

Supplemental Rev 04-22-2016

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

Contract No. **8756**

SUPPLEMENT TO UTILITY RELOCATION CONTRACT

THIS SUPPLEMENT **#1** to Contract No. **8756** 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 (Water)**, hereinafter called the "Utility".

WITNESSETH:

WHEREAS, TDOT and the Utility entered into Contract No. **8756**, dated the **11th day of April, 2018**, in which the parties agreed to certain matters concerning the relocation of utilities on PIN Number **105766.02, SR- 11 from North of Mill Creek to near SR-254**, located in **Davidson County**, Tennessee.; and

WHEREAS, it is desired by the parties that the hereinafter mentioned changes be made in said original contract;

NOW, THEREFORE, for a valuable consideration it is agreed by and between the parties as follows:

To change the paragraphs,

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 relocate certain of its facilities, **85** percent of which are located on public highway right-of-way and **15** percent of which are located on private utility right-of-way; and

WHEREAS, TDOT is liable for the relocation of utility facilities located on private utility right-of-way and is authorized, in accordance with TCA §54-5-804, to reimburse the Utility for the relocation of utility facilities located on public highway right-of-way but is not liable for any utility betterment costs; and

WHEREAS, in accordance with TDOT policy, the reimbursement of actual allowable costs for relocating utility facilities on public highway right-of-way for municipally owned utilities, Utility Districts, or Utility Cooperatives, as defined in TDOT's Policy #340-07, shall be capped at a maximum reimbursement of \$1,750,000, and for all other utilities the reimbursement shall be limited to 75% of actual allowable costs up to a maximum reimbursement cap of \$1,750,000.

WHEREAS, the Utility has furnished TDOT with an estimate, plans, and specifications showing the cost and manner of relocating these facilities, which estimate is in the amount of **\$3,959,370.00**, including the amount of **\$0.00** for the cost of engineering, which may be inclusive of preliminary engineering authorized on **March 11, 2016**; including the amount of **\$0.00** for the cost of inspection provided by the Utility; including the amount of **\$1,663,116.00** for the cost of betterment to the Utility's facilities (hereinafter called the "Betterment Cost"), and including the amount of **\$1,864,931.90** for deposit for the utility work in the State

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contract, and of which **15** percent represents the pro-rata share to which the Utility is entitled to reimbursement for relocation of utility facilities located on private utility right-of-way, and **85** percent represents the pro-rata share for relocation of utility facilities located on public highway right-of-way, reimbursement being for the cost of construction, engineering and inspection, excluding betterment and the cost over the maximum TDOT reimbursement amount; and

To the following,

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 relocate certain of its facilities, **48** percent of which are located on public highway right-of-way and **52** percent of which are located on private utility right-of-way; and

WHEREAS, TDOT is liable for the relocation of utility facilities located on private utility right-of-way and is authorized, in accordance with TCA §54-5-804, to reimburse the Utility for the relocation of utility facilities located on public highway right-of-way but is not liable for any utility betterment costs; and

WHEREAS, in accordance with TDOT policy, the reimbursement of actual allowable costs for relocating utility facilities on public highway right-of-way for municipally owned utilities, Utility Districts, or Utility Cooperatives, as defined in TDOT's Policy #340-07, shall be capped at a maximum reimbursement of \$1,750,000, and for all other utilities the reimbursement shall be limited to 75% of actual allowable costs up to a maximum reimbursement cap of \$1,750,000.

WHEREAS, the Utility has furnished TDOT with an estimate, plans, and specifications showing the cost and manner of relocating these facilities, which estimate is in the amount of **\$6,021,700.00**, including the amount of **\$0.00** for the cost of engineering, which may be inclusive of preliminary engineering authorized on **March 11, 2016**; including the amount of **\$0.00** for the cost of inspection provided by the Utility; including the amount of **\$1,737,120.00** for the cost of betterment to the Utility's facilities (hereinafter called the "Betterment Cost"), and including the amount of **\$2,043,718.40** for deposit for the utility work in the State contract, and of which **52** percent represents the pro-rata share to which the Utility is entitled to reimbursement for relocation of utility facilities located on private utility right-of-way, and **48** percent represents the pro-rata share for relocation of utility facilities located on public highway right-of-way, reimbursement being for the cost of construction, engineering and inspection, excluding betterment and the cost over the maximum TDOT reimbursement amount; and

It is understood that the above are the only changes made in said contract.

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IN WITNESS WHEREOF, the parties have EXECUTED this agreement

UTILITY

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

DocuSigned by:
BY: Scott Potter
994E7D0AE02B458...

