



**CUY-90-14.90**

**PID 77332/85531**

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**APPENDIX UT-14**

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**Memorandum of Understanding with Utilities  
(Reference Document)**

State of Ohio  
Department of Transportation  
Jolene M. Molitoris, Director

**Innerbelt Bridge  
Construction Contract Group 1 (CCG1)**

**MEMORANDUM OF UNDERSTANDING**  
**REGARDING UTILITY ADJUSTMENTS OR RELOCATION FOR**  
**CUY-90-14.90**  
**WESTBOUND CENTRAL VIADUCT REPLACEMENT**  
**UTILITY OWNER COMPENSABLE**

This Memorandum of Understanding (“MOU”) between the Ohio Department of Transportation (“ODOT”) and **UTILITY**, a private utility (“Utility Owner”), establishes the relationships, clarifies the lines of communication and outlines the general procedures for adjustment of the UTILITY’s utility facilities (the “Utilities”) to accommodate construction, operation and maintenance of the ODOT project known as CUY-90-14.92 Westbound Central Viaduct Replacement (“Project”), as more particularly described below. The term “adjustment” as used herein encompasses relocation, abandonment, protection, removal, replacement, reinstallation and/or modification of a Utility in order to accommodate the PROJECT, including the design and construction work necessary for such actions. This MOU is intended to emphasize coordination and cooperation by all participants, with the anticipated result of mutual benefit to both highway users and utility customers.

**Project Description**

This Project is a result of the completed Innerbelt Planning Study, Environmental Impact Statement and *Record of Decision* which describe a program of projects for the reconstruction of the existing interstate highways in and around the Central Business District of Cleveland, Ohio. The CUY-90-14.90 project, referred to as Construction Contract Group 1 (CCG1), is the first major project to be constructed from these planning efforts. CCG1 primarily involves the construction of a new West Bound I-90 Bridge over the Cuyahoga River Valley. Implicit in the goals of CCG1 is to enable the construction of Construction Contract Group 2 (CCG2) which primarily involves the replacement of the existing I-90 Central Viaduct. The new structure built in CCG2 will carry I-90 east bound traffic and will allow for five (5) lanes of west bound traffic on the bridge constructed under CCG1. The bi-directional condition described in detail in the CCG1 project scope and conceptual plans is the implementation of the key component of the CCG2 maintenance of traffic scheme. Bridge decks are included for replacement as part of CCG1. These bridge deck replacements will enable the construction of future construction contract groups and will accommodate the alternate I-90 route described in

Section 18 Maintenance of Traffic which is to be implemented during the construction of CCG1.

In general, the Project is as follows: The Design Build Team (DBT) will design and construct a new bridge over the Cuyahoga River Valley on I-90 that will accommodate six (6) lanes of bi-directional traffic on opening day and five (5) lanes of traffic westbound through traffic at some point in the future (after opening day). This will include temporary and permanent approach pavement and structures. The project also includes: Bridge deck replacement and bridge rehabilitations for I-90 EB and WB Mainline and Ramp bridges over East 14<sup>th</sup> Street and I-90 EB and WB Mainline over I-77 ramps to/from I-90 (E-8 and E-10); Reconstruction of West Bound I-90 entrance ramps and associated structures from East 14<sup>th</sup> Street, East Ninth Street and Ontario Avenue in the Central Business District; Reconstruction of Ontario Avenue, Carnegie Avenue and Ramp Intersection and associated structures; Construction of new sections of East Ninth Street, Broadway Avenue and East 14<sup>th</sup> Street and associated structures; replacing deck of existing I-71 SB bridge over Starkweather Avenue; replacing deck of existing I-90 WB bridge over Starkweather Avenue; modifying and replacing deck of existing I-90 WB bridge over Kenilworth Avenue; Reconstruction of Commercial Road and Central Viaduct Street and Fire Station and Museum Area; Construction of new Commercial Road alignment to new East Ninth Street Alignment; Major earthwork grading of the West Slope region between Abbey Avenue and Cuyahoga River; Reconstruction of I-90 Exit to Abbey and Fairfield including construction of West 14<sup>th</sup> Street Extension; Reconstruction of bulkheads along Cuyahoga River; Removal of sections of University Avenue; Closure and removal of I-77 NB to I-90 WB Ramp and I-90 EB to I-77 SB Ramp; and all associated items including but not limited to earthwork, pavements, landscaping, sidewalks, drainage facilities, utilities, walls, traffic control, and aesthetic or other enhancements for the completion of a facility that can be opened to traffic.

### **Potential Conflicts**

Potential conflicts are tabulated in the “Identified Utility Impacts, Mainline” and “Identified Utility Impacts, Commercial Road Hill” matrices; included in Appendices UT-08, and UT-09, respectively of the Design Build Project Scope. Copies of these matrices are appended to this agreement for reference.

**It is mutually recognized by the parties to this MOU that:**

- ODOT is a department of state government with all powers, duties, and functions to coordinate transportation modes and to develop and maintain a statewide transportation system meeting the needs of the State of Ohio as provided in the Ohio Revised Code (ORC).
- ODOT owns and operates an extensive system of highways and access ramps serving transit and carpools.
- Public utilities are responsible for the development construction, operation and maintenance of utilities for the benefit of the public.
- The PROJECT may affect existing Utilities, resulting in the need to adjust such Utilities.
- ODOT is in the process of writing criteria for selection of a Design-Build Team (“DBT”) to complete the design and construction of the PROJECT.
- An important goal of the PROJECT is to deliver the PROJECT before the deadline mandated by the **Legislature**. To accomplish this goal, the following is the anticipated PROJECT schedule:

Publish Request for Qualifications (RFQ)	February, 2010
Short list qualified DBT’s	March, 2010
Pre-proposal meeting with DBT’s and Utilities	May, 2010
DBT proposals due	August, 2010
Award DBT Contract	September, 2010
Construction complete	June, 2014

- ODOT desires to develop and encourage cooperation and coordination among ODOT, the DBT and utility owners.
- Efficient coordination and exchange of information is essential for the design, plan development and construction to meet PROJECT schedules, reduce public costs, reduce utility owner costs and avoid construction changes and delays.
- Cooperation and an effective partnership between ODOT, the DBT and UTILITY are essential to ensure the efficient execution of these responsibilities to the mutual benefit of the public.

## **A. COORDINATION OF THE UTILITY ADJUSTMENT PROCESS**

In recognition of the above responsibilities and mutual benefits of coordinated efforts, the following procedures have been developed to facilitate efficient accommodation of utility facilities. The parties to this MOU agree to participate in meetings, exchange information and maintain open communications by and among ODOT, the DBT and UTILITY. The DBT obligations with respect to this coordination process will be established pursuant to the Design-Build Contract that has been or will be entered into between ODOT and the DBT. The coordination process includes, but is not limited to, the following activities:

- Initial PROJECT Notification – at the onset of design, the DBT will provide to UTILITY preliminary PROJECT specific information and will initiate the coordination process.
- Field verification – UTILITY will assist the DBT in verifying the accurate location of its Utilities, which will be made available in a common datum for use in PROJECT design.
- Meetings between the DBT and UTILITY – the Design- Builder will implement a schedule of periodic meetings with UTILITY, for coordination purposes. Such meetings will commence as early as possible in the PROJECT design process and will continue until completion of the PROJECT (or until adjustment of the Utilities is completed, if earlier). Such meetings will include a preliminary design meeting for the DBT and utility owners to meet and familiarize themselves with design elements, utility facilities, and general features of the PROJECT. Thereafter, the frequency of meetings between the Design- Builder and UTILITY will be appropriate to the matters under discussion. It is anticipated that subsequent meetings will include (i) design concept meetings to discuss potential Utility impacts and suggestions for cooperative solutions pending more detailed design, (ii) intermediate design meetings to trace the progress of ongoing design processes and discussion of right-of-way acquisition progress, and (iii) final design and initial construction coordination meeting to finalize the plans, specifications, and estimates (if necessary) for adjustment of the Utilities impacted by the PROJECT. UTILITY acknowledges and agrees that because of the nature of the PROJECT, UTILITY may be required to base its adjustment designs on PROJECT plans that are not at a final design level. After the adjustment plans and specification are finalized, additional meetings are anticipated to coordinate the construction of the Utility adjustments and to

establish a forum for the regular exchange of information during construction to minimize delays and provide for proper inspection. The Design-Build Contract will require the DBT to provide adequate notice to the UTILITY and ODOT in advance of each meeting and to allow ODOT the opportunity to participate in each meeting.

- Contact Person – upon entry into the Design-Build Contract, ODOT will notify UTILITY of the name of the DBT and relevant contact information. Likewise, UTILITY will provide the DBT and ODOT with the name(s) of its contact person(s) and relevant contact information. Pursuant to the Design-Build Contract, ODOT will require the DBT to keep UTILITY informed and involved in decisions affecting its Utilities through the contact person(s) provided by UTILITY.
- Coordination of Efforts – UTILITY agrees to coordinate its efforts with the DBT and with ODOT as appropriate in light of the involvement of the DBT pursuant to the Design-Build Contract.
- Continuing Performance – In the event of a dispute, UTILITY and the DBT will continue their respective performance to the extent feasible in light of the dispute, including paying billings, and such continuation of efforts and payment of billings shall not be construed as a waiver of any legal right.

