
Appendix A
Agreements

CONTENTS

DeIDOT Utility Alteration, Adjustment or Relocation Agreement	A-2
Utility Construction Permit	A-25
Public Utility Annual Master Franchise.....	A-27
Utility Use and Occupancy Agreement	A-30
Blanket Vertical Adjustment Agreement	A-37
Utility Attachment Agreement	A-42

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
STANDARD UTILITY LETTER AGREEMENT
(Sample for reference only)

DATE

VIA EMAIL

"Enter name of addressee"
"Enter Title of addressee"
"Enter company of addressee"
"Enter Address 1"
"City, State, Zip"

RE: LETTER AGREEMENT, RELOCATION AND ADJUSTMENT UNDER
STATE CONTRACT NO. Txxxxxxxxx
F.A.P. NO.: xxxx-xxxx(xx)
PROJECT ID NO. xx-xxxxx
"ENTER LOCATION"
"ENTER COUNTY"

Dear "Enter Name of Address (Mr. or Ms.)",

This letter constitutes an **AGREEMENT** between the **Department of Transportation of the State of Delaware**, hereinafter designated as "STATE", and **"Enter Company Name"**, hereinafter designated as "UTILITY". The subject of this **AGREEMENT**, as hereinafter set forth, shall sometimes be referred to as the "PROJECT". **STATE** and **UTILITY** shall sometimes be referred to herein collectively as the "Parties" or individually as a "Party".

In consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, and intending to be legally bound, the parties hereto agree as follows:

Description of Utility Facilities

The **UTILITY** maintains facilities within the **PROJECT** limits as described in **Exhibit 'A'**, attached hereto and made a part hereof.

Reimbursable Work

In accordance with its Master Franchise Agreement, the Delaware Utility Manual Regulations, and the Delaware Code, the **UTILITY** understands it is obligated to relocate those portions of its facilities in conflict with proposed roadway, bridge and related transportation infrastructure improvements, including, but not limited to, signals, signage, lighting, sidewalks, pathways, at its sole expense, subject at all times to the following exceptions provided in Delaware Code and case law when **UTILITY** facilities are:

(Check all that apply)

- ☐ Located outside of STATE rights-of-way on privately held land or easement [Del. Power & Light Co. v. Terry, 194 A.2d 553 (Del. Ch. 1963)]
- ☐ Located Prior Rights [Del. Power & Light Co. v. Terry, 194 A.2d 553 (Del. Ch. 1963)]
- ☐ Located within the limits of STATE projects funded at least 90% by the federal government [17 Del. C §132 (b) (5)]
- ☐ Owned by a municipality or of any governmental body or political subdivision of the State of Delaware [17 Del. C. §143 (b)]
- ☐ Part of a major economic development project, recovery from natural disaster, or compelling benefit to the traveling public – eligible for up to 50% reimbursement only upon approval by Department Secretary. [17 Del. C. §143 (c) and (d)]
- ☐ Required to be made from unique materials and/or require storage in advance of the STATE project [17 Del. C. §143 (e)]
- ☐ Required to be relocated in advance of the STATE project [17 Del. C. §143 (f)] where the STATE agrees to reimburse the UTILITY for increased expenses incurred as a result of the advanced move, including, but not limited to, expenses for the maintenance of traffic, tree and vegetation removal, grubbing, grading, test holes, and surveying.
- ☐ Required to be moved a second time within 10 years of a previous STATE project [17 Del. C. §143 (g) (1) a.]
- ☐ Required to be altered or relocated due to the STATE altering its plan of construction for the PROJECT at any time before its completion in a manner that requires the public utility to alter or relocate its facility that has already been fully or partially altered or relocated in connection with the PROJECT [17 De. C. §143 (g) (1) b.]
- ☐ Required to relocate temporarily [17 Del. C. §143 (g) (1) d.]
- ☐ Required to be enhanced for public benefit and convenience such as net costs savings or expediting the completion schedule of the STATE project [17 Del. C. §143 (j)]

The Parties hereto agree, for the specific facilities described in **Exhibit ‘B1’**, under the exception(s) checked above, the **STATE** agrees to pay the appropriate, allowable and actual expenses associated with the relocation and/or adjustment of the **UTILITY’s** facilities to conform to the **PROJECT**, meaning the cost to the **UTILITY** properly attributable to such relocation and/or adjustment after deducting any increase in the value of the new or adjusted facilities and any salvage value derived from the old facilities.

The Parties hereto agree, for the specific facilities described in **Exhibit ‘B2’**, under the circumstance checked below, the **UTILITY** agrees to pay to the **STATE** the appropriate, allowable and actual expenses associated with the relocation and/or adjustment of the **UTILITY’s** facilities when the **UTILITY** facilities are:

(Check if applicable)

- ☐ To be included in a **STATE** construction contract and constructed by the **STATE’s** contractor or subcontractor instead of the **UTILITY** with costs being incurred by the **STATE**. [17 Del. C. §143 (h)]
- ☐ J-funds – Work being done by the **STATE’s** contractor that is reimbursable to the **STATE**. This includes a Betterment (upgrade to a facility) for public utility companies (Municipalities) and any work not reimbursable to a private utility where they are required to reimburse the **STATE** because they are located within the **STATE’s** right-of-way. [17 Del. C. §143 (h)] [23 CFR 645)

Itemized relocation costs eligible for reimbursement by the **STATE** to the **UTILITY** under this **AGREEMENT** as a result of the **PROJECT** are described as depicted on **Exhibit ‘C1’**, attached hereto and made a part hereof.

Itemized relocation costs eligible for reimbursement by the **UTILITY** to the **STATE** under this **AGREEMENT** as a result of the **PROJECT** are described and depicted on **Exhibit ‘C2’**, attached hereto and made a part hereof.

Prior Rights

When applicable, the **UTILITY** is determined to have legally occupied private property, typically in the form of a private easement designated as the “**PROPERTY**”, as described in **Exhibit ‘C3’**, prior to the time the property was conveyed to or acquired by the **STATE**. As part of this **AGREEMENT**, the **UTILITY** hereby conveys all of its rights in the **PROPERTY** that is impacted by acquisition associated with the **PROJECT** in exchange for the right of compensation should the **UTILITY** facilities described in **Exhibit ‘C4’** need to be relocated again due to future **STATE** projects.

- a. If determined to be applicable, a summary of prior rights will be included within **Exhibit ‘C4’** and will entitle the **UTILITY** to compensation for the actual costs of one future alteration, adjustment, or relocation, to each component of the **UTILITY’s** facilities as described within said **Exhibit ‘C4’**, resulting from future **STATE** projects.

To claim the rights held under this prior rights portion outlined by **Exhibit ‘C4’** of the **AGREEMENT**, it shall be the **UTILITY’s** responsibility to furnish an official signed copy of this **AGREEMENT** to the **STATE** during the design phase of future **STATE** projects.

Non-Reimbursable Work

For tracking and documentation purposes, the relocation work not eligible for reimbursement at the time of execution of this **AGREEMENT** by the **STATE** to the **UTILITY** as a result of the **PROJECT** is described and depicted on **Exhibit ‘D’**, attached hereto and made a part hereof. In accordance with 17 Del. C. §143 (g) (1) c., should the **STATE** cancel or otherwise fail to commence the **PROJECT** within 2 years of the date of authorization of the relocation work the costs documented in **Exhibit ‘D’**, the sufficiency of which is hereby acknowledged, shall become reimbursable to the **UTILITY** by the **STATE**. The **UTILITY** shall keep cost records contemporaneously with the non-reimbursable work and modify **Exhibit ‘D’** accordingly at the conclusion of the work as a change order under the terms of this **AGREEMENT**. The **STATE** will only consider, and will only accept for payment, those costs so documented.

Any relocation work not shown or otherwise not specifically described herein and shown as reimbursable in **Exhibits ‘B’** and **‘C’**, shall be construed as non-reimbursable under the **AGREEMENT** unless the Parties have executed a written and signed amendment to this **AGREEMENT**.

Construction Schedule

The anticipated construction schedule for the **STATE** project and for the **UTILITY** work contemplated under this agreement, both reimbursable and non-reimbursable, is described in **Exhibit ‘E’**.

Accommodation within STATE Rights-of-Way

The **STATE** shall make sufficient rights-of-way available to the **UTILITY** to accommodate the relocation of its facilities within the **STATE** rights-of-way, including temporary construction easements necessary for the installation of the **UTILITY** facilities, as well as permanent easements or rights-of-way needed for the maintenance of the **UTILITY** facilities.

Such property rights shall be acquired by the **STATE** at its expense only after coordination between the Parties to minimize the footprint and impact to adjacent owners while meeting the mutual needs of the Parties. Accommodation of the **UTILITY** facilities within **STATE** rights-of-way and easements shall be subject at all times to the requirements found in the Delaware Utility Manual Regulations in effect as of the date of execution of this **AGREEMENT**, as such requirements relate to the placement of such **UTILITY** facility.

The rights-of-way acquired under the **PROJECT** and the proposed location of the **UTILITY** facilities within such rights-of-way are depicted on the **PROJECT** plans, incorporated by reference hereto and made a part hereof.

Ingress & Egress

To the extent the **UTILITY** must maintain access to remnant parcels owned by the **UTILITY** from the **PROJECT** limits, the **STATE** will approve entrances at locations mutually acceptable to both the **UTILITY** and the **STATE**, which approval shall not be unreasonably withheld or conditioned, affording each party sufficient access to its property as needed to carry out its business.