TITLE: Director

DATE: 6/2/2023

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION

BY: _____
Howard H. Eley
Commissioner

DATE: _____

APPROVED AS TO FORM:

BY: _____
John H. Reinbold
General Counsel



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

Project No: 19028-3251-14
 County: Davidson
 Date: May 8, 2023

****Submittal 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: _____
 E-mail: _____ Phone: _____
 Utility Name: Metro Water Services
 Address: 1600 2nd Ave N
 City, State: Nashville, TN Zip: 37208
 Percent On Private: 52% Private ROW - #Poles / Length of facility: 3483
 Percent On Public: 48% Public ROW - #Poles / Length of facility: 3152
 Total Percentage: 100% Total #Poles / Length of facility: 6635 ✓

Is Utility Chapter 86 Certified (Obtained from Certification Sheet)? ☒ Y

(If project does not qualify for Chapter 86 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 86

REIMBURSEMENT MOVE PRIOR ☐
 REQUESTED MOVE IN State Contract ☒ X
 (Please check ONE) Move Again ☐

NON-CHAPTER 86

% Private / Public Relocation ☐
 % Private / Public MOVE IN State Contract ☐
 Utility Replacement Easement Reimbursement ☐

ENGINEERING

Description	Amount
Pre-Construction	\$ -
Construction	\$ -
Construction Inspection Private	\$ -
Construction Inspection Public	\$ -
Reimbursable Expenses	\$ -
ENGINEERING COST:	\$ -

CONSTRUCTION (LABOR & MATERIAL)

Description	Amount
Installation Labor	\$ 3,279,525.00
Installation Materials	\$ 2,742,175.00
Removal Labor	\$ -
Site Costs	\$ -
Material Provided to State	\$ -
Salvage Materials	\$ -
Non-Usable Materials	\$ -

ESTIMATED CONSTRUCTION COST: \$ 6,021,700.00 ✓

BETTERMENT

Description	Amount
Installation Labor	\$ 893,560.00
Installation Materials	\$ 843,560.00

ESTIMATED UTILITY BETTERMENT COST: \$ 1,737,120.00 ✓

ESTIMATED REPLACEMENT EASEMENT COST: \$ -

If cost is listed above, separate Easement Contract is needed

ESTIMATED TOTAL CONSTRUCTION COST: \$ 6,021,700.00 ✓

TDOT USE ONLY

RG Approval and Date: Sean McDonough 05/08/2023
 Consult Appr. Date: / /
 Amount Approved: \$ -
 HQ Approval and Date: Chris Johnston 5/9/2023
 CH86 ☒ Y ☐ N PIN#: 105766.02
 LET: / / Contract #: 8756 Sup 1
 Easement Contract #

UTILITY REIMBURSEMENT

CHAPTER 86 MOVE-IN CONTRACT: \$ -
 CHAPTER 86 MOVE PRIOR: \$ -
 NON-CHAPTER 86 MOVE-IN CONTRACT: \$ -
 NON-CHAPTER 86 % PUBLIC/PRIVATE: \$ -

Does Estimate Exceed \$1.75M Cap? - Y
 Does Estimate Require 75% Cap? - N

UTILITY DEPOSIT (IF APPLICABLE)

RELOCATION EXCEEDS \$1.75M CAP: \$306,598.40
 AMOUNT OVER 75% REIMBURSEMENT: \$0.00
 ESTIMATED UTILITY BETTERMENT COST: \$1,737,120.00
 NON-CHAPTER 86 MOVE-IN CONST COST: \$0.00
 TOTAL UTILITY DEPOSIT: \$2,043,718.40 ✓

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



Chapter 86 Certification



In accordance with Tennessee Department of Transportation policy number 340-07, the following information is provided with regards to required compliance documentation for utility relocation reimbursement in accordance with TCA 54-5-804 and TCA 54-5-854.

PROJECT #/S: 19028-3251-14 **COUNTY/S:** Davidson

FEDERAL: NH-11(81) **PIN:** 105766.02

- The utility is seeking reimbursement under provisions of TCA 54-5-804 as amended by Public Acts 2003, Chapter number 86.
- To the best of my knowledge the utility is in compliance with TCA § 54-5-804(a)(1) and this policy in that the utility has returned its relocation plan, schedule, and cost estimate to the Department within 120 days after receipt of the Department's project plans, or within such additional time as may be allowed in accordance with TCA § 54-5-854(b).
- To the best of my knowledge the utility is in compliance with TCA 54-5-804(b) in that the utility has a valid permit to locate its utility facility on the public highway right-of-way.
- The utility is eligible for reimbursement in accordance with the Limitation provisions of the TDOT Policy 340-07 in that it is:
Municipally Owned ☒ Utility District ☐ Utility Cooperative ☐
- The utility is considered to be a specific utility category listed in accordance with the Limitation provisions of the TDOT Policy 340-07:
☒ Water
☐ Waste Water
☐ Gas ☐ Distribution ☐ Transmission
☐ Electric ☐ Distribution ☐ Transmission
☐ Communication ☐ CATV ☐ Phone ☐ Fiberoptic ☐ Broadband
☐ Street Lighting
☐ Other _____

Signature indicates this individual has the legal authority to sign contracts and agreements to obligate the utility.

