

UECA MUNICIPAL AMENDMENT W/ or W/O STATE CONTRACTOR (NEW 2017)

Rev 4/13/2023

Guiderail Replacement North, Contract 2019-2

Rt. I-80, 280 and 287

Various Townships

Various County

West Orange Township (Sanitary Sewer)

UECA-08-Guiderail Replacement North 2-223220

Contract Billing No. _____

UPC Code: 223220

Contract ID No.: 24-16031

THIS AMENDMENT AGREEMENT made this _____ day of _____, between **COMMISSIONER of TRANSPORTATION**, acting for and in the name of the **STATE OF NEW JERSEY**, hereinafter called the "State", and the West Orange Township (Sanitary Sewer), hereinafter called the "Utility".

WHEREAS, the State and Utility have already "agreed upon but not fully executed a Utility Agreement before July 1, 2017"; and

WHEREAS, the State has determined that federal financial assistance or grants have been or will be expended in the design and construction of this Project, and;

WHEREAS, as of July 1, 2017, 2 C.F.R. 200 and 2 C.F.R. 200, Appendix II are mandated to be part of any procurement based on federal financial assistance; and

WHEREAS, 2 C.F.R. 200 requires other federal regulations to be followed and adhered to in construction projects using federal financial assistance; and

WHEREAS, before entering into additional phases of the Utility's work, an amendment to the original agreement must be executed;

WHEREAS, the Utility is owned by West Orange Township and as such must follow the West Orange Township's procurement laws and policies;

NOW THEREFORE, State and Utility, for the mutual benefits to be obtained agree as follows:

GENERAL CONDITIONS

- (1) The agreed upon but unexecuted agreement before July 1, 2017 is being executed simultaneous with this Amendment.

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- (2) The previous Agreement is superseded to the extent that it conflicts with the Amendment, all non-conflicting provisions shall remain in full force and effect.

AMENDMENTS

- (3) This paragraph amends UECAMUNS paragraph 10.

After receipt of the Utility's plans, estimates, and schedules, the State will develop a "Utility Agreement Modification". The Utility Agreement Modification, may include a Utility Agreement Plan, but it will set forth in detail the proposed Scope of Work to be performed by the Utility, the anticipated schedules, estimates (including overhead rates for the Utility and any subconsultants or subcontractors to be hired by the Utility to perform the work), project duration and benchmarks, and funding ceilings to accomplish the utility work in the Project by the Utility and/or its contractor to be reimbursed by the State. Separate Utility Agreement Modifications can be performed for the design work and the construction work if a Utility is contracting with firms outside of the Utility

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to consult with the State in the Preliminary Design process. If the construction is to be performed by the State's Contractor, the Utility Modification will indicate within the Scope of Work any duties of inspection or verification being retained by the Utility.

- (4) This paragraph amends UECAMUNS paragraph 14.

State will request, by certified mail, the Utility to submit final invoices for costs incurred by the Utility upon: (a) completion of design; (b) completion of the utility work; or (c) cancellation of the Project. Final construction invoice shall be submitted along with the Certificate of Compliance (DC17U). (Exhibit 1). All such invoices shall be submitted to the State monthly and the State shall not accept invoices for payment submitted after a sixty (60) day period. In no event will the State reimburse the Utility for costs not included in invoices submitted to the State after the sixty (60) days period following notice. In compliance with 2 C.F.R. 200.309,

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the Utility shall not charge to this Agreement costs incurred after the period of performance of the project.

- (5) This paragraph amends UECAMUNS paragraph 15. All matters pertaining to subcontracted work, billing, estimates, survey control, extra work items, and inspection responsibility shall be in accordance with the Memorandum of Record dated January 10, 2013, entitled "Procedures Governing Estimation of Costs, Requirements During Construction and Billing the New Jersey Department of Transportation for Public Utility Work", and in accordance with the federal regulations at 23 C.F.R. Subpart A and 2 C.F.R. 200 Subpart E and with it being understood that where the State's Regulations are in conflict with the Federal Regulations, the Federal Regulations shall govern. Disallowed costs are those charges determined to not be allowed in accordance with the applicable Federal cost principles or other conditions contained in this agreement. The matter of "Credit for Expired Service Life" has been considered for all items and where allowances apply, same

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are hereinafter specified in description of items and the cost summary.

- (6) This paragraph also amends UECAMUNS paragraph 14.

The State, FHWA, or their agents, shall be entitled to perform an audit at the following times: during the performance of the work or during a period of up to three years after project close out. All State audit procedures shall be in conformance with State Grant Compliance Supplement; and Treasury Circular 07-07-OMB; and New Jersey Treasury Circular OMB-15-08-OMB "Single Audit Policy for Subrecipients of Federal Grants, State Grants, and State Aid."