Acceptance of Payment as Settlement of all Claims

The **UTILITY** agrees that acceptance of final payment by the **STATE** made pursuant to this **AGREEMENT** shall constitute full and fair compensation of all claims, damages of any kind, actions, causes of action, suits, rights, demands, losses, debts, penalties, fees, wages, expenses, attorneys' fees, or costs known or unknown, which either Party has, or may have had, against the other Party, whether or not apparent or yet to be discovered, or which may hereafter develop, for any acts or omissions related to or arising from the **PROJECT**.

Preparation of Plans, Specifications and Cost Estimates

The **STATE** shall prepare plans of the **PROJECT** and furnish advance copies of the plans to the **UTILITY**. The plans shall be supplied by the **STATE** in the formats requested by the **UTILITY**, either hard copy or electronic file, or as they are available.

The **UTILITY** shall prepare plans, specifications, and estimates of the expense for the relocation and/or adjustments of the **UTILITY** facilities caused by the **PROJECT** and shall submit the same to the **STATE**, through the **STATE's Utilities Engineer** for the **STATE's** review and approval pursuant to the terms and conditions of this **AGREEMENT**.

All plans, specifications and estimates of expenses submitted by the **UTILITY** shall be prepared in accordance with, and shall be subject to, the applicable conditions and stipulations set forth in **US DOT, Federal Highway Administration, Federal Aid Policy Guide (FAPG), 23 CFR, Part 645, Section 645.115 Construction**, and all amendments thereto, in effect as of the date of this **AGREEMENT**. All plans shall show clearly the existing facilities as well as the work contemplated by this **AGREEMENT**. All estimates of expense for the work shall set forth the items of work to be performed in sufficient detail to provide a reasonable basis for analysis and shall indicate all credits for the value of salvage, betterment and, if applicable, expired service life.

Buy America

All work to be performed under this **AGREEMENT** shall conform to all applicable state and federal laws, rules, and regulations, including all the requirements and provisions of Buy America and the Build America, Buy America Act (BABA) including, but not limited to, 23 USC §313, 49 USC §5323, 23 CFR §635.410, and 49 CFR §661 and any revisions as per the Infrastructure Investment and Jobs Act (H.R. 3684), hereinafter designated as "**BUY AMERICA**", which includes, but may not be limited to, all iron and steel, manufactured products, and construction materials permanently incorporated into the **PROJECT**. The **UTILITY** must maintain a list of materials and products used for the project and certifications that all products, permanently incorporated into the

project adhere to the **BUY AMERICA** requirements, including products taken from company stock. The **UTILITY** hereby certifies that in the performance of this **AGREEMENT**, for products where **BUY AMERICA** requirements apply, it shall use only such products for which it has received a certification from its supplier, or provider of construction services that procures the product certifying **BUY AMERICA** compliance and shall submit an executed **BUY AMERICA** certification upon completion of work. This does not include products for which waivers have been granted under 23 CFR §635.410 or other applicable provisions, as amended. In some circumstances, a waiver of **BUY AMERICA** requirements may be granted by the federal government, to be determined on a project-by-project basis. The **UTILITY** shall maintain a list of materials and products used for the project and certifications that any which are permanently incorporated into the project adhere to the **BUY AMERICA** requirements, including products taken from company stock. The **UTILITY** shall submit said list to the **STATE** identifying materials and products used along with compliance prior to submitting an invoice. Reimbursement to the **UTILITY** may be withheld until the **STATE** receives the list of materials identifying compliance and an executed **BUY AMERICA** certification for the **PROJECT**.

The **STATE** reserves the right to audit the **UTILITY** to further ensure **BUY AMERICA** provisions were met during and following completion of the **PROJECT**. If the **UTILITY** is unable to provide required justification, documentation, and certifications or if it is determined that **UTILITY** supplied products do not comply with **BUY AMERICA** requirements, then the **UTILITY** shall replace non-compliant products with compliant products at the **UTILITY**'s sole cost. The **STATE** may take additional measures as necessary to ensure **BUY AMERICA** compliance. The measures may include withholding reimbursement; seeking monetary compensation; holding utility permits for any active or proposed work; or as otherwise outlined in the DelDOT Utilities Manual regulation (2401 of DE Administrative Code).

In the event the **STATE**'s contractor procures materials for the **UTILITY**, it is the sole responsibility of the **STATE**'s contractor to ensure all **BUY AMERICA** requirements have been satisfied in connection with the materials procured by said contractor, as per their contract with the **STATE**. In the event the **UTILITY** is supplying the **STATE**'s contractor with materials, the **UTILITY** is responsible to certify **BUY AMERICA** compliance in connection with such materials as outlined above.

Time is of the Essence

The Parties hereto agree to abide by the response times as stipulated in the Delaware Utility Manual Regulations.

Design phase submissions will be made to the **UTILITY** by the **STATE** at the various phases of plan development. The **UTILITY** shall return requested information to the **STATE** within 30 days of receipt unless a later date is agreed upon by the appropriate representatives of each Party.

Construction time frames and dates in the schedules are of the essence, unless the context clearly and unequivocally allows otherwise. The Parties will notify each other promptly of any circumstances that may adversely affect the construction schedules, specifying the causes of delay and expected duration of it, as well as all proposed measures to reduce the delay as much as practicable.

Notice to Proceed with Relocation Work

The **UTILITY** shall not proceed with any relocation, maintenance of traffic, or other construction related work on the **PROJECT** unless it shall first obtain prior written approval from the **STATE** in the form of a **Notice to Proceed**, which approval shall not be unreasonably conditioned or delayed. Upon orders from the **STATE**, the **UTILITY** shall proceed to perform the work described in the approved plans, specifications, and estimates. If such work is to be performed by contract, the **UTILITY** shall let the contract in accordance with the applicable provisions of **US DOT, Federal Highway Administration, Federal-Aid Policy Guide (FAPG), 23 CFR, Part**

645, Section 645.115 Construction, and the payments to be made by or to the **STATE** shall be subject to the conditions and limitations as set forth therein.

Cooperation and Coordination of Work

The **UTILITY** shall cooperate with the **STATE's** contractor in performance of its work so that the **PROJECT** will not be impeded. The **UTILITY** shall perform its work in accordance with the provisions of the **STATE's** “**Standard Specifications**”, and all amendments thereto in effect at the time the work is performed. Additionally, the **STATE** and the **STATE's** contractor shall cooperate with the **UTILITY** to allow necessary relocation work to be performed in accordance with this **AGREEMENT**.

Protection as specified in the **Delaware Manual on Uniform Traffic Control Devices for Street and Highway Construction and Maintenance Operations**, and all amendments thereto, in effect at the time the work is performed, shall be provided for by the **UTILITY** unless otherwise agreed upon by the appropriate representatives of each Party.

Change Orders

The work and costs contemplated under this **AGREEMENT** are captured in the **Exhibits** attached hereto. The **Exhibits** may be modified by the Parties to accommodate changes required during the life of the **PROJECT** necessary to complete the work. An authorized representative of each Party, by initialing and dating the modified **Exhibit**, acknowledges and accepts the modified **Exhibit** as sufficient documentation of their agreement with the proposed change to the terms of the **AGREEMENT**. The most recent version of each **Exhibit**, so initialed and dated, shall be deemed the official **Exhibit** for payment purposes under this **AGREEMENT**.

Notice of Claim

“Claim” means a written demand or assertion by either Party seeking, as a legal or equitable right; payment of money, adjustment or interpretation of **AGREEMENT** terms, or other relief.

Each Party shall immediately notify the other in writing or by electronic mail of intention to make a claim under this **AGREEMENT**.

No further work shall be performed or costs incurred without the other Party being afforded the opportunity to first review and observe the changed condition to assess whether work may proceed. The other Party shall promptly review the claim so as to not delay the prosecution of the work.

Within five (5) business days of the initial notification, the claiming Party shall provide to the other Party the following information in writing:

1. The date of occurrence and the nature and circumstances of the occurrence that constituted the alleged change or basis of the claim.
2. The name, title, and activity of each Party's representative knowledgeable of the alleged change or basis of the claim.
3. Copies or descriptions of any documents and the substance of any communications involved in the alleged change or claim and the basis of an alleged Schedule change, if applicable.
4. The basis for an allegation that the work is not required by the **AGREEMENT**, if applicable.
5. The particular elements of **AGREEMENT** performance for which additional compensation may be sought

including:

- a. Plan changes that have been or may be affected by the alleged change or claim
- b. Schedule delay and disruption to the manner and sequence of performance that has been or will be caused by the alleged change or claim.
- c. The claiming Party's contractor and/or subcontractor claims for adjustment under the **PROJECT** resulting from the changed condition, if applicable.
- d. Materials that were/will be added, deleted, or wasted by the alleged change or claim.
- e. Equipment costs that was/will be idled or increased by the alleged change or claim.
- f. Labor costs that was/will be idled or increased as a result of the alleged change or claim.
- g. Estimated adjustments to material price(s), delivery schedules(s), staging, and storage time necessary due to the alleged change or claim.
- h. Estimate of the time within which the other Party must respond to the notice to minimize cost, delay, or disruption of performance.

The failure of either Party to provide required notice in accordance with this **AGREEMENT** shall constitute a waiver of any and all entitlement to additional compensation as a result of the alleged change or claim.

