



NH-11(81) / 19028-2245-14

Contract No. 8761

UTILITY EASEMENT CONTRACT

THIS CONTRACT made and entered into by and between the **State of Tennessee** acting through its Department of Transportation, hereinafter called "TDOT", and **Metro Nashville Water & Sewer Department (Sewer)**, hereinafter called the "Utility".

WITNESSETH:

WHEREAS, TDOT plans to construct PIN Number **105766.02, SR-11 from North of Mill Creek to near SR-254**, located in **Davidson County, Tennessee** (hereinafter called the "Project"), and for said Project to be constructed it will be necessary for the Utility to convey existing utility easements for the proposed highway right-of-way and acquire replacement easements for the relocation of their facilities in order that said Project may be constructed; and

WHEREAS, the Utility has furnished TDOT with a relocation plans and an estimate showing the cost of acquiring said replacement easements, which estimate is in the amount of **\$96,100.00**; and

WHEREAS, the parties want to enter into a contract to provide for the acquisition of said replacement easements.

NOW, THEREFORE, in consideration of these premises and the mutual promises contained herein, it is agreed by and between the parties as follows:

1. (a) The Utility shall acquire said replacement easements in accordance with the estimate of cost and relocation plan as approved by TDOT, incorporated herein by reference, and as otherwise contemplated by this Contract. The estimate includes a written valuation of the replacement right-of-way. The approved estimate of cost is attached hereto as Exhibit "A".
- (b) Any change in the approved relocation plan shall require the prior written approval of TDOT. TDOT agrees to review and, if acceptable, approve such requests for change in a timely manner, and TDOT agrees to cooperate with the Utility to resolve, if possible, any objections TDOT may have to such requested changes in the Contract.
2. (a) The Utility shall acquire all utility rights-of-way outside of the proposed public highway right-of-way as may be needed to relocate its utility facilities, including any betterment.
- (b) The Utility agrees to transfer to TDOT that portion of the previously owned private utility rights-of-way being vacated by the Utility and within the Project proposed right-of-way.

3. (a) The Utility agrees that it will perform the acquisition work provided for in this Contract by one of the following methods (mark the appropriate space and describe as required):

- By force account (provided that the Utility is qualified to perform the work with its own forces in a satisfactory and timely manner)
- By contract awarded to the lowest qualified bidder based on appropriate solicitation
- By use of an existing continuing contract (provided that the costs are reasonable)
- By combination of the above, as described below:

(b) Whenever the Utility elects to perform the acquisition work by award of a contract, it shall submit the same to TDOT for prior approval. TDOT may not be required to reimburse the Utility for its obligation under any contract that has not received the advance written approval of TDOT.

(c) The Utility agrees that any memoranda or other information concerning the estimated cost of the proposed relocation of the Utility's facilities will not directly or indirectly be released or disclosed to potential bidders except to the extent that the utility may otherwise be required to do so by law.

(d) Neither the Utility nor any affiliate or subsidiary thereof shall participate directly or indirectly as a bidder for any part of the Utility's proposed acquisition to be performed under a contract to be awarded by the Utility. The Utility further agrees that no employee, officer, or agent of the Utility shall participate in the selection, or in the award or administration of a contract for the performance of any part of the Utility's proposed acquisition if a real or apparent conflict of interest would be involved. Such a conflict of interest would arise when the employee, officer, or agent, or any member of his or her immediate family, or his or her partner, or an organization which employs or is about to employ any of the above, has a substantial financial interest, such as five-percent (5%) or greater ownership interest, or other interest in the firm selected for award of a contract to perform the Utility's acquisition work for this Project. Neither the Utility nor any affiliate, subsidiary, employee, officer, or agent of the Utility shall solicit or accept gratuities, favors, or anything of monetary value, except an unsolicited gift having nominal monetary value, from contractors or bidders.

(e) The Utility must request in writing and receive TDOT's written approval prior to any revision in the method of performing the acquisition work. Failure to do so may result in the loss of TDOT participation in the cost of acquisition.

