

County:

Highway:

Limits:

Fed. Proj. No.:

ROW CSJ No.:

Const. CSJ No.:

UTILITY ADJUSTMENT AGREEMENT AMENDMENT (Developer Managed)

(Amendment No. _____ to Agreement No.: -U-_____)

THIS AMENDMENT TO MASTER UTILITY ADJUSTMENT AGREEMENT (this “Amendment”), by and between _____, hereinafter identified as the “**Developer**”, and _____, hereinafter identified as the “**Owner**”, is as follows:

WITNESSETH

WHEREAS, the STATE of TEXAS, acting by and through the Texas Department of Transportation, hereinafter identified as the “Department”, proposes to construct the turnpike project identified above (the “Facility”, as more particularly described in the “Original Agreement”, defined below); and

WHEREAS, pursuant to that certain Comprehensive Development Agreement (“CDA”) by and between the Department and the Developer with respect to the Facility, the Developer has undertaken the obligation to design and construct the Facility, including causing the removal, relocation, or other necessary adjustment of existing Utilities impacted by the Facility; and

WHEREAS, the Owner and the Developer are parties to that certain Master Utility Adjustment Agreement with an effective date of _____, 20____ and designated by the “Agreement No.” indicated above, as amended by previous amendments, if any (the “Original Agreement”), which provides for the adjustment of certain Utilities owned and/or operated by the Owner; and

WHEREAS, the parties are required to utilize this Amendment form in order to modify the Original Agreement to add the adjustment of Owner facilities not covered by the Original Agreement; and

WHEREAS, the parties desire to amend the Original Agreement to add additional Owner facility(ies), on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the agreements contained herein, the parties hereto agree as follows:

1. **Amendment.** The Original Agreement is hereby amended as follows:
 - (a) The description of the Owner Utilities and the proposed Adjustment of the Owner Utilities is hereby amended to add the following facility(ies) (“Additional Owner Utilities”) and proposed Adjustment(s) :

 - (b) The Plans, as defined in Paragraph 1 of the Original Agreement, are hereby amended to add thereto the plans, specifications and cost estimates attached hereto as Exhibit A.

- (c) The Plans attached hereto as Exhibit A, along with this Amendment, shall be submitted upon execution to the Department in accordance with Paragraph 2 of the Original Agreement, and Paragraph 2 shall apply to this Amendment and the Plans attached hereto in the same manner as if this Amendment were the Original Agreement. If the Owner claims an Existing Interest for any of the Additional Owner Utilities, documentation with respect to such claim shall be submitted to the Department as part of a "Supplemental Utility Assembly" together with this Amendment and the attached Plans, in accordance with Paragraph 16(a) of the Original Agreement.
- (d) The Developer's costs associated with Adjustment of the Additional Owner Utilities shall be developed pursuant to the method checked and described below, which for purposes of Paragraphs 6 through 10 of the Original Agreement, shall correspond to the procedures set forth as (1) through (3) in Paragraph 5(b) of the Original Agreement *[check only one box]*:
- (1) Developer's "Actual Cost" for the Adjustment work shall be the sum of the actual, allocable and reasonable charges incurred by Developer for such work, developed in accordance with generally recognized accounting principles, including but not limited to: all labor, transportation, equipment, materials, permits, and indirect and overhead charges; or
- (2) The agreed sum of \$ _____ ("Agreed Sum") as supported by the analysis of the Developer's estimated costs attached hereto as part of Exhibit A; or
- (3) The Developer is responsible for 100% of the costs for the Adjustment work, and there is no Betterment. Accordingly, the Developer is not required to report such costs to the Owner.
- (e) The Owner's indirect costs associated with Adjustment of the Additional Owner Utilities shall be developed pursuant to the method checked and described below, which for purposes of Paragraphs 6 through 10 of the Original Agreement, shall correspond to the procedures set forth as (1) through (3) in Paragraph 5(c) of the Original Agreement *[check only one box]*:
- (1) Actual related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body ("Actual Cost"); or
- (2) Actual related indirect costs accumulated in accordance with an established accounting procedure developed by the Owner and which the Owner uses in its regular operations ("Actual Cost"); or
- (3) The agreed sum of \$ _____, ("Agreed Sum") as supported by the analysis of estimated costs attached hereto as part of Exhibit A.
- (f) For purposes of Paragraph 6 of the Original Agreement, responsibility for the Agreed Sum or Actual Cost, as applicable, of all Adjustment work to be performed pursuant to this Amendment shall be allocated between the Developer and the Owner as follows: _____ % to the Developer and _____ % to the Owner; provided, however, that any portion of an Agreed Sum or Actual Cost attributable to Betterment shall be allocated 100% to the Owner in accordance with Paragraph 10 of the Original Agreement.

