "Design-Builder", and _____ (Vendor # _____), a Corporation duly organized and existing under the laws of the State of _____, and authorized to do business in the State of New Hampshire, party of the third part, hereinafter called the "*".[FOR AGREEMENT WITH COMPANY]

This Agreement is made in triplicate this _____ day of _____, _____, by and between the STATE OF NEW HAMPSHIRE, by its Department of Transportation, party of the first part, hereinafter called the "State", Design-Builder, a Corporation duly organized and existing under the laws of the State of _____, and authorized to do business in the State of New Hampshire, party of the second part, hereinafter called the "Design-Builder", and _____ (Vendor # _____), a municipally owned utility/municipality, party of the second part, hereinafter called the "*".[FOR AGREEMENT WITH MUNICIPALITY]

WITNESSETH:

WHEREAS, the State has the approval of the United States Department of Transportation (USDOT), Federal Highway Administration (FHWA), for a Federal-Aid Project (Organization Code 3054), Derry – Londonderry, IM-0931(201), 13065, for the preliminary and final design, right-of-way acquisition, and construction of EXIT 4A on I-93 and connecting roadway, in the Towns of Derry and Londonderry, County of Rockingham, New Hampshire, which construction necessitates the {installation/relocation/replacement} of Description of Facility to the extent required to permit construction of the Project, and,

WHEREAS, the COMMISSIONER of the New Hampshire Department of Transportation (NHDOT), hereinafter called the "Commissioner", is having the Design-Builder prepare plans and specifications for such Project marked Derry – Londonderry, IM-0931(201), 13065, which plans and specifications meet with the approval of the * and will be on file in the permanent records of said Department of Transportation, Concord, New Hampshire, and,

WHEREAS, the State is obligated to reimburse the * for _____ {relocation/replacement} due to the _____ facilities prior existence to the State Highway facility, and,[UTILITY PRE-EXISTED STATE ROADWAY]

WHEREAS, said _____ facility(ies) is/are located {on _____ (a municipally maintained roadway)/within an easement}, the taking of which is compensable in eminent domain and therefore the costs of the relocations are the responsibility of the Project, and, [FOR MUNICIPAL FACILITIES ON MUNICIPALLY MAINTAINED ROADWAY or UTILITY HAS PROPERTY RIGHTS]

WHEREAS, said _____ facility(ies) is/are located on _____ (a State maintained roadway), and therefore the costs of the relocations are the responsibility of the Town, and, [FOR MUNICIPAL FACILITIES ON STATE MAINTAINED ROADWAY]

WHEREAS, the State is obligated to reimburse the * for certain costs in accordance with RSA 228:22 (trench, backfill, and book value){ for the portion of work {on _____ } {as shown in the attached estimate}, and, [FOR UNDERGROUND MUNICIPAL UTILITY IN STATE ROW]

WHEREAS, the * desires the _____ to be included as part of the Highway Contract, and, [WORK INCLUDED IN STATE CONTRACT]

WHEREAS, the * desires the assistance of the Design-Builder in the {installation/relocation/replacement} of the aforementioned facilities, [IDENTIFIES RELATIONSHIP FOR WORK TO BE ACCOMPLISHED]

NOW THEREFORE, in consideration thereof, the parties hereto mutually agree as follows:

- 1. [INSERT DESCRIPTION OF WORK AND BEGIN PARAGRAPH #'S.]
- #. The Design-Builder shall furnish the labor, equipment, and materials to perform construction of the participating _____ relocations at the following approximate locations:
- #. The * shall furnish the labor, equipment, and materials to perform construction of the participating _____ relocations at the following approximate locations:
- #. The Design-Builder shall furnish the labor, equipment, and materials to perform construction of the non-participating _____ relocations at the following approximate locations:

- #. The * shall furnish the labor, equipment, and materials to perform construction of the non-participating _____ relocations at the following approximate locations:

Method of Payment for Described Work:

Work will be paid for at {Actual Cost estimated at{ and not to exceed}/Lump Sum cost of/Fixed Cost estimate at/Actual Contractor's Bid estimate at [for an already bid upon project]} \$xxxxx.xx (Work Class Code 2260 Par) as shown below and in the attached estimate:

| | |
|---|--------------------------|
| Estimated Participating Contract Items | \$xxx,xxx.xx |
| Estimated Total Actual Cost due Design-Builder by State | \$xxx,xxx.xx |
| Estimated Non-Participating Contract Items | \$xxx,xxx.xx |
| Estimated Total Actual Cost due Design-Builder by * | \$xxx,xxx.xx |
| Estimated Participating Items | \$xxx,xxx.xx |
| Reimbursement per RSA 228:22 | <u>\$x,xxx.xx</u> |
| Estimated Total Actual Cost due * by State | \$xxx,xxx.xx |

