

ARF-20559

AGENDA ITEM

Discussion Item

REGULAR SESSION AGENDA

30 D

Engineering

Meeting Date: 01/05/2016

TITLE: Engineering: Agreement: Southcross: FM 1093/Westpark

Submitted By: Jillian Peterson, Engineering

Originals for signature: Yes

Date Approved by County Attorney: 12/16/15 County Attorney Initials: MS

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Information

SUMMARY OF ITEM:

Take all appropriate action on Standard Utility Agreement between Fort Bend County and Southcross Gulf Coast Transmission Ltd. in an amount not to exceed \$1,286,833 for utility relocations regarding FM 1093/Westpark, Mobility Bond Project No. 748, Precinct 3. (Fund: 2007 Mobility Bonds)

FUNDING SOURCE:

Accounting Unit, Project or Grant Name;  
Account Name;

SPECIAL HANDLING:

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Attachments

Engineering: Agreement: Southcross: FM 1093/Westpark

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## STANDARD UTILITY AGREEMENT

U-Number: **U-0015 Southcross Gulf Coast Transmission Ltd.**  
County: Fort Bend County  
Highway: FM 1093 Westpark Extension from FM 1463/FM 359 to West of SH 99

This Standard Utility Agreement (this "Agreement") by and between the County of Fort Bend, Texas, ("**County**"), and Southcross Gulf Coast Transmission Ltd., a Texas limited partnership ("**Utility**"), acting by and through its duly authorized representative, shall be effective on the date of approval and execution by and on behalf of **County**.

**WHEREAS, County** has deemed it necessary to make certain highway improvements as designated by **County** and approved by the Federal Highway Administration within the limits of the highway as indicated above; and

**WHEREAS,** the proposed highway improvements will necessitate the adjustment, removal, and/or relocation of certain facilities of **Utility** for the "**Project**" as provided in the following statement of work: Relocation of 8" pipeline at Katy-Gaston Road, and relocation of 14" pipeline from west of Spring Green to west of Katy-Gaston; and more specifically described in **Utility's** plans, specifications, estimated costs and schedule of work, which are set forth in Exhibits "A", "B", and "C"; and

**WHEREAS,** Subchapter E of Chapter 203 of the Texas Transportation Code regarding the relocation of utilities does not apply to the Project, but **County** wishes to negotiate in good faith and enter into agreements with all affected utility and other affected companies for the participation in the costs of the adjustment, removal, and/or relocation of certain facilities as authorized under such subchapter; and

**WHEREAS, County,** which is now in receipt of evidence it deems sufficient, acknowledges **Utility's** interest in certain lands and/or facilities and determined it is appropriate to enter into an agreement with **Utility** to govern the terms for participation in the costs of the adjustment, removal, and relocation of certain of **Utility's** facilities located upon the lands as indicated in the statement of work above.

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

**County** will reimburse **Utility** for all of the costs (whether direct or indirect) incurred in connection with the adjustment, removal, and/or relocation of **Utility's** facilities.

All conduct under this Agreement, including but not limited to the adjustment, removal and relocation of **Utility's** facilities, the determination and reimbursement of costs, any environmental requirements, and retention of records will be in accordance with all applicable federal and state laws, rules and regulations, including, without limitation, the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601, et seq., the National Environmental Policy Act, 42 U.S.C. §§ 4231, et seq., the Buy America provisions of 23 U.S.C. § 313 and 23 CFR 635.410, the Utility Relocations, Adjustments, and Reimbursements provisions of 23 CFR 645, Subpart A, and with the Utility Accommodation provisions of 23 CFR 645, Subpart B. **Utility** shall supply, upon request by **County**, proof of compliance with the aforementioned laws, rules and regulations prior to the commencement of construction.