Enforcement

The Parties hereto agree that in the event of the **UTILITY's** noncompliance with the provisions of the **AGREEMENT** due solely to the actions or inactions of **UTILITY** and not based upon events or circumstances outside of its control, the **STATE** may impose such reasonable contract sanctions as it may deem appropriate, including, but not limited to, withholding of reimbursement payments; withholding **STATE** issued utility construction permits being sought by the **UTILITY** in other locations on **STATE** roadways until the **UTILITY** complies; or seeks compensation for damages resulting from said noncompliance.

The Parties also hereto agree that in the event of the **STATE's** noncompliance with the provision of this **AGREEMENT** due solely to the actions or inactions of the **STATE** or the **STATE's** contractor, the **UTILITY** may seek additional reimbursement for the actual costs resulting from and attributable to said noncompliance and which may otherwise have been non-reimbursable.

Insurance Requirement

1. The **UTILITY** agrees to carry sufficient insurance (or have its contractor carry sufficient insurance) for the **PROJECT** as required by the **STATE**. The **UTILITY (or its contractor)** shall pay all costs of said insurance. The **UTILITY** shall maintain the following insurance during the term of this **AGREEMENT**:
 - A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, and
 - B. Commercial General Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate, and
 - C. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate, or

- D. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate, or
 - E. Product Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate, and
 - F. If required to transport state employees, Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.
- 2. The **STATE** must be named a certificate holder on each of the certificates of insurance named above. The insurance company shall be authorized to do business in the State of Delaware. The **UTILITY** shall provide the **STATE** with thirty (30) days written notice in the event any policy is cancelled or not renewed. Nothing contained in this section shall be construed as limiting or otherwise altering **UTILITY's** obligation to indemnify the **STATE** due to the **UTILITY's** the **UTILITY's** agents, assignees, servants, or employees negligence.
 - 3. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.
 - 4. In the event the **STATE's** contractor performs any work for the **UTILITY**, it is the sole responsibility of the **STATE's** contractor to ensure all insurance requirements have been satisfied, for any and all work to be performed by said contractor, as per their contract with the **STATE**.

Indemnification

The **UTILITY** shall indemnify and save harmless the **STATE of Delaware** and its agencies, its officer, agents, employees, assigns, servants and the like from all suits, actions or claims of any character, whatsoever, brought because of any injuries or damage received or sustained by any persons or property on account of the work of the **UTILITY**, its officers, agents, employees, assigns, independent contractors, or the like undertaken within the scope of this **PROJECT**.

Should the **UTILITY** choose to hire a contractor to complete the work, the **UTILITY** shall cause to have its contractors indemnify and save harmless the **STATE** from and against all claims, demands and causes of actions of every kind and character arising in favor of the contractors' employees or third party on account of personal injuries or death or damages to property, which may arise out of the exercise of this **AGREEMENT**.

In addition, should the **UTILITY's** work be included in the **STATE** contract and be performed by the **STATE's** contractor or subcontractor, the **STATE** shall cause to have its contractors indemnify and save harmless the **UTILITY** from and against all claims, demands and causes of actions of every kind and character arising in favor of the contractors' employees or third party on account of personal injuries or death or damages to property, which may arise out of the contractors' negligence or willful misconduct.

Nothing contained within this **AGREEMENT** is intended to or shall waive any immunity a County or Municipality has under the County and Municipal Tort Claims Act, *10 Del. C. §4010*, et seq. as applicable to the claims of third parties who are not signatories to this **AGREEMENT**. Nothing contained within the **AGREEMENT** shall create any rights or causes of action for the benefit of third parties who are not signatories to this **AGREEMENT**. Nothing contained within this **AGREEMENT** may be the basis of any third-party claim, challenge, or appeal.

Maintenance

Upon completion of the relocation and/or adjustments, the **UTILITY** shall thereafter maintain said installation

in accordance with accepted industry standards and all applicable laws, rules and regulations including the Delaware Utility Manual Regulations.

Invoicing and Payment

Within one (1) year following the completion of the reimbursable work outlined in the **AGREEMENT**, the **UTILITY** shall submit to the **STATE** a final bill, in detail and based on work order accounting, for the expense for the relocation work performed. The billing shall conform to the applicable provisions of **US DOT, Federal Highway Administration, Federal-Aid Policy Guide (FAPG), 23 CFR, Part 645**. The final invoice shall specify “final” and contain a summary of total project costs performed. **STATE** shall reimburse **UTILITY** for the costs incurred under this **AGREEMENT** within 90 days of the submission of final invoices to **STATE**. In the case of betterment to the **UTILITY**’s system or when the **STATE** has performed any other work on behalf of the **UTILITY** that requires reimbursement to the **STATE**, the **STATE** shall submit to the **UTILITY** a single and final bill for the betterment cost thereof. Upon expiration of the aforementioned time period, the project’s administrative documents shall be closed out and funds terminated within one (1) year of the last chargeable day of the **PROJECT**.

The **UTILITY** shall submit a certification of Buy America compliance with the final invoice. Final payment will not be made by the **STATE** if the certification is not received.

Records Retention

The **UTILITY** must retain all books, documents, papers, accounting records and any other material pertaining to cost incurred under this **AGREEMENT** for a minimum of three (3) years after final payment by the **STATE** and shall make such material available upon written request for inspection and audit by the **STATE**.

Similarly, the **STATE** must retain all books, documents, papers, accounting records and any other material pertaining to cost incurred under this **AGREEMENT** for a minimum of three (3) years after final payment and shall make such material available upon request for inspection and audit by the **UTILITY**.

Civil Rights Requirements

All work to be performed under this **AGREEMENT** shall conform with all applicable state and federal laws, rules and regulations, including all the requirements of **Title VI of the Civil Rights Act of 1964** and **Implementing Regulations** issued by the **Department of Transportation**, attached hereto as **Exhibit ‘F’**. The **UTILITY** agrees that these provisions shall apply to it and/or and subcontractor(s).

If the **UTILITY** elects not to perform any portion of the relocation work under this **AGREEMENT** with its own forces but to enter into a contract or agreement with a contractor to perform the relocation work, the **UTILITY** covenants that it will not discriminate on the grounds of race, color, religion, sex, and national origin in the selection or retention of such contractor or similar person, and shall include in the contract or agreement with the contractor or similar person the provision as set forth in **Exhibit ‘F’, Civil Rights Act of 1964**.

Entire Agreement

This **AGREEMENT** embodies and constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes any prior oral or written agreements between the Parties with respect to the transaction contemplated hereby. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants, and conditions herein set forth and that no modification of this **AGREEMENT** and no waiver of any of its terms and/or conditions shall be effective unless made in writing and duly executed by the parties hereto. This **AGREEMENT** may not be altered, changed, or amended except by an instrument in writing, executed by the Parties.

Interpretation

The fact that one Party has drafted certain provisions of this **AGREEMENT** shall in no way be used against that Party in construing the terms, conditions, and obligations hereunder and all Parties acknowledge that each Party has had the opportunity to participate in drafting this **AGREEMENT**.

Captions and Headings

Captions and headings are for convenience of reference only and shall not be used to interpret the provision for this **AGREEMENT**.

Severability

If any one or more of the provisions contained in this **AGREEMENT** shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this **AGREEMENT** shall be construed as is such invalid, illegal or unenforceable provision had never been contained herein.

Termination

The **STATE** may cancel this **AGREEMENT** by written notification to the **UTILITY**, at any time prior to notification to the **UTILITY** to proceed with its work, in which event the **STATE** shall compensate the **UTILITY** for the total expenses incurred by the **UTILITY** as of the date of notification of termination.

Notice

Any notice pursuant to this **AGREEMENT** shall be conclusively deemed to have been received by a Party hereto and to be effective on the date of confirmed delivery to such Party sent by electronic mail set forth below:

DelDOT: Delaware Department of Transportation
Attention: Becky Patchett, Fiscal Advisor II, Utilities Section
Email: rebecca.patchett@delaware.gov

Name of Utility: "Enter company of addressee"
Attention: "Enter name of addressee"
Email: "Enter email of addressee"

Choice of Law

This **AGREEMENT** shall be governed by and construed in accordance with the laws of the State of Delaware. **UTILITY** consents to jurisdiction and venue in the State of Delaware.

Manner of Execution

This **AGREEMENT** may be executed in counterparts, each of which shall be an original, and such counterparts shall be construed together as one instrument. Facsimile or pdf signatures shall be deemed original signatures.

Representative Capacity

Each person executing this **AGREEMENT** in a representative capacity represents and warrants that he or she is empowered to do so.

-----Signature Page Follows-----

The signature of the undersigned constitutes the **STATE's** consent to and endorsement of the provisions of this **AGREEMENT**. An official signature of the representative for **UTILITY** when affixed hereinafter, shall constitute your agreement to the terms and conditions contained herein.