- (7) This paragraph also amends UECAMUNS paragraph 14.

The Utility acknowledges that changes in payment due to the Utility resulting from audits performed by the State shall be made as follows:

A. In the event of overpayment by the State, the Utility shall refund the amount of such overpayment within thirty days of the request by the State. In the event

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the Utility fails to comply with said request, the State is hereby authorized to deduct such overpayment from other monies due the Utility under the terms of this Agreement or any other agreement between the State and the Utility. Furthermore, the Utility expressly understands and agrees that the provisions of this section shall in no way be construed to relieve the Utility from any liability, or preclude the State from taking any other actions as are available to it under any other provisions of this Agreement or otherwise at law. The terms of this section shall survive the expiration or termination of the Agreement.

B. In the event of underpayment by the State, the State shall pay sufficient funds to the Utility to correct the underpayment as soon as is practicable.

C. The Utility shall include in the Final Invoice the following release clause:

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"In consideration of the requested payment of this Final Invoice, the (Utility) hereby releases the State of New Jersey and the New Jersey Department of Transportation, their agents, officers and employees, from all claims and liabilities arising from work done or services performed under this Agreement."

- (8) This paragraph amends UECAMUNS paragraph 14. Payment to the Utility for a Final Invoice does not waive either the right of the State to establish adjustments and to collect overpayments that are disclosed by audits performed subsequent to payment of the Final Invoice, or the right of the Utility to underpayments based upon adjustments disclosed by said audits.
- (9) This paragraph amends UECAMUNS paragraph 14. Closeout Reports. The Utility shall submit a Project Closeout report no later than 90 days after the period of performance end date. The report will be in a form satisfactory to the

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State and shall, at a minimum, comply with the requirements of 2 C.F.R. 200.343 and allow the State to comply as well.

(10) NEW PARAGRAPH. The State may, in its sole discretion terminate this agreement for cause or for convenience pursuant to the Standard Specification or if the State, USDOT or FHWA determined that termination of this Agreement is in the public interest.

(11) NEW PARAGRAPH. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment, 2 C.F.R. 200.216; 2 C.F.R. 200 Appendix II; and current NJDOT Specifications 106.01 and 106.03 requires Utility and any of its procured consultants and contractors (all tiers) to comply with all prohibitions of telecommunications products or video surveillance services therein.

PROCUREMENT REQUIREMENTS FOR UTILITY AND ITS SUBCONTRACTS

(12) As the Utility is wholly owned and operated by a political subdivision of the State, all procurements shall abide by the expressed Federal, State, and local requirements dealing with conflicts of interest in procurement. Utility,

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if using its personnel to perform in whole or in part this Agreement, shall follow all Federal, State, and local laws relating to discrimination against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

- (13) If the Utility will be publicly bidding for contractors to perform the work contained in this Agreement and its Amendments and any Utility Agreement Modification, Utility shall exchange for review and approval all bid documents prior to advertisement for review and conformance with the Procurement requirements expressed herein. Bidding procedures shall conform to the current Standard Specification for Bridge and Road Construction and any Baseline Document Changes ("BDC") and Special Provisions as designated by the State, incorporated herein by reference. The State or FHWA shall have the authority to accept or reject the proposed documents for bidding on the basis of this Agreement and Amendment and the procedures

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of the Standard Specifications, Baseline Document Changes,
and Special Provisions.

- (14) In order to be a recipient of federal financial assistance, the State must comply with all of the federal requirements, as applicable, to the type of work performed by the State, and in turn the Utility performing work on behalf of the State. This list is attached at Exhibit 2.
- (15) If the Utility is assisting in the preparation of plans and specifications during the engineering phases of the Project, the Utility is subject to these provisions in obtaining a subconsultant to perform the work.
- (16) If the Utility will only provide inspections, and will not subcontract for that work, the Utility is responsible for the compliance with all applicable federal, state and local laws.
- (17) If the Utility is obtaining engineering or design services as a consultant, Utility will abide by the Brooks Act (40 U.S.C. §§ 1101-1104) as implemented in 23 U.S.C. 112(b)(2)

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or equivalent qualifications based requirements as approved by State or FHWA.

(18) If the Utility is not performing the construction work under this Agreement, the State is obligated to comply with all applicable federal procurement procedures in obtaining its contract to perform the work contained in this Agreement.

