

**ORDINANCE NO. 26-**

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER SUPPLEMENTAL AGREEMENT NO. 3 TO THE STANDARD UTILITY AGREEMENT (“AGREEMENT”) BY AND BETWEEN THE CITY OF DENTON AND THE TEXAS DEPARTMENT OF TRANSPORTATION (“TXDOT”), FOR THE REIMBURSEMENT OF DESIGN, PROPERTY ACQUISITION AND RELATED SERVICES, CONSTRUCTION, INSPECTION, PROJECT MANAGEMENT, AND OTHER DIRECT COSTS ASSOCIATED WITH THE ADJUSTMENT, REMOVAL, AND/OR RELOCATION OF WATER UTILITIES ALONG IH-35E FROM MAYHILL TO LOOP 288 MORE SPECIFICALLY CALLED THE IH-35E/MAYHILL UTILITY RELOCATIONS PROJECT (UTILITY ID NO. U00008008) FOR WATER RELOCATION EFFORTS, WITHIN THE COUNTY AND CITY OF DENTON, TEXAS; PROVIDING FOR THE EXPENDITURE OF FUNDS NOT TO EXCEED AN INCREASE OF FIVE HUNDRED FIFTY-SIX THOUSAND, FOUR HUNDRED NINETY-SIX AND 55/100 DOLLARS (\$556,496.55) THEREFORE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on November 15, 2022, City Council authorized Ordinance No. 22-2391 for the approval and execution of the Standard Utility Agreement for water utility relocations on project U00008008 in the amount of \$16,189,482.25 and executed the related agreement on January 18, 2023; and

**WHEREAS**, on June 18, 2024, City Council authorized Ordinance No. 24-1123 for the approval and execution of the Standard Utility Agreement Supplemental #2 for water utility relocations on project U00008008 in the amount of \$17,240,049.84 and executed the related agreement on June 30, 2024; and

**WHEREAS**, the Agreement will increase the reimbursement available to the City by an additional \$556,496.55 for all eligible costs associated with the City’s IH-35E/Mayhill Utility Relocation Project between Mayhill and Loop 288 (the “Project”) for a total reimbursement of \$17,796,546.39; and

**WHEREAS**, the City Council having considered the importance of the Project to the citizens of Denton and finding that it is in the public's health and safety interest, is of the opinion that it should approve the Agreement;

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:**

**SECTION 1.** The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference as true and as if fully set forth in the body of this ordinance.

**SECTION 2.** The City Manager, or designee, is hereby authorized to execute on behalf of the City; Supplemental Agreement No. 3 to the Standard Utility Agreement No. U00008008 for water utilities relocations, a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes.

**SECTION 3.** The City Manager, or designee, is hereby authorized to expend funds in an amount not to exceed FIVE HUNDRED FIFTY-SIX THOUSAND, FOUR HUNDRED NINETY-SIX AND 55/100 DOLLARS (\$556,496.55) for Utility ID No. U00008008

**SECTION 4.** The City Manager is further authorized to carry out all duties and agreements to be performed by the City under the Agreement.

**SECTION 5.** The City Manager, or designee, is the City's designated, authorized official, with the power to authorize, accept, reject, alter or terminate the Agreement on behalf of the City and act on behalf of the City of Denton in all matters related to the Agreement and any subsequent agreements that may result.

**SECTION 6.** This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. The ordinance was passed and approved by the following vote [ \_\_\_ - \_\_\_ ]:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Chris Watts, Mayor:	_____	_____	_____	_____
Jordan Villarreal, District 1:	_____	_____	_____	_____
Nick Stevens, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
George Ferrie, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2026.