ATTEST

**DELAWARE DEPARTMENT OF
TRANSPORTATION**

Charlanne Clymer
Director, Finance

Nicole Majeski
Secretary of Transportation

ATTEST

APPROVED FOR:
"ENTER COMPANY NAME"

"Enter name of addressee"
"Enter Title of addressee"

Attached:

- Exhibit 'A' – Description of Existing **UTILITY** facilities within project limits
- Exhibit 'B1' – Description of work reimbursable to the **UTILITY**
- Exhibit 'B2' – Description of work reimbursable to the **STATE**
- Exhibit 'C1' – Itemized cost estimate of work reimbursable to the **UTILITY**
- Exhibit 'C2' – Itemized cost estimate of work reimbursable to the **STATE**
- Exhibit 'C3' – **UTILITY** private easements or property description documents
- Exhibit 'C4' – List of **UTILITY** facilities in area of Prior Rights
- Exhibit 'D' – Description of non-reimbursable **UTILITY** work
- Exhibit 'E' – **STATE** and **UTILITY** construction schedule
- Exhibit 'F' – Civil Rights Act of 1964

Exhibit A

Description of existing **UTILITY** facilities within project limits

Exhibit B1

Description of work reimbursable to the **UTILITY**

Exhibit B2

Description of work reimbursable to the **STATE**

Exhibit C1

Itemized cost estimate of work reimbursable to the **UTILITY**

Exhibit C2

Itemized cost estimate for work reimbursable to the **STATE**

Exhibit C3

UTILITY private easements or property description documents

Exhibit C4

List of **UTILITY** facilities in area of Prior Rights

Exhibit D

Description on non-reimbursable **UTILITY** work

Exhibit E

STATE and UTILITY construction schedule

Exhibit F

Civil Rights Act of 1964

Agreement, Relocation and Adjustment

Department of Transportation, Division of Transportation Solutions, Engineering Support, Utilities

2 pages

COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND IMPLEMENTING
REGULATIONS ISSUED BY THE DEPARTMENT OF TRANSPORTATION

During the performance of this Agreement, here-in-after sometimes referred to as the “contract”, the contractor, in this contract that being the “Utilities”, for itself, its assignees and successors in interest (here-in-after referred to as the “contractor”), agrees as follows:

- 1) COMPLIANCE WITH REGULATIONS: The contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, Title 49 of the Code of Federal Regulations (CFR), Part 21 (49 CFR, Part 21) as they may be amended from time to time, here-in-after referred to as the Regulations, which are herein incorporated by reference and made a part of this contract.
- 2) NONDISCRIMINATION: The contractor, with regard to the work performed by it during the contract shall not discriminate on the grounds of race, color, religion, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) SOLICITATIONS FOR SUBCONTRACTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor’s obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, religion, sex, or national origin.
- 4) INFORMATION AND REPORTS: The contractor will provide all information and reports required by the Regulations, or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State of Delaware Department of Transportation, or the Federal Highway Administration to be pertinent to ascertain

compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State of Delaware, Department of Transportation, or the Federal Highway Administration, as appropriate and shall set forth what efforts it has made to obtain the information.

- 5) SANCTIONS FOR NONCOMPLIANCE: In the event of the contractor's noncompliance with the nondiscrimination provisions of the contract, the State of Delaware, Department of Transportation, shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
- a. withholding of payments to the contractor under the contract until the contractor complies and/or
 - b. cancellation, termination, or suspension of the contract, in whole or in part.
- 6) INCORPORATION OF PROVISIONS: The contractor shall include the provisions of the Exhibit "F" in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor will take such action with respect to any subcontractor or procurement as the State of Delaware, Department of Transportation, or the Federal Highway Administration, may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor or supplier as a result of such direction, the contractor may request the State of Delaware to enter into such litigation to protect the interests of the State of Delaware, and in addition, the contractor may request the United States to enter into such litigation to protect the interest of the United States and/or the State of Delaware.



Utility Permit

PERMIT ID: XX-XXXX-XXXX

PROJECT NAME :

INSPECTOR:

INSPECTOR PHONE:

INSPECTOR EMAIL:

EMERGENCY ☐

AREA:

FIELD CONTACT:

ADC GRID:

FIELD CONTACT PHONE:

KAPPA GRID:

FIELD CONTACT EMAIL:

COMPANY:

**Received
:**

**Authorized
By:**

**Issued
On:**

**Permit
Type:**

**Expiry
Date:**

Permit Site:

Location:

**Project
Description:**

Dimension:

DeIDOT Authorized Signature :

Signature XXXXX

It is hereby agreed by both parties involved in the granting of this permit that the actual construction or adjustment covered by this permit shall be performed in accordance with the policies and procedures set forth in the Utilities Policies and Procedures Manual, State of Delaware, Division of Maintenance and Operations, in effect on the date of this permit. Work is to be begun within 30 days from the date of this permit and completed with as little delay as possible, the right to work under this permit expires 6 months from the date of issuance; it may be renewed or extended upon application.

The holder of this permit shall indemnify and save harmless the Division of Maintenance and Operations of and from all suits and damages arising from or on account of the construction or operation of its said poles, wire, pipe, conduits, appurtenances, etc. herein permitted on State rights-of-way.

Permittee shall call the Division of Maintenance and Operations Permit Section, (North District – 326-4679, Central District – 760-2444, South District – 853-1340) 24 hours prior to any installation on State rights-of-way.

Traffic Control shall be in accordance with the Delaware Manual on Uniform Traffic Control Devices.



Utility Permit

PERMIT ID: XX-XXXX-XXXX

PROJECT NAME :

Utility Coordinator **TRAFFIC CONTROL MUST BE IN ACCORDANCE WITH THE DE. MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD-Latest Edition)**

CONTACT INSPECTOR 24 HRS IN ADVANCE PRIOR TO ANY WORK.

NO ROAD OPENINGS PERMITTED WITHOUT THE APPROVAL FROM DELDOT

DelDOT Authorized Signature :

Signature XXXXX

It is hereby agreed by both parties involved in the granting of this permit that the actual construction or adjustment covered by this permit shall be performed in accordance with the policies and procedures set forth in the Utilities Policies and Procedures Manual, State of Delaware, Division of Maintenance and Operations, in effect on the date of this permit. Work is to be begun within 30 days from the date of this permit and completed with as little delay as possible, the right to work under this permit expires 6 months from the date of issuance; it may be renewed or extended upon application.

The holder of this permit shall indemnify and save harmless the Division of Maintenance and Operations of and from all suits and damages arising from or on account of the construction or operation of its said poles, wire, pipe, conduits, appurtenances, etc. herein permitted on State rights-of-way.

Permittee shall call the Division of Maintenance and Operations Permit Section, (North District – 326-4679, Central District – 760-2444, South District – 853-1340) 24 hours prior to any installation on State rights-of-way.

Traffic Control shall be in accordance with the Delaware Manual on Uniform Traffic Control Devices.

**STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
PUBLIC UTILITY MASTER FRANCHISE**

"ENTER Company" (**UTILITY**) a privately owned Delaware public utility, its successors, lessees, and assigns, is hereby granted the right, permission and authority to erect, construct, renew, replace, maintain and operate **"ENTER what they were approved for from the CPCN or PSC - this will vary for each agreement"** utility facilities, together with the necessary fixtures and appurtenances within State's rights of way located in **"ENTER County"** County, Delaware under and subject to all conditions, restrictions, and regulations of the Department of Transportation (**DEPARTMENT**), State of Delaware (**STATE**). The effective date of this Master Franchise (**FRANCHISE**) shall be the date of execution by the Director of Finance and it shall remain in force for a period of fifty (50) years, unless revoked by the **DEPARTMENT** in accordance with the terms of this **FRANCHISE**. Upon expiration of the initial fifty (50) year term, this **FRANCHISE** shall automatically renew for a fifty (50) year renewal term unless otherwise agreed to by the parties.

Under and by virtue of the power and authority vested in the **DEPARTMENT** by the provisions of the Delaware Code, Title 17, Chapter 132, Subsection (c) (8) and supplements thereto, the **DEPARTMENT** orders and directs that the following conditions, restrictions and regulations shall govern the installation of all utility facilities on the **STATE'S** rights of way.

1. The granting of this **FRANCHISE** shall in no way operate as an exemption of the holder thereof from any taxes levied or to be levied in accordance with law by the governing body of this **STATE**, **"ENTER County"** County or any other regulatory authority.
2. The **UTILITY** shall indemnify and save harmless the **STATE** and its agencies, its officers, agents, employees, assigns, servants and the like from all suits, actions or claims of any character, whatsoever, brought because of any injuries or damage received or sustained by any persons, or property on account of the construction or operation of its said Utility facilities and fixtures by the **UTILITY**, its officers, agents, employees, assigns, independent contractors or the like undertaken within the scope of the permitted work area and arising as a result of the **UTILITY'S** negligence or willful misconduct.
3. The **UTILITY** shall perform all construction adjustment or relocation in accordance with the policies and procedures as set forth in Delaware's Administrative Code Section 2401, Utilities Manual Regulations (**UTILITY MANUAL**), as amended from time to time.
4. The **UTILITY** shall respond immediately to any emergency relating to its fixtures and appurtenances placed pursuant to this **FRANCHISE** that has a direct effect on public safety or impedes the free flow of traffic. Less urgent trouble calls shall be responded to by the **UTILITY** within three hours of being notified of the issue.
5. The **UTILITY** shall, before cutting, spraying or trimming of any tree or shrub within the right of way of any highway in the **STATE**, secure a special use permit from the Department of Transportation District Engineer's Office (**ENGINEER'S OFFICE**) of the district in which the work is to be done, by written application in which are set forth the location, number, kind, and size of trees or shrubs to be cut, sprayed, or trimmed. A representative of the **ENGINEER'S OFFICE** will inspect such proposed work and, if approved, will issue a permit.
6. The **UTILITY** shall comply with all applicable Delaware laws and regulations including but not limited to 26 Del. C., Ch. 8, Delaware's Underground Utility Damage Prevention and Safety Act, and the **UTILITY MANUAL**. At a minimum the **UTILITY** shall participate in an approved one-call notification center, like Miss Utility and 811; field locate its facilities; respond to excavators within the timeframes established by code; and respond to designers within the timeframe established by the **UTILITY MANUAL**.

