OS-2 (10-08)

pennsylvania
DEPARTMENT OF TRANSPORTATION
www.dot.state.pa.us

October 17, 2011

Mark Williams
Northeast Natural Energy LLC
707 Virginia Street East
Charleston, WV 25301

Reference: Agreement No.: 125713
MPMS: 31362
County: Westmoreland
SR-Sec: 0030-10H
Federal Project No.: N/A

Dear Mr. Williams:

Enclosed is one (1) copy of an executed agreement, numbered 125713 dated October 12, 2011, for reimbursement of costs in connection with the subject highway construction project.

Written authorization to proceed with the physical relocation of your facilities will be forwarded through our District Office.

When submitting invoices, Utility Companies that are using the Utility Relocation Document Management System (UR-EDMS) can submit invoices electronically through UR-EDMS. Utility Companies that are not using UR-EDMS will need to send their invoices to the address listed below:

PA Dept. of Transportation
78DIST12
PO BOX 69181
Harrisburg, PA 17106

If you have any questions, please contact Chris Magness, Utility Relocation Administrator, at 717-787-5305.

Sincerely,

Larry W. Ditty, Jr.

Larry W. Ditty, Jr.
Chief
Utility Relocation Administrator

Enclosure
4350/LWD/cm

BCC: Contracts Division, 9th Floor, Forum Place (w/enclosure)
Willis Hackenberg, Treasury Department, Room G-11, Finance Bldg. (w/enclosure)

FID No. 270945493
Contract No. 125713
SAP Vendor No. 380123

THIS AGREEMENT, numbered _125713_ in COMMONWEALTH files, made and entered into this 12th day of October, 2011, by and between the COMMONWEALTH of Pennsylvania, acting through the Department of Transportation, hereinafter called the COMMONWEALTH,

a

n

d

NORTHEAST NATURAL ENERGY LLC with its principal place of business located at 707 Virginia Street East, Charleston, West Virginia, hereinafter called UTILITY.

W I T N E S S E T H

WHEREAS, the Secretary of Transportation, in pursuance of authority in him by law vested, is about to undertake a highway construction project on State Route 0130, Section 10H, in Westmoreland County, Pennsylvania; and,

WHEREAS, this highway project will, in the opinion of the Secretary of Transportation, require the adjustment of certain of the UTILITY's facilities, portions of which are presently located outside the existing public right of way; and,

WHEREAS, any such facilities transferred to or remaining at a location within the right of way of a Federally aided highway will be accommodated in accordance with the provisions of the current 23 Code of Federal Regulations, Part 645, Subpart B, of the Federal Highway Administration, United States Department of Transportation; and,

WHEREAS, the COMMONWEALTH, whenever it enters upon and occupies the right of way of a public utility, is required under the provisions of Section 412 of the state Highway Law, approved June 1, 1945, to provide the UTILITY substitute right of way on another and favorable location, and is authorized by said Act to enter into an agreement with the UTILITY to contribute toward the expense of the transfer or reconstruction of the UTILITY's facilities.

NOW, THEREFORE:

In consideration of the foregoing premises and the mutual covenants hereinafter contained and with the intent to be legally bound hereby, the Parties agree as follows:

FIRST - That the UTILITY will make the adjustments to its facilities, consisting of PIPELINE together with fittings and appurtenances thereto between Station 9+50 and Station 10+75, on State Route 0130, Section 10H, in the County of Westmoreland, Borough of Trafford, in the manner and at the location approved by the Department of Transportation at a total estimated cost of One Hundred Twenty-three Thousand Four Hundred Thirty-eight and 10/100 ($123,438.10) dollars, 0.00 per centum of which cost is estimated to be attributable to adjustment of those facilities located within public right of way and 100 per centum to facilities located outside public right of way. Detailed cost estimates and plans showing the adjustments of the UTILITY's facilities are incorporated herein by reference and made a part hereof as if physically attached hereto, copies of said estimates and plans being in the possession of the Parties.

SECOND - That, upon completion of the work contemplated by this Agreement, and within an estimated 4 calendar days of authorization by the COMMONWEALTH to proceed with such work, in a manner satisfactory of the COMMONWEALTH and in accordance with the current 23 Code of Federal Regulations, Part 645, Subpart A, of the Federal Highway Administration, United States Department of Transportation, the provisions of which are incorporated herein by reference, the UTILITY shall certify to the COMMONWEALTH the actual and related indirect costs thereof, including the right of way costs, if any, said costs to have been accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body, and the COMMONWEALTH shall verify said costs, and pay to the UTILITY that portion of the aforesaid adjustment cost attributable to relocation of those service facilities constitute 100 per centum of the total adjustment cost exclusive of betterments and charges for interest on construction money, which amount is estimated to be One Hundred Twenty-three Thousand Four Hundred Thirty-eight and 10/100 ($123,438.10) dollars.

If the reimbursable amount of this Agreement exceeds $10,000.00, then at the option of the UTILITY, payment may be made in installments, as follows:

Upon receipt of the fully executed Agreement, the UTILITY may submit an invoice for the said portion of the actual costs in excess of $5,000 incurred for the preliminary engineering, right of way and materials necessary for the relocation of those facilities located outside the public right of way, estimated as aforesaid to be 100 per centum of the total adjustment costs. Thereafter, upon incurring additional costs, the UTILITY may submit prorated periodic invoices for such additional costs, said invoices to be submitted no more frequently than one hundred twenty (120) days or upon incurring Ten Thousand ($10,000.00) dollars additional costs, whichever first occurs. Payment of initial and periodic invoices, submitted in accordance with this paragraph will be made within sixty (60) days of receipt by the COMMONWEALTH.

