

NEW MEXICO DEPARTMENT OF TRANSPORTATION
Utilities Section

Utility Adjustment Agreement

PROJECT _____

TERMINI _____

COUNTY OF _____

PARTY OF THE FIRST PART = State of New Mexico, acting by and through the New Mexico Department of Transportation, hereinafter called the STATE.

PARTY OF THE SECOND PART = _____, hereinafter called the OWNER, acting by and through its duly authorized representative.

WHEREAS, THE STATE has deemed it necessary to construct certain highway improvements as set forth in the plans and specifications for the above Project; and

WHEREAS this highway improvement project will require the relocation, or adjustment, of certain utility facilities of OWNER as indicated on STATE'S plans furnished to OWNER, and OWNER'S specifications and cost estimates which are attached hereto and made a part hereof, and which are prepared in form, manner, and content by applicable State or Federal statutes, policies, and regulations.

WHEREAS, THE STATE desires to implement the relocation or adjustment of OWNER'S utility facilities by entering into this Utility Adjustment Agreement with said OWNER.

NOW, THEREFORE, BE IT AGREED that the STATE will reimburse the OWNER upon final review by the Department's Engineer for the eligible costs incurred in relocating and adjusting OWNER'S utility facilities on this highway project, as set forth in the attached OWNER'S cost estimate, up to the amount said costs may be eligible for State or Federal cost participation only when final stamped As-Builts have been submitted to the Department.

The **OWNER** states that the method to be used in developing and substantiating this utility adjustment cost shall be as specified for the method checked hereafter;

- (1) Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable State or Federal regulatory agency.
- (2) Actual and related indirect costs accumulated in accordance with an established accounting procedure developed by the OWNER which, if not previously approved, will be available for prior approval by the STATE.
- (3) An agreed lump sum of _____, as supported by the analysis of estimated cost attached hereto. This method is not permissible if the estimated cost of this utility adjustment exceeds \$100,000.

If costs are developed under procedure (1) or (2) as specified above, the STATE will, upon satisfactory completion of the utility adjustment, and review of OWNER'S final billing in accordance with Title 23, 645A, 117, make payment to OWNER of all eligible costs which are subject to audit. When requested, the STATE will make intermediate payments on utility adjustments exceeding \$100,000 estimated cost,

based on OWNER'S billings of completed portions of the work at not less than monthly intervals. These intermediate billings shall be submitted in the same form and manner as above. The OWNER shall provide materials in accordance with the *Buy America Requirements* (23 C.F.R § 635.410) on federal-aid projects.

The OWNER shall bear the burden of proof and the cost to prove the origin and place of manufacture of steel products and materials.

If utility adjustment costs are developed under procedure (3) as before specified, the STATE will, upon satisfactory completion of this utility adjustment and upon receipt of OWNER'S billing, make payment to OWNER in the agreed lump sum amount. No revisions to the agreed lump sum will be permitted without the prior written approval of the STATE.

After execution of this Utility Adjustment Agreement by both parties, and all required approvals, the STATE will, by written notice, authorize the OWNER to proceed with the construction of this utility adjustment, and the OWNER agrees to prosecute this work diligently to completion in such manner as will not result in avoidable interference or delay to either the STATE'S highway project or other utility owners on this project. Such authorization to proceed shall constitute a commitment on the part of the STATE that this utility adjustment has been included in an approved program, that a project agreement which includes the work will be executed, and that the utility adjustment will be required by the final project agreement and plans.

The OWNER will carry out said utility adjustment in accordance with the approved plans and estimate which are attached hereto and made a part hereof; and will accurately record the costs relative thereto in accordance with applicable State or Federal statutes, rules or regulations. The costs paid by the STATE pursuant to this agreement shall be full compensation to OWNER for all eligible costs incurred by OWNER in making this utility adjustment.

Bills for work hereunder shall be submitted to STATE not later than ninety (90) days after completion of the work.

If any significant revision from the approved work is performed, reimbursement therefore shall be limited to costs covered by a written change or extra work order approved by the STATE prior to the performance of the revision.

The OWNER by execution of this agreement does not waive any of the rights which OWNER may legally have within the limits of the law.

UTILITY OWNER: _____

By: _____

Title: _____

Date: _____

New Mexico Department of Transportation

By: _____

Title: _____

Date: _____