7. Consistent with applicable law, the **STATE** may impose such reasonable sanctions as it may deem appropriate for non-compliance with the provisions of this **FRANCHISE**. For examples and not by way of limitation, the **STATE** may impose lesser sanctions such as not issuing new permits to the **UTILITY**; or issue the immediate stop work order on any active utility construction within the **STATE** right-of-way until the **UTILITY** complies; or the suspension of this **FRANCHISE** until the non-compliance is corrected; or other measures as stated in the **UTILITY MANUAL**.
8. The **STATE** may revoke this **FRANCHISE** after 60 days written notice to the **UTILITY** of material non-compliance with this Agreement and opportunity to cure, provided that in the event that such cure requires more than 60 days to complete, this **FRANCHISE** shall remain valid so long as **UTILITY** promptly begins to effectuate such cure and diligently prosecutes such cure until completion. In the event of revocation of this **FRANCHISE** Agreement, the **STATE** may seek a Court Order to appoint a trustee to administer the **UTILITY'S** assets located within the State's roadway rights-of-way until the non-compliance is corrected or such time as the **UTILITY'S** facilities, fixtures, assets, and appurtenances are removed from the **STATE'S** roadway rights-of-way. The **STATE** will bear no cost for such removal; the cost shall be borne by the **UTILITY**. This section is not to be construed as placing any limitation upon either the **UTILITY** or the **STATE** to pursue any other legal or equitable remedy available to it for a breach of the conditions of this **FRANCHISE**.

This **FRANCHISE** may be executed in counterparts, each of which shall be an original, and such counterparts shall be construed together as one instrument. Facsimile or pdf signatures shall be deemed original signatures.

The signature of the undersigned constitutes the **STATE'S** consent to and endorsement of the provisions of this **FRANCHISE**. An official signature of the representative for the **UTILITY** when affixed hereinafter shall constitute agreement to the terms and conditions herein.

ATTEST:

**APPROVED FOR THE
DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION SOLUTIONS**

Charlanne Clymer
Director, Finance

Monroe Hite, III
Chief, Transportation Solutions R-O-W

Date Department Seal Affixed

ATTEST:

**APPROVED FOR THE UTILITY
"ENTER UTILITY"**

"ENTER NAME"
"ENTER TITLE"

STATE OF DELAWARE DEPARTMENT OF TRANSPORTATION
USE AND OCCUPANCY AGREEMENT

THIS AGREEMENT, hereinafter referred to as “**AGREEMENT**,” executed in triplicate, made this _____ day of _____, by and between _____,
a Delaware corporation, with offices at _____,
hereinafter referred to as “_____,”
and the **DEPARTMENT OF TRANSPORTATION**, a Department of the State of Delaware, hereinafter referred to as the “**DEPARTMENT**,”

WITNESSETH:

WHEREAS, _____ desires to construct and install a _____, herein referred to as the “**PROPOSED INFRASTRUCTURE**,” to be located in the State's right of way located across Public Road Name and No. _____ to run a distance of R/W _____ feet, plus or minus, beginning at _____ and ending at _____ as shown on Drawing No. _____ attached hereto as **Exhibit A**, and made a part hereof; and,

WHEREAS, the **DEPARTMENT** has the authority to enter into this **AGREEMENT** pursuant to the provisions of Title 17, Delaware Code, Section 132 (d), as amended; and

WHEREAS, the location of said **PROPOSED INFRASTRUCTURE**, as described, is necessary and will not restrict the use of said roadways by the public;

NOW, THEREFORE, in consideration of the promises and the terms and conditions hereinafter set forth, the parties agree as follows:

1. That _____ shall be permitted to renew, relocate, replace, maintain, and operate the **PROPOSED INFRASTRUCTURE** in the future following submission and approval of a utility construction permit through the **DEPARTMENT**. All work shall adhere to the standards as set forth in **DEPARTMENT**'s Utilities Regulation and the approval by the **DEPARTMENT** shall only occur upon compliance by _____ with all applicable standards to the satisfaction of the **DEPARTMENT**. If _____ fails to comply with any of the conditions, restrictions or regulations prescribed by the **DEPARTMENT**, action will be taken as specified in the Utilities Regulation and may result in revocation of this **AGREEMENT** and removal of all infrastructure within the **DEPARTMENT**'s right-of-way.

2. _____ agrees to indemnify and save harmless the **DEPARTMENT** of and from all suits and damages arising from or on account of any and all work required to install, construct, renew, relocate, replace, reconstruct, maintain, and/or operate said **PROPOSED INFRASTRUCTURE**.
3. Whenever, in the reasonable judgment of the **DEPARTMENT**, said **PROPOSED INFRASTRUCTURE** constitutes an unreasonable interference with the use of said roadways or with any modification, enlargement, or alteration of said roadways, _____ agrees, upon reasonable notice from the **DEPARTMENT**, to relocate such **PROPOSED INFRASTRUCTURE** at _____'s sole cost and expense.
4. The construction of said **PROPOSED INFRASTRUCTURE** shall not commence without prior written authorization and approval from the **DEPARTMENT**. The construction of said **PROPOSED INFRASTRUCTURE** shall be conducted so as to interfere as little as possible with the traffic along said roadways. Necessary, suitable and sufficient traffic control devices shall be provided for the protection and safety of the public. Placement of temporary traffic control devices shall adhere to the standards as set forth in the Delaware Manual on Uniform Traffic Control Devices (DE MUTCD).
5. When the construction of the **PROPOSED INFRASTRUCTURE** has been completed, all existing roadways, shoulders, or other facilities disturbed by construction shall be replaced and appropriate signs or utility markers shall be placed to identify the underground facility as detailed below.
_____ agrees:
 - a. That any damage to the roadway caused by any installation, construction, renewal, relocation, replacement, reconstruction, and/or maintenance work on the **EXISTING INFRASTRUCTURE** shall be the sole responsibility of _____.
 - b. To place and permanently maintain in place a utility sign or marker. The sign or marker shall be installed at the edge of both right-of-way lines and in line with the underground facility. The sign or marker shall also identify the type of underground facility installed, with ownership and contact information, and colored in accordance with the color coding described in Chapter 8 of Title 26 of the Delaware Code, entitled "Underground Utility Damage Prevention and Safety."
6. It shall be the sole responsibility of the **DEPARTMENT's** representative to inspect completed facility and ensure that the sign has been placed properly and on a permanent basis.
7. _____ shall obtain permission of the **DEPARTMENT** prior to making any other use of the **PROPOSED INFRASTRUCTURE** other than that for the transmission of _____ products.

8. This **AGREEMENT** shall be contingent upon _____ having received all required permits and permissions in writing from the State of Delaware Department of Natural Resources and Environmental Control, and any other relevant landowner(s), for the **PROPOSED INFRASTRUCTURE** for all areas adjacent to the **DEPARTMENT's** right-of-way. In the event that _____ does not have such permits and permissions, then this **AGREEMENT** shall be deemed null and void and, in that event, the **PROPOSED INFRASTRUCTURE** may not be placed within the **DEPARTMENT's** right-of-way.
9. The **DEPARTMENT** reserves the right to change the terms of this **AGREEMENT** providing that the terms of the **AGREEMENT** will in no case be more burdensome to _____ than are the terms to any other non-public corporation under similar circumstances.
10. When duly executed, this **AGREEMENT** shall be binding upon the parties hereto and their successors and assigns.
11. This **AGREEMENT** is for a period of 20 years with _____ having the option to renew for additional periods of 20 years and 10 years respectively, making a total possible period of 50 years from the effective date of the **AGREEMENT**, which is the date first above written. Accordingly, this **AGREEMENT** shall expire upon the conclusion of any period identified above, if not renewed by _____ in writing on or before said date of expiration and, in any event, no later than 50 years from the date hereof.
12. The granting of this use and occupancy of the State's right of way shall in no way operate as an exemption to _____ from any other regulatory requirements governing the operation and maintenance of the **PROPOSED INFRASTRUCTURE** in accordance with law by the governing body of this State or other regulatory authority having jurisdiction over such facilities.
13. Public use of the State's right-of-way, including maintenance and reconstruction of the roadway, takes precedence over any rights or privileges granted pursuant to this **AGREEMENT** and has senior rights of use, which will not be abrogated by this **AGREEMENT**. Should the State's right-of-way be needed for future road construction, utility improvements, or other projects for beneficial public use, _____ shall cooperate with the **DEPARTMENT** as reasonably necessary for the **DEPARTMENT's** maintenance of the right-of way for public use.

14. At all times pertaining hereto, the **DEPARTMENT** shall have complete and unrestricted access to all areas of the right-of-way and _____ shall not, in any manner whatsoever, restrict such access by **DEPARTMENT**.
15. The **DEPARTMENT** shall have the right, but not the obligation, to inspect the **PROPOSED INFRASTRUCTURE** at any time, and for any purpose, as **DEPARTMENT**, in its sole discretion, shall deem fit.
16. Upon revocation of _____ permission to maintain the **PROPOSED INFRASTRUCTURE** within the State of Delaware’s right-of-way, or by expiration or termination of this **AGREEMENT**, or upon _____ permanent discontinued use of its **PROPOSED INFRASTRUCTURE** , _____ agrees to remove its **PROPOSED INFRASTRUCTURE** including all fixtures, assets, and appurtenances in their entirety unless the **DEPARTMENT** agrees in writing, at terms acceptable to **DEPARTMENT**, to allow _____ to abandon or retire them in place. _____ shall bear all costs for such removal, abandonment, retirement, or any combination of such actions.
17. _____ shall indemnify and save harmless the State of Delaware and its agencies including, but not limited to, **DEPARTMENT**, its officers, agents, employees, assigns, and servants, hereinafter referred to as “**DEPARTMENT Indemnitees**”, from all suits, actions or claims of any character, whatsoever, brought because of any injuries received or sustained by any persons, or any damage received or sustained by any property, on account of the work of _____’s officers, agents, employees, assigns, or independent contractors, undertaken for the construction, operation, inspection, maintenance, repair, rehabilitation or relocation of the **PROPOSED INFRASTRUCTURE**, except to those caused by the negligence of the **DEPARTMENT Indemnitees** or any third party other than _____’s officers, agents, employees, assigns, or independent contractors, hereinafter referred to as the “**Non-_____ Third Parties**”. To be clear, _____ is not responsible under this **AGREEMENT** for any degree of the **DEPARTMENT Indemnitees’** or the **Non-_____ Third Parties’** negligence. Should _____ choose to hire a contractor to complete work on its behalf, _____ shall cause to have its contractors indemnify and save harmless the **DEPARTMENT Indemnitees** consistent with _____’s indemnity obligations under this Section, in connection with the work of such

_____ contractor, or its officers, agents, employees, assigns, or independent contractors, undertaken within the scope of this **AGREEMENT**.

18. Except for conditions requiring **DEPARTMENT**, in **DEPARTMENT's** sole discretion, to take immediate action to safeguard public health and welfare, **DEPARTMENT** shall notify _____ of the nature of any **DEPARTMENT** action that would affect the **PROPOSED INFRASTRUCTURE** as soon as reasonably possible, but no less than thirty (30) days prior to taking such action. Any notice, request, demand, or other communication required or permitted hereunder must be in writing and shall be deemed to have been given, upon receipt or refusal of delivery, if sent by registered or certified mail, return receipt requested, postage prepaid, by hand delivery, by a courier service, or by confirmed email. All notices to a party, except those sent by confirmed email, shall be sent to the addresses set forth below or to such other address or person as such party may designate by notice to the other party.

For DEPARTMENT:

Delaware Department of Transportation

Attention: _____

Title: _____

For _____ :

Attention: _____

Title: _____

19. This **AGREEMENT** constitutes the entire **AGREEMENT** between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements, representations, warranties and conditions. No alteration, amendment, modification or waiver of any of the terms or provisions hereof shall be valid unless the same be in writing and duly executed by the parties hereto. No oral modifications to the **AGREEMENT** are permitted. The Preamble Section of this **AGREEMENT** is incorporated herein as substantive provisions. All of

the terms, covenants and conditions of this **AGREEMENT** shall inure to and be binding upon the respective parties, their successors or assigns.

20. If the holder of this **AGREEMENT** fails to comply with any of the conditions, restrictions or regulations prescribed by this **AGREEMENT**, **DEPARTMENT** may exercise all reasonable actions available at law or equity to gain compliance.
21. Time, wherever specified herein for satisfaction of conditions or performance of obligations of the parties, is of the essence.
22. The interpretation, enforcement and construction of this **AGREEMENT**, and all matters relating hereto, will be governed by the laws of the State of Delaware applicable to agreements executed and to be performed solely within such State, without reference to the choice of law provisions thereof, and the courts of the State of Delaware shall be the venue for any dispute arising in connection with the terms of this **AGREEMENT**.
23. All terms and conditions of this **AGREEMENT** shall be binding upon the parties hereto and each of their successors and/or assigns. To that end, in the event that
_____ shall ever, at any time, sell or otherwise transfer its rights and/or obligations to any other entity that will include the **PROPOSED INFRASTRUCTURE**, _____ shall notify the **DEPARTMENT** of such sale or transfer no less than thirty (30) days prior to the completion of such sale or transfer and provide contact information for such other entity to the **DEPARTMENT** at that time. Further, in such event,
_____ shall notify such other entity of the existence of this **AGREEMENT** and provide a copy of this **AGREEMENT** to such other entity.
24. This **AGREEMENT** may be executed in one or more counterparts, any or all of which shall constitute one and the same instrument.
25. This **AGREEMENT** may not be modified, changed, or supplemented, nor may any of the obligations and rights be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing and then only to the extent set forth in such instrument.
26. If any term, covenant or condition of this **AGREEMENT** or the application thereof to any party or circumstances shall be determined by appropriate judicial authority to be invalid or unenforceable, this **AGREEMENT** shall not be affected thereby and each term shall be valid and enforceable to the fullest extent permitted by law in order to carry out the parties' intentions and agreements herein.
27. In executing this **AGREEMENT**, the **DEPARTMENT** and _____ have tried to anticipate problems, issues and situations which may arise now or in the future. Therefore, in addition to the obligations expressly required to be performed hereunder by the **DEPARTMENT** and

_____, each party agrees to reasonably cooperate with the other and (i) to perform such other acts and to execute and acknowledge such other documents and materials as the other party may reasonably request and as shall be necessary in order to effect the consummation of the transactions contemplated by this **AGREEMENT**, and (ii) to address in good faith such other problems, issues and situations which were unforeseen at the time this **AGREEMENT** was executed.

[Signature Page Follows]

IN WITNESS WHEREOF, each party hereto has caused this **AGREEMENT** to be executed in triplicate in its name and behalf by its duly authorized officer, as of the day and year first above written.

Signature

Title: _____

Sworn to and subscribed before me this _____ day of _____, 20____.

(seal)

Signature of Notary Public

Printed Name of Notary Public

Notary Public, State of _____

My Commission Expires: _____

Attest:

Department of Transportation

UTILITIES ENGINEER or
PUBLIC WORKS ENGINEER

CHIEF OF RIGHT-OF-WAY or

DISTRICT ENGINEER

DATE: _____

Utility Contact Name
Utility Contact Title
Utility Company Name
Street Address
City, State Zip

RE: **BLANKET VERTICAL ADJUSTMENT AGREEMENT**
UTILITY COMPANY NAME
APPLICABLE COUNTY(S)

Dear **Utility Contact Name**:

This letter constitutes an **AGREEMENT** between the **Department of Transportation of the State of Delaware**, hereinafter designated as "**STATE**", and the "**Enter Company Name**" hereinafter designated as "**UTILITY**". **STATE** and **UTILITY** shall sometimes be referred to herein collectively as the "Parties" or individually as a "Party".

In consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, and intending to be legally bound, the parties hereto agree as follows:

Scope of Work

Whereas the **UTILITY** is obligated to perform certain utility relocation and adjustment work in accordance with its Master Franchise Agreement, the Delaware Utility Manual Regulations, and the Delaware Code, the **STATE** hereby agrees to have the **STATE's** contractor or subcontractor adjust the **UTILITY's** at-grade facilities, including but not limited to, manhole frames and grates, valve boxes, junction wells, and hand holes as part of **STATE** projects, when impacted pursuant to 17 Del. C. §143 (j) and the Delaware Department of Transportation Division of Transportation Solutions Design Guidance Memorandum (DGM) 3-1. The **STATE** shall be responsible for the cost of said adjustments unless determined otherwise for a specific project and spelled out in a separate agreement with the **UTILITY**. Work perform by the **STATE's** contractor shall be performed in accordance with the **UTILITY's** standards and specifications in place at the time the **STATE** advertises the project as outlined in the **STATE's** contract documents. The **UTILITY** shall provide materials to the **STATE's** contractor when required to properly perform adjustments.

Buy America

All work to be performed under this **AGREEMENT** shall conform to all applicable state and federal laws, rules, and regulations, including all the requirements and provisions of Buy America and the Build America, Buy America Act (BABA) including, but not limited to, 23 USC §313, 49 USC §5323, 23 CFR §635.410, and 49 CFR §661 and any revisions as per the Infrastructure Investment and Jobs Act (H.R. 3684), hereinafter designated as "**BUY AMERICA**", which includes, but may not be limited to, all iron and steel, manufactured products, and construction materials permanently incorporated into the **PROJECT**. The **UTILITY** must maintain a list of materials and products used for the project and certifications that all products, permanently incorporated into the project adhere to the **BUY AMERICA** requirements, including products taken from company stock. The **UTILITY** hereby certifies that in the performance of this **AGREEMENT**, for products where **BUY AMERICA** requirements apply, it shall use only such products for which it has received a certification from its supplier, or provider of construction services that procures the product certifying **BUY AMERICA** compliance and shall submit an executed **BUY AMERICA** certification upon completion of work. This does not include products for which waivers have been granted under 23 CFR §635.410 or other applicable provisions, as amended. In some circumstances, a waiver of

BUY AMERICA requirements may be granted by the federal government, to be determined on a project-by-project basis. The **UTILITY** shall maintain a list of materials and products used for the project and certifications that any which are permanently incorporated into the project adhere to the **BUY AMERICA** requirements, including products taken from company stock. The **UTILITY** shall submit said list to the **STATE** identifying materials and products used along with compliance prior to submitting an invoice. Reimbursement to the **UTILITY** may be withheld until the **STATE** receives the list of materials identifying compliance and an executed **BUY AMERICA** certification for the **PROJECT**.