Billing for Cost of Participating Work or Participating Contract Items submitted by * to:

Melodie A. Esterberg, P.E., Chief of Design Services
 Bureau of Highway Design
 New Hampshire Department of Transportation
 7 Hazen Drive, PO Box 483
 Concord, NH 03302-0483

Detailed billing shall be submitted showing:

- State Project Name & Number.
 - Organization and Work Class codes.
 - Brief description of work covered.
 - Dates work was started & completed.
 - Breakdown of quantities and costs for labor, equipment, materials and overhead expenses.
 - Signed Utility Reports
 - Whether billing is partial or final.
 - Bill or invoice number.
 - Date of billing.
- #. The work described in Paragraph(s) ___ above is shown in greater detail on the approved plans and in the attached plans and estimates being made a part of this Agreement. [\[WORK HIGHLIGHTED ON PLANS\]](#)
- #. The participating work described in Paragraph(s) _____ above will be accomplished under the Highway Contract, in accordance with the plans and specifications for same, at no cost to the *. The State agrees to reimburse the Design-Builder for the actual costs. The * agrees to accept the operation, use, and maintenance of the facilities, as constructed. [\[DEFINES ACCEPTANCE, OPERATION AND MAINTENANCE RESPONSIBILITIES OF STATE CONTRACT PERFORMED WORK\]](#)
- #. The non-participating work described in Paragraph(s) ___ above will be accomplished under the Highway Contract, in accordance with the plans and specifications for same. The * agrees to reimburse the Design-Builder for the actual costs, and also agrees to accept the operation, use, and maintenance of the facilities, as constructed. [\[WHEN NON-PARTICIPATING WORK IS INCLUDED WITH PARTICIPATING WORK\]](#)
- #. The * agrees to permit the State, its agents, and contractors to enter upon said premises, easement and land of the * for the purpose of performing the work described in Paragraph(s) ___ above. [\[ALLOWS ACCESS TO UTILITY'S PROPERTY\]](#)
- #. In order to assure a proper installation, the * {shall/will} assist the State in the inspection of the Contractor's work described in Paragraph(s) ___ as required by the Project. Any issue shall be brought to the attention of the State's Contract Administrator immediately and he/she shall resolve it. The Contract Administrator will require the Design-Builder to take corrective action as necessary to provide an acceptable installation, relocation, and/or adjustment. [\[INSPECTION BY UTILITY\]](#)

- #. The work described in Paragraph(s) ___ above, will be done by * forces and/or under an existing continuing contract and/or by competitive bid contract. Continuing contracts shall be defined as a written contract with * and the contractor which regularly does work for the *. The * will have awarded the continuing contracts using a competitive bid process, the attached documentation of which being made a part of this Agreement. Competitive bid contracts must be solicited by the * from at least three (3) contractors and authorized by the State before the work can be awarded.[\[UTILITY PERFORMED WORK\]](#)

- #. The * agrees to coordinate the work hereinbefore described with the State's Project and also agrees to complete the work prior to or concurrently with the Project's completion date, provided the * is not delayed by acts of God, strikes, or late delivery of critical materials.[\[UTILITY PERFORMED WORK\]](#)

- #. The * agrees to perform the work hereinbefore proposed, in accordance with the plans mentioned above, including such additions or modifications hereafter approved, in writing, by the *, Design-Builder, and the State. The amount of work to be performed by the *, including any changes, shall be approved by the Design-Builder, State, and the duly authorized representatives of the Federal Government before the work is performed, and the * shall be reimbursed therefore, as hereinafter provided, except that the cost of any such force account or contract work which is not approved as above indicated shall be borne by the *.[\[STATEMENT OF PRIOR APPROVAL OF WORK\]](#)

