

**STATE OF OKLAHOMA
DEPARTMENT OF TRANSPORTATION
UTILITY RELOCATION AGREEMENT**

PROJECT NO. _____ JOB PIECE NO. 29517 UTILITIES 06 COUNTY Custer

THIS AGREEMENT, made and entered into by and between the Department of Transportation acting for and on behalf of the State of Oklahoma, hereinafter called the "State" and City of Clinton, Oklahoma
(Company Name/Address)

P.O. Box 1177 Clinton, Oklahoma 73601

hereinafter called the "Utility Owner".

WITNESS TO THAT

WHEREAS, the State proposed to improve State Highway No. 40 and such improvements will necessitate rearrangement of facilities by said Utility Owner (state scope and nature of work on reverse side), and

WHEREAS, it is understood that if said project is to be financed in part from funds appropriated by the United States and expended under its regulations, that acceptance of work and procedure in general are subject to Federal Laws, Rules, Regulations, Orders, and Approvals applying to it as a Federal Project, and that costs for items entering into the improvement are reimbursable to the State in such amounts and forms as are proper and eligible for payment from Federal Funds. Reference is made to U.S. Department of Transportation, Code of Federal Regulations, Title 23, Parts 645A, 645B and 635.410, included in the Right-of-Way and Utilities Division Policies and Procedures, and

WHEREAS, it is understood that Title 69, O. S., § 1205 and 1403 each as amended, define the extent to which the State and the Utility Owner may be obligated in the costs of utility rearrangements, and the utility locations on all highways are governed by Regulations and Policies adopted by the State Transportation Commission for the protection and maintenance of the highways, and for the safety of the highway users, and

WHEREAS, the State reserves the right to cancel this Agreement at any time prior to the beginning of the adjustment or relocation of the facilities of this Utility Owner, and

WHEREAS, the State agrees to pay the Utility Owner for the proportionate share of the actual cost to prepare approved preliminary engineering plans and estimates at the State's request, if for any reason the State cancels this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Utility Owner agrees:

1. To prepare a detailed estimate of the cost of work to be performed in accordance with the Department's Right-of-Way and Utilities Division Policies and Procedures, and such estimate of cost must be attached and be a part of this Agreement. The estimate will include: (1) The accounting system to be used in computing the relocation costs; (2) Credit for Expired Service Life setting forth therein the conditions on which such credit was determined or complete justification if the credit is not applicable; and; (3) Whether equipment costs are developed from experience records.

2. To include the costs for backfill and compaction of any trenches or holes within the right-of-way limits in the estimate of costs. The backfill will be placed and compacted to a density as directed by the Resident Engineer/Manager, but will not be compacted to less than that of the adjacent soil.
3. Any and all existing fencing that may require alteration during the utility relocation process shall be restored to its original condition during and after the time of utility relocation/rearrangement. It is the responsibility of the utility owner to insure that the integrity of the fencing is not compromised at any time to an extent in which it prevents the fencing from performing its intended purpose.
4. To prepare drawings showing the present, temporary and proposed location of its facilities with reference to the centerline of survey and/or the new or existing right-of-way lines using highway stationing in both plan and profile. Delineate details, including date of installation, class, and type of present facility. To comply with all applicable laws and regulations necessary to meet the Oklahoma Department of Environmental Quality (DEQ) requirements for pollution prevention, including discharges from storm water runoff on this project. Further, agrees to secure a Storm Water Permit from the DEQ, when required. It is agreed that the project plans and specifications, required schedules for accomplishing the temporary and permanent erosion control work, the storm water pollution prevention plans and the appropriate location map contained in the plans constitute the Storm Water Management Plan for the project previously described in the document. Agrees to have daily operational control of those activities, at the site, necessary to ensure compliance with plan requirements and permit conditions. Agrees to file the Notice of Intent (NOI), when required, for a general construction Oklahoma Pollutant Discharge Elimination System Permit with DEQ, which authorizes discharges of storm water associated with construction activity from the project site identified in this document. Such drawings will be attached to and become a part of this agreement.
5. To begin the process of adjustment or relocation of the facilities as shown on the plans and covered by this Agreement within a reasonable time, depending on the availability of material and work forces, but the actual time must not exceed thirty (30) days after receipt of notice from the state to do so, and in no event proceed with any adjustment or relocation work until such notice is received. To inform the State's Resident Engineer/Manager of: (1) The proposed starting date, prior to commencing work, and continually maintaining liaison with his/her office for the duration of the physical relocation; (2) The materials to be disposed of by scrapping, or sale, and to inform him/her of a time and place for his/her inspection thereof; (3) The date work is completed.
6. Compliance with the Buy America Requirements:
 - A. In accordance with the BUY AMERICA requirements of the Federal Regulations (23 USC § 313 and 23 CFR § 635.410) all manufacturing processes, including the application of coating, for all steel and iron products furnished for permanent incorporation into the work on this project shall occur in the United States.

