**TEXAS DEPARTMENT OF TRANSPORTATION**

Master Utility Agreement

 This Agreement between the State of Texas, acting by and through the Texas Department of Transportation (“**TxDOT**”) and ­­­      ("**Utility**”)(each a “**Party***”* and collectively the “**Parties**”) delineates the responsibilities of the Parties with respect to the coordination and possible relocation of certain utilities resulting from TxDOT transportation projects (the “**Project**”or“**Projects**”).

RECITALS

1. Utility owns, operates, and maintains utility facilities throughout the State of Texas.
2. TxDOT has various Projects throughout the State of Texas. On occasion these Projects require the relocation of Utility’s facilities.
3. To facilitate the planning, design, safe construction, and ultimate operation of TxDOT Projects, the Parties will identify the location and nature of Utility’s facilities on such Projects.
4. The Parties desire to delineate TxDOT’s plan for addressing any Utility conflict and the process and requirements of both Parties for all TxDOT Projects across Texas through the life of a Project.
5. As part of the Utility’s conflict process, the Parties have determined that it is in their mutual best interest to coordinate communications and actions on a Project from the initial planning stage through the completion of the Project to avoid unnecessary costs or delays to either party. The Parties have also determined that design should first consider feasible conflict avoidance before any Utility accommodation is recommended or requested as part of a Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties mutually agree as follows:

1. **PLANNING STAGE**
2. Upon initiation of a Project, TxDOT will provide a Notice of Proposed Construction (“NOPC”) to Utilities believed to have facilities in and around the Project, in a form substantially similar to that attached in Exhibit “A.”
3. The Parties shall cooperate to identify potential conflicts between a Utility’s facility and the Project and work towards the most effective resolution of such conflicts.
4. If Utility’s conflicts cannot be avoided, the Parties will work toward the most effective resolution of such conflicts, which may include Utility facilities accommodation.
5. Unless otherwise prohibited by outside construction agreements, TxDOT agrees to provide Utility access to the current design plans for the Project after TxDOT provides the Utility with the NOPC.
6. Utility agrees to provide TxDOT, upon request by TxDOT, and subject to critical energy infrastructure information (CEII) limitations, facilities maps, including as-built plans if available, of its current Utility facilities in and around the Project relevant to a conflict analysis.
7. The Parties agree that the initial point of contact for any Project shall be the respective local or identified representatives.
8. **UTILITY CONFLICT IDENTIFICATION**
9. Once the Parties have identified a conflict between the Project and Utility’s facility that cannot be feasibly avoided by design and requires the relocation of Utility’s facility, TxDOT will provide Utility with a Notice of Required Accommodation (“NORA”) in a form substantially similar to that attached in Exhibit “B.”
10. The NORA will detail TxDOT’s proposed construction schedule and the date by which the Utility is requested to have the conflict resolved. Parties agree that the timeline for conflict resolution is dependent on the project scope as defined in the Standard Utility Agreement(“**SUA”**), but such resolution shall not be requested sooner than 90 days from the date of the NORA unless otherwise agreed to by the Parties.
11. The Utility may rely upon the NORA and the schematics or plans provided therein to begin preliminary utility activities (*e.g.*, design; due diligence activities including surveying, engineering, field verifications, as-built research, right of way or easement research, utility customer impact re-configurations; and ordering materials that require extended lead times for the relocation of its facilities). **Physical relocation of reimbursable adjustments shall not commence until the SUA is executed by the Parties**.
12. **UTILITY RELOCATION AGREEMENT**
13. Upon the Utility’s receipt of the NORA, TxDOT and the Utility will enter into a SUA in a form substantially similar to that attached as Exhibit “C.”
14. The Parties agree to work diligently to finalize the SUA within 90 days of the NORA, as described in Transportation Code §203.0935, unless otherwise agreed to by the Parties or the Parties have invoked the escalation process described in Section F.
15. The SUA will include an estimated completion date by which the Utility expects to have the conflict resolved.
16. **RELOCATION OF UTILITY FACILITY WITHIN HIGHWAY RIGHT OF WAY**
17. If the Utility wishes to relocate its facilities within the highway right of way, the Parties agree to work diligently in determining the appropriate location of the relocated facility.
18. Upon determination of the new location of the utility facility within the highway right of way and application by the Utility, TxDOT will facilitate the timely issuance of a permit allowing the installation of the utility facility.
19. **UTILITY REIMBURSEMENT**
20. A change to the TxDOT schematics or plans included in the NORA that requires the Utility to undertake subsequent utility accommodation activities, or a cancellation of TxDOT plans to construct the Project, will entitle the Utility to the reimbursement of such applicable expenses. Utility will be eligible for such reimbursement regardless of the Utility’s reimbursement status for the initial relocation under Transportation Code §203.092.
21. **FAILURE TO RESOLVE CONFLICT**
22. If the Parties have not reached an agreement to resolve the utility conflict within 90 days of the NORA, the Parties will utilize the escalation process below:
	1. Either Party may request an in-person meeting with a representative of each Party with authority to resolve the utility conflict. Notice shall be delivered by the requesting Party outlining the basis of the unresolved conflict.
23. If the escalation process fails to resolve the utility conflict within a timely manner, TxDOT may invoke its right under Transportation Code §203.0935 to relocate the facility itself.

**SIGNATURE PAGE FOLLOWS**

The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

The rights and obligations of the Parties to this Agreement will be binding on, and will be of benefit to, each of the parties’ successors, assigns, heirs and estates.

IN WITNESS WHEREOF, the Parties hereto have affixed their signatures.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **UTILITY** |  |  | **EXECUTION RECOMMENDED:** |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
| Utility: |       |  |  |  |  |
|  | *Name of Utility* |  |  | *Utility Portfolio Section Director, Right of Way Division* |  |
|  |  |  |  |  |  |
| By: |  |  |  |  |  |
|  | *Authorized Signature* |  |  | **THE STATE OF TEXAS**Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission. |  |
|  |  |  |  |  |  |
|  |       |  |  |  |  |
|  | *Print or Type Name* |  |  |  |  |
|  |  |  |  |  |  |
| Title: |       |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
| Date: |       |  |  |  |  |
|  |  |  |  | By: |  |  |
|  |  |  |  |  | *Director, Right of Way Division* |  |
|  |  |  |  |  |  |  |
|  |  |  |  | Date: |       |  |
|  |  |  |  |  |  |  |