APPENDIX 13G
UTILITY REIMBURSEMENT

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13G.1 AGREEMENTS, RELEASES, RESOLUTIONS, AND CONTRACT REQUIREMENTS

Various agreements, releases, resolutions, and contract requirements are illustrated in Sections 13G.1.1 through 13G.1.5. Working copies should be obtained from this appendix or the Design Division Electronic Toolbox.

The various general requirements provisions contained within the agreements (i.e., Municipal Agreement, Private Property Agreement, and Reimbursement Agreement) are as follows:

• The owner (i.e., the Utility) will perform all work provided for in the agreement with its own forces or, if approved by the Commissioner of Transportation, by contract and at its own cost and expense, subject to reimbursement by the State to the extent and in the manner described in this Chapter.

• The State will reimburse the owner for its just costs and expenditures to an extent required to restore the facilities as nearly as practicable to the original service capacity; but in no event will reimbursement be made in excess of the amount covered by the agreement, unless such amount is increased by a supplemental agreement.

• The owner, in carrying out the work provided for in the agreement, shall comply with the plans, specifications, and estimates thereof.

The operations of the owner, its agents and contractors shall, at all times, be subject to the inspection of the Commissioner who shall have access to all phases of the owner’s work and to all records pertaining thereto.

• The operations provided for in the agreement shall be the sole responsibility of the owner.

The owner shall be responsible for all damages to persons or property that occur as the result of its fault or negligence or the fault or negligence of its agents or contractors in connection with the prosecution of the work to be performed by the owner, its agents or contractors under the agreement.

• The owner agrees to perform all work provided for in the agreement in accordance with the plans and specifications without unnecessary delay. Any unsatisfactory work shall be brought to the attention of the owner by the Commissioner and the owner shall take remedial action immediately.

• The State, its officers and employees shall not be liable for any loss, damage, or claims sustained by the owner or other persons, firms or corporations by reason of the owner’s operations in carrying out the work provided for in the agreement or by reason of the operation or maintenance thereof by the owner other than for reimbursement of the owner for its just cost and expenditures as discussed in this chapter.
• The maintenance of all facilities covered by the agreement shall be the sole and primary obligation of the owner.

• The State reserves the right to have other contractors on the site of these projects and the owner shall coordinate their activities with those of such contractors.

• The invoice for reimbursement shall be subject to reasonable verification in whatever manner the State may consider adequate and for this purpose the owner shall furnish such reasonable evidence as may be required and shall permit examination of all records from which the invoice has been prepared.

During the progress of construction and for a period not less than three years from the date final payment has been received by the Utility, the records and the accounts pertaining to the construction of the project, and accounting therefor, will be available for inspection by the representatives of the State and if a Federal-aid project, the Federal Government.

• As a condition to and simultaneous with reimbursement by the State, the owner shall furnish to the State a release (see sample form for municipalities provided in Appendix G) forever discharging the State from any and all claims, damages, or causes of action arising from or growing out of the work performed under the agreement.

• The owner shall obtain all licenses or permits required by the Department, the appropriate Federal Regulatory Agencies, the Public Service Commission and local authorities for the prosecution of the work.

• The owner agrees to comply with all the provisions listed under Contract Clauses Required in Work.

• The owner shall not assign, transfer, convey, sublet or otherwise dispose of any agreement providing for changes to its facilities or if its right, title or interest therein, or its power to execute such agreement to any person, company, or corporation without the previous consent in writing of the Commissioner.

• The owner shall conduct the work with due regard to safety and shall maintain safe working conditions at the site of the work. All operations shall be conducted in accordance with all applicable safety laws, code, rules and regulations.

• In case of any ambiguity in the plans, specifications or maps or between them, the matter must be immediately submitted to the Commissioner of Transportation, who shall adjust the same, and the decision in relation thereto shall be final and conclusive upon the parties.

• All insurance called for in the agreement must be obtained prior to commencing field work, and certificates must be immediately filed with the Director of the Contracts Bureau.
13G.1.1 Utility Work Agreement, Form HC 140 (6/03)
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Since the construction, reconstruction, or maintenance of the transportation project described below, identified as:

Project Identification No.: F.A. Project No.:  
ROW Declaration No.: Map Nos.:  
Parcel Nos.: County of:  
Contract No.:  

Project Description:  
necessitates the adjustment of utility facilities as hereinafter described, the owner, of said facilities herewith agrees with the State of New York acting through the Commissioner of Transportation that this agreement shall apply to the accommodation of these utility facilities. Any adjustment of said facilities will be accomplished under the terms of this agreement, in accordance with the Rules and Regulations Governing the Accommodation of Utilities within the State Highway Right-of-Way, in compliance with the attached Special Note “Coordination with the Utility Schedule, and in accordance with the contract plans, specifications, proposal, amendment(s) or change order(s).  

I. Existing Facilities (describe type, size, capacity, location, etc.)  

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presently located on  Right-of-Way  
(indicate State, County, City, Town, Village, Private, etc.)  
as shown on the plans for the proposed transportation project are to be adjusted as follows: (describe type, size, capacity, location, etc.)

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for an estimated $  .
II. **Financial Responsibility** (check appropriate boxes):

- The facilities to be adjusted under the terms of this agreement are subject to Section 52 of the State Highway Law, and the cost of this adjustment is the sole responsibility of the owner.

- Subdivision 24 of Section 10 of the State Highway Law enables the Commissioner of Transportation to provide at the expense of the State, for adjustment to a municipally owned utility when such work is necessary as a result of State highway work. (Municipal Agreement required.)

- Subdivision 24-b of Section 10 of the State Highway Law enables the Commissioner of Transportation to participate in the necessary expenses incurred for adjustment of privately, publicly or cooperatively owned facilities, municipal utility facilities, or facilities of a corporation organized pursuant to the State Transportation Corporations Law. (Privately Owned Property Agreement or Reimbursement Agreement required.)

- Subdivision 27 of Section 10 of the State Highway Law enables the Commissioner of Transportation, upon the request of a municipality, to perform for and at the expense of such municipality specified work to be included within a State-let contract. (Betterment Resolution required.)

- Subdivision 33 of Section 10 of the State Highway Law enables the Commissioner of Transportation, upon the request of a public utility corporation, to perform for and at the expense of such public utility corporation specified work to be included within a State-let contract.

- Subdivision 13 of Section 30 of the State Highway Law enables the Commissioner of Transportation to enter into an agreement to reimburse with public funds the owner for necessary expenses incurred as a result of this adjustment, or to replace the facilities in kind.

- The owner will develop and keep a record of costs in accordance with the New York State Department of Transportation (NYSDOT) Reimbursement Procedures, and when federal funds participate in the cost, the Federal Highway Administration (FHWA) Federal-Aid Policy Guide Part 645, or as indicated below:
III. **Physical Adjustment Method** (check appropriate boxes):

The actual adjustment or design engineering will be performed by the following method(s):

- [ ] Contract let by the Commissioner.
- [ ] Contract let by the Owner, (check applicable statement, i.e., a or b)
  - [ ] a. Best Interests of State.
  - [ ] b. Utility not sufficiently staffed or equipped.
- [ ] By the Owner’s forces.

IV. **Betterment, Salvage, and Depreciation Credits Due the Project** (check appropriate boxes):

- [ ] There will be no extension of service life, improved capacity nor any other betterment of the facility (as defined by the NYSDOT Utility Reimbursement Procedures and by FHWA Federal-Aid Policy Guide Part 645) as a result of the adjustments made pursuant to this agreement.
- [ ] There is betterment described as follows:

  ________________________________________________________________

  ________________________________________________________________

- [ ] The owner will not claim reimbursement for that betterment portion of the work, but will duly account for it as required by applicable NYSDOT and FHWA procedures.
- [ ] The owner hereby agrees to deposit with the Comptroller of the State of New York the amount of $________________ to cover the cost of the betterment as described above.
- [ ] The owner agrees to comply with the requirements of the NYSDOT Utility Reimbursement Procedure and FHWA Federal-Aid Policy Guide Part 645 with the respect to salvage and depreciation credits when applicable.

V. **General Covenants**

The owner hereby agrees to accept full title and responsibility for the adjusted facility in writing upon satisfactory completion of the work. Such acceptance will acknowledge the owner’s responsibility to maintain the facility in accordance with all applicable codes, standards and regulations, including his obligation, where applicable, to remove any or all of the facility from the highway at the order of the Commissioner of Transportation, all in accordance with the Rules and Regulations Governing the Accommodation of Utilities within the State Highway Right-of-Way. All compensable claims covered by this agreement will be included in one of the following:

A. Privately Owned Property Agreement executed prior to the performance of the work.
B. Municipal Agreement executed prior to performance of the work.
C. Reimbursement Agreement executed prior to performance of the work.
D. Such other agreement as approved by NYSDOT Office of Legal Affairs.
VI. References

The following documents are herewith incorporated in this agreement by reference (check appropriate boxes):


☐ Contract documents:
  - Contract number: __________________________
  - PIN: __________________________
  - Plan sheets No.: __________________________

☐ Owner’s plan sheets: __________________________

☐ Owner’s estimate sheets form No.: __________________________

☐ Resolution dated:_________________________, by __________________________
  - Granting the State of New York authority to perform the adjustment for the owner.
  - Agreeing to maintain facilities adjusted via State-let contract.
  - Authorizing deposit of funds by the owner.

☐ Certification by the owner or his agent that he has the legal authority to enter into this agreement.

(Print/Type Name)Owner or Agent (Signature) Title Date

For NYSDOT Commissioner of Transportation Title Date
APPENDIX 13G
UTILITY REIMBURSEMENT

13G.1.2 Municipal Agreement, Resolutions, Supplemental Agreement, and General Release

13G.1.2.1 Municipal Agreement, Form A224 (6/03)

13G.1.2.2 Resolutions

13G.1.2.3 Supplemental Agreement, Form CONR 227 (6/03)

13G.1.2.4 General Release, Form 256 (6/03)
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APPENDIX 13G
UTILITY REIMBURSEMENT

13G.1.2.1 Municipal Agreement, Form A224 (6/03)
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A224(6/03) AGREEMENT IN CONNECTION WITH COST OF RELOCATING MUNICIPALLY OWNED FACILITIES MAINTAINED FOR PUBLIC USE (SUBDIVISION 24 SECTION 10 OF THE HIGHWAY LAW)

Project:

This agreement made this day of 20 , by and between the People of the State of New York (hereinafter referred to as “State”) acting by and through the Commissioner of Transportation (hereinafter referred to as “Commissioner”) having his principal office in the Administration and Engineering Building, 1220 Washington Ave., State Campus, in the City and County of Albany and State of New York, and the , a Municipal Corporation in the County of and State of New York (hereinafter referred to as “Municipality”).

WITNESSETH:

WHEREAS, the Municipality is desirous of having the work of removal, relocation, replacement and reconstruction of such facilities performed, in accordance with the provisions of this agreement.

NOW, THEREFORE, in consideration of the mutual benefits moving to each of the parties hereto, and in pursuance of Subdivision 24 of Section 10 of the Highway Law, it is agreed as follows, viz:

1. General Description of Work. Such work herein contemplated consists generally of the

and other facilities in connection therewith as shown and described generally or particularly in the plans, estimates and specifications which provide; such plans, estimates and specifications having been heretofore submitted to and having been duly approved by the Municipality and Commissioner.

2. Method of Performance of Work. Such work may be performed (a) by the employment of forces and the use of the equipment of the Municipality and by the use of any material on hand or necessary to be purchased by the Municipality or (b) when consent therefor is stated in writing by the State, by contract as provided in Section 103 of the General Municipal law, or if this method is deemed to be impracticable by the Municipality, or Commissioner, then, upon such written consent, by such other method or combination of methods as the Commissioner shall approve. The Utility Facilities shall be adjusted in accordance with this agreement, as directed by the State’s Engineer in charge, without causing delay to the State’s Contractor, and before completion of the State’s contract.
3. Reimbursement of Costs. Upon written notice from the Municipality to the Commissioner that such work has been completed, and upon final inspection thereof to the satisfaction of the State, or in case the Municipality finds it necessary to have partial reimbursement made intermediately between the start of such work of construction and the final inspection thereof by the State, the State shall reimburse the Municipality up to 90% of the costs of such work as such costs are disclosed by the said records thereof, and the balance of such reimbursement shall be made by the State upon final inspection of such work and the acceptance thereof by the State, but in any event the State shall not be obligated for an estimated sum in excess of $______, unless a Supplemental Agreement is made therefor. All items included by the Municipality in said record of costs shall be in conformity with NYSDOT Reimbursement Procedures. Such items shall be subject to final determination by the Commissioner, and the Commissioner reserves the right to reduce or to eliminate any of such items as he may deem such action to be proper for the best interest of the State.