\_\_\_\_\_  
CHRIS WATTS, MAYOR

ATTEST:  
KRISTI FOGLE, INTERIM CITY SECRETARY

By: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By:  \_\_\_\_\_



# Standard Utility Agreement Supplemental Agreement No. 3 to U Number N/A Utility ID U00008008

District: Dallas	County: Denton
ROW Project ID: R00006793	Highway: IH 35E
ROW CSJ: 0196-01-114	From: South of Mayhill
Construction CSJ: 0196-01-106	To: South of SL 288
Proposed Highway Project Letting Date: 9/1/2023	

**THIS SUPPLEMENTAL AGREEMENT** by and between the State of Texas ("**State**") and City of Denton ("**Utility**") shall be effective upon the date of acceptance and execution by and on behalf of the **State**.

**WHEREAS**, the **State** and **Utility** executed a Standard Utility Agreement on June 30, 2024 concerning the adjustment, relocation, or removal of certain of the **Utility's** facilities;

**WHEREAS**, said Standard Utility Agreement limits the required scope of work and/or the amount of eligible reimbursement;

**WHEREAS**, due to newly discovered information by the **Utility** deemed sufficient by the **State**, the **State** and **Utility** agree that supplementation to the Standard Utility Agreement is necessary; and

**WHEREAS**, the statement of work contained in the Standard Utility Agreement shall be supplemented to include the reason the supplemental is needed and the change in cost: update city labor rates and easement costs, and to include temporary signage, mobilization, site preparation, storm water pollution prevention device (installation & removal) costs (cost estimate lines 1 through 5), which is more specifically shown in **Utility's** plans, specifications, estimated costs, and schedule, which are attached to this supplemental agreement as Attachment "A."

**NOW, THEREFORE, BE IT AGREED:**

The statement of work contained in the Standard Utility Agreement is supplemented to include the additional adjustment, relocation, or removal found in Attachment "A."

The estimated cost of the adjustment, relocation, or removal is  increased or  decreased to a total of \$17,796,546.39, or  no change to the Total Cost Estimate. The parties agree that the approval of estimated costs in no way indicates the eligibility of said costs for reimbursement.

All conditions and agreements contained in the Standard Utility Agreement, except those specifically included in this document, remain in effect.

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

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

**UTILITY**

Utility: City of Denton

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXECUTION RECOMMENDED:**

\_\_\_\_\_  
Director of TP&D (or designee), Dallas District

<p style="text-align: center;"><b>THE STATE OF TEXAS</b></p> <p>Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.</p> <p>By: _____ District Engineer (or designee)</p> <p>Date: _____</p>
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\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

# Attachment "A" Plans, Specifications, and Estimated Costs

Not Applicable

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, **this project does not plan to use** iron and steel subject to Buy America requirements. In the event that Buy America regulated materials are used during the construction of 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 for iron and steel and will supply the required documentation to TxDOT indicating compliance with this provision. The following documents will be supplied prior to the installation of the materials:
  - 1) Form 1818 - Material Statement
  - 2) Material Test Reports or Certifications

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

# Attachment “A” (Continued) Plans, Specifications, and Estimated Costs

Not Applicable

All construction material and manufactured items within the cost estimate that must meet Build America, Buy America (BABA) compliance must be indicated with a double asterisk ( \*\* ).

This is to acknowledge that the material(s) listed/marked in the cost estimate will be in conformance with the governing specification(s) and that at least the final manufacturing processes and the immediately preceding manufacturing stage for the manufactured and construction material occurred in the United States of America. Alterations to this document by any agency other than the Utility Company/Supplier will void the certification.

Per 2 CFR 184.3, manufactured products means:

(1) *Articles, materials, or supplies that have been:*

(i) *Processed into a specific form and shape; or*

(ii) *Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.*

(2) *If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under § 184.4(e) and the definitions set forth in this section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under § 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials.*

Per 2 CFR 184.3 and 2 CFR 184.6, construction material includes:

- *Non-ferrous metals*
- *Glass (including optic glass)*
- *Optical fiber*
- *Lumber*
- *Engineered wood*
- *Drywall*
- *Fiber optic cable (including drop cable)*
- *Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables)*

