

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY MASTER AGREEMENT
(At Utility Expense)

THIS AGREEMENT, made and entered into this 14th day of April, 1993, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the DEPARTMENT, and Chesapeake Utilities Corporation d/b/a Central Florida Gas Company a corporation organized and existing under the laws of Delaware with its principal place of business in the City of Winter Haven, County of Polk, State of Florida, hereinafter called the COMPANY.

WITNESSETH:

WHEREAS, the DEPARTMENT proposed to engage in certain projects for construction, reconstruction and other change of portions of the State Highway System which shall call for the relocation of the COMPANY'S facilities along, over and under the highways on said projects,

AND WHEREAS, the plans for said construction, reconstruction or other change are to be reviewed by the DEPARTMENT and the COMPANY; such utility relocation to hereinafter be designed as "Relocation Work";

AND WHEREAS, under the laws of the State of Florida said "Relocation Work" must be accomplished at the sole expense of the COMPANY when COMPANY'S facilities lie on property in which the COMPANY holds no compensable interest;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained it is agreed by the parties as follows:

1. When the DEPARTMENT has served an order on the COMPANY regarding relocation of the COMPANY'S facilities along, over and under property in which the COMPANY holds no compensable interest, the COMPANY agrees to make or cause to be made all arrangements for necessary adjustment of changes of its facilities at COMPANY'S own expense and in accordance with the provisions of Florida Administrative Code Rule 14-46.001 Utility Installation or Adjustment (amended July 5, 1990) and Utility Accommodation Guide dated May, 1990; any supplements or revisions thereof as of the date of this Agreement, which, by reference hereto, are made a part of this Agreement; and the plans, designs and specifications of the DEPARTMENT for construction or reconstruction of said portions of the State Highway System, prior to the advertising for bid on said project. The COMPANY further agrees to do all of such work with its own forces or by a contractor paid under a contract let by the COMPANY, all under the direction of the DEPARTMENT'S engineer.

2. The COMPANY further agrees that said adjustments, changes or relocation of facilities will be made by the COMPANY with sufficient promptness so as to cause no delay to the DEPARTMENT or its contractor in the prosecution of such construction or reconstruction work; provided, however, that the COMPANY shall not be responsible for delay beyond its control; and that such "Relocation Work" will be done under the direction of the DEPARTMENT'S engineer; and the COMPANY further agrees that in the event the changes, adjustments or relocation of such facilities or utilities are done simultaneously with the construction project, that it will be directly responsible for handling of any legal claims that the contractor may initiate due to delays caused by the COMPANY'S negligence; and that the COMPANY will not proceed with the "Relocation Work" with its own forces or advertise or let a contract for such work until it has received the DEPARTMENT'S written authority to proceed.

3. The COMPANY further agrees that it will maintain and keep in repair, or cause to be maintained and kept in repair, all of such adjusted, changed or relocated COMPANY owned or operated facilities or utilities within the right of way of said portion of the State Highway System; and to comply with all provisions of the law, including Florida Administrative Code Rule, 14-46.001.

4. The DEPARTMENT agrees to furnish the COMPANY with all necessary highway construction plans that are required by the COMPANY to facilitate the COMPANY'S "Relocation Work".

5. The DEPARTMENT further agrees that the COMPANY may relocate its facilities upon the State's right-of-way, according to the terms of the standard permit required by the State Statutes for occupancy of public rights-of-way, and all published regulations lawfully adopted by the DEPARTMENT as of the date of this Agreement.

6. It is mutually agreed that the COMPANY'S plans, maps or sketches showing any such facilities or utilities to be adjusted, changed or relocated are made a part hereof by reference.

7. The COMPANY covenants and agrees that it will indemnify and hold harmless to the extent provided by Florida Statutes, 768.28, the DEPARTMENT and all of the DEPARTMENT'S officers, agents and employees from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by the COMPANY during the performance of the contract, whether direct or indirect, and whether to any person or property to which DEPARTMENT or said parties may be subject, except that neither COMPANY nor any of its subcontractors will be liable under this section for damages arising out of injury or damage to person or property directly caused or resulting from the sole negligence of the DEPARTMENT or any of its officers, agents or employees.

8. The COMPANY will inform the DEPARTMENT'S appropriate Resident Engineer in writing when they start or resume work on the project.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers, and their official seals hereto affixed, the day and year first above written.

Chesapeake Utilities Corporation d/b/a
COMPANY: Central Florida Gas Company (SEAL)

BY: Philip Bardfoot

Philip Bardfoot

TITLE: Division Manager

ATTEST: James R. Lowe

James R. Lowe

TITLE: Asst. Secretary

FLORIDA DEPARTMENT OF TRANSPORTATION

BY: Stanley (SEAL)

TITLE: State Highway Engineer

ATTEST: Susan Strippling

EXECUTIVE SECRETARY

LEGAL REVIEW: DATE: 6/2/93

BY: FA
ATTORNEY - F.D.O.T.