As a condition of and prior to payment by the State of the aforesaid reimbursement, the Municipality shall furnish to the State a release forever discharging the State from any and all claims, damages, or causes of action arising from growing out of the work to be performed by the Municipality under this agreement.

4. Maintenance of Facilities. The Municipality covenants with the Commissioner that the maintenance of the facilities as long as they shall be in use by the Municipality and are and shall continue to be the sole and primary obligation of the Municipality.

5. Other Contracts Relative to Work. The Commissioner reserves the right to the right to let other contracts in connection with such work. The Municipality shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate its work with theirs. Temporary structures, equipment or materials of the Municipality, its agents or contractors, shall be located where directed and if not so located they shall be moved when so directed.

6. Access To and Control of Work. The State shall have access to all phases of such work during its prosecution and to records pertaining thereto, including time records, payrolls, invoices, work orders, etc.

7. Unsatisfactory Work; Ambiguity of Plans. Should such work, or progress of same, at any time be unsatisfactory to the State, that fact will, without unnecessary delay, be brought to the attention of the Municipality who will take remedial action promptly. In the event the Commissioner determines that such remedial action is unsatisfactory or has not occurred within a reasonable period of time, he/she may provide for completion of the work in such manner as he/she deems necessary.

In case if any ambiguity in the plans, specifications, or maps, or between them, the matter must be immediately submitted to the State which shall adjust the same, and its decision in relation thereto shall be final and conclusive upon the parties.
8. Retention of Records. All records established by the Municipality pursuant to this agreement shall be maintained by the Municipality for a period of not less than three years after payment of the final voucher by the Federal Government to the State in connection with a federal-aid project or the custody of such records shall be turned over to the Commissioner. Such records shall be available for inspection by representatives of the State upon reasonable notice during regular business hours.

9. Contract Clauses Required in Work. In connection with any contract let by the Municipality for all or any part of such work, it is understood between the parties hereto that the contract shall comply with all applicable Federal, state and local laws, copies of the Federal and State required contract provisions appearing as Schedule A and Schedule B, attached hereto.

10. Workmen’s Compensation Insurance. The Municipality shall procure and maintain until final acceptance by the State of the work covered by this Agreement a policy, which shall be delivered to the State, covering the obligations of the Municipality in accordance with the provisions of the Workmen’s Compensation Law, covering all operations under this agreement, whether performed by the Municipality or by its subcontractors. This Agreement shall be void and of no effect unless the Municipality making or performing same shall secure compensation for the benefit of, and keep insured during the life of said agreement, such employees in compliance with the provisions of the Workmen’s Compensation Law. (State Finance Law Section 142)

11. Liability Insurance. The Municipality shall procure and maintain until final acceptance by the State of the work covered by the agreement for liability for damages imposed by law, of the kinds and in the amounts hereinafter provided in insurance companies authorized to do such business in the State covering all operations under the agreement whether performed by it or by subcontractors. Before commencing the work the Municipality shall furnish to the Commissioner a certificate or certificates of insurance in form satisfactory to the Commissioner showing that it has complied with this paragraph, which certificate or certificates shall provide that the policies shall not be changed or canceled until 30 days’s written notice has been given to the Commissioner. The kinds and amounts of insurance are as follows:

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<th>Bodily Injury Liability</th>
<th>Property Damage Liability</th>
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for all damages arising during the policy period, and shall be furnished in the types specified, viz:

(1) Liability insurance issued to and covering the liability for damages imposed by law upon the Municipality with respect to all work performed by it under this agreement.
(2) Contractor’s Liability Insurance issued to and covering the liability for damages imposed by law upon (a) each contractor with respect to all work performed by said contractor under this agreement for or with the Municipality, and (b) each subcontractor with respect to all work performed by said subcontractor for or with the said contractor.

(3) Protective Liability insurance issued to and covering the liability for damages imposed by law upon the Municipality with respect to all work under the agreement performed for the Municipality by its contractors or their subcontractors.

(4) Completed Operations’ Liability insurance issued to and covering the liability for damages imposed by law upon the Municipality and its contractors or their subcontractors arising between the date of final cessation of work and the date of final acceptance thereof, out of that part of work performed by each.

The State shall provide Protective Liability insurance issued to and covering the liability for damages imposed by law upon the People of the State of New York with respect to all operations under the agreement by the Municipality or by its contractors, or their subcontractors, including omission and supervisory acts of the State; and Completed Operation’ Liability insurance issued to and covering the liability for damages imposed by law upon the People of the State of New York, arising between the date of final cessation of work and the date of final acceptance thereof.

12. Funds Available. It is understood by and between the parties thereto that this agreement shall be deemed executory only to the extent of the moneys available to the State and no liability on account thereof shall be incurred by the State beyond moneys available for the purposes hereof.

13. Assignment or Other Disposition of Contract. The Municipality agrees not to assign, transfer, convey, sublet or otherwise dispose of this contract or any part thereof, or of its right, title or interest therein, or its power to execute such contract to any person, company, or corporation without previous consent in writing of the Commissioner of Transportation.
IN WITNESS WHEREOF, the State has caused this instrument to be signed by the said Commissioner of Transportation, and the Municipality has caused this instrument to be signed by its duly authorized officer.

This Agreement shall commence on______, 20__, and shall expire____ year(s) from that date unless a Supplemental Agreement is entered into extending the term of this Agreement.

Contract Number:

Agency Certification - “In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other copies of this contract.”

THE PEOPLE OF THE STATE OF NEW YORK (L.S.)

By __________________________

for the

Commissioner of Transportation

Municipality __________________________(L.S.)

(Affix Seal)

By __________________________

STATE OF NEW YORK )

) ss:
COUNTY OF )

On this ______ day of ____________, 20__, before me personally came ____________________________, to me known, who, being by me duly sworn, did depose and say that he resides in the ____________, New York; that he is the ____________ of the ____________, the Municipal Corporation described in which executed the above instrument pursuant to a resolution which was duly adopted on and to which a certified copy is attached and made a part hereof; and that he signed his name thereto by like other.

__________________

Notary Public
This page is intentionally left blank.
A. Resolution Authorizing the Municipal Official to Enter Into Agreement with the New York State Department of Transportation

RESOLUTION

Resolution #_____

On motion by (name), seconded by (name), unanimously authorized (name) to execute any and all agreements with the New York State Department of Transportation regarding the State’s construction project (enter project name/description and project identification number).

**********************************************************************************

I, ________________, duly appointed and qualified ________________, do hereby CERTIFY that the foregoing resolution was adopted at a meeting duly called and held in the office of, ________________, a quorum being present on the ___ day of ________________, and that said copy is a true, correct and compared copy of the original resolution so adopted and that the same has not been revoked or rescinded.

WITNESSETH, my hand and seal this ___ day of ________________.

________________________________________

Name, title
B. Resolution Granting the State of New York Authority to Perform the Adjustment for the Owner and Agreeing to Maintain Facilities Adjusted Via State-let Contract

RESOLUTION

Resolution #

WHEREAS, the New York State Department of Transportation proposes the construction, reconstruction, or improvement of (state project name) in the (town, village, etc.) of (name) located in (county name) county, PIN (enter PIN), and

WHEREAS, the State will include as part of the construction, reconstruction, or improvement of the above mentioned project the relocation and adjustment to water mains and appurtenances, pursuant to Section 10, Subdivision 24, of the State Highway Law, as shown on the contract plans relating to the project and meeting the requirements of the owner, and

WHEREAS, the service life of the relocated and or replaced utilities has not been extended, and

WHEREAS, the State will provide for the reconstruction of the above mentioned work, as shown on the contract plans relating to the above mentioned project.

NOW, THEREFORE,

BE IT RESOLVED: That the (name of municipality) approves of the relocation of and adjustment to their water mains and appurtenances and the above mentioned work performed on the project and shown on the contract plans relating to the project and that the (name of municipality) will maintain or cause to be maintained the adjusted facilities performed as above stated and as shown on the contract plans.

BE IT FURTHER RESOLVED that (name) has the authority to sign, with the concurrence of the (board), any and all documentation that may become necessary as a result of this project as it relates to the (name of municipality), and

BE IT FURTHER RESOLVED: That the clerk of the (name of municipality) is hereby directed to transmit five (5) certified copies of the foregoing resolution to the New York State Department of Transportation.

Moved By:
Seconded By:
Vote: ********______________

Moved By: ___________________________ Seconded By: ___________________________

I, ___________________________, duly appointed and qualified ___________________________, do hereby CERTIFY that the foregoing resolution was adopted at a meeting duly called and held in the office of, ___________________________, a quorum being present on the _____ day of ___________________________, and that said copy is a true, correct and compared copy of the original resolution so adopted and that the same has not been revoked or rescinded.

WITNESSETH, my hand and seal this ___________________________ day of ___________________________.

______________________________
Name, title

§13G.1.2.2 6/6/03
13G.1.2.3 Supplemental Agreement, Form CONR 227 (6/03)
This agreement made the day of , 20 , by and between THE PEOPLE OF THE STATE OF NEW YORK (hereinafter referred to as “STATE”), acting by and through the COMMISSIONER OF TRANSPORTATION (hereinafter referred to as “Commissioner”), having his principal office in the Administration and Engineering Building, 1220 Washington Avenue, State Campus, in the City and County of Albany, State of New York, and the , a Municipal Corporation in the County of ___________ and State of New York (hereinafter referred to as “Municipality”).

WHEREAS, the parties entered into a contract dated under which, among other things, the COMMISSIONER agreed to reimburse the MUNICIPALITY for the cost of relocation of certain municipally owned facilities maintained for public use up to an amount not to exceed $ __________ __________ , except as such sum might be increased by a supplemental agreement, and

WHEREAS, the said sum of $ __________ __________ set forth in the said agreement dated _____________ ___________ is inadequate for the purposes thereof,

NOW, THEREFORE, in consideration of the mutual benefits moving to each of the parties hereto, it is agreed as follows:

1. The amount of $ __________ __________ set forth in paragraph __________ of the agreement dated _____________ ___________ is hereby increased to $ __________

2. The MUNICIPALITY specifically agrees that this Supplemental Agreement shall be deemed executory only to the extent of the moneys available and that no liability shall be incurred by the STATE beyond the moneys available for the purpose.

3. Except as provided in this Supplemental Agreement, the terms and provisions of the said agreement dated _____________ ___________ are and shall continue to be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

This Agreement shall commence on , 20 , and shall expire year(s) from that date unless a Supplemental Agreement is entered into extending the term of this Agreement.

Contract Number:

Agency Certification - “In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other copies of this contract.”

THE PEOPLE OF THE STATE OF NEW YORK

By __________________________

Commissioner of Transportation

Municipality __________________________ (L.S.)

By __________________________
RESOLUTION

WHEREAS the State of New York acting by and through its Commissioner of Transportation has offered to the
reimbursement for work performed by the pursuant to an agreement between the
and said Commissioner, dated and entitled, “Agreement in Connection
with the Cost of Relocating Municipally Owned Facilities Maintained for Public Use and Concerning that Particular Project known as

WHEREAS it is a condition precedent that the municipality deliver a release

NOW, THEREFORE, be it resolved by the of the
That the of said is hereby authorized to complete all acts
and execute any and all specifically the is empowered to sign all releases necessary in
order to obtain the sum previously mentioned.

This is to certify that I, , duly appointed
, have compared the attached resolution with the copy of the original resolution as entered in my minute book and find the same to be a true and accurate copy thereof. Such resolution was offered at a duly called meeting on the , at which meeting there were present at roll call and on the proposition of the attached resolution and majority voted in favor of

subscribed and sworn to
me this day of

Notary Public
13G.1.2.4 General Release, Form 256 (6/03)
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WHEREAS, ______________, a Municipal Corporation in the County of ___________, and State of New York (hereinafter referred to as “Municipality”) entered into a certain Agreement with the State of New York, acting by and through the Commissioner of Transportation, dated __________, entitled “Agreement in Connection With Cost of Relocating Municipally Owned Facilities Maintained For Public Use (Subdivision 24, Section 10, of The Highway Law)” and concerning a particular project known as ______________, and

WHEREAS, the general description of the work required of the Municipality under the said Agreement consisted of ______________, and

WHEREAS, all work under the Agreement has been performed by the employment of the forces and the use of the equipment of the Municipality or by contract between the Municipality and others, and accepted by the State of New York, and

WHEREAS, as a condition of and prior to reimbursement by the State of New York of the funds expended by the Municipality for said work under said Agreement, the Municipality is required to deliver a certain release,

NOW, THEREFORE, Know All Men by These Presents that ______________, the Municipal Corporation hereinbefore mentioned, acting by and through ______________ (name) (title), in consideration of the sum of ______________ dollars ($ __________) to it in hand duly paid by the said State of New York, the receipt whereof is hereby confessed and acknowledged, and which sum is in complete and full reimbursement for the work performed by the said Municipal Corporation under the said Agreement, does for itself, its successors and assigns, in all things fully release and discharge the said State of New York, its officers, agents and employees, from all claims, demands and liabilities of every kind in nature, legal or equitable, occasioned by or arising out of the work performed by said Municipal Corporation under the said Agreement or occasioned by or arising out of any estate or interest in real property acquired by the State of New York for the purpose of the above captioned project.