**Authorized Utility Owner Representative:**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Title*

Initial \_\_\_\_\_ Date \_\_\_\_\_  
TxDOT

Initial \_\_\_\_\_ Date \_\_\_\_\_  
Utility

# Attachment “B” Accounting Method

Not Applicable

**Actual Cost Method of Accounting**

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

**Lump Sum Method of Accounting**

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

\_\_\_\_\_  
Initial                  Date  
TxDOT

\_\_\_\_\_  
Initial                  Date  
Utility

## Attachment "C" Schedule of Work

Not Applicable

Estimated Start Date (mm/dd/yyyy): \_\_\_\_\_, subject to physical work restrictions prior to the issuance of environmental clearance as required by the provisions of this agreement. (If construction will be joint bid and included in the highway contract, enter the project let date.)

Estimated Duration (number of days): \_\_\_\_\_

Estimated Completion Date (mm/dd/yyyy): \_\_\_\_\_

\_\_\_\_\_  
Initial Date  
TxDOT

\_\_\_\_\_  
Initial Date  
Utility

# Attachment "D" Statement Covering Contract Work

Not Applicable

**Construction Contract:** Complete form ROW-U-48 and ROW-U-48-1 if applicable.

- The Utility will use its own personnel (supporting documentation will be required at the time of billing, See ROW Utilities Manual, Chapter 11).
- The Utility will use third party contractors to perform the adjustment and complete the attached ROW-U-48 with ROW-U-48-1 (joint bid), if appropriate. (verification of continuing contract rate sheets or copy of bid tabulation will be required at the time of billing)

## Engineering Contract:

- The Utility will use its own personnel (supporting documentation will be required at the time of billing, See ROW Utilities Manual, Chapter 11).
- The Utility will use a consultant contract (verification of fee schedule is required).
- TxDOT will procure a utility engineering consultant.

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

# Attachment “E” Utility Joint Use Agreement – (ROW-U-JUA) and/or RULIS Permit

Not Applicable

- Utility Joint Use Agreement (ROW–U–JUA)
  - Plans with joint use area highlighted are included.
- RULIS Permit Number:  
The utility should obtain an approved permit before the start of construction inside of the highway right of way.
- Quitclaim will be submitted at the Final Billing

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

## Attachment “F” Eligibility Ratio

Not Applicable

Eligibility Ratio established: \_\_\_\_\_ %

- Non-interstate Highway (Calculations attached)
- Interstate Highway
- Toll Road (Minimum of 50%)
- SP2125 Approved Application (100%)  
Minute Order #: \_\_\_\_\_
- Master Utility Agreement

\_\_\_\_\_  
Initial Date  
TxDOT

\_\_\_\_\_  
Initial Date  
Utility

# Attachment "G" Betterment Calculation and Estimate

Not Applicable

- Elective Betterment Ratio established: \_\_\_\_\_ %
  - Calculation is attached and the justification is included below
  - A betterment and an in-kind estimate are included
  
- Forced Betterment
  - To comply with regulated industry standards, laws, and regulations. (Supporting documentation required)
  - To comply with published current design practice followed by the utility in its own work. (Supporting documentation required)
  - Due to proposed roadway design. (Provide explanation below)
  
- Not Applicable

A statement explaining Elective and/or Forced Betterment:

\_\_\_\_\_  
Initial Date  
TxDOT

\_\_\_\_\_  
Initial Date  
Utility

## Attachment “H” Proof of Property Interest

Not Applicable

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

Property interest is documented through applicable affidavits and required attachments.

ROW-U-Affidavit (See ROW Utilities Manual, Chapter 9, Section 3)

The roadway improvement project is designated as an Interstate Highway project; therefore, no supporting documentation for compensable interest is required. Supporting documentation for existing easements is required for easement replacement.

Toll Road (Supporting documentation of compensable property interest required if more than 50% eligibility ratio is applied)

SP2125

Master Utility Agreement

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility