

STANDARD UTILITY REIMBURSEMENT AGREEMENT

THIS STANDARD UTILITY REIMBURSEMENT AGREEMENT (“AGREEMENT”) BY AND BETWEEN THE TOWN OF HORIZON CITY (“TOWN”), AND TEXAS GAS SERVICE, A DIVISION OF ONE GAS, INC. (“UTILITY”), BOTH ACTING BY AND THROUGH, THEIR DULY AUTHORIZED REPRESENTATIVES, SHALL BE EFFECTIVE ON THE DATE OF APPROVAL AND EXECUTION BY AND ON BEHALF OF THE TOWN.

WHEREAS, the Town has deemed it necessary to make certain highway improvements as designated by the Town and approved by the Texas Department of Transportation (“TxDOT”) and the Federal Highway Administration (the “Highway Project”);

WHEREAS, the proposed Highway Project will necessitate the adjustment, removal, and/or relocation of certain facilities of the Utility as shown more specifically in the Utility’s plans, specifications, and estimated costs, which are attached hereto as Attachment “A”;

WHEREAS, the Town will participate in the costs of the adjustment, removal, and relocation of certain of the Utility’s facilities to the extent as may be eligible for Town and/or Federal participation;

WHEREAS, the Town Council previously approved a Standard Utility Reimbursement Agreement on August 29, 2023, to reimburse the Utility for the cost of relocating its facilities as needed for the N. Darrington Reconstruction Project;

WHEREAS, the authorized amount to be reimbursed was not to exceed \$60,000.00 and was not signed by the Utility;

WHEREAS, additional Utility infrastructure must be removed in order to complete the N. Darrington Reconstruction Project, and the amount of reimbursement will be increased to allow for that work;

WHEREAS, the Town and the Utility desire to sign a new Standard Utility Reimbursement Agreement to include the work previously identified, the new work and allow for a contingency;

WHEREAS, the Town, upon receipt of reasonable supporting evidence, 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 Attachment “A”.

WHEREAS, the parties agree that upon signing this Standard Utility Reimbursement Agreement, the one approved August 29, 2023 is null and void;

Initial Date
Town

Initial Date
Utility

NOW, THEREFORE, BE IT AGREED:

The Town 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 Town participation is not anticipated to exceed the sum of \$170,736.00, which includes the removal of 6 concrete caps inside the easement area and the removal/relocation of Utility owned facilities identified in the proposed Standard Utility Reimbursement Agreement approved by Town Council on August 29, 2023 and specified on Attachment "A" attached hereto and fully incorporated herein .

The parties acknowledge that there may be a need to exceed the sum of \$170,736.00 if additional Utility facilities need to be relocated/removed before the N. Darrington Road Reconstruction project is completed and the Town agrees that a contingency fund equal to 20% of \$170,736.00 (\$34,147.20) has been established to cover unexpected expenses. The Mayor is authorized to utilize the contingency fund after receiving and approving a proposed Work Order for the additional work.

The Utility agrees to utilize the unit pricing and estimates specified in this Agreement as Attachment "A" to determine the additional reimbursement amount, if necessary.

In the event the additional reimbursement exceeds the sum of \$34,147.20, the Utility will notify the Town as soon as possible to order to allow for the Town to review proposed work orders and schedule the approval of the Town Council for additional work.

All conduct under this Agreement, including but not limited to the adjustment, removal, and relocation of the Utility's facilities, the development and reimbursement of costs, any environmental requirements, and retention of records will be in accordance with all applicable state, federal and Town 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.

Each party to this Agreement shall supply, upon request by the other party, proof of compliance with the aforementioned laws, rules, and regulations prior to the commencement of the adjustment, removal, and relocation of the Utility's facilities.

The Utility shall not commence any physical work, including without limitation site preparation, on the Town'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 acquired by the Town. 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 Town 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 Facilities, 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 Utility's facilities, 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 may 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 Town 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 Town or an established accounting procedure developed by the Utility. Bills for work hereunder are to be submitted to the Town not later than one (1) year after completion of the work. Failure to submit the request for final payment, in addition to reasonable supporting documentation, within one (1) year after completion of the work may result in forfeiture of payment for said work.

