

**MEMORANDUM OF AGREEMENT****For In-Contract Utility Relocation****Dominion Energy Gas Distribution**

Carolina Crossroads I-20/I-26/I-126 in Lexington and Richland Counties

**SCDOT Project ID P039720**

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This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between the South Carolina Department of Transportation (hereinafter referred to as “**SCDOT**”) and Dominion Energy Gas Distribution (hereinafter referred to as “**UTILITY**”) (collectively “the **Parties**”) to ensure the successful completion of the gas facilities relocation for the below described Project:

This document is to serve as a Memorandum of Agreement as to the specific responsibilities of **UTILITY** and **SCDOT** in completing this Project and associated Utility Work.

**Section I – Definitions**

1. The term “Project” shall refer to **SCDOT**’s Project along Carolina Crossroads I-20/I-26/I-126 in Lexington and Richland Counties, specifically, Phase 3, I-20/26/126 System Interchanges reconstruction project.
2. The term “Utility Work” shall refer to an adjustment necessitated by **SCDOT**’s Project of a public gas system facility by removing and reinstalling the facility; a move, rearrangement, or change of the type of existing facilities; necessary safety and protective measures; or the construction of a replacement facility that is both functionally equivalent to, but not including any betterment of, the existing facility that is necessary for the continuous operation of the system’s service.

**Section II - Agreements by the Parties**

1. The Utility Work shall be included in **SCDOT**’s contract(s) for the design and construction of the Project.
2. The Utility Work shall be designed by a designer approved by **UTILITY** and licensed and qualified to perform the Utility Work. **SCDOT**’s contractor will either select the designer to design the Utility Work from **UTILITY**’s list of preferred designers, or will apply to become qualified by **UTILITY** in order to self-perform.
3. The Utility Work shall be constructed by a contractor approved by **UTILITY** and licensed and qualified to perform the Utility Work. **SCDOT**’s contractor will either select the contractor to perform the Utility Work from **UTILITY**’s list of preferred contractors, or will apply to become qualified by **UTILITY** in order to self-perform.

4. **UTILITY** agrees to review and consider whether innovative design and/or construction measures proposed by **SCDOT** or **SCDOT's** contractor are acceptable in consideration of **UTILITY's** design criteria, standard material and construction specifications, requirements, and system functionality.
5. All Utility Work shall be in compliance with all applicable **SCDOT** policies, including **SCDOT's** Utilities Accommodations Manual – A Policy for Accommodating Utilities on Highway Rights of Way, incorporated herein by reference.
6. **SCDOT** has no duty to review **UTILITY's** utilities or components for their quality or adequacy to provide the intended Utility service.
7. Additional criteria for the Utility Work is included in Attachment A, attached hereto and incorporated herein.

### Section III - Funding

1. **SCDOT** shall be responsible for the cost of utility relocations in locations where **UTILITY** has established prior rights. **UTILITY** is responsible for the cost of any betterments and for locations where prior rights do not exist.
2. **SCDOT** will pay for the cost of the Utility Work included in **SCDOT's** contract(s), and **UTILITY** will reimburse **SCDOT** for its share of the cost as set forth in Supplemental Agreements specific to each phase of the Project.
3. In accordance with its procurement practices and procedures, **SCDOT** will solicit proposals for the design and construction of the Project, including the Utility Work, and will award the **SCDOT** Contract to the contractor with the best value proposal for the overall work of the design-build phases of the Project, or, in the case of bid-build phases, to the contractor with the lowest qualified bid for the overall work of the Project.
4. **SCDOT** will invoice **UTILITY** for any amounts owed for the Utility Work. **UTILITY** shall remit the invoiced amount to **SCDOT** within 90 days of receipt of the invoice.