Signature: _____ **Date:** _____

Print Name: Michael Morris

Title: Engineer 3

Utility Name: Metro Water Services

Utility Address: 1600 2nd Ave N

City, State, Zip: Nashville, TN 37208

Phone Number: 615-335-1064

Fax Number: _____

Email Address: michael.morris@nashville.gov



Declaration of Scheduled Calendar Days

Project Number: 19028-3251-14 **Date:** _____

Description: SR 11 (US-31A) (Nolensville Pk) from North of Mill Creek to Near SR-254

County: Davidson

Utility Name: Metro Water Services

Address: 1600 2nd Ave N

City, State: Nashville, TN **Zip Code:** 37208

Phone Number: 615-862-4534 **Fax Number:** _____

Type of Facilities: ☒ Water ☐ Sewer ☐ Gas ☐ Telephone ☐ Electric
☐ CATV ☐ Fiberoptic ☐ Other

Required Period services cannot be interrupted: No more than a 4 hour period

All estimated days should be expressed in "Calendar" days to complete installation, relocation or adjustment of the utility facilities on the above referenced project. The utility can as an option submit an "On or Before" date all work will be completed. In accordance with provisions set forth in TCA 54-5-854.

Task	Days to Complete	Special Conditions
Stock Pile Material (Including ordering material)	90	
Mobilize Work Force (including Bidding process if Required)	30	
Complete Relocation	300	
Total Days To Complete	420	

Special Conditions:

Michael D. Morris

Signature of submitting
Utility Representative

5-2-2023

Date

Sean McDonough

Signature of submitting
State Representative

05/08/2023

Date

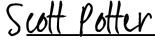
Subject to provisions of the TDOT Utility Office Maintenance of Traffic Procedures.

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:

DocuSigned by:



Scott A. Potter, Director
Water and Sewerage Services

DATE: 6/2/2023

APPROVED AS TO THE AVAILABILITY
OF FUNDS:

DocuSigned by:



Kelly Flannery, Director
Department of Finance

DATE: 6/2/2023

APPROVED AS TO FORM AND
LEGALITY:

DocuSigned by:



Tara Ladd
Assistant Metropolitan Attorney

DATE: 6/2/2023

THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY:

John Cooper, Mayor

DATE: _____

ATTEST:

Metropolitan Clerk

DATE: _____



**METROPOLITAN GOVERNMENT OF NASHVILLE
AND DAVIDSON COUNTY**

Metro Office Building
800 President Ronald Reagan Way
P.O. Box 196300
Nashville, TN 37219-6300

May 31, 2023

To: Peggy Deaner Metro Water Services

**Re: SUPPLEMENT 1 TO TDOT UTILITY RELOCATION CONTRACT #8756 WATER
Planning Commission Mandatory Referral 2023M-020AG-001**

On behalf of the Metropolitan Planning Commission, the following item, referred to the Commission as required by the Metro Charter, has been recommended for *approval* to the Metropolitan Council:

A resolution approving Supplement #1 to an Intergovernmental Agreement by and between the State of Tennessee, Department of Transportation, and The Metropolitan Government of Nashville and Davidson County, acting by and through the Department of Water and Sewerage Services, to construct PIN Number 105766.02, SR-11, (Nolensville Pike), from North of Mill Creek to near SR-254, located in Davidson County, Tennessee, (State Project No. 19028-2245-14, MWS Project No. 16-WG-0060 and Proposal No. 2023M-020AG-001.

The relevant Metro agencies (Metro Parks, Metro Public Works, Metro Water Services, Metro Emergency Communications, the Nashville Electric Service, Metro Finance – Public Property and the Metro Historical Commission) have reviewed the proposal and concur in the recommendation for approval. This request must be approved by the Metro Council to become effective. A sketch showing the location of the request is attached to this letter.

Conditions that apply to this approval: none

This recommendation for approval is given as set forth in the Metropolitan Planning Commission Rules and Procedures. If you have any questions about this matter, please contact Delilah Rhodes at delilah.rhodes@nashville.gov or 615-862-7208.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lisa Milligan".

Lisa Milligan
Land Development Manager
Metro Planning Department
cc: Metro Clerk

**Re: SUPPLEMENT 1 TO TDOT UTILITY RELOCATION CONTRACT #8756 WATER
Planning Commission Mandatory Referral # 2023M-020AG-001**

A resolution approving Supplement #1 to an Intergovernmental Agreement by and between the State of Tennessee, Department of Transportation, and The Metropolitan Government of Nashville and Davidson County, acting by and through the Department of Water and Sewerage Services, to construct PIN Number 105766.02, SR-11, (Nolensville Pike), from North of Mill Creek to near SR-254, located in Davidson County, Tennessee, (State Project No. 19028-2245-14, MWS Project No. 16-WG-0060 and Proposal No. 2023M-020AG-001.



Project Initiation and Funding Approval Form

PIF#

18-049

