

MASTER UTILITY REIMBURSEMENT AGREEMENT

THIS MASTER UTILITY AGREEMENT between the State of Ohio, acting by and through the Director of the Ohio Department of Transportation (ODOT), 1980 West Broad Street, Columbus, Ohio, 43223 and Ohio Power Company (UTILITY), acting by and through its duly authorized representative, shall be effective on the date of approval and execution by and on behalf of ODOT.

1. PURPOSE

- 1.1 ODOT proposes to construct and improve numerous sections of state highways designated by PID, County, Route and Section, in accordance with road plans filed in the appropriate ODOT district office.
- 1.2 In order to improve the highway in accordance with project plans, it will be necessary to adjust, remove, and/or relocate certain facilities of the UTILITY.
- 1.3 ODOT will participate in the cost of the adjustment, removal, and/or relocation of certain facilities to the extent as may be eligible for State and/or Federal participation.
- 1.4 ODOT, upon receipt of evidence it deems sufficient, acknowledges UTILITY's interest in certain lands and/or facilities that entitle it to reimbursement for the adjustment, removal, and relocation of certain of its facilities.
- 1.5 ODOT is obligated under Ohio Revised Code 5501.51 to reimburse the UTILITY for its actual cost of altering existing facilities to conform to the new improvement, but not including any betterment of facilities.

2. DURATION OF TERM

- 2.1 This agreement shall automatically renew each year on July 1 and shall end on June 30 to correspond with the State's fiscal year, unless ODOT or the UTILITY gives written notice of its intention not to renew at least One Hundred Twenty (120) calendar days prior to June 30.
- 2.2 If this agreement is terminated in accordance with Section 2.1, any projects initiated while the agreement was in effect will be governed by the terms and conditions in this agreement until the project is completed.

3. PLANS AND ESTIMATES

- 3.1 ODOT shall provide the UTILITY with a copy of the plans for the highway improvement contemplated which will affect the facilities of the UTILITY as described in ODOT's Project Development Process.
- 3.2 The UTILITY shall prepare relocation plans and estimates for altering its facilities, temporarily, if necessary, and permanently to conform to the new highway improvement and submit same to ODOT. Such plans and estimates shall be prepared in conformance with and as required by 23 CFR 645,

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Subparts A and B, and all other applicable Federal and State laws, rules and regulations as outlined in ODOT's Office of Real Estate Utilities Manual as required by both parties. Plans shall clearly show the existing facilities as well as the existing right of way, proposed right of way and centerline stationing.

- 3.3 The costs of betterments not necessitated by the requirements of the project shall be deducted from the estimated costs of altering the facilities to conform to the highway improvement.
- 3.4 A completed estimate shall be prepared by the UTILITY and submitted using the most recent version of ODOT Form RE 75-1 "Preliminary Estimate". The estimate shall be properly formatted and contain the appropriate signatures and date of preparation. The RE 75-1 Form can be found on the ODOT web site (www.dot.state.oh.us) in the Real Estate Section under the Production column.

4. PERFORMANCE OF WORK

- 4.1 Acceptance of the UTILITY plans and estimates shall be given upon written authorization by ODOT. After acceptance of the plans and estimates, the UTILITY shall promptly perform the work necessary to conform to the highway improvement, as set forth in plans referenced in Section 3.2.
- 4.2 The UTILITY shall cooperate with ODOT's contractor in the performance of its work and shall backfill all trenches in accordance with provisions of the appropriate sections of the Ohio Department of Transportation's Construction and Material Specifications Manual.

5. CHANGE ORDERS

- 5.1 **Change in Scope.** In the event conditions or circumstances require a change in scope of the UTILITY's work on the project as set forth in Section 3.2, all changes must be made in writing and approved by both parties, including payment responsibilities, prior to performance of the work. ODOT shall not be responsible for any costs associated with any change in the scope of the UTILITY's work until the ODOT District Utility Coordinator approves the change in writing. The schedule for completion of UTILITY's work shall accommodate the time necessary for ODOT to process the change request.
- 5.2 **Cost Increases.** ODOT's written approval is required for total project costs plus any approved changes which exceed the cost estimate (ODOT Form RE 75-1 "Preliminary Estimate"). The UTILITY must use the same RE 75-1 form to submit an updated cost estimate to ODOT for approval prior to incurring any additional cost.

6. SUBCONTRACTORS AND VENDORS

- 6.1 **Subcontracting.** The UTILITY may, if not adequately staffed or equipped to perform the work required under this agreement, subcontract the work using a continuing contract or a proper competitive bidding process in accordance with 23 CFR 645.
- a) **Continuing contract.** If the UTILITY elects to use a vendor under a continuing contract, the UTILITY must provide a copy of the continuing contract to ODOT with

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the project estimate, if not previously provided. ODOT reserves the right to reject ineligible costs in accordance with this agreement.

- b) **Competitive bidding process.** If the UTILITY elects to bid the project, the UTILITY agrees to furnish bid amounts of all bids to ODOT upon request. If the UTILITY wishes to subcontract to other than the lowest responsible bidder, the UTILITY is not eligible for reimbursement for costs in excess of the low bid amount(s).

7. SCHEDULE

- 7.1 **Utility Construction Schedule.** The UTILITY shall perform the required relocation in accordance with the project scope. The project scope is defined in working days from start of relocation to completion.
- 7.2 **Schedule Changes.** The UTILITY shall not be authorized to extend the time schedule beyond the time frame designated in the project scope unless or until authorized, in writing, by ODOT.
- 7.3 **Failure to Meet Schedule.** If the UTILITY does not complete its relocation out of ODOT controlled right of way in accordance with the project timeline and/or any subsequent authorized extension to said schedule, and the delay is caused by UTILITY's acts or failure to act, whether negligent or not, and ODOT notifies the UTILITY in writing of a conflict or interference with ODOT's contractor, then UTILITY shall be responsible and may be charged by ODOT for any reasonable costs incurred by ODOT or by ODOT's contractor as a result of such delay. Despite any such delay, UTILITY shall work as expeditiously as possible under the circumstances to complete the work. If UTILITY's work is impacted by circumstances considered by ODOT to be beyond the UTILITY's control, a written extension shall be provided by ODOT.

8. SUBMISSION OF INVOICES

- 8.1 The UTILITY may submit to ODOT partial invoices provided that the invoices are submitted no more frequently than one hundred twenty (120) calendar days or upon incurring ten thousand dollars (\$10,000) in incremental costs. The sum of all partial invoices may not exceed fifty percent (50%) of the approved estimate. Partial bills will be paid within thirty (30) calendar days of approval by ODOT. Costs incurred in excess of fifty percent (50%) of the approved estimate shall be billed as a final invoice. The final invoice shall account for all prior costs included in the partial invoices. All partial and final invoices shall be properly formatted and submitted using the most recent version of ODOT Form RE 75-2 "Summary of Bills". The RE 75-2 Form can be found on the ODOT web site (www.dot.state.oh.us) in the Real Estate Section under the Production column.
- 8.2 The UTILITY is required to submit to ODOT a complete and final invoice for the reimbursable relocation work covering all incurred costs that are properly charged and supported in detail, within one year upon completion of the work. ODOT will pay the final bill within thirty (30) calendar days of receipt of the executed Special Agreement and Waiver of Damages Document from the UTILITY which signifies approval and acceptance of the final billing. All costs incurred as a result of Section 8.3 will be removed from partial and final invoices.

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8.3 Costs incurred by the UTILITY prior to written authorization by ODOT are not eligible for reimbursement as a direct or indirect cost.

9. TERMS AND CONDITIONS

9.1 The following documents, or specified portions thereof, are hereby incorporated into and made a part of this Agreement as though expressly rewritten herein:

- a) Federal-Aid Policy Guide 23 CFR 645;
 - a. Ohio Department of Transportation, Office of Real Estate Utility Relocation Manual, §8100 and §8200;
- b) 48 CFR 31, Contract Cost Principles and Procedures; and
- c) Laws of the State of Ohio.

9.2 In accordance with Executive Order 2007-01S, the UTILITY, by signing this Agreement certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The UTILITY understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this contract and may result in the loss of other contracts with the State of Ohio.

10. RECORDS RETENTION AND AUDIT

10.1 All books, accounts, reports, files and other records relating to individual projects shall be subject at reasonable times to inspect and audit by ODOT for three (3) years subsequent to receipt of final payment by the UTILITY. Such records shall be provided by the UTILITY at a location designated by ODOT. At ODOT's discretion, said inspection and audit may be held at UTILITY's office during normal business hours.

11. AVAILABILITY OF FUNDS

11.1 It is expressly understood by the parties that none of the rights, duties and obligations described in this Agreement shall be binding on either party until such time as the expenditure of funds for the adjustment, removal, and/or relocation of UTILITY facilities is certified by the Director of Budget and Management, pursuant to §126.07 of the Ohio Revised Code.

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12. WAIVER

12.1 Notwithstanding the terms, conditions and obligations set forth within this agreement, the UTILITY does not waive or alter any rights it may have under federal, state or local law, including but not limited to ORC Section 5501.51 and applicable state and federal constitutional provisions, to seek just compensation for the taking of any UTILITY property by ODOT

13. SIGNATURES

13.1 Any person executing this Contract in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

IN WITNESS WHEREOF, the parties hereunto have caused this agreement to be duly executed in duplicate as to the day and year first above written.

THE STATE OF OHIO,
DEPARTMENT OF TRANSPORTATION

OHIO POWER COMPANY

By Jolene M. Molitoris/gpv
JOLENE M. MOLITORIS,
DIRECTOR

By Edward M. Mocerer
Name: EDWARD M. MOCERER

Title: VO DISTRIBUTION OPERATIONS

Date: 5/25/10

Date: MAY 5, 2010