
UTILITY RELOCATION AGREEMENT – DUKE ENERGY
(with Right of Entry Option for Permanent Utility Easement Areas)

NCDOT HIGHWAY WBS ELEMENT NO. _____

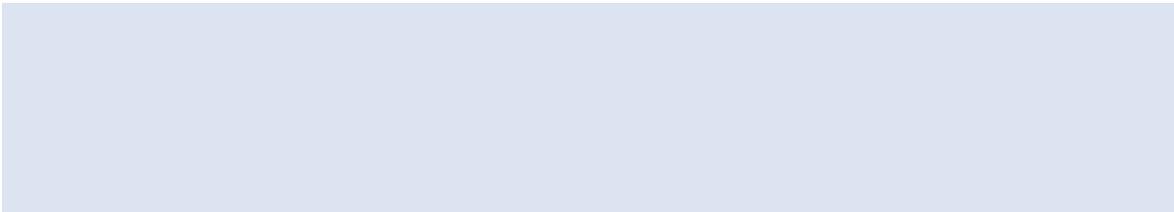
TRANSPORTATION IMPROVEMENT PROGRAM NO. _____

COUNTY _____

This agreement made this _____ day of _____, _____, by
and between the Department of Transportation, an agency of the State of
North Carolina, hereinafter referred to as the DEPARTMENT, and Duke
_____ Energy, hereinafter referred to as the
COMPANY:

WITNESSETH:-

THAT WHEREAS, the DEPARTMENT will submit a project for



construction as follows:
known as route _____ in _____ County,
North Carolina to be designated as N.C. State Highway Project and/or WBS
Element _____ and, WHEREAS, the construction of said project will
require certain adjustments to be made to the existing facilities of the COMPANY;

NOW, THEREFORE, in order to facilitate the orderly and expeditious relocation of the said facilities of COMPANY, the DEPARTMENT and the COMPANY have agreed as follows:

1. That the scope, description, and location of work to be undertaken by the COMPANY are as follows:

2. That any work performed under this agreement shall comply with DEPARTMENT's "POLICIES AND PROCEDURES FOR ACCOMMODATING UTILITIES ON HIGHWAY RIGHTS OF WAY" dated January 1, 1975, and such amendments thereto as may be in effect at the date of this agreement. The work to be performed by the COMPANY shall conform with Federal Highway Administration's Federal-Aid Policy Guide, Subchapter G, Part 645, Subpart A hereinafter referred to as FAPG dated December 9, 1991, and such amendments thereto as may be in effect at the date of this agreement. The provisions of said FAPG and amendments thereto are incorporated in this agreement by reference as fully as if herein set out. Any work performed under this agreement not in compliance with FAPG shall constitute unauthorized work and the DEPARTMENT shall be relieved of participating in the costs of such unauthorized work unless such work is done pursuant to a supplemental agreement attached to and made a part hereof.

3. That the COMPANY will prepare an estimate, broken down as to estimated cost of labor, construction overhead, materials and supplies, handling charges, transportation and equipment, rights of way, preliminary engineering and construction engineering, including an itemization of appropriate credits for salvage and betterments, all in sufficient detail to provide the DEPARTMENT a reasonable basis for analysis. Unit costs, such as broad gauge units of property, may be used for estimating purposes where the COMPANY uses such units in its own operations. The COMPANY will also prepare plans, sketches or drawings showing their existing facilities, temporary and permanent changes to be made with reference to the DEPARTMENT's new right of way using appropriate nomenclature, symbols, legend, notes, color coding or the like. The before mentioned estimate and plans are attached hereto and made a part hereof. The DEPARTMENT will not reimburse the COMPANY for any utility relocations or changes not necessitated by the construction of the highway project, nor for changes made solely for the benefit or convenience of the COMPANY, its contractor, or a highway contractor.

4. That the DEPARTMENT's authority, obligation, or liability to pay for relocations as set forth in this agreement is based on the COMPANY having a right of occupancy in its existing location by reason of the fee, an easement or other real property interest, the damaging or taking of which is compensable in eminent domain.