IN WITNESS WHEREOF, the said Municipal Corporation has caused this instrument to be signed by its __________, and its corporate seal to be hereunto affixed the __________ day of __________.

CORPORATE SEAL

__________________________
Municipal Corporation

by ______________________
(TITLE)
On this _______ day of __________, in the year 20___, before me personally came ________ __________, to me know, who, being by me duly sworn, did depose and say that he/she resides in the ___________, New York; that he/she is the ________________, of the _______________, the municipal corporation described in and which executed the above instrument; and that he/she knows the seal of said municipal corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Common Council of said municipal corporation pursuant to a resolution which was duly adopted on ___________; a certified copy of such resolution being attached hereto and made a part hereof; and that signed his/her name thereto by like order.

Notary Public
13G.1.3 Privately Owned Property Agreements

13G.1.3.1 Agreement to Provide Compensation for the Removal, Relocation, Replacement or Reconstruction of Utility Facilities and Appurtenances Located on Privately Owned Property; Supplemental Agreement; General Release .......................................................... 13G-31

13G.1.3.2 Agreement of Adjustment, Form ROW 21-6 (6/03) ....................... 13G-48
13G.1.3.1 Agreement to Provide Compensation for the Removal, Relocation, Replacement or Reconstruction of Utility Facilities and Appurtenances Located on Privately Owned Property; Supplemental Agreement; General Release
This page is intentionally left blank.
A. Agreement to Provide Compensation for the Removal, Relocation, Replacement or Reconstruction of Utility Facilities and Appurtenances Located on Privately Owned Property
This page is intentionally left blank.
This Agreement made this __________ day of __________, 20__, by and between the People of the State of New York (hereinafter referred to as “State”), acting by and through the Commissioner of Transportation (hereinafter referred to as “Commissioner”), having his principal office in the Administration and Engineering Building, 1220 Washington Avenue, State Campus, in the City and County of Albany and State of New York, and ________________________________ (hereinafter referred to as "Utility Owner"), located at_______________________________.

WITNESSETH:

WHEREAS, the Commissioner has determined that the above-captioned project will require the removal, relocation, replacement or reconstruction of the Utility Owner’s utility facilities (hereinafter referred to as "Facilities") located on privately owned property, which Facilities are hereinafter described in Paragraph # 1, “General Description of Work”; and

WHEREAS, the Utility Owner is desirous of having the work of removal, relocation, replacement or reconstruction of its Facilities that are located on privately-owned property performed in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits moving to each of the parties hereto, and in pursuance of Section 10 Subdivision 24-b of the Highway Law, it is agreed as follows:

1. General Description of Work. Such work herein contemplated consists generally of the

_____________________________________________________________________________

and is more specifically described in the Utility Work Agreement, plan and cost estimate which provide for this work (attached hereto and incorporated herein as Exhibit 1), such data having been prepared by the Utility Owner, submitted to and duly approved by the Commissioner.
2. Time Schedule. Such work shall be undertaken and completed in accordance with a time schedule agreed upon between the State and the Utility Owner (attached hereto and incorporated herein as Exhibit 2). The Utility Owner shall coordinate its activities with the State's construction contractor so as to avoid unnecessary delays. The Utility Owner agrees and understands that adherence to such time frames is essential to the orderly progression of the State highway project by the State's contractor. Delays to the project caused by the failure of the Utility Owner to adhere to the time schedule may result in damages to the State. Such damages may include actual liability by the State to its highway contractor which are measurable by a negotiated settlement or court award, and/or other ascertainable damages. In addition, there may be other damages suffered by the People of the State of New York using the highway Facilities and by the Department which are incapable of or are very difficult to accurately estimate, including but not limited to the inconvenience to the public of not being able to use the improved facility, and additional overhead, administrative and other personnel costs suffered by the Department in managing the delayed highway project.

In the event that the Utility Owner fails to relocate or adjust its Facilities in accordance with the aforementioned time schedule, the Utility Owner understands that, under the provisions of common law or any applicable statute, it may be responsible for the failure to relocate or adjust its Facilities in accordance with such agreed upon time frames. Where the Utility Owner is responsible for failure to relocate or adjust its Facilities in accordance with the agreed upon time frames, the Utility Owner shall be liable directly to the State's contractor for damages incurred as a result of delay in accordance with subdivision 3 of Section 11-102 of the General Obligations Law. In the event the State's contractor recovers directly from the State for damages incurred as a result of such delay, by a negotiated settlement, court award, and/or otherwise, the Utility Owner shall be liable to the State for such damages. In addition to damages described above, the Utility Owner, where it fails to move its Facilities in accordance with the schedule, shall also be liable for liquidated damages for costs incapable of or very difficult to accurately estimate. Such damages shall be assessed at $1,000.00 per day. Delays caused by forces beyond the control of the Utility Owner and where the Utility Owner is under emergency status shall not be included in delays for which the Utility Owner is responsible under this paragraph.

3. Method of Performance of Work. Such work shall be performed either (a) by the employment of the forces and the use of the equipment of the Utility Owner and by the use of any material on hand or necessary to be purchased by the Utility Owner, or (b) when consent therefor is given in writing by the Commissioner, by contract in conformity with NYSDOT Reimbursement Procedures. All work within the State highway right-of-way shall be performed pursuant to a Highway Work Permit issued by the Department. If this method is deemed to be impracticable by the Utility Owner or Commissioner, then, upon written consent of the Commissioner, such other method or combination of methods shall be employed as the Commissioner shall approve. The utility Facilities shall be adjusted in accordance with this Agreement, as directed by the State's Engineer in Charge, without causing delay to the State's contractor, and before completion of the State's contract.
4. Reimbursement of Costs. Upon written notice from the Utility Owner to the Commissioner that such work has been completed, and upon final inspection thereof to the satisfaction of the State, or in case the Utility Owner finds it necessary to have partial reimbursement made intermittently between the start of such work of construction and the final inspection thereof by the State, the State shall reimburse the Utility Owner up to 90% of the documented costs of such work. The balance of such reimbursement shall be made by the State upon final inspection of such work and the acceptance thereof by the State. The State’s obligation under this Agreement shall not exceed $______________, unless a Supplemental Agreement is made therefor. All items included by the Utility Owner in said record of costs shall be subject to final determination by the Commissioner, and the Commissioner reserves the right to reduce or to eliminate any of such items as he may deem proper for the best interest of the State.

5. Releases. As a condition of and prior to payment by the State of the aforesaid reimbursement, the Utility Owner shall furnish to the State, in a form acceptable to the Commissioner:
   (a) a release forever discharging the State from any and all claims, damages, or causes of action arising from or growing out of the acts or failures to act of the Utility Owner, its agents, employees, contractors, subcontractors, or representatives under this Agreement; and
   (b) a release of all claims arising from or growing out of any estate or interest in real property acquired for the purpose of the above-captioned project.

6. Maintenance of Facilities. The Utility Owner shall continue to maintain such relocated or replacement Facilities and such Facilities shall continue to be the sole obligation of the Utility Owner for so long as such Facilities shall remain in existence.

7. Other Contracts Relative to Work. The Commissioner reserves the right to let other contracts in connection with the above-captioned project. The Utility Owner shall properly connect and coordinate its work with that of such other contractors. Temporary structures, equipment or materials of the Utility Owner, its agents or contractors, shall be located where directed and if not so located they shall be moved when so directed.

8. Access To and Control of Work. The State shall have access to all phases of such work during its prosecution and to records pertaining thereto, including time records, payrolls, invoices, work orders, etc.

9. Unsatisfactory Work. Should such work or progress of same, performed by the Utility Owner or any of its contractors or subcontractors, at any time be unsatisfactory to the State, that fact will, without unnecessary delay, be brought to the attention of the Utility Owner which shall take remedial action promptly. In the event that the Commissioner determines that such remedial action is unsatisfactory or has not occurred within a reasonable time, he may withhold any or all moneys due to the Utility Owner. The State, and the State’s contractor, in such circumstances, shall also be entitled to such relief in the form and in the manner set forth in paragraph 2 of this Agreement.
10. Retention of Records. All records established by the Utility Owner pursuant to this Agreement shall be maintained by the Utility Owner for a period of not less than six years after payment of the final voucher by the Federal Government to the State in connection with a federal-aid project or the custody of such records shall be turned over to the Commissioner. Such records shall be available for inspection by representatives of the State upon reasonable notice during regular business hours.

11. Contract Clauses Required in Work. In connection with any contract let by the Utility Owner for all or any part of such work, it is understood between the parties hereto that the contract shall comply with all applicable Federal, State and local laws, copies of the Federal and State required contract provisions appearing as Schedule A and Schedule B, attached hereto.

12. Worker's Compensation Insurance. The Utility Owner shall procure and maintain, until final acceptance by the State of the work covered by this Agreement, a policy, which shall be delivered to the State, covering the obligations of the Utility Owner in accordance with the provisions of the Worker's Compensation Law, covering all operations under this Agreement, whether performed by the Utility Owner or by its subcontractors. Before commencing the work, the Utility Owner shall furnish to the Commissioner a certificate of insurance in form satisfactory to the Commissioner showing that it has complied with this paragraph. This Agreement shall be void and of no effect unless the Utility Owner making or performing same shall secure compensation for the benefit of, and keep insured during the life of said Agreement, such employees in compliance with the provisions of the Worker's Compensation Law. (State Finance Law Section 142).

13. Liability Insurance. The Utility Owner shall procure and maintain until final acceptance by the State of the work covered by the Agreement, insurance for liability for damages imposed by law, of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State, covering all operations under the Agreement, whether performed by it or by subcontractors. Before commencing the work, the Utility Owner shall furnish to the Commissioner a certificate or certificates of insurance in form satisfactory to the Commissioner showing that it has complied with this paragraph, which certificate or certificates shall provide that the policies shall not be changed or canceled until 30 days' written notice has been given to the Commissioner. The kinds and amounts of insurance are as follows:

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<th>Bodily Injury Liability and Property Damage Liability Combined</th>
<th>Single Limit</th>
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<tr>
<td>Each Occurrence</td>
<td>Aggregate</td>
</tr>
<tr>
<td>$1,000,000</td>
<td>$2,000,000</td>
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for all damages arising during the policy period, shall be furnished in the types specified, viz:

(1) Liability insurance issued to and covering the liability for damages imposed by law upon the Utility Owner with respect to all work performed by it under this Agreement.

(2) Contractor's liability insurance issued to and covering the liability for damages imposed by law upon (a) each contractor with respect to all work performed by said contractor under this Agreement for or with the Utility Owner, and (b) each subcontractor with respect to all work performed by said subcontractor for or with the said contractor.
(3) Protective liability insurance issued to and covering the liability for damages imposed by law upon the Utility Owner with respect to all work under this Agreement performed for the Utility Owner by its contractors or their subcontractors.

(4) Completed operations' liability insurance issued to and covering the liability for damages imposed by law upon the Utility Owner and its contractors or their subcontractors arising between the date of final cessation of work and the date of final acceptance thereof, out of that part of the work performed by each.

(5) Protective liability insurance issued to and covering the liability for damages imposed by law upon The People of the State of New York, the State of New York and the Commissioner of Transportation and all employees of the Commissioner of Transportation both officially and personally, any municipality in which the work is being performed, and/or any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work or any consultant inspecting engineer or inspector working for or on the above-captioned project, and their agents or employees, with respect to all operations under this Agreement by the Utility Owner or its contractors or subcontractors, including omissions and supervisory acts of the State, municipality, public benefit corporation or consultant.

(6) Automobile liability and property damage insurance. A policy covering the use in connection with the work covered by the this Agreement of all owned, non-owned and hired vehicles bearing, or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear license plates.