4. To the extent that facilities are being located within public highway right-of-way, the Utility agrees to comply with all current, applicable provisions of 23 CFR Subpart 645A, which are incorporated herein by reference; provided, however, that provisions for review, approval, authorization and participation by the Federal Highway Administration set forth in 23 CFR Subpart 645A shall not apply to the

extent that the Project is not a federal-aid project. The Utility acknowledges possession of a copy of the 23 CFR Subpart 645A.

5. The Utility agrees to comply with all current, applicable provisions of the Guidelines for Governmentwide Debarment and Suspension of 2 CFR §180.355 through §180.365 which are incorporated herein by reference. The Utility acknowledges possession of 2 CFR Part 180 and the requirements of the attached FHWA Form 1273, Section X – Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.
6. Subject to the provisions of this paragraph and as otherwise provided in this Contract, TDOT agrees to reimburse the Utility for the cost of acquiring replacement easements in accordance with the approved plan, as follows:
 - (a) Subject to the provisions of the next succeeding paragraphs herein, the State agrees that it will pay the Utility the entire cost, under the provisions of 23 CFR §645.111, for acquiring the Utility's replacement easements in accordance with said estimate. The parties specifically recognize that the costs of acquiring easements are not fixed. TDOT agrees to pay the eligible, reasonable, and acceptable actual costs of acquiring the easements; provided, however, TDOT reserves the right to reject costs it finds to be ineligible or unreasonable. However, in no event shall the State be liable for costs of acquiring easements not included in the approved relocation plans or as modified and approved under this contract.
 - (b) TDOT shall reimburse the Utility for such direct and indirect costs as are allowable under the current provisions of 23 CFR Subpart 645A. Any claim for costs that would be ineligible for Federal reimbursement under 23 CFR Subpart 645A on a federal-aid project shall be ineligible for reimbursement by TDOT on this Project, whether it is or is not a federal-aid project.
 - (c) The Utility shall develop and record acquisition costs in a manner consistent with the current provisions of 23 CFR §645.117 as of the effective date of this Contract and as approved by TDOT.
 - (d) The Utility shall submit all requests for payment by invoice, in form and substance acceptable to TDOT, with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amount charged for the period invoiced, and the total amount charged under the Contract to date.
 - (e) The Utility may submit invoices for interim payments during the progress of the work; provided, however, that such interim payments may be approved only up to a maximum of eighty percent (80%) of the approved estimate of reimbursable costs for the total acquisition project, as described in Exhibit "A" of this Contract, and any remaining reimbursable costs must be submitted on the final bill. Such invoices for interim payments shall be submitted no more often than monthly.
 - (f) TDOT shall, unless it has good faith and reasonable objections to the Utility's invoice for interim payment, use its best efforts to issue payment based on the Utility's invoice within forty-five (45) days after receipt. If, however, TDOT has good faith and reasonable objections to the Utility's invoice(s) or any part thereof,

TDOT shall specifically identify those objections in writing to the Utility so as to allow the parties to address them in a prompt manner. If the invoice is otherwise acceptable, TDOT shall only withhold payment(s) as to those cost items it has specified in its written notice of objections to the Utility. All other reimbursable cost items set out in the Utility's invoice shall be paid by TDOT.

