

Route 10, Chelsea Drive to Kelly Drive
Townships of Livingston & West Orange, Essex County
West Orange Sewer – Public Works and Engineering
UECA-05-Rt10ChelseaDr-154390
UPC Code: 154390
Contract ID No.: 23-10034

THIS AGREEMENT made this _____ day of _____, _____, between the COMMISSIONER OF TRANSPORTATION, acting for and in the name of the STATE OF NEW JERSEY, hereinafter called the "State", and the West Orange Sewer – Public Works and Engineering hereinafter called the "Utility".

WHEREAS, State is about to undertake the design and construction of Route 10, Chelsea Drive to Kelly Drive located in Township of Livingston & West Orange, Essex County hereinafter called the "Project"; and

WHEREAS, the Project may require the construction of new, and/or the protection, relocation and/or adjustment of facilities of the existing Sewer system which is owned and operated by the Utility; and

WHEREAS, Utility's legal right to occupy public right-of-way, subject to the conditions imposed by the State, is in no way mitigated by this Agreement; and

WHEREAS, Utility is not obligated by State law or agreement to relocate its own facilities at its own expense for this type of Project; and

WHEREAS, the provisions of the State's Accommodation of Utilities within Highway Right-of-Way N.J.A.C. 16:25 and Code of Federal Regulations, 23 C.F.R. 645, Subpart B are applicable.

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

- (1) The State and Utility shall cooperate in developing plans and cost estimates for their respective work necessitated by the Project.
- (2) The Utility shall designate a responsible representative to coordinate its effort with those of the State.
- (3) The State will, at its sole cost and expense, contract for and cause to be constructed, all items indicated in the State's contract plans and specifications for the Project, related to existing and proposed facilities owned and operated by the Utility.
- (4) The State will authorize and reimburse the Utility for its actual costs for design, review, approval and inspection, for the protection, relocation or adjustment of its existing facilities necessary to accomplish the Project.
- (5) The Utility's preliminary engineering design costs for correspondence, meetings and exchanges of engineering information are eligible for reimbursement and the State will accept billing of these costs after this Agreement is fully executed and issued.
- (6) The Utility shall disclose and verify its existing facilities at no cost to State within the Project limits identifying the facility type, size and operating potentials.
- (7) The State will indicate the existing and proposed utility facilities, owned and operated by the

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Utility, and to be constructed by the State, in State's contract documents for the Project.

- (8) When the State proceeds to develop the Project plans, the State and Utility shall jointly identify potential conflicts between the Utility's facilities and the Project, and shall jointly develop a scheme for the protection, relocation, rearrangement and/or betterment of facilities in accordance with N.J.A.C. 16:25 Utility Accommodation to accomplish the Project.
- (9) Subsequent to the development of the above scheme with the approval of the State and concurrence of the Utility, the State will issue a "Utility Owner Design Authorization (Check List)" describing the utility work and authorizing the State's designer to finalize design plans, estimates, and schedules necessary to construct new, and/or protect, relocate, and/or rearrange facilities in concert with the Project, and incorporate them into the State's Project contract documents.
- (10) The State will develop a "Utility Agreement Modification" which may include a Utility Agreement Plan outlining work "To be performed by State's contractor at State Expense", estimated cost for field engineering, inspection and/or valve turning operations to be performed by Utility's personnel. This will be issued in the person of the Executive Regional Manager Team A (NJDOT).
- (11) The purpose of this Agreement is to cover all the required utility facility construction, protection, relocation, and rearrangement work necessitated by the Project; however, it is agreed that the State, in the person of the Executive Regional Manager Team A (NJDOT), will issue modifications to this Agreement to cover unanticipated work, resulting from Project activities and/or field conditions.
- (12) State will supply the Utility with a copy of the contract plans and specifications when the Project is advertised.
- (13) The 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. All such invoices shall be submitted to the State within sixty (60) days of this request. The State may not accept invoices for payment submitted after the sixty (60) day period.