14. Funds Available. It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the moneys available to the State and no liability on account thereof shall be incurred by the State beyond moneys available for the purposes hereof.

15. Assignment or Other Disposition of Contract. The Utility Owner agrees not to assign, transfer, convey, sublet or otherwise dispose of this contract or any part thereof or of its rights, title or interest therein, or its power to execute such contract, to any person, company, or Utility Owner without previous consent in writing of the Commissioner of Transportation.

16. General Operating Agreements. Where the Utility Owner and the State have previously entered into a General Operating Agreement, and there is a conflict between the terms of, or the procedures established by such General Operating Agreement and this Agreement, the terms and procedures of this Agreement shall take precedent and govern.
IN WITNESS WHEREOF, the State has caused this instrument to be signed by the said Commissioner of Transportation, and the Utility Owner has caused this instrument to be signed by its duly authorized officer.

Contract Number:

Agency Certification - “In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other copies of this contract.”

This Agreement shall commence on ____________, 20__, and shall expire ______ year(s) from that date unless a Supplemental Agreement is entered into extending the term of this Agreement.

THE PEOPLE OF THE STATE OF NEW YORK

by ________________________________

Commissioner of Transportation

Utility Owner

by __________________

APPROVED AS TO FORM

Attorney General

APPROVED

State Comptroller

STATE OF NEW YORK )
COUNTY OF )

On this __________ day of ________________, 20__, before me personally came __________________, to me known, who, being by me duly sworn, did depose and say that he/she resides in ________________, New York; that he/she is the __________________ of __________________, the Utility Owner described in and which executed the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Utility Owner.

Notary Public

Page 6 of 6
B. Supplemental Agreement
SUPPLEMENTAL AGREEMENT TO PROVIDE COMPENSATION FOR THE REMOVAL, RELOCATION, REPLACEMENT OR RECONSTRUCTION OF UTILITY FACILITIES AND APPURTENANCES LOCATED ON PRIVATELY OWNED PROPERTY, IN CONNECTION WITH PROJECT ________________________________, (SUBDIVISION 24-b, SECTION 10, OF THE HIGHWAY LAW)

This Supplemental Agreement made this ____________ day of ____________, by and between the People of the State of New York (hereinafter referred to as “State”), acting by and through the Commissioner of Transportation (hereinafter referred to as "Commissioner"), having his principal office in the Administration and Engineering Building, 1220 Washington Avenue, State Campus, in the City and County of Albany and State of New York, and ________________________________, (hereinafter referred to as "Utility Owner"), located at _________________________________.

WHEREAS, the parties entered into an agreement dated ________________ under which, among other things, the Commissioner agreed to provide compensation for the removal, relocation, replacement or reconstruction of certain facilities owned by the Utility Owner, in an amount not to exceed $ ________________, except as such sum might be increased by a supplemental agreement, and

WHEREAS, additional work that was not contemplated in the original agreement was necessary, and

WHEREAS, the said sum of $ ________________ set forth in the said agreement dated, __________ is, therefore, inadequate for the purpose thereof,

NOW, THEREFORE, in consideration of the mutual benefits moving to each of the parties hereto, it is agreed as follows:

1. The amount of $ ________________ set forth in paragraph _____ of the agreement dated __________________________, is hereby increased to $__________________

2. Except as provided in this Supplemental Agreement, the terms and provisions of the said agreement dated ________________________, are and shall continue to be in full force and effect.
IN WITNESS WHEREOF, the State has caused this instrument to be signed by the said Commissioner of Transportation, and the Utility Owner has caused this instrument to be signed by its duly authorized Officer.

Contract Number:

Agency Certification - “In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other copies of this contract.”

THE PEOPLE OF THE STATE OF NEW YORK

by___________________________________

Commissioner of Transportation

Utility Owner

by___________________________________

APPROVED AS TO FORM

___________________________________
Attorney General

APPROVED

___________________________________
State Comptroller

STATE OF NEW YORK )
)ss.:
COUNTY OF )

On this __________ day of ________________, before me personally came ________________, to me known, who, being by me duly sworn, did depose and say that he/she resides in ____________________________, New York; that he/she is the ____________________________ of ____________________________, the Utility Owner described in and which executed the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Utility Owner.

Notary Public
C. General Release
This page is intentionally left blank.
GENERAL RELEASE UNDER AN AGREEMENT TO PROVIDE COMPENSATION FOR THE REMOVAL, RELOCATION, REPLACEMENT OR RECONSTRUCTION OF UTILITY FACILITIES AND APPURTENANCES LOCATED ON PRIVATELY OWNED PROPERTY, IN CONNECTION WITH PROJECT ______________________________________, PURSUANT TO SECTION 10, SUBDIVISION 24-b OF THE HIGHWAY LAW.

WHEREAS, _______________ , a Utility Owner in the County of ___________ , and State of New York (hereinafter referred to as “Utility Owner”) entered into a certain Agreement with the State of New York, acting by and through the Commissioner of Transportation, dated _______________, entitled “Agreement to Provide Compensation for the Removal, Relocation, Replacement or Reconstruction of Utility Facilities and Appurtenances Located on Privately Owned Property, Pursuant to Section 10, Subdivision 24-b of The Highway Law” and concerning a particular project known as ________________________________, and

WHEREAS, the general description of the work required of the Utility Owner under the said Agreement consisted of ________________________________, and

WHEREAS, all work under the Agreement has been performed by the employment of the forces and the use of the equipment of the Utility Owner or by contract between the Utility Owner and others, and accepted by the State of New York , and

WHEREAS, as a condition of and prior to reimbursement by the State of New York of the funds expended by the Utility Owner for said work under said Agreement, the Utility Owner is required to deliver a certain release,

NOW, THEREFORE, Know All Men by These Presents that ________________, the Utility Owner hereinbefore mentioned, acting by and through ________________ (name) ________________ (title) , in consideration of the sum of $______________, dollars ($______________) to it in hand duly paid by the said State of New York, the receipt whereof is hereby confessed and acknowledged, and which sum is in complete and full reimbursement for the work performed by the said Utility Owner under the said Agreement, does for itself, its successors and assigns, in all things fully release and discharge the said State of New York, its officers, agents and employees, from all claims, demands and liabilities of every kind in nature, legal or equitable, occasioned by or arising out of the work performed by said Utility Owner under the said Agreement or occasioned by or arising out of any estate or interest in real property acquired by the State of New York for the purpose of the above captioned project.

IN WITNESS WHEREOF, the said Utility Owner has caused this instrument to be signed by its ____________, and its corporate seal to be hereunto affixed the ____________ day of ________.

by ____________________
(TITLE)
On this __________ day of __________, 20__, before me personally came__________ - _____, to me know, who, being by me duly sworn, did depose and say that he/she resides in the __________, New York; that he/she is the _________________, of the ____ __________, the Utility Owner described in and which executed the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

________________________
Notary Public
13G.1.3.2 Right of Way Agreement of Adjustment, Form 21-6 (6/03)
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ROW 21-6 (6/03)  NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REAL ESTATE DIVISION
AGREEMENT OF ADJUSTMENT
(Property of Transportation Corporation)

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<th>P.I.N.</th>
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THIS AGREEMENT, made this _______ Day of ______, 20__ , between herein after referred to as “Claimant”, and the COMMISSIONER OF TRANSPORTATION FOR THE PEOPLE OF THE STATE OF NEW YORK, hereinafter raftered to as “the state” pursuant to _____________________ As amended.

WITNESSETH:

WHEREAS, pursuant to the aforementioned statute, the State is appropriating or has appropriated, for the purpose of the above identified project, certain property shown and described on the above designated map(s) filed in the office of the Department of Transportation, a certified copy of which has been filed in the office of the Department of State and a copy of which has been or will be filed in the office of the clerk or register of each county in which such property, or any portion thereof, is situated: and

WHEREAS, claimant has or may have a claim against the state by reason of said appropriation for each of the following two items:

1. As owner of some right, title or interest in said property shown and described on the above designated maps, by way of an easement therein or otherwise; and

2. For reimbursable expense for relocation of facilities owned by claimant and located at the time of said appropriation on the property covered by the following map(s) of the above mentioned project:

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and

WHEREAS, claimant has agreed to accept the amounts of compensation hereinafter mentioned in full adjustment of such claim;

NOW, THEREOF , it is understood and agreed by and between claimant and state as follows:

The respective amounts of compensation to be paid in full adjustment of each item of said claim as above enumerated are:

As to item “(1)” thereof, the sum of One Dollar ($1.00), payment whereof is hereby waived by claimant.

As to item “(2)” thereof, the sum of ____________________________

_______DOLLARS ($ _____________).
The aforesaid compensation is to be paid only upon such approval by the Comptroller of the State of New York as is or may be required by law, and only upon a certificate of the Attorney General of the State of New York that the claimant is legally entitled thereto.

Claimant agrees to execute or cause the execution of all formal papers which the Attorney General deems necessary to authorize payment and to secure to state a full release of all claims which claimant has or may have by reason of the aforesaid appropriation of property, together with a release of all claims which claimant has or may have by reason of any estate of interest in the streams, lakes, streets, roads, highways or rights of way, if any, adjacent to or abutting on the above mentioned property required for the purpose of said project. Claimant agrees to deliver to the Attorney General all such papers in advance of payment.

This agreement is exclusive of all claims, if any, of other transportation corporations as defined in the Transportation Corporations Law.

THIS AGREEMENT shall inure to the benefit of and bind the distributees, legal representatives, successors, and assigns of claimant.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Contract Number:

Agency Certification - “In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other copies of this contract.”

__________________________

(Claimant)

(SEAL)

By ________________________

(Title of Authorized Officer)

COMMISSIONER OF TRANSPORTATION FOR THE PEOPLE OF THE STATE OF NEW YORK

By ________________________

(Director of Real Estate Division)

APPROVED:

By ________________________

For the State Comptroller

Land Contract No.: 
13G.1.4 Reimbursement Agreement (A225), Supplemental Agreement (A255), and General Release (A226)

13G.1.4.1 Reimbursement Agreement, Form A225 (6/03) ...................... 13G-55
13G.1.4.2 Supplemental Agreement, Form A255 (6/03) ....................... 13G-63
13G.1.4.3 General Release, Form A226 (6/03) ............................. 13G-67
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13G-56

APPENDIX 13G
UTILITY REIMBURSEMENT

13G.1.4.1 Reimbursement Agreement, Form A225 (6/03)
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A225 6/03 AGREEMENT TO PROVIDE COMPENSATION FOR THE REMOVAL, RELOCATION, REPLACEMENT OR RECONSTRUCTION OF FACILITIES OWNED BY A TRANSPORTATION CORPORATION IN CONNECTION WITH PROJECT PURSUANT TO SECTION 10, SUBDIVISION 24-b OF THE HIGHWAY LAW.