### Section IV – SCDOT's Responsibilities

1. Include the Utility Work in **SCDOT's** contract(s) for the design and construction of the Project.
2. **SCDOT** will provide **SCDOT's** Contractor with all documents provided to **SCDOT** by **UTILITY**.
3. Apply for and receive all necessary permits for the Utility Work within **SCDOT** right-of-way.
4. Allow **UTILITY** or **UTILITY's** Consulting Engineer and/or Inspector access to the site when the Utility Work is underway.
5. **SCDOT's** contractor shall be responsible for the Utility Work until it is accepted by **UTILITY**.
6. To the extent permitted by existing South Carolina law and within the public policy limits of the South Carolina Tort Claims Act (SC Code § 15-78-10 *et seq.*), **SCDOT** hereby assumes complete responsibility for any loss resulting from bodily injuries (including death) or damages to property, arising out of any negligent act or negligent failure to act on

**SCDOT's** part, or the part of any employee of **SCDOT** in the performance of the work undertaken under this Agreement.

7. **SCDOT** will include **UTILITY's** construction and design criteria in **SCDOT's** Request(s) for Proposals as requirements for the Utility Work.

#### Section V – **UTILITY's** Responsibilities

1. Provide to **SCDOT** a list of preferred designers (minimum of one) and preferred contractors (minimum of two) to meet **SCDOT's** schedule for the Project. If only one designer is provided, **UTILITY** will ensure preferred designer meets **SCDOT's** Contractor's schedule for design submittals
2. **UTILITY** shall, if desired, provide construction observation services and design reviews for the Utility Work.
3. **UTILITY** must meet the Project schedules established by **SCDOT**. All documents necessary must be provided by **UTILITY** to **SCDOT** as specified in phase specific Supplemental Agreements. **SCDOT** shall notify **UTILITY** of the date by which the documents must be provided.
4. Failure to meet the schedule requirements will subject **UTILITY** to liability for Project delays as outlined in the Supplemental Agreement(s).
5. If criteria and specifications provided by **UTILITY** are found to be inaccurate due to errors or omissions, **UTILITY** shall be responsible for any resulting damages, including delay damages or the costs attributable to such delays.
6. **UTILITY** shall not be responsible or liable for schedule or costs if **SCDOT's** contractor fails to adhere to **UTILITY's** Design Criteria and Standard Specifications.
7. **UTILITY** shall maintain existing facilities in place at its expense until new facilities that are acceptable to **UTILITY** have been constructed, tie-ins and cut-overs have been completed, and existing facilities are ready to be removed.
8. **UTILITY** retains responsibility for operation of any temporary facilities, and must coordinate with **SCDOT** and **SCDOT's** contractor for access to the Project site for this purpose. **SCDOT's** contractor is responsible for installation and maintenance of all temporary facilities and maintains ownership of temporary facilities.
9. **UTILITY** or its representative is required to attend all meetings pertaining to **UTILITY's** involvement in the Project held by **SCDOT's** contractor or at the request of **SCDOT**.
10. **SCDOT's** contractor shall coordinate the construction schedule with **UTILITY** and provide seven (7) calendar days' notice for days in which the contractor plans to perform Utility Work. **UTILITY's** on-site representative or inspector may perform inspection to verify work for all items related to the Utility Work.
11. Prior to accessing the Project site, **UTILITY** shall coordinate with **SCDOT's** contractor regarding their safety policies and access requirements.