(19) If the Utility is performing engineering or construction work with the aid of subcontractors or subconsultants under this Agreement with estimates and reimbursements under the appropriate Utility Agreement Modification, Utility shall include in any solicitation for bids, Requests for Proposals of work, or materials as negotiated:

"The Recipient (State), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be

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afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

(20) Utility will comply with the parameters of 49 C.F.R. Part 26, Disadvantaged Business Enterprises Program, in its procurement of subcontractors and subconsultants to make all applicable good faith efforts. Requirements are set forth at Exhibit 3.

(21) If after the scope of work is determined and a Disadvantaged Business Enterprises goal ("DBE goal") is established by the State's DBE unit, the individual DBE goal shall be listed in the Utility Agreement Modification relating to the engineering or construction work for which the goal is being established. If it is determined that the DBE goal is 0%, the DBE goal shall still be listed in the Utility Agreement Modification.

(22) State, as a requirement of receiving federal financial assistance, is obligated to require Utility to abide by

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and include in any contracts by the Utility with its subcontractors and subconsultants the attached Exhibit 4 and Exhibit 5.

(23) Bonding and insurance requirements shall be set forth in the Utility Modification Agreement based on the type of Project, estimated costs, whether work is to be constructed by the Utility, and whether or not the Utility is self-insured.

(24) After July 1, 2017, State became responsible to include every engineering and construction contract and its grants the requirements of 2 C.F.R. 200 and 2 C.F.R. 200, Appendix II. Utility shall be responsible for the compliance with these federal regulatory provisions and comply by following:

A. Federal Mandatory Equal Opportunity Language on Federal Aid Project, Authority Subject to 41 C.F.R. Part 200 and 2 C.F.R. Part 200 Appendix II. (Exhibit 6).

B. Federal Form 1273, Prevailing Wage (Exhibit 7) and Supplementary State Provisions at Exhibit 8.

C. If any federal funds subject to 37 C.F.R. §401.2 are used to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental,

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developmental, or research work under that "funding agreement" the Utility must comply with the requirements of 37 C.F.R. part 401 "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements," and any implementing regulations issued by the federal agency or State.

- D. In addition to the Debarment and Suspension requirements of the System for Award Management and the New Jersey List of Debarred Contractors as explained in Form 1273, Utility shall follow Exhibit 8.
- E. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and requirements of submission of documents to State at Exhibit 9.
- F. If materials used in performance of this contract are listed on the Procurement of Recovered Materials at 2 C.F.R. 200.322, Utility shall comply with all requirements therein.

(25) Utility shall also comply with the requirements of the State's receipt of federal financial assistances concerning:

- A. State of New Jersey Treasury Circular 07-05-OMB, Grant Agreements and Agency Contracts incorporated by reference herein. Any federal statutes or regulations that conflict with this circular shall control.
- B. Department of Transportation Code of Vendor Ethics

(26) The Utility shall recognize and agree that both the initial provision of funding and the continuation of such funding under the Agreement is expressly dependent upon the

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availability to the Department of funds appropriated by the State Legislature from State and/or Federal revenue or such other funding sources as may be applicable. A failure of the Department to make any payment under this Agreement or to observe and perform any condition on its part to be performed under the Agreement as a result of the failure of the Legislature to appropriate funds shall not in any manner constitute a breach of the Agreement by the Department or in event of default under the Agreement and the Department shall not be held liable for any breach of the Agreement because of the absence of available funding appropriations. In addition, future funding shall not be anticipated from the Department beyond the duration of the award period set forth in the Agreement/ Utility Modification Agreement in no event be construed as a commitment by the Department to expend funds beyond the termination date/Project completion date set in the Agreement/Utility Modification Agreement.

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

CERTIFICATION

I hereby certify that I am an authorized representative of the Utility and have all necessary authority to execute this Agreement and to bind the Utility to all obligations arising from this Agreement. I fully understand that the Department of Transportation will rely upon this certification in accepting my execution of this Agreement for the Utility.

ATTEST:

WEST ORANGE TOWNSHIP

BY: _____

Name:

Title:

BY: _____

Name:

Title:

ATTEST:

STATE OF NEW JERSEY

DEPARTMENT OF

TRANSPORTATION

By: _____

Anika James

Department of Transportation

DATE:

BY: _____

Tina M. Shutz, Acting Director

Capital Program Support

This aforementioned Agreement has
been reviewed and APPROVED AS TO FORM:

MATTHEW J. PLATKIN

Recommended:

ATTORNEY GENERAL OF NEW JERSEY

Bhavesh Shah,
Project Management Specialist 3,
Team D

By: _____

Nonee Lee Wagner

Deputy Attorney General

DATE: _____

DATE: _____