The **STATE** reserves the right to audit the **UTILITY** to further ensure **BUY AMERICA** provisions were met during and following completion of the **PROJECT**. If the **UTILITY** is unable to provide required justification, documentation, and certifications or if it is determined that **UTILITY** supplied products do not comply with **BUY AMERICA** requirements, then the **UTILITY** shall replace non-compliant products with compliant products at the **UTILITY**'s sole cost. The **STATE** may take additional measures as necessary to ensure **BUY AMERICA** compliance. The measures may include withholding reimbursement; seeking monetary compensation; holding utility permits for any active or proposed work; or as otherwise outlined in the DelDOT Utilities Manual regulation (2401 of DE Administrative Code).

Construction Schedule

The **STATE**'s contractor will be responsible to schedule the **UTILITY** vertical adjustment work into their construction schedule and to coordinate the schedule with the **UTILITY** prior to performing work.

Time is of the Essence

Construction time frames and dates in the schedules are of the essence, unless the context clearly and unequivocally allows otherwise. The Parties will notify each other promptly of any circumstances that may adversely affect the construction schedules, specifying the causes of delay and expected duration of it, as well as all proposed measures to reduce the delay as much as practicable.

Cooperation and Coordination of Work

The **UTILITY**, the **STATE** and the **STATE**'s contractor shall cooperate in performance of work described herein so that projects will not be impeded. The Parties shall perform work in accordance with the **STATE**'s "Standard Specifications", "Standard Construction Details", and Delaware Utility Manual Regulations, and **UTILITY** specifications and details. In the event of a conflict between **STATE** and **UTILITY** standards, the higher will apply.

Notice of Claim

"Claim" means a written demand or assertion by either Party seeking, as a legal or equitable right; payment of money, adjustment or interpretation of **AGREEMENT** terms, or other relief.

Each Party shall immediately notify the other in writing or by electronic mail of intention to make a claim under this **AGREEMENT**.

No further work shall be performed, or costs incurred without the other Party being afforded the opportunity to first review and observe the changed condition to assess whether work may proceed. The other Party shall promptly review the claim so as to not delay the prosecution of the work.

Within five (5) days of the initial notification, the claiming Party shall provide to the other Party the following information in writing:

6. The date of occurrence and the nature and circumstances of the occurrence that constituted the alleged change or basis of the claim.
7. The name, title, and activity of each Party's representative knowledgeable of the alleged change or basis of the claim.

8. Copies or descriptions of any documents and the substance of any communications involved in the alleged change or claim and the basis of an alleged Schedule change, if applicable.
9. The basis for an allegation that the work is not required by the **AGREEMENT**, if applicable.
10. The particular elements of **AGREEMENT** performance for which additional compensation may be sought including:
 - a. Plan changes that have been or may be affected by the alleged change or claim
 - b. Schedule delay and disruption to the manner and sequence of performance that has been or will be caused by the alleged change or claim.
 - c. The claiming Party's contractor and/or subcontractor claims for adjustment under the project resulting from the changed condition, if applicable.
 - d. Materials that were/will be added, deleted, or wasted by the alleged change or claim.
 - e. Equipment costs that was/will be idled or increased by the alleged change or claim.
 - f. Labor costs that was/will be idled or increased as a result of the alleged change or claim.
 - g. Estimated adjustments to material price(s), delivery schedules(s), staging, and storage time necessary due to the alleged change or claim.
 - h. Estimate of the time within which the other Party must respond to the notice to minimize cost, delay, or disruption of performance.

The failure of either Party to provide required notice in accordance with this **AGREEMENT** shall constitute a waiver of any and all entitlement to additional compensation as a result of the alleged change or claim.

Indemnification

Since the **UTILITY**'s work will be included in the **STATE** contract and be performed by the **STATE**'s contractor or subcontractor, the **STATE** shall cause to have its contractors indemnify and save harmless the **UTILITY** from and against all claims, demands and causes of actions of every kind and character arising in favor of the contractors' employees or third party on account of personal injuries or death or damages to property, which may arise out of the contractors' negligence or willful misconduct.

Maintenance

Upon completion of the relocation and/or adjustments, the **UTILITY** shall thereafter maintain said installation in accordance with accepted industry standards and all applicable laws, rules and regulations including the Delaware Utility Manual Regulations.

Entire Agreement

This **AGREEMENT** embodies and constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes any prior oral or written agreements between the Parties with respect to the transaction contemplated hereby. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants, and conditions herein set forth and that no modification of this **AGREEMENT** and no waiver of any of its terms and/or conditions shall be effective unless made in writing and duly executed by the parties hereto. This **AGREEMENT** may not be altered, changed or amended except by an instrument in writing, executed by the Parties.

Interpretation

The fact that one Party has drafted certain provisions of this **AGREEMENT** shall in no way be used against that Party in construing the terms, conditions and obligations hereunder and all Parties acknowledge that each Party has had the opportunity to participate in drafting this **AGREEMENT**.

Captions and Headings

Captions and headings are for convenience of reference only and shall not be used to interpret the provision for this **AGREEMENT**.

Severability

If any one or more of the provisions contained in this **AGREEMENT** shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this **AGREEMENT** shall be construed as is such invalid, illegal or unenforceable provision had never been contained herein.

Termination

The **STATE** may cancel this **AGREEMENT** by written notification to the **UTILITY**, at any time prior to notification to the **UTILITY** to proceed with its work, in which event the **STATE** shall compensate the **UTILITY** for the expense incurred by it as of the date of notification of termination.

Notice

Any notice pursuant to this **AGREEMENT** shall be conclusively deemed to have been received by a Party hereto and to be effective on the date of confirmed delivery to such Party (i) at the address set forth below (or at such other address as such Parties shall specify to the other Party in writing) or (ii) sent by electronic mail if an electronic mail address is set forth below followed by delivery by a nationally-recognized overnight courier, with confirmation by such overnight courier, address to such party at such address:

DeIDOT: Delaware Department of Transportation
800 South Bay Road
P.O. Box 778
Dover, DE 19903
Attention: Fiscal Advisor II, Utilities Section

Name of Utility: "Enter Company Name"
"Enter address line 1"
"Enter address line 2"
"Enter City State Zip"
Attention: "Enter name of addressee"

Choice of Law

This **AGREEMENT** shall be governed by and construed in accordance with the laws of the State of Delaware. **UTILITY** consents to jurisdiction and venue in the State of Delaware.

Manner of Execution

This **AGREEMENT** may be executed in counterparts, each of which shall be an original, and such counterparts shall be construed together as one instrument. Facsimile or pdf signatures shall be deemed original signatures.

Representative Capacity

Each person executing this **AGREEMENT** in a representative capacity represents and warrants that he or she is empowered to do so.

-----Signature Page Follows-----

The signature of the undersigned constitutes the **STATE's** consent to and endorsement of the provisions of this **AGREEMENT**. An official signature of the representative for **UTILITY** when affixed hereinafter, shall constitute your agreement to the terms and conditions contained herein.

ATTEST

APPROVED FOR:

"Enter Company Name"

"Enter name of addressee"

"Enter Title of addressee"

ATTEST

**DELAWARE DEPARTMENT OF
TRANSPORTATION**

Charlanne Clymer
Director, Finance

Nicole Majeski
Secretary of Transportation

UTILITY ATTACHMENT AGREEMENT

THIS AGREEMENT is made by and between **Utility Name**, a Delaware corporation with offices at **Utility Address**, hereinafter referred to as “**UTILITY ABBREV NAME**”, its successors and assigns, and the **Department of Transportation of the State of Delaware**, its successors and assigns, hereinafter referred to as “**DELDOT**”, on the date as signed by **DELDOT** (the “**Effective Date**”).

WITNESSETH

WHEREAS, **DELDOT** currently owns and maintains existing Bridge **number** on **road name** over **road/water body/railroad** (the “**Bridge**”); and

WHEREAS, 26 *Del. C.* §901 gives **UTILITY** the authorization to be within the right-of-way with **DELDOT** approval; and

WHEREAS, **UTILITY** is requesting permission to attach new **describe utility facilities** onto the **Bridge** in concert with **DELDOT** utility permit **XX-XXXX-XXX** (the “**Utility Facilities**”); and

WHEREAS, 17 *Del. C.* §143 gives **DELDOT** the authorization to enter into an agreement with a public utility to reimburse some or all of the expenses related to a relocation required by a construction project; and

WHEREAS, Section **4.7** of section 2401 of title 2 of the Delaware Administrative Code generally prohibits utilities from attaching to a bridge;

WHEREAS, **DELDOT** is authorized to allow utility attachments to bridges under an exception request scenario; and

WHEREAS, **DELDOT** has made the determination that based on the facts and circumstances in this specific instance, as set forth in this **AGREEMENT**, to grant the exception request made by **UTILITY** to allow the **Utility Facilities** to be attached to the **Bridge** based **list information and justification from exception request**. **DELDOT** has determined that denying the attachment of **UTILITY's Utility Facilities** to the **Bridge** would result in **list information and justification from exception request**; and

NOW, THEREFORE, in consideration of the mutual and dependent covenants set forth herein, **UTILITY** and **DELDOT** hereby agree as follows:

1. This **AGREEMENT** supersedes and supplants all previous contracts associated with **UTILITY's Utility Facilities** attached to the **Bridge**.