- (g) Subject to the Utility's right to bill on an interim basis as described above, the Utility shall by invoice provide one final and complete billing of all costs incurred within one year following the completion of the Utility acquisition work in its entirety. Otherwise, any previous payments to the Utility may be considered final, and the Utility may be deemed to have waived any claim for additional payments, except as TDOT and Utility may have agreed otherwise in writing before the end of that year.
 - (h) The Utility's invoice(s) shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by TDOT, on the basis of audits or monitoring conducted in accordance with the terms of this Contract, not to constitute allowable costs. The payment of an invoice shall not prejudice TDOT's right to object to or question any invoice or matter in relation thereto. Such payment by TDOT shall neither be construed as acceptance of the work nor as final approval of any of the costs invoiced therein.
7. TDOT shall have the right to confirm the financial information made available by the Utility to TDOT in support of the Utility's invoiced amounts. Any costs billed by the Utility that cannot be verified by TDOT records will not be reimbursed.
 8. The Utility agrees that its cost records will be subject to inspection at any reasonable time by representatives of TDOT before or after final payment for reimbursable work. In the event any costs are determined not to be allowable under provisions of this Contract, the Utility agrees to repay TDOT such amount of ineligible costs included within payments made by TDOT.
 9. The Utility shall keep and maintain accurate records by which all invoices can be verified. The books, records, and documents of the Utility, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years after final payment has been received by the Utility and shall be subject to audit at any reasonable time and upon reasonable notice by TDOT, the Comptroller of the Treasury, or their duly appointed representatives during this three year period. The financial statements shall be prepared in accordance with generally accepted accounting principles.
 10. This Contract is subject to the appropriation and availability of TDOT funds. In the event that the funds are not appropriated or are otherwise unavailable, TDOT reserves the right to terminate this Contract upon written notice to the Utility. Said termination shall not be deemed a breach of Contract by TDOT. Upon receipt of the written notice, the Utility shall cease all work associated with the Contract, except as may be reasonably necessary to return the Utility's facilities to safe operation. Should such an event occur, the Utility shall be entitled to compensation for all costs of acquisition reimbursable under 23 CFR Subpart 645A (in accordance with paragraph 6 of this Contract) for work completed as of the termination date or in accordance with this provision. Upon such termination, the Utility shall have no right

to recover from TDOT any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

11. The Utility agrees to, the extent provided by law, that it will be solely responsible for any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Utility, its employees, its contractors, or any person acting for or on its or their behalf in the performance of the acquisition work relating to this contract. The Utility further agrees that it will not hold TDOT responsible for any such claims. Under this Contract, "TDOT" shall include any and all officers and employees of the State of Tennessee acting within the scope of their employment..

In the event that TDOT is sued for damages arising from acts, omissions, or negligence by the Utility or its employees, the Utility shall cooperate in TDOT's defense. TDOT shall give the Utility written notice of any such claim or suit, and the Utility shall have full right and obligation to conduct the Utility's own defense thereof. Nothing contained herein shall be deemed to accord to the Utility, through its attorney(s), the right to represent TDOT in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

12. TDOT shall have no liability except as specifically provided in this Contract.
13. This Contract may be modified only by a written amendment executed by the parties hereto.
14. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term, covenant, condition or provision of this Contract shall be held to be waived, modified, or deleted except by written amendment signed by the parties hereto.
15. The Utility hereby agrees that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Utility on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any classification protected by the Constitution or statutes of the United States or the State of Tennessee. The Utility shall, upon request, show proof of such nondiscrimination and post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
16. The Utility shall comply with all applicable federal and state laws and regulations in the performance of its duties under this Contract. The Utility agrees that failure of the Utility to comply with this provision may subject the Utility to the repayment of all State funds expended under this Contract.
17. This Contract shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns. Time is of the essence of this Contract.
18. The parties hereto, in the performance of this contract, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged

by the parties hereto that such parties are independent contracting entities and that nothing in this contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

19. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Utility acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.
20. If any terms, covenants, conditions or provisions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms, covenants, conditions and provisions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
21. TDOT and the Utility agree that any notice provided for in this Contract or concerning this Contract shall be in writing and shall be made by personal delivery, by certified mail (return receipt requested), by nationally recognized overnight delivery service (such as FedEx or UPS), or by facsimile transmission (provided that notice shall also be given in one of the other methods prescribed herein) addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

To TDOT:

Tennessee Department of Transportation
Attention: State Utility Coordinator
Suite 600, James K. Polk Building
505 Deaderick Street
Nashville, Tennessee 37243-0329
Facsimile Number: (615) 532-1548

With a copy if requested by TDOT to:

John Reinbold, General Counsel
Suite 300, James K. Polk Building
505 Deaderick Street
Nashville, Tennessee 37243-0326
Facsimile Number: (615) 532-5988

To the Utility:

Metro Water Services

Attention: Scott Potter

1600 2nd Avenue North

Nashville, TN 37208

Facsimile Number: (615) 862-4929

With a copy if requested by Utility to:

Metropolitan Legal Department

Attention: Tara Ladd, Assistant Metropolitan Attorney

P.O. Box 196300

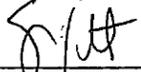
Nashville, TN 37219-6300

Facsimile Number: (615) 862-6352

IN WITNESS WHEREOF, the parties have executed this contract.

