

STANDARD UTILITY AGREEMENT

U Number: _____ Utility ID: _____

County : Webb
Highway: SH 84
Limits from: FM 1472
Limits To: IH 35 West Frontage Road
CCSJ 3483-02-002
ROWCSJ 3483-02-003

This Agreement by and between the City of Laredo, Texas, ("**City**"), and Kimmeridge Texas Gas, LLC, ("**Utility**"), acting by and through its duly authorized representative, shall be effective on the date of approval and execution by and on behalf of the **City**.

WHEREAS, the **City** has deemed it necessary to make certain highway improvements as designated by the **City** and approved by the Federal Highway Administration within the limits of the highway as indicated above (the "**Highway Project**");

WHEREAS, the proposed Highway Project will necessitate the adjustment, removal, and/or relocation of certain facilities of the **Utility** as indicated in the following statement of work: Readjustment of existing Gas Line at Station 165+00; and more specifically as shown in the **Utility's** plans, specifications and estimated costs, which are attached hereto as Attachment "A".

WHEREAS, the **City** will participate in the costs of the adjustment, removal, and relocation of certain facilities to the extent as may be eligible for City and/or Federal participation.

WHEREAS, the **City**, upon receipt of evidence it deems sufficient, acknowledges the **Utility's** interest in certain lands and facilities that entitle it to reimbursement for the adjustment, removal, and relocation of certain of its facilities located upon the lands as indicated in the statement of work above.

NOW, THEREFORE, BE IT AGREED:

The **City** will pay to the **Utility** the costs incurred in adjustment, removal, and relocation of the **Utility's** facilities up to the amount said costs may be eligible for **City** participation.

All conduct under this agreement, including but not limited to the adjustment, removal, and relocation of the facility, the development and reimbursement of costs, any environmental requirements, and retention of records will be in accordance with all applicable federal and City laws, rules and regulations, including, without limitation, the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601, et seq., the National Environmental Policy Act, 42 U.S.C. §§ 4321, et seq., the Buy America provisions of 23 U.S.C. § 313 and 23 CFR 635.410, as amended, Texas Transportation Code § 223.045, the Utility Relocations, Adjustments, and Reimbursements provisions of 23 CFR 645, Subpart A, and the Utility Accommodation provisions of 23 CFR 645, Subpart B.

The **Utility** shall supply, upon request by the **City**, proof of compliance with the aforementioned laws, rules, regulations, and guidelines prior to the commencement of the adjustment, removal, and relocation of the facility.

The **Utility** shall not commence any physical work, including without limitation site preparation, on the State's right of way or future right of way, until TxDOT provides the **Utility** with written authorization to proceed with the physical work upon TxDOT's completion and clearance of its environmental review of the Highway Project. Any such work by the **Utility** prior to TxDOT's written authorization to proceed will not be eligible for reimbursement and the **Utility** is responsible for entering any property within the proposed limits of the Highway Project that has not yet been

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acquired by TxDOT. This written authorization to proceed with the physical work is in addition to the authorization to commence work outlined below. Notwithstanding the foregoing, the provisions of this paragraph are required only when TxDOT has not obtained completion and clearance of its environmental review of the Highway Project prior to the execution of this Agreement by the City and the Utility.

The **Utility** shall comply with the Buy America provisions of 23 U.S.C. § 313, 23 CFR 635.410, as amended, and the Steel and Iron Preference provisions of Texas Transportation Code § 223.045 and, when products that are composed predominately of steel and/or iron are incorporated into the permanent installation of the utility facility, use domestically manufactured products. TxDOT Form 1818 (Material Statement), along with all required attachments, must be submitted, prior to the commencement of the adjustment, removal, and relocation of the facility, as evidence of compliance with the aforementioned provisions. Failure to submit the required documentation or to comply with the Buy America, and Steel and Iron Preference requirements shall result in: (1) the **Utility** becoming ineligible to receive any contract or subcontract made with funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991; (2) the **City** withholding reimbursement for the costs incurred by the **Utility** in the adjustment, removal, and relocation of the **Utility's** facilities; and (3) removal and replacement of the non-compliant products.

The **Utility** agrees to develop relocation or adjustment costs by accumulating actual direct and related indirect costs in accordance with a work order accounting procedure prescribed by the **City**, or may, with the **City's** approval, accumulate actual direct and related indirect costs in accordance with an established accounting procedure developed by the **Utility**. Bills for work hereunder are to be submitted to the **City** not later than one (1) year after completion of the work. Failure to submit the request for final payment, in addition to all supporting documentation, within one (1) year after completion of the work may result in forfeiture of payment for said work.

When requested, the **City** will make intermediate payments at not less than monthly intervals to the **Utility** when properly billed. Such payments will not exceed 90 percent (90%) of the eligible cost as shown in each such billing. Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.

The **City** will, upon satisfactory completion of the adjustment, removal, and/or relocation and upon receipt of final billing prepared in an approved form and manner and accounting for any intermediate payments, make payment in the amount of 90 percent (90%) of the eligible costs as shown in the final billing prior to audit and after such audit shall make an additional final payment totaling the reimbursement amount found eligible for **City** reimbursement.