APPROVED

BY: _____

DATE: _____

UTILITIES OFFICE

State of Florida Department of Transportation
Division of Preconstruction and Design
UTILITY RELOCATION MASTER AGREEMENT
RELOCATION FROM PRIVATE PROPERTY
(Reimbursable - Private Utility)

THIS AGREEMENT, made and entered into this 14th day of April, 1983, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the DEPARTMENT, and Chesapeake Utilities Corp d/b/a Central Florida Gas Company a corporation organized and existing under the laws of Delaware, with its principal place of business in the City of Winter Haven, County of Polk, State of Florida, hereinafter called the COMPANY.

WITNESSETH:

WHEREAS, the DEPARTMENT proposes to engage in certain projects for construction, reconstruction or other change of portions of the State Highway System which shall call for the relocation of the COMPANY'S facilities along, over and under the highways on said projects,

AND WHEREAS, the plans for said construction, reconstruction or other change are to be reviewed by the DEPARTMENT and the COMPANY; such utility relocation to hereinafter be designated as "Relocation Work";

AND WHEREAS, under the laws of the State of Florida the expense of said "Relocation Work" may qualify for reimbursement to the COMPANY where COMPANY'S facilities lie on property in which the COMPANY holds a compensable interest;

AND WHEREAS, the term "cost of relocation" shall include the entire amount paid by the COMPANY property attributable to each such relocation after deducting therefrom any increase in the value of the new facility and any salvage value of materials recovered from the old facility;

NOW, THEREFORE, in consideration of the mutual undertaking as herein set forth, the parties hereto agree as follows:

1. When the DEPARTMENT has served an order on the COMPANY regarding relocation of the COMPANY'S facilities along, over and under property in which the COMPANY holds a compensable interest, the COMPANY hereby agrees to relocate the necessary parts of said facilities in accordance with the provisions set forth in DEPARTMENT Rule 014-046.01 "Utility Accommodation Guide," Florida Administrative Code, dated May 4, 1970; any supplements thereto or revisions thereof, which, by reference hereto, are made a part hereof. The COMPANY further agrees to do all of such work with its own forces or by a contractor paid under a contract let by the COMPANY, all under the supervision and approval of the DEPARTMENT.

2. The COMPANY further agrees to fully comply with the provisions of Title VI of the Civil Rights Act of 1964 in connection with the "Relocation Work" covered by this agreement, and such compliance will be governed by the applicable method described hereafter:

a. When the COMPANY will perform all or part of such "Relocation Work" by a Contractor paid under a contract let by the COMPANY, then the Appendix "A" of Assurances attached to this agreement will be included in said contracts let by the COMPANY;

b. When the COMPANY will perform all of such "Relocation Work" entirely with COMPANY'S forces, then Appendix "A" of Assurances is not required;

c. When the "Relocation Work" involved is agreed to by way of just compensation for the taking of COMPANY'S facilities right of way in which the COMPANY holds a compensable interest, then Appendix "A" of Assurances is not required;

d. When the COMPANY will perform all such "Relocation Work" entirely by continuing contract, which contract to perform all future "Relocation Work" was executed with COMPANY'S Contractor prior to August 3, 1965, then Appendix "A" of Assurances is not required.

3. The DEPARTMENT hereby agrees to reimburse the COMPANY for all costs incurred by it in each such relocation of said facilities, in accordance with the provisions set forth in DEPARTMENT Procedure 132-046 "Reimbursement for Utility and Railroad Relocation," dated October 1, 1973, and any supplements or revisions thereof. It is understood and agreed by and between the parties that preliminary engineering costs not incorporated in the COMPANY'S plans and estimates, as approved by the DEPARTMENT, shall not be subject to payment by the DEPARTMENT.

4. Plans and specifications of the work to be performed by the COMPANY on each project contemplated under the terms of this agreement are made a part hereof by reference, upon approval by the DEPARTMENT. All work performed by the COMPANY pursuant hereto shall be performed according to these plans and specifications as approved by the DEPARTMENT. All "Relocation Work" covering facilities to be relocated to a position within the highway right of way will be accommodated in accordance with the provisions of said "Utility Accommodation Guide," and any supplements thereto or revisions thereof.

5. All labor, services, materials and equipment furnished by the COMPANY in carrying out the work to be performed hereunder on each project shall be billed by the COMPANY direct to the DEPARTMENT. Separate records as to the cost of contract bid items and force account items performed for the COMPANY on each project shall also be furnished by the COMPANY to the DEPARTMENT.

6. The COMPANY and the DEPARTMENT agree that the method to be used in developing the relocation or adjustment cost may be any of following:

- a. Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.
- b. Actual and related indirect costs accumulated in accordance with an established accounting procedure developed by the COMPANY and approved by the DEPARTMENT.
- c. An agreed lump sum as supported by a detailed analysis of estimated cost, such specific sum and analysis to be attached to the COMPANY'S plans and specifications and approved by the DEPARTMENT (Note: This method is not applicable where the estimated cost of the proposed adjustment exceeds \$25,000).

The COMPANY shall clearly state the applicable method in its plans, specifications and estimates as submitted to the DEPARTMENT.