This Agreement made this ___________ day of ___________ , 20 ___, by and between the People of the State of New York, acting by and through the Commissioner of Transportation (hereinafter referred to as “Commissioner”), having his principal office of the Administration and Engineering Building, 1220 Washington Avenue, State Campus, in the City and County of Albany and State of New York, and ______________, a corporation organized pursuant to the Transportation Corporation Law or operating as a transportation corporation (hereinafter referred to as “Corporation”), which offices are located at ____________

WITNESSETH:

WHEREAS, subdivision 24-b of Section 10 of the Highway Law, a copy of which is affixed hereto as “Appendix A”, provides, in part, that:

“In the event that the Commissioner of Transportation, in connection with the work of construction, reconstruction or maintenance of State highways, encounters such facilities of a corporation organized pursuant to the transportation corporations law or operating as a transportation corporation that are located within the highway right-of-way, he/she shall provide compensation for the fair and reasonable cost of the removal, relocation, replacement or reconstruction of such facilities provided the following conditions are met:

(a) the project for which such facilities are to be removed, relocated or replaced or reconstructed must be federally funded and the cost of such removal, relocation, replacement or reconstruction are a part of the approved project cost by the appropriate federal authorities; and

(b) such compensation shall be provided only: (i) for the interstate category of projects; and (ii) for the other categories of projects only when a specific appropriation has been made for such purpose; and

(c) for those categories for which compensation is provided the Commissioner of Transportation shall reimburse the Corporation at a rate not less than the rate of reimbursement as the state shall receive from the federal government; and

(d) such Corporation enters into an agreement with the Commissioner of Transportation in connection with undertaking the work of removal, relocation, replacement or reconstruction which shall specify the amount or the bases of compensation that is to be provided toward the fair and reasonable cost of such removal, relocation, replacement or reconstruction.
The fair and reasonable cost of such removal, relocation, replacement or reconstruction shall mean the amount paid by such a Corporation properly attributable to the work of such removal, relocation, replacement or reconstruction of such facilities after deducting therefrom any betterment incorporated into the new facilities plus the salvage value and depreciation from the old facility determined by the established method utilized by the State. Nothing in this subdivision shall be construed to grant to the owner of such private facilities within the highway right-of-way on greater or new rights, other than as provided herein, to compensation for removals, relocations, replacements or reconstruction of such facilities in connection with work of construction, reconstruction or maintenance of State highway that existed prior to the effective date of the amendment to this subdivision and compensation to be paid hereunder is strictly limited as provided herein.”

and

WHEREAS, the Commissioner has determined that the above-captioned, federally-funded project will require the removal, relocation, replacement or reconstruction of the corporation facilities located within the highway right-of-way, that are hereinafter described; and

WHEREAS, a specific appropriation has been made for such purpose or the utility is within the right of way of an interstate highway, and the cost of such removal, relocation, replacement or reconstruction is part of the federally approved project cost; and

WHEREAS, the estimated fair and reasonable cost of such removal, relocation, replacement or reconstruction of Corporation facilities has been determined by the Corporation and approved by the Federal Highway Administration and by the Commissioner and is shown in “Appendix B”, attached hereto and made a part hereof; and

WHEREAS, the Corporation is desirous of having the work of removal, relocation, replacement or reconstruction of such facilities performed, in accordance with the provisions of this Agreement,

NOW, THEREFORE, in consideration of the mutual benefits moving to each of the parities hereto, and in pursuance of subdivision 24-b of Section 10 of the Highway Law, it is agreed as follows, viz:

1. General Description of Work. Such work herein contemplated consists generally of

and is more specifically described in the Utility work Agreement, plan and cost estimate which provide for this work, such data having been prepared by the Corporation, submitted to and duly approved by the Federal Highway Administration and Commissioner.

2. Time Schedule. Such work shall be undertaken and completed in accordance with the time schedule agreed upon between the State and the Corporation, and attached hereto and incorporated herein. The Corporation shall coordinate its activities with the state’s construction contractor so as to avoid unnecessary delays.

The Corporation agrees and understands that adherence to such time frames is essential to the orderly progression of the State highway project by the State’s contractor. In the event that the Corporation fails to relocate or adjust its facilities in accordance with the aforementioned time schedule, the Corporation understands that, under the provisions of common law or any applicable
statue, it may be responsible for failure to relocate or adjust its facilities in accordance with such agreed upon time frames. Where the Corporation is responsible for failure to relocate or adjust its facilities in accordance with the agreed upon time frames, the Corporation shall be liable directly to the State’s contractor for damages incurred as a result of delay in accordance with subdivision 3 of Section 11-102 of the General Obligation Law. Delays caused by forces beyond the control of the Corporation and where the Corporation is under emergency status shall not be included in delays for which the Corporation is responsible under this paragraph.

3. Method of Performance of Work. Such work shall be performed either (a) by the employment of the forces and the use of the equipment of the Corporation and by the use of any material on hand or necessary to be purchased by the Corporation, or (b), when consent therefor is given in writing by the Commissioner, by contract in conformity with NYSDOT Reimbursement Procedures. All work within the State Highway right-of-way shall be performed pursuant to a Highway Work Permit issued by the Department. If this method is deemed to be impracticable by the Corporation or Commissioner, then upon written consent of the Commissioner, such other method or combination of methods shall be employed as the Commissioner shall approve. The utility facilities shall be adjusted in accordance with this Agreement, as directed by the State’s Engineer in Charge, without causing delay to the State’s Contractor, and before completion of the State’s contract.

4. Reimbursement of Costs. Upon written notice from the Corporation to the Commissioner that such work has been completed, and upon final inspection and acceptance thereof by the State, the State shall reimburse the Corporation for the cost of the work. The State shall not be obligated for an estimated sum in excess of $__________, unless a Supplemental Agreement is made therefor. All items included by the Corporation in said record of costs shall be in conformity with the “Utility Reimbursement Procedure Manual”. Such items shall be subject to final determination by the Commissioner, and the Commissioner reserves the right to reduce or eliminate any of such items as he may deem such action to be proper in the best interest of the State.

As a condition of and prior to payment by the State of the aforesaid reimbursement, the Corporation shall furnish to the State a release, (From A226), forever discharging the State from any and all claims, damages, or causes of action arising from or growing out of the acts or failures to act of the Corporation, its agents, employees, contractors, subcontractors, or representative under this Agreement.

5. Maintenance of Facilities. The Corporation shall continue to maintain such relocated or replacement facilities and such facilities shall continue to be the sole and primary obligation of the Corporation for so long as such utilities shall remain in existence.

6. Other Contracts Relative to Work. The Commissioner reserves the right to let other contracts in connection with the above-subject highway project. The Corporation shall properly connect and coordinate its work with that of such other contractors. Temporary structures, equipment or materials of the Corporation, its agents or contractors, shall be located where directed and if not so located they shall be moved when so directed.

7. Access To and Control of Work. The State shall have access to all phases of such work during its prosecution and to records pertaining thereto, including time records, payrolls, invoices, work orders, etc.

8. Unsatisfactory Work; Ambiguity of Plans. Should such work, or progress of same, at any
time be unsatisfactory to the State, that fact will, without unnecessary delay, be brought to the attention of the Corporation which shall take remedial action promptly. In the event that the Commissioner determines that such remedial action is unsatisfactory or has not occurred within a reasonable period of time, he/she may call upon the surety to complete the work in accordance with the provisions of this agreement or pursue such other applicable remedies as are provided under Section 40 of the Highway Law.

Where the work is completed by the State or its agents, the State shall be responsible, under the provisions of the Court of Claims Act, to the Corporation, its officers, agents, employees and representatives for all claims, damages, or causes of action arising from or growing out of acts or failures to act of the State, its agents, employees, contractors, subcontractors, or representatives under this Agreement. It is agreed, that the surety, if called upon to act as a completing contractor, is an agent of the Corporation and not the State, and that the State is not responsible for claims, damages or causes of actions arising from or growing out of acts or failures to act of the surety, its agents, employees, contractors, subcontractors, or representatives.

In case of any ambiguity in the plans, specifications, or maps, or between them, the matter must be immediately submitted to the State which shall adjust the same, and its decision in relation thereto shall be final and conclusive upon the parities.

9. Retention of Records. All records established by the Corporation pursuant to this agreement shall be maintained by the Corporation for a period of not less than three years after payment of the final voucher by the Federal Government to the State in connection with a federal-aid project or the custody of such records shall be turned over to the Commissioner. Such records shall be available for inspection by representatives of the State upon reasonable notice during regular business hours.

10. Contract Clauses required in Work. In connection with any contract let by the Corporation for all or any part of such work, it is understood between the parties hereto that the contract shall comply with all applicable Federal, State and local laws, copies of the Federal and the State required contract provisions appearing as Schedule A and Schedule B, attached hereto.

11. Worker’s Compensation Insurance. The Corporation shall procure and maintain, until final acceptance by the State of the work covered by this Agreement, a policy, which shall be delivered to the State, covering the obligations of the Corporation in accordance with the provisions of the Worker’s compensation Law, covering all operations under this Agreement, whether performed by the Corporation or by its subcontractors. Before commencing the work, the Corporation shall furnish to the Commissioner a certificate of insurance in form satisfactory to the Commissioner showing that it has complied with this paragraph. This Agreement shall be void and of no effect unless the Corporation making performing same shall secure compensation for the benefit of, and keep insured during the life of said Agreement, such employees in compliance with the provisions of the Worker’s Compensation Law. (State Finance Law Section 142).
12. Liability Insurance. The Corporation shall procure and maintain until final acceptance by the State of the work covered by the Agreement, insurance for liability for damages imposed by law, of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the state, covering all operations under the Agreement, whether performed by it or by subcontractors. Before commencing the work, the Corporation shall furnish to the Commissioner a certificate or certificates of insurance in form satisfactory to the Commissioner showing that it has compiled with this paragraph, which certificate or certificates shall provide that the policies shall not be changed or canceled until 30 days’s written notice has been given to the Commissioner. The kinds and amounts of insurance are as follows

<table>
<thead>
<tr>
<th>Bodily Injury Liability</th>
<th>Property Damage Liability</th>
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<tbody>
<tr>
<td>Each Occurrence</td>
<td>Each Occurrence</td>
</tr>
<tr>
<td>$1,000,000</td>
<td>$500,000</td>
</tr>
</tbody>
</table>

for all damages arising during the policy period, shall be furnished in the types specified, viz:

(1). Liability insurance issued to and covering the liability for damages imposed by law upon the Corporation with respect to all work performed by it under this agreement.

(2). Contractor’s liability insurance issued to and covering the liability for damages imposed by law upon (a) each Contractor with respect to all work performed by said contractor under this agreement for or with the Corporation, and (b) each subcontractor with respect to all work performed by said subcontractor for or with the said contractor.

(3). Protective liability insurance issued to and covering the liability for damages imposed by law upon the Corporation with respect to all work under the agreement performed for the Corporation by its contractors or their subcontractors.

(4). Completed operations’ liability insurance issued to and covering the liability for damages imposed by law upon the Corporation and its contractors or their subcontractors arising between the date of final cessation of work and the date of final acceptance thereof, out of that part of the work performed by each.

13. Funds Available. It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the moneys available to the State and no liability on account thereof shall be incurred by the State beyond moneys available for the purposes hereof.

14. Assignment or Other disposition of Contract. The corporation agrees not to assign, transfer, convey, sublet or otherwise dispose of this contract or any part thereof, or of its rights, title or interest therein, or its power to execute such contract, to any person, company, or corporation without previous consent in writing of the Commissioner of Transportation.

15. General Operating agreements. Where the Corporation and the State have previously entered into General Operating Agreement, and there is a conflict between the terms of, or the procedures established by such General Operating Agreement and this Agreement, the terms and procedures of this Agreement shall take precedent and govern.
IN WITNESS WHEREOF, The State has caused this instrument to be signed by the said Commissioner of Transportation, and the Corporation has caused this instrument to be signed by its duly authorized Officer.

This Agreement shall commence on _____________, 20__, and shall expire year(s) from that date unless a Supplemental Agreement is entered into extending the term of this Agreement.

Contract Number:

Agency Certification - “In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other copies of this contract.”

THE PEOPLE OF THE STATE OF NEW YORK

by __________________________

COMMISSIONER OF TRANSPORTATION

______________________________
CORPORATION

by __________________________

APPROVED AS TO FORM

______________________________
Attorney General

APPROVED

______________________________
State Comptroller

STATE OF NEW YORK )

)ss:

COUNTY OF )

On this _____________ day of ______________, 20__, before me personally came ________________, to me know, who, being by me duly sworn, did depose and say that he/she resides in the ______________________, New York; that he/she is the ________________ of the ________________, the Transportation Corporation described in and which executed the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of Said Corporation

______________________________
Notary Public
13G.1.4.2 Supplemental Agreement, Form A255 (6/03)
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SUPPLEMENTAL AGREEMENT
TO PROVIDE COMPENSATION FOR THE REMOVAL,
RELOCATION, REPLACEMENT OF RECONSTRUCTION
OF FACILITIES OWNED BY A TRANSPORTATION
CORPORATION IN CONNECTION WITH PROJECT
PURSUANT TO SECTION 10, SUBDIVISION 24-b
OF THE HIGHWAY LAW.

This Supplemental Agreement made this day of  , 20 , by and between The People of the State of New York, acting by and through the Commissioner of Transportation (hereinafter referred to as “Commissioner”), having his principal office in the Administration and Engineering Building, 1220 Washington Avenue, State Campus, in the City and County of Albany and State of New York, and , a corporation organized pursuant to the Transportation Corporations Law or operating as a Transportation Corporations Law or operating as a transportation corporation (hereinafter referred to as “Corporation”), whose offices are located at .

WHEREAS, the parties entered into an agreement dated , 20 , under which the Commissioner agreed to provide compensation for the removal, relocation, replacement or reconstruction of certain facilities owned by the Corporation, in an amount not to exceed $ , except as such sum might be increased by a supplemental agreement, and

WHEREAS, additional work that was not contemplated in the original agreement was necessary, and

WHEREAS, he said sum of $ set forth in Paragraph of the agreement dated , 20 , is therefore, inadequate for the purposes thereof,

1. The amount of $ set forth in Paragraph of the agreement dated , 20 , is hereby increased to $ .

2. Except as provided in this Supplemental Agreement, the terms and provisions of the said agreement dated , 20 , are and shall continue to be in full force and effect.