**Section VI – General Conditions**

1. **SCDOT** shall have final approval on the location of all **UTILITY's** facilities within **SCDOT** Right-of-Way.
2. All work covered under this agreement and performed by **SCDOT's** contractor shall be performed within **SCDOT** Right-of-Way, or within **UTILITY's** acquired easements, as coordinated with and approved by **SCDOT**.
3. Upon **UTILITY's** acceptance of the Utility Work, or any specific portion thereof, in accordance with the plans and specifications, **UTILITY** will assume sole and complete responsibility for the new facility. For purposes of this agreement, **UTILITY** will be considered to have accepted the Utility Work, or any specific portion thereof, by assuming control of the Utility Work and commencing to utilize it.
4. Following acceptance, **UTILITY** will have sole responsibility for the operation and maintenance of the Utility Work and sole liability for any claims made by third-parties that arise from the design, construction, operation, or maintenance of the Utility Work in its entirety or the portion that has been accepted.
5. Following acceptance, **UTILITY** assumes any and all liability for accidents or injuries to persons, or damage to property (including the highway) that may be caused by the maintenance, use, moving, or removing of the fiber and related appurtenances constituting the Utility Work as described herein.
6. Prior rights will remain in locations where prior rights currently exist. This agreement shall not grant prior rights in locations where they do not currently exist.
7. Where **UTILITY** is on **SCDOT** right-of-way by encroachment, **UTILITY** agrees that if, in the opinion of **SCDOT's** Deputy Secretary of Engineering, it should ever become necessary to move or remove the Utility Work, including any future modifications thereto, on account of the change in locations of the highway, widening of the highway, or for any other sufficient reason, such moving or removing shall be done on demand of **SCDOT** at **UTILITY's** expense.
8. Should additional Utility Work become necessary as a result of Project impacts on **UTILITY's** facilities that were not foreseen at the time of execution of this Agreement, **UTILITY** agrees to work with **SCDOT** and **SCDOT's** contractor to negotiate a resolution.
9. Subject to **SCDOT** negligence or willful misconduct, the **Parties** agree that delays in the Utility Work will impact public convenience, safety, and welfare, and that monetary damages would be inadequate to compensate **SCDOT** for delays in the construction of the Project. Consequently, **SCDOT** shall be entitled to specific performance or other equitable relief from **UTILITY** in the event of any breach of this Agreement which threatens to delay construction of the Project. This provision shall not limit any other remedies available to **SCDOT**.
10. All claims or disputes shall be filed with **SCDOT's** Project Manager. The **Parties** will meet to attempt to resolve any dispute or claim. If unable to resolve the dispute with the **SCDOT** Project Manager, the **Parties** may appeal the claim or dispute to the appropriate **SCDOT** Deputy Secretary. The Deputy Secretary's decision in the matter shall be final

and conclusive for both **Parties**, subject to non-jury appeal in the Circuit Court of Richland County.

#### Section VII – Counterparts

This Agreement may be executed in counterparts, and if so executed, shall become effective when a counterpart has been executed and delivered by both Parties hereto. All counterparts taken together shall constitute one and the same Agreement and shall be fully enforceable as such. Delivery of counterparts via facsimile transmission or via email with scanned attachment shall be effective as if originals thereof were delivered.

#### Section VIII – Authority and Law

**SCDOT** and **UTILITY** each bind themselves, their respective successors, executors, and assigns to the other Party with respect to these requirements, and also agree that neither Party shall assign, sublet, or transfer its respective interest in this Agreement without the written consent of the other.

This Agreement is to be interpreted under the laws of the State of South Carolina.

*[Signature blocks on next page]*

MOA-

In-Contract Utility Relocation of  
Dominion Energy Gas Distribution  
**SCDOT Project ID P039720**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed and sealed by their authorized representatives on the dates set forth below.

SIGNED, SEALED, AND DELIVERED  
IN THE PRESENCE OF:

Dominion Energy Gas Distribution

BY: \_\_\_\_\_

\_\_\_\_\_

WITNESS

DATE: \_\_\_\_\_

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_

Deputy Secretary for Finance and Administration  
or Designee

\_\_\_\_\_

WITNESS

RECOMMENDED BY:

\_\_\_\_\_

Deputy Secretary of Engineering or Designee

REVIEWED BY:

\_\_\_\_\_

State Utilities Engineer

## ATTACHMENT A

### Dominion Energy Gas Distribution

#### Section I – Definitions

1. The term “Betterments” shall mean any upgrading to the utility facility being relocated made solely for the benefit of and at the election of the **UTILITY** and not attributed to the Project. Betterments include, but are not limited to, placement of Utility outside of **SCDOT** right of way for convenience, an increase in the capacity, capability, efficiency or function of the adjusted Utility over that provided by the existing Utility or an expansion of the existing Utility, unless such adjustment is due to:
  - a. Any upgrading which is required for accommodation of the Project;
  - b. Replacement devices or materials that are of equivalent standards although not identical;
  - c. Replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
  - d. Any upgrading required by applicable Laws, regulations or ordinances;
  - f. Replacement devices or materials which are used for reasons of economy (e.g., non-stocked items that may be uneconomical to purchase); or
  - g. Any upgrading required by the criteria set forth in Section II below.
2. The term “Specifications” shall mean of the standard material & construction specifications of the **UTILITY** as provided by the **UTILITY**. See subsequent “Supplemental Agreements” for details.
3. The term “Design Criteria” (Criteria) shall mean the standard Design Criteria of the **UTILITY** for capital projects as provided by the **UTILITY**. See subsequent “Supplemental Agreements” for details.
4. The term “cut-over” shall mean, for purposes of this Agreement, all work necessary to enable Utility Work to be used by consumer enabling the original facility to be demolished.
5. The term “Substantial Completion” shall mean, for the purposes of this Agreement, the date on which any portion of the new utility facilities are properly installed, inspected, tested, and placed into service.
6. The term “Final Acceptance” shall mean, for the purposes of this Agreement, the date beyond Substantial Completion on which any portion of the new utility facilities has been placed into service; cut-over of services has been completed; old facilities have been disconnected and demolished; record drawings have been submitted by **SCDOT’s** contractor and approved by **UTILITY**; and **SCDOT’s** contractor has certified the construction and received a permit to operate, if applicable.

## Section II – SCDOT’s Responsibilities

1. As a part of the Construction Contract, **SCDOT** will require the contractor performing the Utility Work to obtain and maintain in place for the duration of the Utility Work insurance policies which meet or exceed the requirements listed in Attachment C – *Insurance Policy Requirements*. In addition, the **UTILITY** will be named as an additional insured. Copies will be provided to the **UTILITY**.
2. As a part of the Construction Contract, the **UTILITY** will include in the Specification a requirement for the contractor to warranty the improvements for one (1) year from the date of Substantial Completion of the work that is installed as described in each Supplemental Agreement. **SCDOT** will require that the contractor include this in their bid.
3. **SCDOT** shall allow the **UTILITY** time to inspect recovered materials from the permanent facility prior to disposal by sale or scrap. This requirement will be satisfied by **SCDOT** giving notice to the **UTILITY** of the time and place the materials will be available for inspection. The **UTILITY** shall have the right to inspect all recovered materials from the utility removal (examples are copper cables, cabinets, etc.). If the **UTILITY** elects to retrieve the materials, there will be no cost associated with doing so, but the **UTILITY** shall be responsible for removal from the inspection site. If the **UTILITY** elects not to retrieve the items, **SCDOT** may sell them for scrap or allow the contractor to do so.
4. **SCDOT** shall provide the names, addresses, and telephone numbers of representatives at **SCDOT** and **SCDOT**’s contractor who are responsible for submitting the plans to **UTILITY** and receiving comments and approvals. Where more than one representative is designated, the area of responsibility of each representative shall be specified.
5. **SCDOT** shall provide **UTILITY** a 10 business day notice that a portion of Utility Work will be in place and ready for cut-overs. **UTILITY** shall schedule inspection staff to be present to observe testing and cut-overs.