- #. In accordance with the **BUY AMERICA** requirements of the Federal regulations (23 U.S.C. 313 and 23 CFR 635.410), all manufacturing processes for steel and iron products furnished for permanent incorporation into the work on this project shall occur in the United States. The only exception to this requirement is the production of pig iron and the processing, pelletizing and reduction of iron ore, which may occur in another country. Other than these exceptions, all melting, rolling, extruding, machining, bending, grinding, drilling, coating, etc. must occur in the United States.[\[INCLUDE THIS PARAGRAPH AND A – D BELOW ON A FEDERALLY FUNDED PROJECT WHERE UTILITY PERFORMS WORK\]](#)
 - A. Products of steel include, but are not limited to, such products as structural steel, piles, reinforcing steel, structural plate, steel culverts, guardrail steel supports for signs, signals and luminaires, and cable wire/strand. Products of iron include, but are not limited to, such products as cast iron frames and grates and ductile iron pipe. Coatings include, but are not limited to, the applications of epoxy, galvanizing and paint. The coating material is not subject to this clause, only the application process.

- B. A Certificate of Compliance (available at www.NHDOT.com) shall be furnished for steel and iron products as part of the backup information with the billing. Records to be maintained by the * for this certification shall include a signed mill test report and a signed certification by each supplier, distributor, fabricator, and manufacturer that has handled the steel or iron product affirming that every process, including the application of a coating, performed on the steel or iron product has been carried out in the United States of America, except as allowed by this Section. The lack of these certifications will be justification for rejection of the steel and/or iron product or non-payment of the work.
- C. The requirements of said law and regulations do not prevent the use of miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct the above products, manufactured products that are not predominantly steel or iron or a minimal use of foreign steel and iron materials if the cost of such materials used does not exceed one-tenth of one percent (0.1%) of the total contract price or \$2,500.00, whichever is greater.
- D. Upon completion of the project, the * shall certify in writing as to compliance with this Section and also provide the total project delivered cost of all foreign steel and/or iron permanently incorporated into the work covered by this Agreement. The form for this certification entitled "Buy America Certificate of Compliance" can be found at www.NHDOT.com.
- #. The * agrees to notify the Design-Builder and State's Contract Administrator daily when performing the work hereinbefore described, and to complete Utility Reports showing the work performed, the classes and hours of labor, equipment and materials used, and the disposition of the materials replaced, along with the time and place abandoned or scrapped materials will be available for inspection. The * further agrees to obtain the signature of the State's Contract Administrator on the Project on the completed Utility Reports for work being done daily and deliver them weekly to the State's Contract Administrator or mail them to the New Hampshire Department of Transportation, Bureau of Construction/Turnpikes/Highway Design/Maintenance-District ____, 7 Hazen Drive/_____, PO Box 483/2950/_____, Concord/_____, NH 03302-0483/2950/_____, at the end of the week following that in which the work was performed. The * and the State's Contract Administrator/Utility Coordinator shall resolve any possible discrepancies. The Utility Reports are required for verification that the work was performed. [\[Send Utility Reports with Authorization to Proceed letter\]](#) [\[REQUIREMENT FOR UTILITY REPORTS WHEN UTILITY PERFORMING WORK\]](#)
- #. The State agrees to reserve/obtain and/ or convey to the * the right of easement as shown on the approved plans to accommodate the new/relocated _____ facilities. This constitutes the replacement of existing rights and facilities. [\[WHEN STATE IS REPLACING AN EASEMENT\]](#)

#. Federal and State participation in the cost of the work done under this Agreement shall be computed on the basis of the provisions and regulations of 23 CFR, Part 645, Subpart A and/or Subpart B. The subject regulation, including all current amendments and/or revisions, is hereby made a part of this Agreement. [\[COST PARTICIPATION ACCORDING TO FEDERAL REQUIREMENTS\]](#)

#. The * agrees to remit payment to the Design-Builder, through:

 Name, Title
 Design-Builder Company
 Street Address / PO Box
 City, State Zip Code

in the amount of the bid item totals {, minus the reimbursement amount,} for the non-participating _____ work described in Paragraph(s) __. [\[WORDING FOR NON-PARTICIPATING WORK PERFORMED BY DESIGN-BUILDER.\]](#)

{ with the exception of _____ estimated at \$ _____ which the State will be responsible for}. [\[ADDITIONAL WORDING FOR PARTICIPATING RELOCATIONS PAID BY THE STATE.\]](#)