**Utility** agrees to determine the costs related to the adjustment, removal and relocation of its facilities by accumulating actual direct and related indirect costs in accordance with a work order accounting procedure prescribed by **County**, or may, with **County's** approval, accumulate actual direct and related indirect costs in accordance with an established accounting procedure developed by **Utility**. In this connection, **County** accepts **Utility's** preliminary cost estimate proposed by **Utility** for the accumulation of actual direct and related indirect costs related to the Project and **County** acknowledges that the final costs may differ from the preliminary cost estimates. While not an exhaustive list, among the costs to be accumulated by **Utility** and for which **Utility** will be reimbursed by **County** are: (i) the actual out-of-pocket construction and materials costs of the Project; (ii) the internal engineering and right-of-way costs of the Project; (iii) losses incurred as a result of the interruption of **Utility's** business; and (iv) administrative costs related to the Project. The parties hereto agree that the intent of this Agreement is to ensure that, in exchange for **Utility's** cooperation and willingness to undertake the Project, **County** will reimburse **Utility** for all of the direct and indirect costs incurred in connection with the Project. Bills for work hereunder will be submitted to **County** not later than 90 days after completion of the work.

When requested, **County** will make intermediate payments at not less than monthly intervals to **Utility** when properly billed and such payments will not exceed 90 percent (90%) of the eligible cost as shown in each such billing. Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.

Upon execution of this Agreement by both parties hereto, **County** will, by written notice, authorize **Utility** to perform such work diligently, and to conclude said adjustment, removal, or relocation by the stated Completion Date as indicated in Exhibit "C". The Completion Date shall be extended for delays caused by events outside **Utility's** reasonable control, including an event of force majeure, which shall include, without limitation, a strike, war or act of war (whether an actual declaration of war is made or not), insurrection, terrorism, riot, act of public enemy, accident, fire, flood or other act of God, sabotage, request, directive, restraint or requirement of any government agency, delays in delivery of machinery, equipment or related facilities, or other events, interference by **County** or any other party with **Utility's** ability to proceed with the relocation, or any other event in which **Utility** has exercised all due care in the prevention thereof so that the causes or other events are beyond the reasonable control, and without the fault or negligence, of **Utility**.

However, for any failure by **Utility** to conclude said adjustment, removal, or relocation by the Completion Date not caused by events outside **Utility's** reasonable control including an event of force majeure which includes, without limitation, those items listed in the previous paragraph, **County** may elect to reduce the reimbursement to **Utility** by one percent (1%) each week delayed (pro-rated for any partial week).

**County** will, upon completion of the adjustment, removal or relocation of **Utility's** facilities and upon receipt of final billing prepared in a reasonably acceptable form and manner, make payment in the amount of 90 percent (90%) of the eligible costs as shown in the final billing prior to audit and immediately after such audit (or waiver of such audit right) shall make an additional final payment totaling the reimbursement amount found eligible for **County** reimbursement. Payments will be made in accordance with **County's** standard payment method. If such right to audit is not waived, such audit will be conducted immediately upon receipt of the final billing (but not to be commenced later than twenty (20) days thereafter) and will be completed as expeditiously as possible.

Unless an item below is stricken and initialed by **County** and **Utility**, this Agreement in its entirety consists of the following:

1. Standard Utility Agreement;
2. Plans and Specifications (Exhibit "A");
3. Construction Cost Estimate (Exhibit "B");
4. **Utility's** Schedule of Work and Estimated Date of Completion (Exhibit "C"); and
5. Eligibility Ratio (Exhibit "D").

All attachments are included herein as if fully set forth. In the event it is determined that a material change from the statement of work contained in this Agreement is required, reimbursement therefore shall be limited to costs covered by a modification or amendment of this Agreement or a written change or extra work order approved by **County** and **Utility**.

**Utility** acknowledges to and for the benefit of **County** and State of Texas that it understands the Project referenced in this Agreement to be conducted by **County** is eligible for Federal-aid highway funds and as such, requires all of the iron, steel, and manufactured goods used in the Project be produced in the United States ("Buy American Requirements") including iron, steel, and manufactured goods provided by **Utility** pursuant to this Agreement.