## Section III – UTILITY’s Responsibilities

1. By executing this agreement **UTILITY** authorizes **SCDOT**’s contractor to access the service connection locations and tie points outside of SCDOT’s right-of-way where **UTILITY** has right-of-entry allowing **SCDOT**’s contractor to complete Utility Work.
2. **UTILITY** shall provide to **SCDOT** the available tie-in points in CAD format or detailed location drawings within SCDOT right-of-way for the Utility Work within and beyond the limits of the Project. These tie points should be made available within 45 days of this Agreement. To meet this schedule, **UTILITY** will utilize survey and SUE data provided by **SCDOT**; **SCDOT** agrees that **UTILITY** may rely on survey and SUE provided by **SCDOT** or **SCDOT**’s consultant. However, all Parties understand that these tie-in locations are approximate and may be required to change due to field conditions, features in the Project design, and due to the Utility design of **SCDOT**’s contractor.
3. Within 90 days of execution of this Agreement, but no later than the date specified in the phase specific Supplemental Agreement, **UTILITY** shall provide any applicable standards



and other criteria, including betterments, for the design and construction of the Utility Work which will be incorporated into **SCDOT's** Contract.

4. **UTILITY** shall provide the name, addresses, and telephone numbers of representatives who are responsible for approving the plans. Where more than one representative is designated, the area of responsibility of each representative shall be specified.
5. Should utility easements be required for betterments requested by the **UTILITY**, **UTILITY** shall be responsible for those easements.
6. Upon notification by **SCDOT** that a portion of Utility Work will be in place and ready for cut-overs, **UTILITY** shall schedule staff to perform splicing of fiber optic cable and cut-overs. **UTILITY** shall expeditiously complete cut-over work and proceed to Acceptance of Utility Work. **UTILITY** shall provide **SCDOT** 30 calendar days-notice of anticipated Acceptance of Utility Work date.

### Supplemental Utility Relocation Agreement

This Supplemental Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the South Carolina Department of Transportation (hereinafter referred to as “**SCDOT**”) and Dominion Energy Gas Distribution (hereinafter referred to as “**UTILITY**”) (collectively “the **Parties**”) to outline the scope of Utility Work and associated financials for Phase 3 of **SCDOT**’s Carolina Crossroads I-20/I-26/I-126 Project.

All terms in this Supplemental Agreement shall have the same meaning and definitions as presented in the Master Agreement (MOA - \_\_\_\_ - \_\_\_\_ ) between the Parties.

#### Section I – Definitions

1. The term “Design-Build” (DB) shall refer to the Project procurement and delivery method. This type of project delivery includes design and construction under one contract.
2. The term “**SCDOT**’s contractor” shall refer to the contractor that enters into a Design-Build agreement to provide for design, right-of-way acquisition services, and construction of the Project.

#### Section II – Terms of Supplemental Agreement

1. Utility Work design plans will be submitted by **SCDOT** to the **UTILITY**, and the **UTILITY** will review the plans in accordance with this section. **SCDOT**’s Contractor shall resolve **UTILITY**’S comments and obtain **UTILITY** approval prior to submittal of Released for Construction (RFC) plans.
2. **SCDOT** agrees that it will submit to **UTILITY** for review the 30-percent, 60-percent, and 100-percent Utility Work design plans prepared by the contractor. **UTILITY** agrees that it will have the responsibility to review the 30-percent, 60-percent, 100-percent Utility Work design plans prepared by **SCDOT**’s contractor. Upon submittal of each milestone package, **UTILITY** shall have an initial review period of 13 business days for each submittal (30, 60, and 100-percent). **UTILITY**’s review comments will be sent to **SCDOT** to review and forward to **SCDOT**’s contractor. **UTILITY** shall provide review comments to **SCDOT** by either utilizing an **SCDOT** created Bluebeam review session or **SCDOT**’s Comment Matrix. **SCDOT**’s contractor shall respond to **SCDOT** within five business days. **SCDOT** will forward contractor comment responses to **UTILITY**. **UTILITY** shall provide additional comments, if warranted, within four business days to **SCDOT**. If any open comments remain after the initial 13-business day review and subsequent five-day review and comment period, there will be no time constraint for **SCDOT**’s contractor to respond. If verification plans are required for any package (30-percent, 60-percent, and 100-percent), **UTILITY** shall have a review period of 9 business days to provide new or still unresolved comments back to **SCDOT**. Failure of **UTILITY** to meet these deadlines shall be deemed acceptance of **SCDOT**’s contractor’s

design. Time is of the essence. Failure of **SCDOT** and/or **SCDOT's** contractor to meet these deadlines shall not limit the responsibilities of **UTILITY** in this process.