IN WITNESS WHEREOF, THE State has caused this instrument to be signed by the said Commissioner of Transportation, and the Corporation has caused this instruments to be signed by its duly authorized Officer.

This Agreement shall commence on , 20 , and shall expire year(s) from that date unless a Supplemental Agreement is entered into extending the term of this Agreement.

Contract Number:

Agency Certification - “In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other copies of this contract.”
THE PEOPLE OF THE STATE OF NEW YORK

AS APPROVED AS TO FORM:

Commissioner of Transportation

Attorney General

Corporation

APPROVED:

by: ____________________________

State Comptroller

STATE OF NEW YORK

COUNTY OF

On this _________ day of ___________ 20 , before me personally came
___________________ to me known, who, being by me duly sworn did depose and say that he resides
in the __________________________ , New York; that he is the _______________ of the
______________________________, the Transportation Corporation described
in and which executed the above instrument; and that he signed his name hereto by order of the
Board of Directors of said Corporation.

______________________________

Notary Public
13G.1.4.3 General Release, Form A226 (6/03)
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A226 (6/03) NEW YORK STATE DEPARTMENT OF TRANSPORTATION
GENERAL RELEASE UNDER AN AGREEMENT
TO PROVIDE COMPENSATION FOR THE REMOVAL
RELOCATION, REPLACEMENT OR RECONSTRUCTION
OF FACILITIES OWNED BY A TRANSPORTATION
CORPORATION IN CONNECTION WITH PROJECT

PURSUANT TO SECTION 10, SUBDIVISION 24-b OF THE HIGHWAY LAW

WHEREAS, a corporation organized pursuant to the Transportation Corporations Law or operating as a transportation corporation, (hereinafter referred to as “Corporation”), whose offices are located at

_____ entered into a certain Agreement with the State of New York, acting by and through the Commissioner of Transportation and the Director of the Budget dated______________, entitled “Agreement to Provide Compensation for the Removal, Relocation, Replacement or Reconstruction of Facilities Owned by Transportation Corporation in connection with Project” ________________ ________________, and

WHEREAS, the general description of the work required of the Corporation under the said Agreement consisted of ________________, and

WHEREAS, all work under the Agreement has been performed by the employment of the forces and the use of the equipment of the Corporation or by contract between the Corporation and others, and accepted by the State of New York, and

WHEREAS, as a condition of and prior to reimbursement by the State of New York of the funds expended by the Corporation for said work under said Agreement, the Corporation is required to deliver a certain release,

NOW, THEREFORE, Know All Men by These Presents that ________________, the Transportation Corporation Owner hereinbefore mentioned, acting by and through (name)________________________________________ (title)________________________________________, in consideration of the sum of _______________________ dollars ($ __________) to it in hand duly paid by the said State of New York, the receipt whereof is hereby confessed and acknowledged, and which sum is in complete and full reimbursement for the work performed by the said Corporation under the said Agreement, does for itself, its successors and assigns, in all things fully release and discharge the said State of New York, its officers, agents and employees, from all claims, demands and liabilities of every kind in nature, legal or equitable, occasioned by or arising out of the work performed by said Corporation under the said Agreement or occasioned by or arising out of the work performed by or on behalf of the Corporation under the said Agreement.
IN WITNESS WHEREOF, the said Transportation Corporation has caused this instrument to be signed by its__________, and its corporate seal to be hereunto affixed the __________day of__________.

CORPORATE SEAL

Transportation Corporation

by _________________________

(TITLE)

STATE OF NEW YORK )

) ss:

COUNTY OF )

On this __________day of __________, in the year 20__, before me personally came______________________, to me know, who, being by me duly sworn, did depose and say that he/she resides in the__________________________, New York; that he/she is the______________________, of the______________, the transportation corporation described in and which executed the above instrument; and that he/she knows the seal of said transportation corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said transportation corporation, and that he/she signed his/her name thereto by like order.

_____________________

Notary Public
13G.1.5 **Contract Requirements**

Refer to Sections 13G.1.5.1 and 13G.1.5.2 for guidance regarding contract requirements with are to be attached to the various agreements.

13G.1.5.1 CONR 335 (8/89) Appendix A Standard Clauses for All New York State Contracts

CONR 335 shall be attached to the following agreements regardless of funding:

• Municipal Agreement

• Agreement to Provide Compensation for the Removal, Relocation, Replacement or Reconstruction of Utility Facilities and Appurtenances Located on Privately Owned Property

• Reimbursement Agreement
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APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS

The parties to the attached contract, license, lease amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State’s written consent are null and void. The Contractor may, however, assign its right to receive payment without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLERS APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $15,000 ($20,000 for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. The contractor agrees to comply with all applicable Federal, State and local Civil Rights and Human Rights laws with reference to employment opportunities, and the provision of services. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional nondiscrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor’s behalf.
8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State’s right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION:

(a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.

All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION.

(1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, AESOB, Albany, New York 12236.
12. **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN**: In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, mayor repair or renovation of real property and improvements thereon for such project, then:

(a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b" and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to:

(i) work, goods or services unrelated to this contract or (a) employment outside New York State; or (ii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of his section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. **CONFLICTING TERMS**. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof and the terms of this Appendix A, the terms of this Appendix A shall control.

14. **GOVERNING LAW**. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. **LATE PAYMENT**. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION**. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized).

17. **SERVICE OF PROCESS**. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it be registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State’s receipt thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.
13G.1.5.2 Form FHWA 1273 Modified Required Contract Provisions Federal-aid Construction Contracts

Form FHWA 1273 shall be attached to the following agreements when the work will be federally funded:

- Municipal Agreement
- Agreement to Provide Compensation for the Removal, Relocation, Replacement or Reconstruction of Utility Facilities and Appurtenances Located on Privately Owned Property
- Reimbursement Agreement
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ATTACHMENTS

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. HAS BEEN DELETED

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. Selection of Labor: During the performance of this contract, the contractor shall not:

   a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment , or

   b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

   a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

   b. The contractor will accept as his operating policy the following statement:

      "It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade.
and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through
a contractor’s association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed at qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:
   i. The number of minority and non-minority group members and women employed in each work classification on the project;
   ii. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
   iii. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
   iv. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain
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identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of $10,000 or more and that it will retain such certifications in its files.

IV. HAS BEEN DELETED

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. HAS BEEN DELETED

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under the applicable wage determination incorporated into the contract.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

   i. that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

   ii. that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

   iii. that each laborer or mechanic has been paid not less that the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

   e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

   f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

   g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than $1,000,000 (23 CFR 635) the contractor shall:

   a. Become familiar with the list of specific materials and
supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor’s option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor’s own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS
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18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more that $10,000 or imprisoned not more than 5 years or both."  

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions: (Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered
h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

"Witholding for Unpaid Wages – All laborers and mechanics employed or working upon the site of the work shall be paid unconditionally without subsequent deductions or rebate on any account except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3) the full amounts due at time of payment. The provisions of Title 18 U.S.C. Section 874 apply to this contract.

The State highway agency contracting officer may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the contractor or any subcontractor on the work the full amount of wages due."
13G.1.6 Release Form for Adjustment of Private Facilities Included in the State’s Contract
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REPLACEMENT OF ELECTRICAL, GAS, TELEPHONE, WATER OR
SEWER UTILITY CONNECTIONS TO PRIVATE PROPERTY
(Section 10, Subdivision 24-b)

Region # ___    State Highway # ____    Contract  PIN____________
F.A. Project # ___________ City _______________ County _________________

The undersigned owner of private lands located between the _________side of station ______
and the_________ side of Station ____________
and being further identified as ______________________________________
_____________________________________
(address)

hereby requests that the Department of Transportation cause the replacement of the electrical,
gas, telephone, water and/or sewer utility connections to said private lands made necessary by
the construction or reconstruction of ______________________________
(project name)
S.H._________in accordance with Section 10, Subdivision 24-b of the Highway Law of the
State of New York.

The Commissioner has the power when he deems it necessary as a result of a Transportation
project, to provide for the relocation, removal, or adjustment to privately, publicly or cooperatively
owned utility facilities, located on privately owned property. The expense of such work shall be
a proper charge against funds available for such Transportation project.
In addition, the Commissioner is further empowered to provide for the relocation, removal, or adjustment of aforementioned utility facilities, to the extent he deems it equitable, when such facilities are located with the highway right-of-way.

For the portion of the connections within the highway right-of-way the Commissioner of Transportation has determined that the owner (is) (is not) responsible for any of the expense of the replacement (delete that which is not applicable). If the owner is responsible, that amount is $_______________, which amount is to be paid to the State under terms of a separate agreement.

For the portion of the connections on private property, the State is responsible for the expense of the in-kind replacement.

The owner of the utility connections agrees to take ownership and shall be responsible for the maintenance thereof after the work has been completed. In addition, the owner agrees to release the State of New York, its officers, agents and employees from all claims, demands and liabilities occasioned by or arising out of the work performed by the State's contractor.

In presence of: Date: __________ _________________ L.S.

_________________________________ _______________________ L.S.

_________________________________ _______________________ L.S.

_________________________________ _______________________ L.S.

PERSONAL ACKNOWLEDGMENT:
STATE OF NEW YORK    )
                           ) SS:
COUNTY OF                )

On this ________ day of ____________, 20___ before me personally
 came______________________________________, to me known, who being by me duly sworn,
did depose and say that (he) (she) resides in ________________________________
and that (he) (she) is the owner of the above described property, and is the person who executed
the foregoing instrument.

____________________________________

NOTARY PUBLIC

PARTNERSHIP ACKNOWLEDGMENT:
STATE OF NEW YORK    )
                           ) SS:
COUNTY OF                )

On this________ day of ____________, 20____, before me personally
 came______________________________________, to me known, who being duly sworn,
did depose and say that (he) (she) resides in ________________________________,
that (he) (she) is the_____________________of the__________________________,
the partnership described in and which executed the foregoing instrument;
and that (he) (she) signed (his) (her) name thereto by like order.

____________________________________

NOTARY PUBLIC
CORPORATE ACKNOWLEDGMENT:

STATE OF NEW YORK  
COUNTY OF  

On this day of , 20, before me personally came , to me known, who being duly sworn did depose and say that resides in , that is the of the , the corporation described in and which executed the foregoing instrument; and that signed (his) (her) name thereto by like order.

__________________________

NOTARY PUBLIC

Approved for the Department of Transportation

__________________________
Mr./Ms. __________________________
_______________________________
_______________________________

RE: PIN_____; Route____;
_______________________________

Dear Mr./Mrs.

Please be advised that the New York State Department of Transportation is planning to reconstruct Route _____. The work will include roadway paving, relocation of utility poles and necessary adjustments to underground utilities serving homes and commercial business.

Your property at ________________________________ has been identified as requiring adjustment and/or re-connection of the existing underground electrical service.

The cost of all work necessary to reestablish your service, "in-kind", will be borne by the State of New York, Department of Transportation. Our Contractor, in cooperation with your Power Company, ________________________________, will complete the work in conformance to the Fire Underwriters Code.

We anticipate construction will commence during the __________ of 200__. Our Engineer-in-Charge, assigned to a field office on the Project, will direct and coordinate the work. Our Engineer will contact you early in the process to incorporate your specific needs concerning a short interruption to electrical service.

Attached for your approval and notarized signature(s), are release forms that will permit the State's Engineering personnel, the State's Contractor and the Utility Company, to enter upon your property to accomplish the necessary work. Please return three sets of original executed forms to this office in the stamped, pre-addressed envelope provided, by __________, 200__.

Please call me at if I can be of further assistance.

Very truly yours,

Region Utilities

cc: __________, EIC, D_______, Construction, Room

Utilities Project File

Ugrertrans.wpd
Mr./Ms. [Address]

RE: PIN [Redacted]; Route [Redacted]

Dear Mr./Mrs.

Attached please find a fully executed copy of the Release allowing the re-establishment of electric service to property at [Redacted], during reconstruction of the subject Project.

The cost of all work necessary to reestablish your service, "in-kind", will be borne by the State of New York, Department of Transportation. Our Contractor, in cooperation with [Redacted], will complete the work in conformance to the Fire Underwriters Code.

We anticipate construction will commence shortly after the Contract Award Date of [Redacted], 200[Redacted]. Our Engineer-in-Charge, assigned to a field office on the Project, will direct and coordinate the work. Our Engineer will contact you early in the process to incorporate your specific needs concerning a short interruption to electrical service.