5. That payment for all work done hereunder shall be made in accordance with the requirements of FAPG unless payment is being made pursuant to a supplemental agreement attached to and made a part of this agreement.

6. That the construction work provided for in this agreement will be performed by the method or methods as specified below:

BY COMPANY'S REGULAR FORCE: The COMPANY proposes to use its regular construction or maintenance crews and personnel at its standard schedule of wages and working hours in accordance with the terms of its agreement with such employees.

BY EXISTING WRITTEN CONTINUING CONTRACT: The COMPANY proposes to use an existing written continuing contract under which certain work as shown by the COMPANY's estimate is regularly performed for the COMPANY and under which the lowest available costs are developed.

BY CONTRACT: The COMPANY does not have adequate staff or equipment to perform the necessary work with its own forces. The COMPANY proposes to award a contract to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed as set forth in an appropriate solicitation for bids.

7. a. It is contemplated by the parties hereto that the construction of this State Highway Project will begin on or about the _____ day of _____, _____.

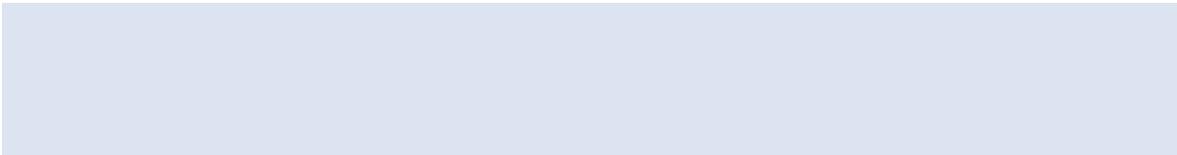
b. Based on the best information available at the present time to the COMPANY, indicate applicable paragraph below:

Materials are available and it is expected that work will be complete prior to highway construction.

All work will take place during highway construction and arrangements for said work will be coordinated with highway construction operations at preconstruction conference.

___ Work will begin promptly upon notification by DEPARTMENT; however, it is not expected to be complete prior to highway construction. Any remaining work will be coordinated with highway construction operations at preconstruction conference.

___ Other (Specify)



8. That the method used by the COMPANY in developing the relocation costs shall be as indicated by Paragraph (a), (b), or (c) as follows:

- a. _ Actual direct and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.
- b. _ Actual direct and related indirect costs accumulated in accordance with an established accounting procedure developed by the COMPANY and approved by the DEPARTMENT.
- c. On a lump-sum basis where the estimated cost to the DEPARTMENT does not exceed \$100,000.00. Except where unit costs are used and approved, the estimate shall show such details as man-hours by class and rate; equipment charges by type, size, and rate; materials and supplies by items and price; and payroll additives and other overhead factors.

9. Indicate if (a) or (b) is applicable:

- a. _ That the replacement facility is not of greater functional capacity or capability than the one it replaces, and includes no COMPANY betterments.
- b. _ That the replacement facility involves COMPANY betterments, or is of greater functional capacity or capability than the one it replaces.

10. That the total estimated cost of the work proposed herein, including all cost to the DEPARTMENT and COMPANY less any credit for salvage, is estimated to be ----- \$

The estimated non-betterment cost to the DEPARTMENT, including all cost less any credits for salvage, betterments, accrued depreciation and additional work done by the
C O M P A N Y w i l l b e - - - - - \$

The estimated cost to the COMPANY including betterments, and any additional work done by the COMPANY will be ----- \$

(The above costs shall be supported by attached estimate and plans)

11. That in the event it is determined there are changes in the scope of work, extra work, or major changes from the statement of work covered by this agreement, reimbursement shall be limited to costs covered by a modification of this

agreement or a written change or extra work order approved by the DEPARTMENT.

12. Periodic progress billings of incurred costs may be made by COMPANY to the DEPARTMENT not to exceed monthly intervals; however, total progress billing payments shall not exceed 95% of the approved non-betterment estimate. Progress billing forms may be obtained from the Area Utility Agent.