3. **SCDOT** agrees to install utility work in accordance with the plans. After **UTILITY** is notified by **SCDOT** that the Utility Work scope item, as defined in Table 1, is installed per the plans, **UTILITY** shall cut-over service within the timeframe outlined in Table 1.
4. **SCDOT** shall be responsible for the cost of utility relocations where prior rights exist in accordance with SCDOT's "A Policy for Accommodating Utilities on Highway Rights of Way" and 23 CFR 645A.
5. **UTILITY** is responsible for the cost of utility relocations where no prior rights exist and for the cost of any betterments.
6. The **Parties** acknowledge that the scope of work presented in this Supplemental Agreement Table 1 Scope of Utility Work below is the limit of work to be performed in-contract by **SCDOT's** contractor.
7. Any impact to **UTILITY's** facilities which extend beyond the limits described in Table 1 below will not be considered in-contract work and **SCDOT's** contractor will be responsible for coordination of any and all additional Utility Agreements required to resolve conflicts between **SCDOT's** project and **UTILITY's** facilities. Any additional Utility Agreements shall not be covered by the scope or terms of this Agreement.
8. Refer to Table 1 for scope of Utility Work. **UTILITY** estimates the total maximum cost of their Utility Work for Phase 3 to be \$2,886,000 with such costs to be allocated as follows:
  - a. **Prior Rights**, to be paid by **SCDOT**, at \$0.00; and
  - b. **Non-Prior Rights and any betterments**, to be paid by **UTILITY** at \$2,886,000.
9. Failure by **UTILITY** to meet the contract requirements and construction schedule shall subject **UTILITY** to liability for Project delays.
10. **SCDOT** shall invoice **UTILITY** for 50% of **UTILITY's** estimated In-Contract utility costs within 30 days of execution of this Supplemental Agreement. **UTILITY** shall remit the invoiced amount within 90 days of receipt of the invoice.
11. **SCDOT** shall invoice **UTILITY** on a quarterly basis for the remainder of **UTILITY's** share of In-contract utility costs. **UTILITY** shall remit the invoiced amount to **SCDOT** within 90 days of receipt of the invoice.
12. **SCDOT** will endeavor to keep **UTILITY** informed as to the Project status and Utility Work, to include updated estimates.

### Section III – UTILITY's Responsibilities

1. **UTILITY** may provide **SCDOT** a conceptual layout of the Utility Work. In such event, **UTILITY** agrees to make available to **SCDOT's** contractor any CAD (Microstation v8 or latest AutoCAD) files used to prepare the preliminary plans within 60 days of this Agreement. These plans are not final construction plans or sealed engineering plans and will be provided to **SCDOT's** contractor for information only. The plans will not become part of **SCDOT's** contract for construction.

2. Within 90 days of execution of this Agreement, but no later than November 1, 2020, **UTILITY** shall provide all state, local and federal codes and standards and any other criteria, including betterments, for the design and construction of the Utility Work which will be incorporated into the **SCDOT** Contract.
3. Any changes requested by **UTILITY** to the plans previously approved by **UTILITY** that are Released for Construction (RFC Plans), which differ from the Scope of Utility Work or criteria provided, must be mutually agreed to by all Parties including **SCDOT**'s contractor in order for the change to be incorporated into the Utility Work. The **UTILITY** will be responsible for any changes in cost due to **UTILITY**'s request including the cost of time delay to the Project.

All other terms and conditions of the Master Agreement not changed, modified, or supplemented by this Supplemental Agreement shall remain in full force and effect as originally written.