Total invoices for partial payments may not exceed 75% of the reimbursable amount of this Agreement.

THIRD - Commonwealth will make payments to the recipient of the funding through the Automated Clearing House ("ACH"). Within 10 days of the contract execution date, the recipient of the funding must submit or must have already submitted its ACH and electronic addenda information, if desired, to the Commonwealth's Payable Service Center, Vendor Data Management Unit at 717-214-0140 (FAX) or by mail to the Office of Comptroller Operations, Bureau of Payable Service Center, Payable Service Center, Vendor Data Management Unit, 555 Walnut Street- 9th Floor, Harrisburg, PA 17101. A copy of the ACH enrollment form can be obtained online at www.vendorregistration.state.pa.us/cvmu/paper/Forms/ACH-EFTenrollmentform.pdf.

FOURTH - The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101—3104, applies to this Agreement. Therefore, this Agreement is subject to, and the UTILITY shall comply with, the clause entitled Contract Provisions – Right to Know Law 8-K-1532, attached as Exhibit "A" and made a part of this Agreement. As used in this Agreement, the term "Contractor" refers to the UTILITY.

FIFTH - That the UTILITY shall remit all final costs within 365 calendar days following completion of the work. If UTILITY fails to submit costs within 365 days following completion of the highway project, the actual cost paid to UTILITY to date by the COMMONWEALTH will be considered final payment. If the UTILITY is unable to submit its final bill within 365 calendar days following written notice of the completion of the highway project, the UTILITY may file a written request with the Department, within said 365 days, seeking a limited extension of time within which to submit a final bill. A request for an extension of time may be granted at the discretion of the Department.

SIXTH - The UTILITY agrees to maintain and provide, in any applicable contracts entered into to effect a portion of this relocation, that its contractors will also maintain, all books, documents, papers, accounting records and other evidence pertaining to cost proposals and estimates and to costs incurred and to make such materials available at their respective offices at all reasonable times for a period of not less than three (3) years from the date final reimbursement payment has been received, for the purpose of examination by representatives of the COMMONWEALTH and the Federal Government and copies thereof shall be furnished if requested.

SEVENTH - The UTILITY agrees to subordinate to the highway easement acquired or to be acquired by the COMMONWEALTH for the aforesaid highway construction project, any and all property rights which the UTILITY may have within the required right of way, functional replacements for which having been provided by the COMMONWEALTH, either by acquisition of substitute right of way or as otherwise specifically provided for herein. The UTILITY shall retain any and all other existing rights, if any to occupy the required right of way with its facilities. Subsequent construction, alteration, operation or maintenance of the facilities, adjusted pursuant to this agreement shall except as otherwise herein provided, be in accordance with the highway occupancy provisions of this Agreement and the current Highway Occupancy Regulations of the Department of Transportation and, where applicable, the Federal Highway Administration.

EIGHTH - It is agreed that any delay in completion of the work outlined in Paragraph First, or in any portion thereof, which is occasioned by failure of the COMMONWEALTH or its contractor to do other work which, by the nature of its relationship thereto, must be accomplished prior to the aforesaid work outlined in Paragraph First, shall not be chargeable to the time limit specified in Paragraph Second.

NINTH - It is further agreed that if, for any reason, the highway construction project referred to herein shall be cancelled, abandoned, or revised, in such a manner that the work described in Paragraph First of this Agreement should be no longer required, in the opinion of the Secretary of Transportation, then in such event, the only amount which will be payable to the UTILITY will be the actual and related indirect cost of the work actually completed at the time of notification by the COMMONWEALTH of the said cancellation, abandonment or revision, plus any additional expenses incurred by the UTILITY in restoring its system to normal operating conditions.

IN WITNESS WHEREOF, the parties have executed with Agreement the date first above written.

ATTEST

BY _____ 9/27/11
Title: VP + General Counsel Date:

NORTHEAST NATURAL ENERGY LLC

BY _____ 9/27/11
Title: VICE PRESIDENT Date:

If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

----DO NOT WRITE BELOW THIS LINE – FOR COMMONWEALTH USE ONLY----

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____ 10/5/11
Central Office Utility Administrator Date

APPROVED AS TO LEGALITY AND FORM

BY _____ 10/07/11
for Chief Counsel Date

PRELIMINARILY APPROVED

BY _____ 10/7/11
Assistant Counsel Date

FUNDS COMMITMENT DOCUMENT NO. U125713000

CERTIFIED FUNDS AVAILABLE UNDER SAP NO. _____

SAP COST CENTER 784125000

GL. ACCOUNT 6413010

AMOUNT $123,438.10

BY _____ 10-12-11
Signature for Comptroller Operations Date

Pre-approved Form:
OGC No. 18-K-410
Appv'd OAG 12/18/96
Utility Relocation

Contract Provisions – Right to Know Law 8-K-1532

a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.

b. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

c. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:

1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and

2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.

d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.

f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.

g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.