- (g) Paragraph 10(b) of the Original Agreement is hereby amended to add the following *[Check the one box that applies, and complete if appropriate]*:
- The Adjustment of the Additional Owner Utilities, pursuant to the Plans as amended herein, does not include any Betterment.
- The Adjustment of the Additional Owner Utilities, pursuant to the Plans as amended herein, includes Betterment to the Additional Owner Utilities by reason of *[insert explanation, e.g. "replacing 12" pipe with 24" pipe]*: _____. The Developer has provided to the Owner comparative estimates for (i) all work to be performed by the Developer pursuant to this Amendment, including work attributable to the Betterment, and (ii) the cost to perform such work without the Betterment, which estimates are hereby approved by the Owner. The estimated cost of the Developer's work under this Amendment which is attributable to Betterment is \$_____, calculated by subtracting (ii) from (i). The percentage of the total cost of the Developer's work under this Amendment which is attributable to Betterment is _____%, calculated by subtracting (ii) from (i), which remainder is divided by (i).
- (h) If Paragraph 1(g) identifies Betterment, the Owner shall advance to the Developer, at least **fourteen (14) days** prior to the date scheduled for commencement of construction for Adjustment of the Additional Owner Utilities, the estimated cost attributable to Betterment as set forth in Paragraph 1(g) of this Amendment. If the Owner fails to advance payment to the Developer on or before the foregoing deadline, the Developer shall have the option of commencing and completing (without delay) the Adjustment work without installation of the applicable Betterment. *[Check the one appropriate provision]*:
- The estimated cost stated in Paragraph 1(g) of this Amendment is the agreed and final amount due for Betterment under this Amendment, and accordingly no adjustment (either up or down) of such amount shall be made based on actual costs.
- The Owner is responsible for the Developer's actual cost for the identified Betterment. Accordingly, upon completion of all Adjustment work to be performed by both parties pursuant to this Amendment, (i) the Owner shall pay to the Developer the amount, if any, by which the actual cost of the Betterment (determined as provided below in this paragraph) exceeds the estimated cost advanced by the Owner, or (ii) the Developer shall refund to the Owner the amount, if any, by which such advance exceeds such actual cost, as applicable. Any additional payment by the Owner shall be due within **sixty (60) days** after the Owner's receipt of the Developer's invoice therefor, together with supporting documentation; any refund shall be due within **sixty (60) days** after completion of the Adjustment work under this Amendment. The actual cost of Betterment incurred by the Developer shall be calculated by multiplying (i) the Betterment percentage stated in Paragraph 1(g) of this Amendment, by (ii) the actual cost of all work performed by the Developer pursuant to this Amendment (including work attributable to the Betterment), as invoiced by the Developer to the Owner.
- (i) The determinations and calculations of Betterment described in this Amendment shall exclude right of way acquisition costs. Betterment in connection with right-of-way acquisition is addressed in Paragraph 16 of the Original Agreement.

- (j) Owner and Developer agree to refer to this Amendment, designated by the “Amendment No.” and “Agreement Number” indicated on page 1 above, on all future correspondence regarding the Adjustment work that is the subject of this Amendment and to track separately all costs relating to this Amendment and the Adjustment work described herein.
- (k) *[Include any other proposed amendments allowed by applicable law.]*

2. **General.**

- (a) All capitalized terms used in this Amendment shall have the meanings assigned to them in the Original Agreement, except as otherwise stated herein.
- (b) This Amendment may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one and the same instrument.
- (c) Except as amended hereby, the Original Agreement shall remain in full force and effect. In no event shall the responsibility, as between the Owner and the Developer, for the preparation of the Plans and the Adjustment of the Owner Utilities be deemed to be amended hereby.
- (d) This Amendment shall become effective upon the later of (a) the date of signing by the last party (either the Owner or the Developer) signing this Amendment, and (b) the completion of the Department’s review and approval as indicated by the signature of the Department’s representative, below.

APPROVED BY:

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____
Authorized Signature

Printed
Name: _____

Title: _____

Date: _____

OWNER

[Print Owner Name]

By: _____
Duly Authorized Representative

Printed
Name: _____

Title: _____

Date: _____

DEVELOPER

[Print Developer Name]

By: _____
Duly Authorized Representative

Printed
Name: _____

Title: _____

Date: _____