UTILITY

**Metro Nashville Water & Sewer
Department (Sewer)**

BY: 

TITLE: Director

DATE: 14 Feb 18

STATE OF TENNESSEE
DEPARTMENT OF
TRANSPORTATION

BY: John C. Schroer
Commissioner

DATE: _____

APPROVED AS TO FORM AND
LEGALITY:

BY: John H. Reinbold
General Counsel

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

X. Compliance with Governmentwide Suspension and Debarment Requirements

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is

debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or

local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200).

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered

transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.



Buy America

Rev. 12-23-2013

The Tennessee Department of Transportation (TDOT) in compliance with Federal Highway Administration (FHWA) directive **Effective February 29, 2016**

All utility and railroad relocation construction must comply with 23 U.S.C. 313 and 23 CFR 635.410 **Buy America requirements**

All Utility / Railroad invoices submitted to TDOT for Payment **MUST ATTACH THIS CERTIFICATION.**

Utility / Railroad Name

Street Address

City

State

Zip

Certification: All products used in the relocation construction and identified in the attached invoice that are manufactured of steel or iron for permanent installation meet or exceed the requirements set forth in 23 USC 313 and 23 CFR 635.410 Buy America requirements.

Certification documentation is available for review that includes but is not limited to, if available, the Mill Test Report (MTR) for ALL steel products that have the certification statement (or similar) that the steel/iron was "melted and manufactured in the United States." All manufacturing processes and coatings applied thereon have occurred in the United States.

Per the Utility / Railroad Relocation Contract:

The Utility / Railroad agrees to comply with all current, applicable provisions of 23 CFR 645A / 23 CFR 140 and 23 CFR 646.

The Utility acknowledges possession of 23 CFR 645A / The Railroad acknowledges possession of 23 CFR 140 and 23 CFR 646.

The Utility / Railroad is subject to audit for a period of three (3) full years after final payment has been received.

The Utility / Railroad shall comply with all applicable federal and state laws and regulations in the performance of its duties under this Contract. The Utility / Railroad agrees that remedies for non-compliance are set out in the applicable regulations and the Contract.

I have reviewed the material provided herein and attached and hereby certify ALL material on the attached invoice is in compliance with Buy America requirements.

Signature of representative Authorized for financial obligations

Title

Date

Code of Federal Regulations

Title 23 United States Code, Section 313

§ 313. Buy America

- (a) Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or this title and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.
- (b) The provisions of subsection (a) of this section shall not apply where the Secretary finds--
- (1) that their application would be inconsistent with the public interest;
 - (2) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - (3) that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.
- [(4) Redesignated (3)]
- (c) For purposes of this section, in calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.
- (d) The Secretary of Transportation shall not impose any limitation or condition on assistance provided under the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or this title that restricts any State from imposing more stringent requirements than this section on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with such assistance or restricts any recipient of such assistance from complying with such State imposed requirements.
- (e) Intentional violations.--If it has been determined by a court or Federal agency that any person intentionally--
- (1) affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any product used in projects to which this section applies, sold in or shipped to the United States that was not made in the United States; or
 - (2) represented that any product used in projects to which this section applies, sold in or shipped to the United States that was not produced in the United States, was produced in the United States;
- that person shall be ineligible to receive any contract or subcontract made with funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991 pursuant to the debarment, suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations.
- (f) Limitation on applicability of waivers to products produced in certain foreign countries.--If the Secretary, in consultation with the United States Trade Representative, determines that--
- (1) a foreign country is a party to an agreement with the United States and pursuant to that agreement the head of an agency of the United States has waived the requirements of this section, and
 - (2) the foreign country has violated the terms of the agreement by discriminating against products covered by this section that are produced in the United States and are covered by the agreement,
- the provisions of subsection (b) shall not apply to products produced in that foreign country.