The Town will, upon satisfactory completion of the adjustment, removal, and/or relocation of the Utility's facilities 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 Town reimbursement.

Upon execution of this Agreement by both parties hereto, the Town will, by written notice, authorize the Utility to perform such work diligently and to conclude said adjustment, removal, and relocation by the 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 Town or any other party with the Utility's ability to proceed with the work, delays in obtaining required permits, approvals or authorizations 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 Reimbursement Agreement;

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

- Eligibility Ratio (Attachment “F”);
- Betterment Calculation and Estimate (Attachment “G”); 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 plans and specifications contained in Attachment “A” of 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 Town and the Utility.

This Agreement is subject to cancellation by the Town at any time up to the date that work under this Agreement has been authorized. If this Agreement is cancelled by the Town, the Town shall reimburse the Utility for any reasonable costs incurred or contractually obligated to be incurred by the Utility prior to Utility’s receipt of notice of cancellation from the Town.

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

Except as and to the extent expressly provided in the Encroachment Agreement between the Town and Utility dated _____, nothing in this Agreement reflects or shall be deemed to constitute any release, relinquishment, abandonment, modification or subordination of any right, title or interest Utility may have in its lands and facilities described above.

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

[Signature Page and Exhibits follow]

UTILITY

TEXAS GAS SERVICE
a division of ONE Gas, Inc.

By: _____
Authorized Signature

Print or Type Name

Title: _____

Date: _____

TOWN

TOWN OF HORIZON CITY

By: _____

Andres Renteria, Mayor

Date: _____

Attachment “A”
Plans, Specifications, and Estimated Costs

All material items within the 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. Calculations 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 the Town 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

**Attachment “B”
Accounting Method**

- **Actual Cost Method of Accounting**

The Utility accumulates cost under a work order accounting procedure prescribed by the Federal or Town 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.

**Attachment “C”
Schedule of Work**

Estimated Start Date: _____, (subject to physical work restrictions prior to the issuance of environmental clearance as required by the provisions of this Agreement)

Estimated Duration (days): _____

Estimated Completion Date: _____

Attachment “D”
Statement Covering Contract Work
(ROW-U-48)
(ROW-U-48-1, if applicable)

Construction Contract:

- Utility performing with their own forces (timesheets will be required at the time of billing).
- Utility will use outside forces to perform the adjustment, and complete attached ROW-U-48 or ROW-U-48-1 (joint bid).

Engineering Contract:

- Utility performing with their own forces (timesheets will be required at the time of billing).
- Utility will use consultant contracts (continuing contract rate sheets or fee schedules will be required).
- TxDOT will procure utility consultants.

Attachment “E”
Utility Joint Use Agreement – (ROW-U-JUA) and/or Utility Installation Request – (Form 1082)

- Utility Joint Use Agreement (ROW-U-JUA)
- Utility Installation Review/Permit Number: _____

Attachment “F” Eligibility Ratio

Eligibility Ratio established: _____ %

- Non-interstate Highway (Calculations attached)
- Interstate Highway

ROW Utility Manual Chapter 8, Section 2

In developing the ratio, line length or number of poles is restricted to facilities located within the existing and proposed highway right of way. Facilities located outside the existing and proposed right-of-way limits will not be used in developing the ratio.

Please see the example of eligibility ratio calculations below.

Plan Sheet or Page#	In Easement (Eligible) Existing # of Poles or LF	In Public ROW (Ineligible) Existing # of Poles or LF
1	0	0
2	84	22
3	90	385
4	238	96
Totals	412	503

Total Existing # of Poles or LF (Eligible)	412
Total Existing # of Poles or LF (Ineligible)	503
Total Existing # of Poles or LF	915
Total Existing # of Poles or LF (Eligible) divided by the Total Existing # of Poles or LF	45.03%

Attachment “G”
Betterment Calculation and Estimate

- Elective Betterment Ratio established: _____ %
(Calculation attached and justification below)
- Forced Betterment
(Provide supporting documentation)
- Not Applicable

Elective betterment justification Statement:

**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.