#. During the final audit of the work, the State will compute the final costs based on the actual quantities of items related to non-participating _____ installations/relocations/replacements, along with any additional required _____ installations/relocations/replacements needed to resolve construction conflicts. If these costs exceed the amount paid, the Design-Builder will bill the * for the balance due. If they are less, the Design-Builder will forward a check in the amount of the balance to the *. [\[COST ADJUSTMENT FOR CHANGES DURING CONSTRUCTION\]](#)

#. The facilities being replaced or adjusted are a segment of service, distribution, or transmission lines; therefore, no credits are due for accrued depreciation. [\[FOR ALL RELOCATIONS\]](#)

#. Upon the receipt of satisfactory detailed invoices (with applicable credit shown for salvage or scrap, betterments, and accrued depreciation) without arbitrary percentage or lump sum addition for overhead expenses, the State agrees to reimburse the * {for ___% of/the agreed lump sum amount for} the costs of labor, equipment, and materials to perform the work described in Paragraph(s) ___ above, said costs being {estimated at }\$_____. However, the State shall be under no obligation to make payment for the costs of any work performed prior to the date the * is authorized in writing by the State to proceed with such approved work, or whenever the * violates the conditions set forth in this Agreement. [\[NOT ELIGIBLE FOR REIMBURSEMENT UNDER RSA 228:22\]](#)

#. Periodic progress payments will be made to the * upon presentation of invoices and substantiation of work performed (Utility Reports) provided the value of the work

invoiced, other than the final invoice, is in excess of \$1,000.00. [\[PERIODIC PROGRESS PAYMENTS\]](#)

- #. The * shall submit a final invoice no later than two (2) months after completion of its work on all lump sum payments, or six (6) months after completion of its work on all actual cost payments. Unless otherwise approved by the State in advance, the *’s work shall be completed no later than two (2) months after notification by the State that the State’s construction Project is complete. Upon submission of the final invoice and issuance of the Final Audit of Agreement, no further charges will be accepted. The State will make payment to the * after submission of progress or final invoices provided that all substantiating documentation has been submitted to the State for the work invoiced therein. [\[FINAL INVOICES SUBMISSION REQUIREMENTS\]](#)
- #. The * agrees to record the costs paid by the State for the aforementioned facilities and maintain related accounting records in accordance with applicable provisions of the {Cost Accounting Standards prescribed by the Cost Accounting Standards Board as defined in 48 CFR Chapter 99/[\[for Power Companies\]](#)Uniform System of Accounts prescribed by the State/Federal Energy Regulatory Commission}, and the costs paid by the State for facilities covered by this Agreement and the corresponding current and cumulative depreciation amounts will be eliminated from the rate determination process. [\[ACCOUNTING MEANS AND METHODS\]](#)
- #. Upon the receipt of a final invoice, so marked, showing the dates the work was started and completed, the State agrees to reimburse the * {___% of the actual cost estimated at/ the agreed lump sum cost of} \$ _____ as full compensation for costs of _____ complete. However, the State shall be under no obligation to make payment for the costs of any work performed prior to the date the * is authorized in writing by the State to proceed with such approved work, or whenever the * violates the conditions set forth in this Agreement. [\[PAYMENT WHEN STATE IS REIMBURSING FOR WORK\]](#)
- #. The State agrees to reimburse the * the amount of \$ _____ for trench and backfill. The State also agrees to reimburse the * for the book value (original cost less allowable depreciation) of the _____ which will be retired, the amount of \$ _____. Said payment(s) {are/is} computed per the attached estimate. The * agrees that these amounts, included in the payments described above, fulfill the State’s obligation of RSA 228:22 (trench, backfill, and book value). [\[PAYMENT IN ACCORDANCE WITH RSA 228:22\]](#)
- #. All cost records of the * pertaining to the Project will be subject at any time to inspection and audit by representatives of the State and the Federal Government for a period of not less than three (3) years from the date final payment is received by the *. [\[REQUIREMENT TO MAINTAIN RECORDS FOR FUTURE AUDITS\]](#)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

DESIGN-BUILDER

COMPANY/MUNICIPALITY

X

By: _____
(Signature)

By: _____
(Signature)

(Typed or Printed Name)

(Typed or Printed Name)

(Title)

(Title)

_____ checker's initials

(Date)

THE STATE OF NEW HAMPSHIRE
Department of Transportation

By: _____
Peter E. Stamnas, P.E.
Director of Project Development

(Date)

_____ JAM