[(g) Redesignated (f)]

Updated: 04/07/2011

The following link is the current FHWA site for Buy America compliance and shall be reviewed:

<http://www.fhwa.dot.gov/construction/cqit/buyam.cfm>

Code of Federal Regulations

Title 23 – Highways

Volume: 1

Date: 2001-04-01

Original Date: 2001-04-01

Title: Section 635.410 - Buy America requirements.

Context: Title 23 - Highways.

CHAPTER I - FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION.

SUBCHAPTER F - TRANSPORTATION INFRASTRUCTURE MANAGEMENT.

PART 635 - CONSTRUCTION AND MAINTENANCE.

Subpart D - General Material Requirements.

§ 635.410 Buy America requirements.

(a) The provisions of this section shall prevail and be given precedence over any requirements of this subpart which are contrary to this section. However, nothing in this section shall be construed to be contrary to the requirements of § 635.409(a) of this subpart.

(b) No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless at least one of the following requirements is met:

(1) The project either: (i) Includes no permanently incorporated steel or iron materials, or (ii) if steel or iron materials are to be used, all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied.

(2) The State has standard contract provisions that require the use of domestic materials and products, including steel and iron materials, to the same or greater extent as the provisions set forth in this section.

(3) The State elects to include alternate bid provisions for foreign and domestic steel and iron materials which comply with the following requirements. Any procedure for obtaining alternate bids based on furnishing foreign steel and iron materials which is acceptable to the Division Administrator may be used. The contract provisions must (i) require all bidders to submit a bid based on furnishing domestic steel and iron materials, and (ii) clearly state that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel and iron materials unless such total bid exceeds the lowest total bid based on furnishing foreign steel and iron materials by more than 25 percent.

(4) When steel and iron materials are used in a project, the requirements of this section do not prevent a minimal use of foreign steel and iron materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project.

(c)(1) A State may request a waiver of the provisions of this section if:

(i) The application of those provisions would be inconsistent with the public interest; or

(ii) Steel and iron materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.

(2) A request for waiver, accompanied by supporting information, must be submitted in writing to the Regional Federal Highway Administrator (RFHWA) through the FHWA Division Administrator. A request must be submitted sufficiently in advance of the need for the waiver in order to allow time for proper review and action on the request. The RFHWA will have approval authority on the request.

(3) Requests for waivers may be made for specific projects, or for certain materials or products in specific geographic areas, or for combinations of both, depending on the circumstances.

(4) The denial of the request by the RFHWA may be appealed by the State to the Federal Highway Administrator (Administrator), whose action on the request shall be considered administratively final.

(5) A request for a waiver which involves nationwide public interest or availability issues or more than one FHWA region may be submitted by the RFHWA to the Administrator for action.

(6) A request for waiver and an appeal from a denial of a request must include facts and justification to support the granting of the waiver. The FHWA response to a request or appeal will be in writing and made available to the public upon request. Any request for a nationwide waiver and FHWA's action on such a request may be published in the **Federal Register** for public comment.

(7) In determining whether the waivers described in paragraph (c)(1) of this section will be granted, the FHWA will consider all appropriate factors including, but not limited to, cost, administrative burden, and delay that would be imposed if the provision were not waived.

(d) Standard State and Federal-aid contract procedures may be used to assure compliance with the requirements of this section.

[48 FR 53104, Nov. 25, 1983, as amended at 49 FR 18821, May 3, 1984; 58 FR 38975, July 21, 1993]

Editorial Note:For a waiver document affecting § 635.410, see 60 FR 15478, Mar. 24, 1995.

Updated: 04/26/2012

EXHIBIT A

Metro Sewer, PIN 105766.02



Project No: 19028-2245-14
 County: DAVIDSON
 Date: September 1, 2016

****Submit and completion of this form is required for consideration of reimbursement on this project.****

Primary Contact: Steve Nunley
 E-mail: steve.nunley@nashville.gov Phone: 615-862-4534
 Secondary Contact: _____ Phone: _____
 E-mail: _____
 Utility Name: Metro Water Services
 Address: 1600 2nd Avenue N
 City, State: Nashville Zip: 37208