Please call me at [Redacted] if I can be of further assistance.

Very truly yours,

Region Utilities

cc: Richard W. Lee, DQAB, Utility Unit, Room 414, Bldg. 5, EIC, D[Redacted], Construction, Utilities Project File

Ugreltransfe.wpd
13G.2 SUBCONTRACTING BY UTILITIES

This section prescribes guidelines and the necessary contract requirements and procedures should the Utility elect to subcontract all or part of the utility facility relocation or adjustment work.

13G.2.1 Guidelines

- The bid letting should be conducted in accordance with state and local laws and good administrative practice.
- Contracts must be based upon unit prices where practicable and bidding must be on a common basis.
- When lump sums are unavoidable and are so solicited with the consent of the Region, the contractors will be required, where practicable, to furnish adequate breakdown of all lump sum proposals.
- The consent of the Commissioner must be obtained before the award of the contract to a subcontractor and the use of Form A 220 will satisfy this requirement. Refer to Section 13G.3.9 for an illustration of Form A 220.
- Before the Utility is authorized to commence work to be performed under a contract, the Department requires three copies of each of the following:
  - Proof of publication (if a municipality), or list of invitees (if a privately owned public utility).
  - Certified copies of the tabulation of all bids received.
  - Duplicate originals or photostatic copies of each bid.
  - Proposal form and specifications.
  - Executed contract between the municipality or Utility and the Contractor.
13G.2.2 **Continuing Contracts**

The owners of public utility facilities are seldom staffed to make extensive changes or relocations, and for that reason, must frequently subcontract a major portion of their work of this nature. Contracts for this work should be awarded on the basis of open competitive bidding, where feasible, but in certain instances the necessary work is of a specialized nature which can only be safely performed by specialists. In those instances, the owners ordinarily proceed under a continuing contract. In certain instances, other approved work of a more routine nature is also authorized by the same type of contract.

It is Department policy to recognize continuing contracts. Public Utility Corporations operating under an annual or other type of long term labor contract or agreement may be reimbursed for the reasonable cost of work performed thereunder by submitting three copies of the following as appropriate:

- The complete contract.
- If the contract has been entered into by competitive bidding:
  - List of invitees.
  - Certified tabulation of bids.
  - Copies of each bid.
  - Proposal form and specifications.
- If the award was not based upon competition, statement explaining the basis of the award.
13G.3 CONTRACT APPROVAL AND BILLING FOR REIMBURSEMENT

In the interest of economy, efficiency, and uniformity, the Department has adopted the following forms for use by Utilities seeking reimbursement:

- Summary Sheet FIN 223c (6/03)
- Schedule A Labor Statement, Form FIN 224b (6/03)
- Schedule B Materials From Owner’s Stores, Form FIN 225b (6/03)
- Schedule C Owner’s Equipment Charges, Form FIN 226b (6/03)
- Schedule D Contract Payments and Direct Purchases, Form FIN 227b (6/03)
- Schedule E Material Retired and Salvaged From Existing and Temporary Facilities, FIN 228a (6/03)
- Schedule F Depreciation, Form FIN 229b (6/03)
- Schedule F-1 Depreciation, Form FIN 230b (6/03)
- Schedule F-2 Depreciation, Form FIN 232 (6/03)
- Schedule G Betterments, Form FIN 231b (6/03)

Guidance regarding the use of these forms is provided in Sections 13G.3.1 through 13G.3.8 and the forms are illustrated in Section 13G.3.9. Each form is self-explanatory and the careful observance of all notes and instructions provided on the form should provide sufficient detail to meet State audit requirements. The State, however, reserves the right to require additional substantiating data, including the right to examine the related records of the Utility. Utilities are requested to use these forms unless written permission is obtained from the Department to use their own forms.

These forms have been designed, insofar as possible, to provide a complete billing of the cost of any project likely to be encountered for changes to utility facilities and yet not demand any information which the Utility would not require for its own records. Spaces are provided on the forms to indicate whether the submission is an estimate or billing, Federal-aid or State funded, and the type of work contemplated or performed. These blocks should be checked accordingly. The Federal-aid blocked should be checked only if Federal funds are participating in the cost of the utility facility relocation.

All estimates and bills should be broken down to show actual or estimated (as appropriate) costs for the following general categories of work:

- Preliminary Engineering
- Removal of existing facilities
- Installation of temporary facilities
- Removal of temporary facilities
- Installation of new permanent facilities
- Expenses incurred for rights of way

Separate supporting schedules should be used for each of the above types of work. Retirement and salvage credits should be segregated as between temporary facilities and permanent facilities.
13G.3.1 **Summary Sheet Form FIN 223c (6/03)**

When the supporting billing schedules that show the separate costs for the six general categories of work have been completed, the information thus provided must be consolidated on a billing Summary Sheet. The total net cost as shown on the Summary Sheet will be the actual cost of the project. When used for billing, certifications must appear on the Summary Sheet and in every instance, executed by the authorized officials.

In the event there are substantial variations between the estimate and the actual bill, an explanation must accompany the bill or be explained thereon.

Municipalities may submit intermediate accounting statements of expenditures provided the amount thereof is $5,000 or more. Payment will be advanced at 90% of the amount billed.
13G.3.2 **Schedule A Labor Statement, Form FIN 224b (6/03)**

Each class of labor must be billed separately - preferably at actual payroll rates. Reasonable composite rates, based upon actual rate, including various allowances, taxes, benefits, insurance, etc., paid by owner, will be accepted if such billing is in accordance with the Utilities established practice for company work. A sample breakdown of these various allowances may be required.

A rate representative of the actual cost of construction overhead, such as general supervisory and engineering costs, general offices salaries and expense, applicable to the project will be reimbursed.

Where the owner's record keeping system is such that overhead costs are not accumulated or cannot be readily developed, an allowance will be made, upon approval by the Regional Director, as follows:

- 15% may be added to the salaries and wages charged to the job and shall cover and be in lieu of the cost to the owner of:
  - All salary and expense of any general supervising officer or employee, either in the field or office. This is to apply to all attorneys, district engineers, general office engineers, chief draftsperson, general or sectional superintendents, supervisors, maintenance engineers, general foremen or any other person above foreman regularly employed having supervision over any branch of operation or maintenance.
  - All stenographic or clerical forces employed in general, divisional or district offices handling matters referring to the type of work covered by the agreement.
  - All charges for minor equipment such as small tools and other miscellaneous materials, supplies and services.
  - All drafting room accessories such as paper, blue printing, etc.

**Note:** If the Utility obtains approval to use the 15% labor allowance, the Utility should also use the 10% stores handling allowance (discussed in Section C) on materials. The application of actual overhead in one instance and the allowance in another on the same billing is not acceptable.

On Federal aid projects, where federal funds are participating in the utility facility relocation, only actual overhead costs may be billed and reimbursed.
13G.3.2.1 Professional Service - Attorneys

Reimbursement will not be made for incidental legal services rendered by regularly employed attorneys or attorneys serving under an annual retainer.

In the event that it is necessary to secure the services of an attorney to perform necessary work in connection with facility changes covered herein, the Regional Director shall first be advised of this fact in writing. The extent of the work to be performed shall be outlined and the expenditures involved shall be stated. The Regional Director’s written approval shall be obtained before any commitment is made.

13G.3.2.2 Professional Service - Engineers

The owner, if a private corporation, will be reimbursed for all direct engineering costs. Incidental engineering costs will be covered by the actual overhead rate.

The salary of engineers regularly employed by a municipality will be reimbursed on the basis of time actually expended on the project at payroll rates plus necessary expenses actually incurred.

If the owner does not have a qualified engineer on their payroll, the same procedure as required for Attorneys will apply. Reimbursement for such engineering services will be in accordance with standards approved by the Department.

13G.3.3 Schedule B Materials From Owner’s Stores, Form FIN 225b (6/03)

New material from stock must be charged at actual cost to the Utility. The computation of costs shall include the deduction of all offered discounts and allowances.

Used material shall be billed at the value at which carried on the Utility’s books.

A rate representative of actual stores expense, or where the Utilities records do not accumulate the actual costs applicable to stores and approval is obtained from the Regional Director, an allowance of 10% may be added only to the actual cost of miscellaneous materials generally stocked and which have been delivered in the Utilities storehouse or store yard and there rehandled and reshipped to the construction work. Actual cost of transportation from storehouse or store yard to the site of work is properly chargeable to the project.

No percentage shall be charged to the cost of materials purchased and shipped directly to the site of the construction. The actual cost of such materials, plus necessary transportation charges will be the maximum allowed and should be charged on Schedule D.

On Federal-aid projects where federal funds are participating in the utility facility relocation, the provision of 23 CFR 645.117 (e) must be observed.
13G.3.4 Schedule C Owner’s Equipment Charges, Form FIN 226b (6/03)

Charges for use of a Utility’s equipment must be billed at rates used in computing costs of company work. (See note below). Average annual or monthly rates will be accepted if the standard practice of the owner is based upon the use of such averages. Billings from maintenance, repairs or parts will not be accepted. If oil and fuel are not included in the rates used, the actual amount used should be billed at actual cost.

Equipment rental will be allowed only for the time that the equipment is actually and necessarily held on the job, as determined by the Regional Director, plus time in transit from its regularly assigned base.

Note: Municipally owned equipment may be charged at actual rental rates or at the rates shown in the current equipment rental schedule issued by NYSDOT. Equipment rented by the Municipality will be reimbursed at the actual rental rate charged to the municipality by the vendor.

On Federal aid projects 23 CFR 645.117 (f) will govern reimbursement with the exception that in the case of municipalities, the Department’s current equipment rental schedule is also acceptable and may be used in lieu of developing actual rental rates.

Cost of transportation of the Utility’s employees to and from the site of the project will be reimbursed on the basis of the Utility’s accepted practice.
§13G.3.6 Schedule E Material Retired and Salvaged From Existing and Temporary Facilities, Form FIN 228a (6/03)

A reasonable salvage credit consistent with the Utility's practice of determining salvage value shall be given for all salvageable materials recovered from facilities replaced and from temporary facilities.

If a project involves substantial retirements, the value of the salvage before its removal must, if possible, be determined jointly by a representative of the Utility and the Department.

The cost of loading salvaged material, together with the cost of transportation thereof to the Utility's storehouse, plus the cost of unloading, shall constitute the complete accounting of expenses connected therewith. The cost of salvage shall not exceed the value of the material salvaged.
13G.3.7 **Depreciation**

Credit to the highway project will be required for the accrued depreciation of a utility facility being replaced, such as a building, pumping station, filtration plant, power plant, substation, or other similar operation unit. Such accrued depreciation is the amount based on the ratio between the period of actual length of service and total life expectancy applied to the original cost.

In order to meet the requirements and practices of the various Utilities which will be reporting expenditures, it is necessary to provide different methods of computing depreciation. These methods are described in Sections 13G.2.7.1 through 13G.2.7.3.

13G.3.7.1 Schedule F Depreciation, Form FIN 229b (6/03)

Certain Utilities follow the practice of determining reproduction cost by trending the original cost to the date of removal by the use of Handy-Whitman or some other recognized cost index for the industry involved. Schedule F is designed to meet the requirements of this method of determining reproduction cost. The percent of increase shown in column 6 should, in all instances, apply to the Public Service Commission’s account of the facility and area involved. The index used and the year of replacement should be shown in the spaces provided for that purpose.

13G.3.7.2 Schedule F-1 Depreciation, Form FIN 230b (6/03)

This schedule should only be used with prior approval from the Design Quality Assurance Bureau, Design Support Services Section. Schedule F-1 is an alternative to Schedule F and provides for the determination of reproduction cost on the basis of present costs as determined by the use of actual cost incurred in connection with the project billed, or in the event that this means is impractical, by averages of actual costs of construction-like units over a recent period.

- Depreciation credits on pipe lines and other similar facilities used exclusively by the Utility in the conduct of their business.
- Depreciation credits will not be required on utility facilities of this nature if both of the following requirements are met:
  - Not a public service facility - which would mean not governed by a public regulatory commission such as the Public Service Commission, ICC, FCC, etc.
  - The service life of the line relocated has not been extended (i.e., the replacement is not expected to continue in operation for a longer period than the sections to which it is connected.

In order to qualify for exemption from the basic requirements for a depreciation credit, the owner of the facility involved must furnish a detailed statement explaining the basis for claiming exemption.
13G.3.7.3 Schedule F-2 Depreciation, Form FIN 232 (6/03)

This schedule shall be used to calculate the depreciation credit using the historical original cost:

- In lieu of Form FIN 229a (6/03) Schedule F - Depreciation or Form FIN 230a (6/03) Schedule F-1 Depreciation, and
- only in conjunction with projects on the State Highway system.

