

MEMORANDUM OF AGREEMENT**For In-Contract Utility Relocation****Fiber Optic Cable Relocation**

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

SCDOT Project ID P027662

This Agreement is made this 21st day of August, 2020 by and between the South Carolina Department of Transportation (hereinafter referred to as "SCDOT") and the South Carolina Department of Administration (hereinafter referred to as "UTILITY") (collectively "the Parties") to ensure the successful completion of the fiber optic 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. The Project will be divided into phases, each of which will be addressed individually with Supplements to this Agreement.
2. The term "Utility Work" shall refer to an adjustment necessitated by **SCDOT's** Project of a utility 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. Unless agreed otherwise in any applicable Supplemental Agreement, **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 and preferred contractors (minimum of three each) to meet **SCDOT's** schedule for the Project. **UTILITY** shall also provide a method for **SCDOT's** contractors to become certified in order to self-perform the Utility Work.
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** is required to attend all utility meetings held by **SCDOT's** contractor or at the request of **SCDOT**.
10. **SCDOT's** contractor shall coordinate the construction schedule with **UTILITY** and provide three business 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 optic cable(s) 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 unless agreed otherwise in any applicable Supplemental Agreement.
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. 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. The **Parties** acknowledge that **SCDOT's** Standard Specifications for Highway Construction, incorporated herein by reference, will apply to the Project. In the event of utility service interruption due to accidental breakage by **SCDOT's** contractor, **SCDOT's** contractor shall promptly notify **UTILITY** and cooperate with them until service has been restored. Additionally, **SCDOT's** contractor shall carry and maintain liability insurance as specified in the Standard Specifications, and shall be responsible for suits and claims as identified in the Standard Specifications. This provision shall not limit any other remedies available to **UTILITY**.
11. 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]

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:



WITNESS

SOUTH CAROLINA DEPARTMENT OF ADMINISTRATION *MS*

BY: 
Hisham Osman, Chief Information Officer

DATE: 01/21/2020

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION




Deputy Secretary for Finance and Administration
or Designee

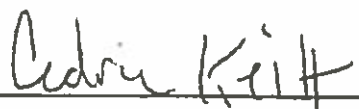


WITNESS

RECOMMENDED BY:

KSR
GDR
OF

Deputy Secretary of Engineering or Designee

REVIEWED BY:



State Utilities Engineer

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 South Carolina Department of Administration (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 -1-21) 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 a 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, 60, 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.

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 \$1,184,685 with such costs to be allocated as follows:
 - a. **Prior Rights**, to be paid by **SCDOT**, at \$0; and
 - b. **Non-Prior Rights and any betterments**, to be paid by **UTILITY** at \$1,184,685.
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** the remaining 50% of **UTILITY's** share of In- Contract utility costs within 180 days of execution of this Supplemental Agreement. **UTILITY** shall remit the invoiced amount to **SCDOT** within 90 days of receipt of the invoice.
12. In the event that the total cost of the Utility Work is less than originally estimated, SCDOT will refund any excess amount paid by **UTILITY** within 90 days of the final completion and closure of Phase 3 within **SCDOT's** accounting office. Refunds will not be unreasonably withheld, denied, or delayed.
13. Should change orders be needed, SCDOT reserves the right to approve any and all change orders up to 10% of the conflict's total cost as shown in Table 1.
14. **SCDOT** will keep **UTILITY** informed as to the Project status and Utility Work.

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.

[Signature blocks on next page]

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:

South Carolina Department of Administration

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

Table 1 Scope of Utility Work

See Project Information Package.