TDOT USE ONLY	
RG Approval and Date:	<u>10/9/17</u>
Consult Appr. Date:	<u>1/1</u>
Amount Approved:	\$
HQ Approval and Date:	<u>10/23/17</u>
CH88 (Y/N)	<u>Y</u>
PIN:	<u>105766.02</u>
LET:	<u>12/6/2019</u>
Contract #:	<u>8755</u>
Easement Contract #:	<u>8761</u>

Percent On Private: 65% Private ROW - #Poles / Length of facility: 1881
 Percent On Public: 35% Public ROW - #Poles / Length of facility: 1000
 Total Percentage: 100% Total #Poles / Length of facility: 2881

Is Utility Chapter 88 Certified (Obtained from Certification Sheet)? Y
 (If project does not qualify for Chapter 88 Reimbursement, then "Percent on Private" will be used to calculate total amount due to Utility)

NO COST / NO REIMBURSEMENT (STOP HERE, REMAINDER OF FORM IS NOT REQUIRED)

CHAPTER 88
 REIMBURSEMENT MOVE PRIOR
 REQUESTED MOVE IN State Contract X
 (Please check ONE) Other

NON-CHAPTER 88
 % Private / Public Relocation
 % Private / Public MOVE IN State Contract
 Utility Replacement Easement Reimbursement

ENGINEERING	
Description	Amount
Pre-Construction / Construction	\$ -
Field Surveying	\$ -
Construction Inspection	\$ -
Reimbursable Expenses	\$ -
ENGINEERING COST:	\$ -

CONSTRUCTION (LABOR & MATERIAL)	
Description	Amount
Installation Labor	\$ 475,040.00
Installation Materials	\$ 288,125.00
Removal Labor	\$ -
Site Costs	\$ -
Material Provided to State	\$ -
Salvage Materials	\$ -
Non-Usable Materials	\$ -
ESTIMATED CONSTRUCTION COST:	\$ 763,165.00

BETTERMENT	
Description	Amount
Installation Labor	\$ -
Installation Materials	\$ -
ESTIMATED UTILITY BETTERMENT COST:	\$ -
ESTIMATED REPLACEMENT EASEMENT COST:	\$ 86,100.00
If cost is listed above, separate Easement Contract is needed	
ESTIMATED TOTAL CONSTRUCTION COST:	\$ 763,165.00

UTILITY REIMBURSEMENT	
CHAPTER 88 MOVE-IN CONTRACT:	\$ -
CHAPTER 88 MOVE PRIOR:	\$ -
NON-CHAPTER 88 MOVE-IN CONTRACT:	\$ -
NON-CHAPTER 88 MOVE PRIOR:	\$ -
Does Estimate Exceed \$1.75M Cap? - N	
Does Estimate Require 75% Cap? - N	

AMOUNT TO BE PAID BY THE UTILITY	
RELOCATION EXCEEDS \$1.75M CAP:	\$ -
AMOUNT OVER 75% REIMBURSEMENT:	\$ -

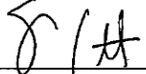
UTILITY DEPOSIT (IF APPLICABLE)	
CHAPTER 88 MOVE-IN CONTRACT:	\$ -
NON-CHAPTER 88 MOVE-IN CONTRACT:	\$ -

The Utility will reference the page number where designated on the form when other Detail Cost Estimate sheets are attached.

IN WITNESS WHEREOF, the parties hereto have executed this contract.

**THE METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON
COUNTY
DEPARTMENT OF WATER AND
SEWERAGE SERVICES**

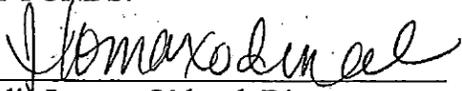
RECOMMENDED BY:

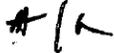


Scott A. Potter, Director
Water and Sewerage Services

DATE: 14 Feb 18

APPROVED AS TO THE AVAILABILITY
OF FUNDS:



Talia Lomax-O'dneal, Director
Department of Finance 

DATE: 2-23-18

APPROVED AS TO FORM AND
LEGALITY:



Assistant Metropolitan Attorney

DATE: _____

THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY:

Megan Barry, Mayor

DATE: _____

ATTEST:

Metropolitan Clerk

DATE: _____