OS-2 (10-0)

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

June 1, 2012

Kenneth W. Frameli, Chairman
Southwestern Pennsylvania Water Authority
P.O. Box 187
Jefferson, PA 15370

Reference: Agreement No.: 121359
MPMS: 93077
County: Fayette
SR-Sec: 0381-U10
Federal Project No.: N/A

Dear Mr. Frameli:

Enclosed is one (1) copy of an executed agreement, numbered 121359, dated May 24, 2012, 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.

~~For~~: Larry W. Ditty, Jr.
Chief
Utility Relocation Administrator

Enclosure
4350/LWD/cm
BCC: Dale Scott, Contracts Division, 9th Floor, Forum Place (w/enclosure)
Willis Hackenberg, Treasury Department, Room G-11, Finance Bldg. (w/enclosure)

FID No. 256009051
Contract No. 121359
SAP Vendor No. 159492

THIS AGREEMENT, numbered 121359 in Commonwealth files, made and entered into this 24th day of May 2012, 2012, by and between the COMMONWEALTH of Pennsylvania, acting through the Department of Transportation hereinafter called the DEPARTMENT,

a
n
d

SOUTHWESTERN PENNSYLVANIA WATER AUTHORITY with its principal place of business located at 1442 Jefferson Road, Jefferson, Pennsylvania, 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 4008, Section B10, in Fayette 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, 100 per centum of which, it is agreed, are located in public right of way and 0.00 per centum outside 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 DEPARTMENT is authorized by the provisions of Section 412.1 of the State Highway Law of June 1, 1945, P.L. 1242 as amended, to share in the costs of adjusting such facilities; and,

WHEREAS, the Parties hereto have agreed that the DEPARTMENT will pay 50.00 per centum of the cost of adjusting the UTILITY's facilities located within public right of way and 0.00 per centum of the cost of adjusting those facilities located outside public right of way.

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 water, together with fittings and appurtenances thereto between Station 41+10 and Station 41+90, on State Route 4008, Section B10, in the County of Fayette, Township of Redstone, in the manner and at the location approved by the DEPARTMENT at a total estimated cost of Eleven Thousand and 00/100 ($11,000.00) dollars. 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 DEPARTMENT to proceed with such work, and in a manner satisfactory to the DEPARTMENT 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 DEPARTMENT 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 DEPARTMENT shall verify said costs and pay to the UTILITY 50.00 per centum of said cost, exclusive of betterments and charges for interest on construction money, which amount is estimated to be Five Thousand Five Hundred and 00/100 ($5,500.00) 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, estimated as aforesaid to be 50.00 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 DEPARTMENT.

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

THIRD - DEPARTMENT 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 Contract/Agreement. Therefore, this Contract/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 and made a part of this Contract/Agreement. As used in this Contract/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 DEPARTMENT 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 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 DEPARTMENT and the Federal Government and copies thereof shall be furnished if requested.

SEVENTH - Supporting documents will accompany the final billing showing a breakdown of man hours and direct salary costs by classification of employees for all engineering and labor, and an itemized list of material installed and removed in accordance with the current Design Manual Part 5.

EIGHTH - That 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 and, where applicable, the Federal Highway Administration.

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 50.00 per centum of the actual and related indirect cost of the work actually completed at the time of notification by the DEPARTMENT of the said cancellation, abandonment or revision, plus any additional expenses incurred by the UTILITY in restoring its system to normal operating conditions. The cost will be eligible for reimbursement under the provisions of Sections 412 and 412.1 of the State Highway Law.

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

ATTEST

BY _____
Title: SECRETARY Date: 5/10/12

SOUTHWESTERN PENNSYLVANIA WATER AUTHORITY

BY _____ 5/10/12
Title: CHAIRMAN 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 _____, Jr. 5/17/12
Central Office Utility Administrator Date

APPROVED AS TO LEGALITY AND FORM

BY _____ for
Chief Counsel 5/21/2012 Date

PRELIMINARILY APPROVED

BY _____ 5/21/12
Assistant Counsel Date

FUNDS COMMITMENT DOCUMENT
NO. U121359000
CERTIFIED FUNDS AVAILABLE UNDER
SAP NO. _____
SAP COST CENTER 7841210000
GL. ACCOUNT 6413010
AMOUNT $5,500.00

BY _____ - 5-24-12
Signature for Comptroller Operations Date

Pre-approved Form:
OGC No. 18-K-411
Appv'd OAG 12/22/2011
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.

SOUTHWESTERN PENNSYLVANIA WATER AUTHORITY
WATER LINE RELOCATION
S.R. 4008, SECTION B10

RESOLUTION NO. _____

BE IT RESOLVED by authority of the SOUTHWESTERN PENNSYLVANIA WATER AUTHORITY and it is hereby resolved by authority of the same, that the Chairman of said Municipal Authority be authorized and directed to sign the attached Agreement on its behalf and that the Secretary be authorized and directed to attest the same.

SOUTHWESTERN PENNSYLVANIA WATER AUTHORITY

By _____
Kenneth W. Frameli, Chairman

Attest:

_____

(SEAL)

I, Kenneth W. Frameli, Chairman of the Southwestern Pennsylvania Water Authority, do hereby certify that the foregoing is a true and correct copy of the Resolution adopted at a regular meeting of the Southwestern Pennsylvania Water Authority, held the twelfth day of April 2012.

DATE: April 12, 2012

_____
Kenneth W. Frameli, Chairman