Alternatively, the **City** agrees to pay the **Utility** an agreed lump sum of \$252,536.00 as supported by the attached estimated costs. The **City** will, upon satisfactory completion of the adjustments, removals, and relocations and upon receipt of a final billing, make payment to the **Utility** in the agreed amount.

Upon execution of this agreement by both parties hereto, the **City** will, by written notice, authorize the **Utility** to perform such work diligently and to conclude said adjustment, removal, and relocation by the stated completion date which is attached hereto in Attachment "C". The completion date shall be extended for delays caused by events outside the **Utility's** control, including an event of Force Majeure, which shall include a strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, sabotage, or other events, interference by the **City** or any other party with the **Utility's** ability to proceed with the work, or any other event in which the **Utility** has exercised all due care in the prevention thereof so that the causes of other events are beyond the control and without the fault or negligence of the **Utility**.

This agreement in its entirety consists of the following elements:

Standard Utility Agreement – ROW-U-35;

- Plans, Specifications, and Estimated Costs (Attachment "A");
- Accounting Method (Attachment "B");
- Schedule of Work (Attachment "C");
- ~~Statement Covering Contract Work – ROW-U-48 (Attachment "D");~~
- ~~Utility Joint Use Agreement – ROW-U-JUA and/or Utility Installation Request – Form 1082 (Attachment "E");~~
- ~~Eligibility Ratio (Attachment "F");~~


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- ~~Betterment Calculation and Estimate (Attachment "G"); N/A, and~~
- Proof of Property Interest – ROW-U-Affidavit (Attachment "H").

All attachments are included herein as if fully set forth. In the event it is determined that a substantial change from the statement of work contained in this agreement is required, reimbursement therefore shall be limited to costs covered by a modification or amendment of this agreement or a written change or extra work order approved by the **City** and the **Utility**.

This agreement is subject to cancellation by the **City** at any time up to the date that work under this agreement has been authorized, and such cancellation will not create any liability on the part of the **City**. However, the **City** will review and reimburse the **Utility** for eligible costs incurred by the **Utility** in preparation of this Agreement.

The City Auditor may conduct an audit or investigation of any entity receiving funds from the **City** directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the City Auditor, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the City auditor with access to any information the City auditor considers relevant to the investigation or audit.

The **Utility** by execution of this agreement does not waive any of the rights that the **Utility** may have within the limits of the law.

It is expressly understood that the **Utility** conducts the adjustment, removal, and relocation at its own risk, and that the **City** makes no warranties or representations regarding the existence or location of utilities currently within its right of way.


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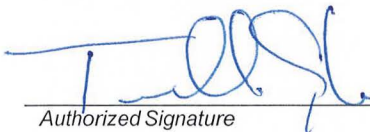

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The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

UTILITY

Utility: Kimmeridge Texas Gas, LLC
Name of Utility

By: 
Authorized Signature

Tanner M. Sykes
Print or Type Name

Title: vice president, land + legal

Date: May 7, 2024

EXECUTION RECOMMENDED:

City: City of Laredo
Name of City

By: Ramon E. Chavez
Authorized Signature

Ramon E. Chavez, P.E.
Print or Type Name

Title: City Engineer

Date: May 9, 2024

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Attachment "A"

Plans, Specifications, and Estimated Costs

All material items within cost estimate that must meet Buy America or Steel and Iron Preference Provision requirements must be indicated with an asterisk (*).

- ☐ Currently, **we do not have** Buy America required materials planned for this project. In the event that Buy America compliant materials are used during construction on this project, compliance documentation will be provided.
- ☐ There are non-domestic iron and steel materials in this project that fall under the De Minimis equation. Calculation showing the total cost does not exceed one-tenth of one percent (0.1 %) of the individual utility agreement amount or \$2,500.00, whichever is greater is required.
- ☒ We understand the Buy America Compliance Requirements and will supply the required documentation to TxDOT indicating compliance with this provision. The following documents will be supplied prior to installation of the materials:

- 1) Form 1818 - Material Statement
- 2) Material Test Reports or Certifications

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Attachment "B"

Accounting Method

☐ **Actual Cost Method of Accounting**

The utility accumulates cost under a work order accounting procedure prescribed by the Federal or City regulatory body and proposes to request reimbursement for actual direct and related indirect costs.

☒ **Lump Sum Method of Accounting**

Utility proposed to request reimbursement based on an agreed lump sum amount supported by a detailed cost analysis.

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Attachment "C"

Schedule of Work

Estimated Start Date: Can start as soon as permits are approved (5/15), (subject to physical work restrictions prior to the issuance of environmental clearance as required by the provisions of this agreement)

Estimated Duration (days): 15

Estimated Completion Date: 5/30

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Attachment "H" Proof of Property Interest

☒ Supporting documentation of compensable property interest that establishes reimbursement eligibility as referenced in Texas Transportation Code §203.092.

☐ Property interest documented through applicable affidavits and required attachments.

☐ ROW-U-Affidavit

☐ The roadway improvement project is designated as an Interstate Highway project; therefore, no supporting documentation of compensable interest is required.

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