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- (14) 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 23 CFR 645, Subpart A and with it being understood that where the State's Regulations are in conflict with the Federal Regulations, the Federal Regulations shall govern. Billing shall be based on accounting methods used by the Utility in conformity with the system of accounts adopted and prescribed by the Division of Local Government Services of the State of New Jersey. The matter of "Credit for Expired Service Life" has been considered for all items and where allowances apply, same are hereinafter specified in description of items and the cost summary.
- (15) The Utility will comply with the Buy America Federal Regulation requirements U.S.C. 313 and 23 CFR 635.410, for all steel and iron materials furnished by the Utility and its Subcontractors for permanent incorporation in this Project. Under this requirement, all manufacturing processes for steel and iron products shall occur in the United States including all melting, rolling, extruding, machining, bending, grinding, drilling and coating. The Utility Company shall submit a Buy America Commitment letter at the time of execution of this Agreement affirmatively stating that the Utility is committed to complying with all the requirements of the Buy America Federal Regulations. The State reserves the right to audit such records at the completion of the Project. The lack of these documents will be justification for rejection of the steel and/or iron product thus resulting in nonpayment for all work performed by the Utility.
- With the Final Construction Invoice submission, the Utility shall submit a "Buy America Certification of Compliance" certifying that:
- All steel and iron products provided for permanent incorporation in the Project, were made from steel and iron that was melted and manufactured in the United States including the application of coatings which protect or enhance the value of the material.**
- Or if any material does not comply with these requirements, the Utility will indicate what material does not comply. The State may require the Utility to remove and replace material that does not comply with the Buy America requirements, at no expense to the Department and may deny the Utility reimbursement for all the relocation costs incurred by the Utility.
- (16) The Utility shall perform the work, specified herein, with its own forces wherever possible and only have that portion of the work performed by a consultant or contractor that the Utility is not adequately staffed or equipped to perform with its own forces.
- (17) The intention of this Agreement is that facilities which are removed, relocated, or disrupted will be replaced in such a manner that shall result in services being restored to the status and degree of use as existed prior to said changes. The Utility and the State agree to jointly use their best efforts to relocate, adjust and/or abandon the existing facilities and construct any new facilities without detrimentally affecting or interrupting services to the Utility's customers. In the event during construction of the Project it is necessary to detrimentally affect or interrupt services, the Utility shall be notified at least 48 hours in advance, unless the particular circumstances dictate less notice.

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- (18) The design of utility facilities intended to be constructed by the State for the Utility shall be approved by the Utility before the State includes such facilities in the State's contract documents before the Project is advertised.
- (19) In no case will the State pay for betterment of facilities nor will the State pay any costs for work performed for the sole benefit or convenience of the Utility, the State's contractor, or the Utility's contractor.
- (20) Utility facilities constructed under the terms of this Agreement shall become the sole property of the Utility and the Utility shall be solely responsible for their operation, repair, and maintenance.
- (21) The State will obtain and bear the cost of all permits, environmental or otherwise, relating to the construction of new, and/or the protection, relocation and/or rearrangement of existing facilities, as necessitated by the Project, whether the necessary utility work is within or outside of the highway right-of-way. However, should the Utility choose to install facilities that constitute betterment, then it is the sole responsibility of the Utility to obtain the permits necessary for said betterment. It is further understood that should the Utility desire to install additional facilities, at a future date within the highway right-of-way, the Utility shall obtain the appropriate Utility Permit from the authority having jurisdiction over the highway. This Agreement is the Utility Permit for the work authorized herein.
- (22) Subject to provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-et seq., the State will be responsible for personal injuries and property damage caused by the actions of the State, its employees or agents which arises out of this Agreement. Any claim for such personal injury or property damage must be filed in accordance with N.J.S.A. 59:8-1 et seq.
- (23) Subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et. Seq., the Utility will be responsible for personal injuries and property damage caused by the actions of the Utility, its employees or agents which arises out of this Agreement. Any claim for such personal injury or property damage must be filed in accordance with N.J.S.A. 59:8-1 et seq.
- (24) The State has estimated the Utility's engineering costs for the Project and will adjust these costs to reflect the actual costs incurred by the Utility by issuing the appropriate Utility Agreement Modification.
- (25) The Utility's engineering costs incurred for the Project are eligible for reimbursement as of 06/06/2023 and are estimated to be \$5,000.

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

ATTEST:

WEST ORANGE SEWER – PUBLIC
WORKS AND ENGINEERING

Name:
Title:

By: _____
Name:
Title:

ATTEST:

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION

Anika James, Secretary
Department of Transportation

By: _____
Paul F. Schneider, Director
Capital Program Support

Date: _____

This aforementioned Agreement has been
reviewed and approved as to form.

Recommended:

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

Piotr Kurcon
Project Management Specialist 2
Team A

By: _____
Nonee Lee Wagner
Deputy Attorney General

Date: _____

Date: _____