"All manufacturing processes" are defined as any process required to change the raw ore or scrap metal into the finished steel or iron product (smelting, rolling, extruding, bending, etc.).

"Coating" is defined as any process which protects or enhances the value of the steel or iron produce to which the coating is applied (epoxy, galvanizing, painting, etc.).

Products of steel include, but are not limited to, such products as steel pipe, steel encasement, reinforced concrete pipe, steel electrical poles, conductor wire, etc. Products of iron include, but are not limited to, such products as ductile iron pipe. The coating material is not limited to this clause, only the application process.

The following materials are exempt, unless processed or refined to include substantial amounts of steel or iron material, and may be used regardless of source in the domestic manufacturing process for steel or iron material:

- Raw Materials (iron ore or alloys)
- Scrap
- Pig Iron
- Processed, pelletized, and reduced iron ore material
- Aluminum
- Brass
- Copper

For recycled steel, only the manufacturing processes to produce steel products must occur domestically beginning at the point where the recycled steel is melted.

B. Minimal Use Request - The federal regulations do not prevent the use of miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct certain highway products and manufactured products that are not predominately steel or iron 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. The value of any foreign material to be used includes the cost of the material as well as any shipping and taxes.

The Contractor/Utility Owner must submit a written request to the Resident Engineer which includes the origin and value of any foreign material to be used. This request must be submitted prior to the work being performed.

C. Compliance with Buy American Requirements - The Contractor/Utility Owner's responsibility for meeting the Buy America requirements are as follows:

- a) Before any work begins that incorporates steel or iron products into the project, the contractor shall submit a project specific certification letter stating that all manufacturing processes involved with the production of these projects will occur in the United States, along with project specific certification letters from each subcontractor and supplier of steel or iron products for the project (See attached example letter in "Exhibit C").
- b) For each steel or iron product incorporated into the project, the Contractor/Utility Owner will be responsible for providing to the Department a completed "**Certificate of Materials Origin**" form (See attached form in "Exhibit B"). The "Certificate of Materials Origin" will list each corporate entity involved in the manufacturing of the steel item from smelting through all fabrication process. In most instances, determination of compliance with Buy America requirements should be achieved prior to incorporating the product into the work. If not, the Resident Engineer will be responsible for withholding payment for this work until compliance has been determined.
- c) Additionally, each Contractor/Utility Owner should maintain a signed mill test report and/or a signed certification by **EACH** supplier, distributor, fabricator, or manufacturer that has handled the steel or iron product affirming that every process, including the application of the coating, performed on the steel or iron project has been carried out in the United States in accordance with the requirements of the corresponding category listed below. The certifications should be maintained by the Contractor/Utility Owner and available for the Department to audit until the project has been accepted by the Department.

- d) The lack of these certifications will be justification for rejection of the steel and/or iron product or nonpayment of the work.
7.
 - a. That no contract with any individual will be entered into without meeting the requirements of the Department's Right-of-Way and Utilities Division Policies and Procedures.
 - b. That contract work for technical services, professional services or other labor classifications involved in the rearrangement of the facility proposed under this Agreement will be supported by a statement to the effect that, "The Utility Company is not adequately staffed or equipped to perform such work with its own forces." **Proper approval must be obtained in accordance with the Right-of-Way and Utilities Division Policies and Procedures prior to executing a contract with any outside firm or or continuing contractor.**
 8. To submit to the State, within six (6) months after satisfactory completion of rearrangement of their facilities under this Agreement, a claim using *ODOT Claim Form 324A*, with a certified statement of costs in accordance with the provisions of the aforementioned memorandums.

It is understood this Agreement does not change the rights or obligations of the Utility Owner as they exist in accordance with present State Law.

In consideration of the faithful performance by the Utility Owner of the foregoing, the State agrees:

To reimburse the Utility Owner for the actual costs of work completed, prorated on the basis of the following percentage or for the lump sum as proposed:

(1) Utility Owner Share of Cost	_____ %	Estimated Utility Owner Cost	\$ _____
(2) State Share of Cost	_____ %	Estimated State Cost	\$ _____
<u>OR</u>			
(3) Lump Sum Proposal		State Cost	\$ <u>44,710</u>

Nothing herein shall in any way be construed to relieve the Utility Owner from its liability, if any, for payment of a portion of these costs pursuant to 69 O.S. 2001 § 1205, as amended.