7. The DEPARTMENT and the COMPANY agree that the adjustment of the COMPANY'S facilities on individual projects may require the operation of the old facility until the new facility is functioning. If the old facility must remain in operation until the new facility is functioning, the reason(s) must be clearly stated in the COMPANY'S plans, estimates and specifications as submitted to the DEPARTMENT.

8. The DEPARTMENT and the COMPANY agree that the proposed new facilities on individual projects to be installed in the COMPANY'S system may remain in useful service beyond the time when the overall (old) facility, of which it is a part, is replaced. If the new facility will remain in useful service as above and indicated in the COMPANY'S plans and specifications, or if an entirely new facility is constructed and the old facility retired, credit for expired service life will apply and the estimated or actual credit must appear in COMPANY'S plans and estimates.

9. The adjustment of the COMPANY'S facilities on each project may involve additional "Relocation Work" over and above the minimum reimbursable requirements of the DEPARTMENT; which condition shall be clearly stated in the COMPANY'S plans, estimates and specifications. If upgrading or nonreimbursable "Relocation Work" is involved at the option of the COMPANY on any project, then credit against the cost of the project is required and will be governed by the applicable method described hereinafter:

- a. A certain percentage being applied to the final billing of work actually accomplished to determine required credit for betterment, expired service life or non-reimbursable segments; such percentage to be clearly stated and explained in COMPANY'S plans and estimates.
- b. All "Relocation Work" involving nonreimbursable segments being performed by special COMPANY work or job order number apart and separate from reimbursable "Relocation Work," such work or job order number to be clearly stated in COMPANY'S plans, estimates and specifications as submitted to the DEPARTMENT. The COMPANY further agrees to clearly identify such work areas in the COMPANY'S plans and specifications for the "Relocation Work" covered under this agreement;

c. A certain lump sum credit for betterment, expired service life or nonreimbursable segments in accord with Article 6(c) hereinabove and clearly stated in the COMPANY'S plans and estimates.

10. It is specifically agreed by and between the DEPARTMENT and the COMPANY that the DEPARTMENT shall receive fair and adequate credit for any salvage which shall accrue to the COMPANY as a result of the above relocation work.

11. It is further agreed that the cost of all improvements made during this relocation work on each project shall be borne by the COMPANY, subject only to the DEPARTMENT bearing such portion of this cost as represents the cost of relocation of previously existing facility, less salvage credit as set forth in the immediately preceding paragraph.

12. Upon completion of the work on each project the COMPANY shall, at the earliest date practicable, and in no event later than one hundred eighty (180) days following the date of completion of the "Relocation Work" by the COMPANY, furnish the DEPARTMENT with two (2) copies of its final and complete billing of all costs incurred in connection with the work performed hereunder, such statement to follow as closely as possible the order of the items contained in the COMPANY'S estimate as approved by the DEPARTMENT. Upon the COMPANY'S failure to submit proper billing within the 180 day period, the DEPARTMENT may, at its discretion, audit the COMPANY'S records and thereby determine the reimbursable amount. The COMPANY hereby waives any right of appeal or protest of such amount as determined by audit. The totals for labor, overhead expense, transportation equipment, material and supplies, handling costs and other services on each project shall be shown in such a manner as will permit ready comparison with the approved plans and estimates. Materials shall be itemized where they represent major components or costs in the relocation, following the pattern set out in the approved estimate as closely as possible. Salvage credits from recovered and replaced permanent and recovered temporary materials shall be reported in said bill in relative position with the charge for the replacement or the original charge for temporary.

The final billing shall show the description and site of each project; the date on which the first work was performed, or, if preliminary engineering or right of way items are involved, the date on which the earliest item of billed expense was incurred; the date on which the last work was performed or the last item of billed expense was incurred, and the location where the records and accounts billed can be audited. Adequate reference shall be made in the billing to the COMPANY'S records, accounts and other relevant documents. All cost records and accounts shall be subject to audit by a representative of the DEPARTMENT. Upon receipt of invoices prepared in accordance with the provisions of DEPARTMENT Procedure No. 132-046, the DEPARTMENT agrees to reimburse the COMPANY in the amount of such actual costs as approved by the DEPARTMENT'S auditor. The DEPARTMENT shall retain ten percent from any progress payments.

13. The COMPANY covenants to indemnify, defend and save harmless and exonerate the DEPARTMENT of and from all liability, claims, and demands arising out of the undertaken by the COMPANY pursuant to this agreement, due to the negligence actions delays, or omissions done or committed by the COMPANY, its subcontractors, employees, agents, representatives. It is specifically understood and agreed that this indemnification agreement does not cover nor indemnify the DEPARTMENT for its own negligence or breach of this contract.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officer, and their official seals hereto affixed the day and year above written.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: 
State Highway Engineer

(SEAL)

ATTEST: 
Executive Secretary

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Chesapeake Utilities Corporation d/b/a
COMPANY: Central Florida Gas Company

BY: 
(Title: Division Manager)

(SEAL)

ATTEST: 
James R. Lowe, Asst. Secretary

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Approved as to Form, Legality and Execution
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

BY:  3/22/73
Assistant Attorney