13G.3.8 Schedule G Betterments, Form FIN 231b (6/03)

This schedule is intended to cover the cost of any incidental additions or betterments which the owner may wish to incorporate in the work for their own benefit, which could not be readily segregated from the total cost. Included in this category would be additional capacity, better grade of materials than those retired, etc. Upgrading necessary to meet present day standards as required by Law, Rule, Code, etc., shall not be considered a betterment.

A brief description of the nature of any betterments shall be given in the space provided in the Schedule. If there are no additions or betterments involved, this should be so noted on the form.

The estimated cost of replacement in kind of utility facilities retired may be obtained by trending from the original cost or by the use of approved average unit costs based upon recent experience of the Utility. Sufficient detail must be submitted to permit checking.

Credit will be required for the cost of any betterments to the utility facility being replaced or adjusted except if the additions or improvements are:

- Required by the highway project,
- Replacement devices materials that are of equivalent standards although not identical, replacement devices or materials no longer regularly manufactured with next highest grade or size,
- Required by law under governmental and appropriate regulatory commission code.

Refer to Chapter 21 of this manual for additional guidance and requirements regarding betterments (e.g., the 15% additive for engineering and contingencies).
13G.3.9 **Forms**

Form A220c (6/03) should be used as discussed in Section 13G.2 to seek contract approval.

The forms listed below should be used for billing as discussed in Sections 13G.3.1 through 13G.3.8.

- Summary Sheet, FIN 223c (6/03)
- Schedule A - Labor Statement, FIN 224a (6/03)
- Schedule B - Materials From Owner’s Stores, FIN 225a (6/03)
- Schedule C - Owner’s Equipment Charges, FIN 226a (6/03)
- Schedule D - Contract Payments and Direct Purchases, FIN 227a (6/03)
- Schedule E - Material Retired and Salvaged From Existing and Temporary Facilities, FIN 228a (6/03)
- Schedule F - Depreciation, FIN 229a (6/03)
- Schedule F-1 - Depreciation, FIN 230a (6/03)
- Schedule F-2 - Depreciation, FIN 232 (6/03)
- Schedule G - Betterments, FIN 231a (6/03)
TO: R. W. Lee, Design Quality Assurance Bureau, 5-414
FROM: Regional Director, Regional Director
SUBJECT: SUB-CONTRACT APPROVAL
P.I.N.
PROJECT DESCRIPTION
FEDERAL AID PROJECT NUMBER (If applicable)
Contract D Number
DATE: February 27, 2003

In accordance with the policy of the New York State Department of Transportation which complies with Section 144 of the State Finance Law, competitive bids have been received to perform the following utility relocation work in connection with the above identified project:

Utility Name:

Description of Work:

Location of Work:

I approve of and seek your approval in awarding the contract to the low Bidder ______ ______________________________ , for $ ________________ .

This work is to be performed by Sub-Contract:

☐ Entered into by competitive bidding.
☐ Under an existing continuing contract.

This method has been selected because:

☐ It is to best interests of the State.
☐ The Utility is not adequately staffed or equipped to perform the work with its own forces.
☐ Other:

Approved:

Deputy Chief Engineer
(Design Division)

Date __________________________ (Forward 5 Copies)

A220c (6/03)
## SUMMARY SHEET

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These certifications must be filled in when this summary sheet is submitted for billing or advance payment.

I hereby certify that field inspections have shown that all major materials included in this statement (will be) (have been) installed and (will be) (are) properly chargeable to this project, that the credits included herein are reasonable and that all retirements and related Salvage are correctly shown.

Date: Regional Director:

I hereby certify that all amounts included herein (will be) (are) properly chargeable and (will be) (have been) necessarily incurred by the _______ in relocating its facilities only to the extent necessary to permit the completion of this project, and that such charges (will be) (are) billed on the basis of actual cost to the owner.

Date: ____________________________

Signature & Title
(Must be signed by duly authorized agent of owner)
**SCHEDULE A - LABOR STATEMENT**

* Check one:
  - □ FEDERAL-AID
  - □ STATE

Comptroller's Contract No.:
J.O. or W.O. No.:
Claimant:
Sheet _______ of _______ Sheets

* USE SEPARATE SHEET FOR EACH TYPE OF WORK

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<th>Title of Employee</th>
<th>Payroll Period</th>
<th>COST OF LABOR</th>
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<td>Rate</td>
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Sub total $       

List Allowances Applicable to Labor Only:

| Total - Labor and Allowances | $ | $ | $ |
| Total - Expenses             | $ | $ | $ |
| Grand Total                  | $ |   |   |
## SCHEDULE B - MATERIALS FROM OWNER’S STORES

Note: Show Purchases on Schedule D

*Check one:
3. Installation of temporary facilities ☐ □ FEDERAL-AID □ STATE
5. Installation of new permanent facilities ☐

* Use separate form for each type of work

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>QUANTITY</th>
<th>NEW OR USED</th>
<th>UNIT PRICES</th>
<th>AMOUNT</th>
<th>REMARKS</th>
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</tbody>
</table>

Sub-total
Add - % allowance on material from Company Stock
Total
SCHEDULE C - OWNER'S EQUIPMENT CHARGES

Note: Show Purchases/rentals on Schedule D

* Check one:
1. Preliminary engineering □  □ FEDERAL-AID  □ STATE
2. Removal of existing facilities □
3. Installation of temporary facilities □
4. Removal of temporary facilities □
5. Installation of new permanent facilities □
6. Expenses incurred for Right-of-Way □

* Use separate form for each type of work

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>SIZE OR CAPACITY</th>
<th>DATE USED</th>
<th>TIME USED</th>
<th>RENTAL RATE</th>
<th>AMOUNT</th>
<th>REMARKS</th>
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Total

Comptroller's Contract No.:  
J.O. or W.O. No.:  
Claimant:  
Sheet _____ of _____ Sheets
**SCHEDULE D - CONTRACT PAYMENTS & DIRECT PURCHASES**

* Check one:  
  1. Preliminary engineering  ☐  
  2. Removal of Existing facilities  ☐  
  3. Installation of temporary facilities  ☐  
  4. Removal of temporary facilities  ☐  
  5. Installation of new permanent facilities  ☐  
  6. Expenses incurred for Right-of-Way  ☐

* Use separate sheet for Each type of work.  
Note: Itemized statements or bills must be submitted to cover all direct payments listed.

<table>
<thead>
<tr>
<th>VOUCHER NO.</th>
<th>DESCRIPTION</th>
<th>CONTRACTOR OR VENDER</th>
<th>DATE OF PAYMENT</th>
<th>AMOUNT</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
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</table>

**TOTAL**

I certify that all charges listed hereon were necessarily incurred for this project, are reasonable, and have been paid in full.

Signed ________________________________  
Name and Title of authorized fiscal officer
# SCHEDULE E - MATERIAL RETIRED & SALVAGED FROM EXISTING AND TEMPORARY FACILITIES

* Check one:
  - ☐ FEDERAL-AID
  - ☐ STATE

## Comptroller's Contract No.:

## Job Order or Work Order No.:

## Claimant:

* Use a separate form for each type of work.

<table>
<thead>
<tr>
<th>RETIREMENT</th>
<th>SALVAGE CREDIT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong> DESCRIPTION **</td>
<td><strong>3</strong> CONDITION REUSABLE OR SCRAP</td>
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<td><strong>2</strong> QUANTITY **</td>
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**Description and quantities shown in columns 1 & 2 must be duplicated exactly in columns 2 & 3 on Schedule F, F-1, or F-2 depending on method used in computing reproduction cost. This information must be used in computing credit for accrued depreciation.**
I hereby certify that the original costs shown herein constitute the total book value of all property to be retired of this change; that the dates of original installation and anticipated removal are correctly shown; that the service life and depreciation rates are in each instance those accepted by the Public Service Commission and that the present reproduction cost has been obtained by the proper use of the above named indices and dates as shown in the accounts.

Date ___________________________ Signature and Title ___________________________

Note: This form should be used only when computing reproduction costs by trending from original cost by means of indices. When reproduction cost is to be obtained from unit prices or by other means, use Schedule F-1 or F-2.

<table>
<thead>
<tr>
<th>PSC ACCT' NO.</th>
<th>NO. OF UNITS</th>
<th>DESCRIPTION</th>
<th>YEAR INST</th>
<th>TOTAL ORIG. COST OF ALL PROPERTY RETIRED</th>
<th>PERCENT OF TRENDED INCREASE TO 20__</th>
<th>PRESENT REPRODUCTIO N COST (Cols. 5x6)</th>
<th>PER PSC</th>
<th>AVERAGE SERVICE LIFE-YRS.</th>
<th>PERCENT DEP'R.</th>
<th>ACCRUED DEPRECIATION (COL. 7)(COL. 9)</th>
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</thead>
<tbody>
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TOTALS

FIN 229b (6/03)

SCHEDULE F - DEPRECIATION

☐ FEDERAL-AID ☐ STATE

For use in connection with 5. Installation of new permanent facilities.

Comptroller's Contract No.:
Job Order or Work Order No.:
Cost Index Used:
For Year 20__ Claimant:
**SCHEDULE F-1 DEPRECIATION**

☐ **FEDERAL-AID**  ☐ **STATE**

For use in connection with 5. Installation of new permanent facilities.

Check One:

☐ Based upon this project  ☐ Based upon average of other recent projects

Statement of original cost, actual present reproduction cost and accrued depreciation thereon as applied to facilities retired.

<table>
<thead>
<tr>
<th>PSC ACC’T NO.</th>
<th>NO. OF UNITS</th>
<th>ITEMS OF PROPERTY RETIRED (FROM COLUMNS 1 &amp; 2 - SCHEDULE “E”)</th>
<th>PRESENT PRODUCTION COST</th>
<th>DEPRECIATION DATA</th>
<th>ACCRUED DEPRECIATION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>DESCRIPTION</td>
<td>YEAR INST</td>
<td>TOTAL BOOK VALUE</td>
<td>YEAR REP’L</td>
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I hereby certify that the original costs shown herein constitute the total book value of all property to be retired of this change; that the dates of original installation and anticipated removal are correctly shown; that the service life and depreciation rates are in each instance those accepted by the Public Service Commission and that the unit costs used on computing reproduction costs reflect the experience of the ________________________ for the period shown.

REMARKS:

Date ________________________  Signature and Title ________________________
SCHEDULE F-2 DEPRECIATION

☐ FEDERAL-AID ☐ STATE

Comptroller’s Contract No.:  
Job Order or Work Order No.:  
Cost Index Used:  
For Year 20  
Claimant:  

For use in connection with 5. Installation of new permanent facilities.

Note: This form should be used only when computing depreciation costs using historical original cost solely.

<table>
<thead>
<tr>
<th>PSC ACC’T NO.</th>
<th>ITEMS OF PROPERTY RETIRED (FROM COLUMNS 1 &amp; 2 - SCHEDULE “E”)</th>
<th>YEAR INST</th>
<th>TOTAL ORIG. COST OF ALL PROPERTY RETIRED</th>
<th>PER PSC</th>
<th>ACCRUED DEPRECIATION (COL. 5 X COL. 7)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NO. OF UNITS</td>
<td>DESCRIPTION</td>
<td>AVERAGE SERVICE LIFE-YRS.</td>
<td>PER CENT DEPR.</td>
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I hereby certify that the original costs shown herein constitute the total book value of all property to be retired of this change; that the dates of original installation and anticipated removal are correctly shown; that the service life and depreciation rates are in each instance those accepted by the Public Service Commission and that the present reproduction cost has been obtained by the proper use of the above named indices and dates as shown in the accounts.

_________________________ ______________________________
Date Signature and Title
**SCHEDULE G - BETTERMENTS**

☐ FEDERAL-AID  ☐ STATE

For use in connection with 5. Installation of new permanent facilities.

Note: This form is to be used in reporting betterments desired by the owner.

<table>
<thead>
<tr>
<th>Description of Material Installed</th>
<th>Amount</th>
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</table>

Total expenditures for material installed $ ________________

**ESTIMATED COST OF REPLACEMENT IN KIND OF ORIGINAL FACILITIES**

Describe basis and show general computation below:

<table>
<thead>
<tr>
<th>Total cost of replacement in kind of original facilities</th>
<th>$ ________________</th>
</tr>
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</table>

**BETTERMENT** $ ________________