13. One final and detailed complete billing of all cost shall be made by COMPANY to the DEPARTMENT at the earliest practicable date after completion of work and in any event within six months after completion of work. The statement of final billing shall follow as closely as possible the order of the items in the estimate portion of this agreement

14. That the DEPARTMENT shall have the right to inspect all books, records, accounts and other documents of the COMPANY pertaining to the work performed by it under this agreement at any time after work begins and for a period of 3 years from the date final payment has been received by the COMPANY.

15. That the COMPANY obligates itself to erect, service and maintain the facilities to be retained and installed over and along the highway within the DEPARTMENT right of way limits in accordance with the mandate of the Statute and such other laws, rules, and regulations as have been or may be validly enacted or adopted, now or hereafter.

16. That if, in the future, it becomes necessary due to highway construction or improvement to adjust or relocate utilities covered in this agreement being relocated at DEPARTMENT expense that are crossing or otherwise occupying highway right of way, the non-betterment cost of same will be that of the DEPARTMENT.

17. That if, at any time, the DEPARTMENT shall require the relocation of or changes in the location of the encroaching facilities covered in this agreement being relocated at COMPANY expense, the COMPANY binds itself, its successors and assigns, to promptly relocate or alter the facilities, in order to conform to the said requirements, without any cost to the DEPARTMENT.

18. That the COMPANY agrees to relinquish their rights in that portion of right of way vacated by their existing facilities now absorbed within DEPARTMENT right of way.

19. Proper temporary and permanent measures shall be used to control erosion and sedimentation in accordance with all local, State and Federal regulations.

20. That the COMPANY agrees to perform the work described in Paragraph 1 above prior to the DEPARTMENT acquiring all necessary permanent utility easements, provided that:

a. The DEPARTMENT acquires Right of Entry Agreements in the form previously agreed upon by the DEPARTMENT and the COMPANY from all landowners who have not already granted a permanent utility easement and provides copies of such Right of Entry Agreements to the COMPANY;

b. In situations where the COMPANY has relocated facilities based on the Right of Entry Agreements, the Department shall promptly provide to the COMPANY copies of all Permanent Utility Easements acquired upon obtaining such easements.

c. In the event that the Right of Entry Agreements acquired by the DEPARTMENT are insufficient to permit COMPANY to perform the work described in Paragraph 1 above for any reason, including, without limitation, failure of all owners to execute, then the DEPARTMENT shall be responsible for all damages arising from such insufficient Right of Entry Agreements including, without limitation, (1) the cost of relocating COMPANY's facilities to a legally permissible location; (2) the cost of restoring the property from which COMPANY's facilities were removed; and (3) damages arising from trespass, inverse condemnation, or other legal claims.

d. In the event that the DEPARTMENT fails to acquire the necessary permanent utility easements, at no cost to the COMPANY, within six (6) months after completion and acceptance of the highway project, then the DEPARTMENT shall, in its discretion, do one of the following: (1) pay for the COMPANY to relocate its facilities to a location where the COMPANY can obtain the necessary new permanent private easements from the landowner or other landowners; (2) acquire the necessary new permanent private easements on behalf of the COMPANY; or (3) acquire alternate permanent utility easements and pay for the COMPANY to relocate its facilities to said alternate permanent utility easement areas.

e. In the event of damages caused by the DEPARTMENT, its officers, agents, or employees, COMPANY shall have available all remedies provided by law including, without limitation, the Tort Claims Act (G.S. Ch. 143, Art.13).

21. The company agrees to comply with Buy America. United States Codes (USC) 313 and Code of Federal Regulations 23 CFR 635.410: Requires the use of domestic steel and iron in all federally funded construction projects

**IN WITNESS WHEREOF, the parties hereby have affixed their names by their
duly authorized officers the day and year first above written.**

DEPARTMENT OF TRANSPORTATION

BY:

AREA UTILITY AGENT

ATTEST OR WITNESS

(TITLE)

(NAME OF COMPANY)

BY:

TITLE:

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Form R/W16.8 DukeEnergy Rev. 08/17/2016