## B. CONSTRUCTION COSTS AND CONSIDERATIONS

Pursuant to the Design-Build Contract, the DBT will be responsible for coordinating all utility adjustments with UTILITY and other utility owners. The DBT will be responsible for all reasonable and verifiable costs associated with adjustment of its Utilities (identified as **Potential Conflicts** in this MOU) on account of the PROJECT (Whether incurred by UTILITY or by the DBT), including, but not limited to, the cost to design the adjustments and the cost of construction to perform the adjustments. ODOT will assign certain rights (including the right to obtain reimbursement from UTILITY for adjustment costs **and justifiable costs for delaying the DBT**).

Betterments to Utilities being adjusted may be included at the option and expense of UTILITY, provided that (a) they are compatible with the PROJECT design, the PROJECT schedule, and the constraints imposed by applicable law, all applicable governmental approvals, and the requirements of the Design-Build Contract, and (b) the cost and method of accounting for such betterment work is mutually agreed to by the DBT and UTILITY.

The DBT and UTILITY will determine by mutual agreement which of them will furnish the design of the necessary adjustments and which of them will perform the actual construction, with the preferred approach being for the DBT to design and construct. The DBT and UTILITY will negotiate and enter into a written binding Relocation Agreement for each adjustment (a single Relocation Agreement may cover multiple adjustments), addressing the foregoing determination of a work responsibility, the design, plans, specification, estimates, eligibility costs for reimbursement, adjustment construction work and the like. ODOT will not be a party to the Relocation Agreements; however, it will be a third-party beneficiary of the Relocation Agreements and ODOT's approval of each Relocation Agreement will be required prior to it becoming effective for most purposes. The parties acknowledge and agree that all work will be accomplished in accordance with the applicable local, State and Federal laws and regulations.

UTILITY understands that the PROJECT will be developed under time constraints that will require a commitment by UTILITY and the DBT to cooperate in all areas, including design, design review, construction and construction inspection. UTILITY agrees to timely commence, diligently prosecute, and timely complete the work assigned to UTILITY in order to ensure the timely complete the work assigned to UTILITY in order to ensure the timely completion of the Utility adjustment work in accordance with the PROJECT schedules. Where UTILITY performs its own design and construction for a Utility adjustment, it is anticipated that UTILITY will have **1**

month to complete the adjustment from the date the DBT delivers to UTILITY a request to adjust the Utility, together with PROJECT plans designated by the DBT as those on which the adjustment design should be based. Should the DBT furnish the design for a Utility adjustment, UTILITY will have 20 business days after its receipt of the DBT adjustment design plans (including any resubmission of modified adjustment design plans) in which to review and comment on and/or approve said design. All UTILITY inspections of the DBT adjustment construction work shall be completed and any comments provided within 20 business days after request for inspection is received.

UTILITY will use acceleration measures as reasonably necessary to meet PROJECT schedules. To the extent possible, UTILITY agrees that in the prosecution of the adjustment work, it and its contractors will coordinate their work with the DBT in order to avoid any possible interference with work on the PROJECT.

**C. CONCLUSIONS AND ENDORSEMENTS**

Nothing in this MOU is to be construed as conflicting with existing laws, regulations, and contractual agreements. This MOU may be amended or supplemented only by written agreement between ODOT and UTILITY upon 30 days written notice to the other party. Although this MOU is non-binding, its intent is to maximize the lines of communication, increase the mutual cooperation among ODOT, DBT and UTILITY, and to enhance the effectiveness of procedures utilized for the mutual benefit and common good of both utility customers and the general public.

**For Ohio Department of Transportation**

By: \_\_\_\_\_

Jolene M. Molitoris  
Director, Ohio Department of Transportation

Dated: \_\_\_\_\_

\_\_\_\_\_

**Name of Utility Company**

By: \_\_\_\_\_

(Signature)

By: \_\_\_\_\_

(Printed Name)

\_\_\_\_\_

(Title)

Dated: \_\_\_\_\_

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**For Ohio Department of Transportation**

By: \_\_\_\_\_

Jolene M. Molitoris  
Director, Ohio Department of Transportation

Dated: \_\_\_\_\_

\_\_\_\_\_

**Name of Utility Company**

By: \_\_\_\_\_

(Signature)

By: \_\_\_\_\_

(Printed Name)

\_\_\_\_\_

(Title)

Dated: \_\_\_\_\_