2. **UTILITY** is hereby granted the revocable nonpossessory right (the “**Right**”) to attach the relocated **Utility Facilities** to the **Bridge** as agreed upon through design coordination for the **Project**. **DELDOT** may revoke this **Right** at any time in accordance with Section 3 of this **AGREEMENT**. This granting of the **Right** is subject at all times to the provisions of the DelDOT Utilities Manual Regulations found in 2 Del. Admin. Code §2401, the Delaware Underground Utility Damage Prevention and Safety Act found at 26 Del. C. §801 et. seq. and any and all pertinent laws, rules, regulations, policies and construction specifications of the State of Delaware and **DELDOT**.

The granting of this use of the State’s right of way shall in no way operate as an exemption to **UTILITY** from any other regulatory requirements governing the operation and maintenance of **Utility Facilities** in accordance with law by the governing body of this State or other regulatory authority having jurisdiction over such facilities.

3. In the event that **UTILITY** fails to adhere to the terms of this **AGREEMENT**, or fails to meet the schedule requirements established in the **PROJECT** causing delays to the **PROJECT**, or fails to respond within established timeframes for future bridge maintenance or reconstruction projects, or fails to properly maintain its facilities and the conduits and the attachments to the bridge as determined by **DELDOT**, **DELDOT** may terminate this **AGREEMENT** as provided for in Section 5 of this **AGREEMENT**, and revoke **UTILITY’s** **Right** to attach to the **Bridge**. **DELDOT** will provide **UTILITY** a minimum of sixty (60) calendar days’ written notice prior to any revocation of the **Right**. Upon revocation **UTILITY** shall remove its **Utility Facilities** in accordance with the provisions herein for **Utility Facilities** removal.
4. Public use of the State’s right of way, including maintenance and reconstruction of the **Bridge**, takes precedence over the **Rights** granted pursuant to this **AGREEMENT** and has senior rights of use, which will not be abrogated by this **AGREEMENT**. Should the State’s right-of-way be needed for future road construction, utility improvements, or other projects for beneficial public use (“**Future Project**”), **UTILITY** shall have the right to review all construction drawings and details relating to the **Future Project** affecting the area(s) covered by this **AGREEMENT** to determine if the nature of the work necessary to perform the **Future Project** shall have a negative effect on the integrity, safety or operation of **UTILITY’s** **Utility Facilities**. In the event **UTILITY** determines that the **Future Project** will have a negative effect on the **Utility Facilities**, **UTILITY** shall have the right to offer reasonable and industry accepted alternatives to ensure continued integrity and safe operation of the **Utility Facilities**. Both **UTILITY** and **DELDOT** agree to act reasonably with respect to evaluating **UTILITY’s** suggestions or each other’s subsequent suggested alternatives. However, in the event **UTILITY** and **DELDOT** cannot agree on an alternative to complete the **Future Project** without impact to the **Utility**

Facilities, then, in such event, before commencement of the **Future Project**, **UTILITY** shall have the option of either (i) discontinuing use of the **Utility Facilities** permanently or for a period of time necessary for **DELDOT**, or its contractors, to complete work on the **Future Project** in the area(s) covered by this **AGREEMENT**, or (ii) relocating its **Utility Facilities**, to an alternative location, in whole or in part, within right-of-way provided by **DELDOT**. **UTILITY** shall bear all costs associated with relocating the **Utility Facilities**, in whole or in part, including any actual or consequential damages to any third parties resulting therefrom. **DELDOT** and its contractors shall cooperate with **UTILITY** in the relocation of the **Utility Facilities**, including making reasonable accommodations for **UTILITY's** construction work and scheduling.

5. Upon revocation of **UTILITY's Right** to occupy the **Bridge**, the State's right-of-way, expiration or termination of this **AGREEMENT**, or upon **UTILITY's** permanent discontinued use of its **Utility Facilities**, **UTILITY** agrees to remove its **Utility Facilities** including all fixtures, assets and appurtenances from the **Bridge** unless **DELDOT** agrees in writing, at terms acceptable to **DELDOT**, to allow **UTILITY** to retire or otherwise abandon them in place. **UTILITY** shall bear all costs for such removal, retirement, abandonment, or any combination of such actions.
6. **UTILITY** shall indemnify and save harmless the State of Delaware and its agencies including, but not limited to, **DELDOT**, its officers, agents, employees, assigns, and servants, hereinafter referred to as "**DELDOT Indemnitees**", from all suits, actions or claims of any character, whatsoever, brought because of any injuries received or sustained by any persons, or any damage received or sustained by any property, on account of the work of **UTILITIES's** officers, agents, employees, assigns, or independent contractors, undertaken for the construction, operation, inspection, maintenance, repair, rehabilitation or relocation of the **Utility Facilities**, except to those caused by the negligence of the **DELDOT Indemnitees** or any third party other than **UTILITY's** officers, agents, employees, assigns, or independent contractors, hereinafter referred to as the "**Non-UTILITY Third Parties**". To be clear, **UTILITY** is not responsible under this **AGREEMENT** for any degree of the **DELDOT Indemnitees'** or the **Non-UTILITY Third Parties'** negligence.

Should **UTILITY** choose to hire a contractor to complete work on its behalf, **UTILITY** shall cause to have its contractors indemnify and save harmless the **DELDOT Indemnitees** consistent with **UTILITY's** indemnity obligations under this Section, in connection with the work of such **UTILITY** contractor, or its officers, agents, employees, assigns, or independent contractors, undertaken within the scope of this **AGREEMENT**.

7. Except for conditions requiring **DELDOT**, in **DELDOT's** sole discretion, to take immediate action to safeguard public health and welfare, **DELDOT** shall notify **UTILITY** of the nature of any

DELDOT action that would affect the **Utility Facilities** as soon as reasonably possible, but no less than thirty (30) days prior to taking such action. Any notice, request, demand or other communication required or permitted hereunder must be in writing and shall be deemed to have been given, upon receipt or refusal of delivery, if sent by registered or certified mail, return receipt requested, postage prepaid, by hand delivery, by a courier service, or by confirmed email. All notices to a party, except those sent by confirmed email, shall be sent to the addresses set forth below or to such other address or person as such party may designate by notice to the other party.

For DELDOT:

Delaware Department of Transportation

P.O. Box 778

Dover, DE 19903

Attention: Utilities Engineer

For UTILITY:

Utility Company

Mailing Address

City, State Zip

Attention: Name

Title: Contact's Title

8. This **AGREEMENT** constitutes the entire **AGREEMENT** between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements, representations, warranties and conditions. No alteration, amendment, modification or waiver of any of the terms or provisions hereof shall be valid unless the same be in writing and duly executed by the parties hereto. No oral modifications to the **AGREEMENT** are permitted. The Preamble Section of this **AGREEMENT** is incorporated herein as substantive provisions. All of the terms, covenants and conditions of this **AGREEMENT** shall inure to and be binding upon the respective parties, their successors or assigns.
9. If the holder of this **AGREEMENT** fails to comply with any of the conditions, restrictions or regulations prescribed by this **AGREEMENT**, **DELDOT** will exercise all reasonable actions available at law or equity to gain compliance.
10. **UTILITY** may terminate this **AGREEMENT** for any reason upon sixty (60) days written notice to **DELDOT** and upon making all arrangements for the removal of the **Utility Facilities** from the **Bridge**.

DELDOT may terminate this **AGREEMENT** for material non-compliance with the **AGREEMENT** by **UTILITY**, if **DELDOT** provides **UTILITY** with a written notice describing the material non-compliance, and **UTILITY** does not cure the non-compliance within sixty (60) days after **UTILITY's** receipt of such notice. However, in the event such cure requires more than sixty (60) days to complete, this **AGREEMENT** shall remain valid so long as **UTILITY**, in the reasonable discretion of **DELDOT**, promptly begins to effectuate such cure and diligently prosecutes such cure until completion. In the event of termination of this **AGREEMENT** under this Section for material non-compliance, **DELDOT** may take any action authorized by law, including but not limited to, removal of the assets or legal action to force cause the removal of **UTILITY's** assets with **UTILITY** bearing all cost for removal of the **Utility Facilities** and associated appurtenances. This section shall not to be construed as placing any limitation upon **DELDOT** to pursue any other legal or equitable remedy available to it for breach of conditions of this **AGREEMENT**.

11. Time, wherever specified herein for satisfaction of conditions or performance of obligations of the parties, is of the essence.
12. In executing this **AGREEMENT**, **DELDOT** and **UTILITY** have tried to anticipate problems, issues and situations which may arise now or in the future. Therefore, in addition to the obligations expressly required to be performed hereunder by **DELDOT** and **UTILITY**, each party agrees to cooperate with the other and (i) to perform such other acts and to execute and acknowledge such other documents and materials as the other party may reasonably request and as shall be necessary in order to effect the consummation of the transactions contemplated by this **AGREEMENT**, and (ii) to address such other problems, issues and situations which were unforeseen at the time this **AGREEMENT** was executed.

[Signature Page Follows]

IN WITNESS WHEREOF, **UTILITY** and **DELDOT**, through their duly authorized representatives, have executed this **AGREEMENT** to be effective as of the **Effective Date**. Signature and date shall evidence each party's intent and desire to enter into this **AGREEMENT** in accordance with the terms and conditions set forth above.

For the State of Delaware, Department of Transportation

Attest:

Charlanne Clymer
Director, Division of Finance

Date

Shanté A. Hastings,
Chief Engineer

Date

For **Utility Name**

Attest:

Date

Name,
Title

Date

Corporate Seal

Approved as to form:

Name
Deputy Attorney General

Date