The State Auditor may conduct an audit or investigation of any entity receiving funds from **County** directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the State Auditor, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

The parties hereto acknowledge that, in connection with the transactions hereunder, **Utility** will share confidential and/or proprietary information with **County** including, without limitation, information related to the business operations and financial results of **Utility** and its affiliates. It is contemplated in this Agreement that **County** may

perform an audit of **Utility's** final billing related to the Project which may require **Utility** to provide documentation supporting the costs to be reimbursed and the losses incurred from the interruption of its business. Like all other confidential and/or proprietary information **Utility** may share with **County** hereunder, **County** would be required to keep this information confidential.

**Utility**, by execution of this Agreement, does not waive any of the rights which **Utility** may have within the limits of the law.

This Agreement will be governed by, and construed in accordance with, the laws of the State of Texas, without regard to any choice of law rule or principle the State of Texas or any other jurisdiction that otherwise may apply the law of another jurisdiction.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Any executed counterpart transmitted by facsimile or electronic or similar transmission by any party hereto shall be deemed an original and shall be binding upon such party.

It is expressly understood that **Utility** conducts the adjustment, removal, or relocation at its own risk, and that Fort Bend County, Texas makes no warranties or representations regarding the existence or location of utilities currently within its right of way.

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

#### UTILITY

Utility Southcross Gulf Coast Transmission Ltd.

:

*Name of Utility*

By: Southcross Energy GP LLC,  
its general partner

By:

G. D. Kuse  
*Authorized Signature*

Gary D. Kuse  
*Print or Type Name*

Title:

Vice President - Pipeline Construction

Date:

12/17/15

Fort Bend  
COUNTY

By:

Robert Hebert  
*Authorized Signature*

Robert Hebert  
*Print or Type Name*

Title:

County Judge

Date:

January 13, 2016

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2016-1176

Date Filed:  
01/05/2016

Date Acknowledged:

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Southcross Gulf Coast Transmission Ltd.  
Dallas, TX United States

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

Fort Bend County

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.**

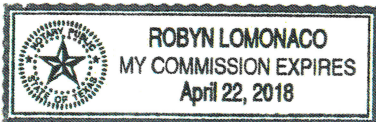
23381  
Utility Relocation regarding FM 1093/Westpark, Mobility Bond Project No. 748

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Southcross Energy LP LLC	Dallas, TX United States	X	
Southcross Energy GP LLC	Dallas, TX United States	X	

5 Check only if there is NO Interested Party.

### 6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



*G. D. Kuse*

Signature of authorized agent of contracting business entity

*Gary D. Kuse*  
Vice President - Pipeline Construction

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Gary D. Kuse, this the 5<sup>th</sup> day of January, 2016, to certify which, witness my hand and seal of office.

*Robyn Lomonaco* Robyn Lomonaco

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath

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FORM 1295

1 of 1

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Southcross Gulf Coast Transmission Ltd.  
 Dallas, TX United States

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Fort Bend County

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.**

23381  
 Utility Relocation regarding FM 1093/Westpark, Mobility Bond Project No. 748

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Southcross Energy LP LLC	Dallas, TX United States	X	
Southcross Energy GP LLC	Dallas, TX United States	X	

**5 Check only if there is NO Interested Party.**

**6 AFFIDAVIT**

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

\_\_\_\_\_  
 Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said \_\_\_\_\_, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to certify which, witness my hand and seal of office.

\_\_\_\_\_  
 Signature of officer administering oath      Printed name of officer administering oath      Title of officer administering oath



## Exhibit B - Construction Cost Estimate

Line Item No.	Item Description	Total Cost	Expense Type Description	Comments/Assumptions
<b>Tangible Purchases</b>				
1	Line Pipe - 14" OD, 0.375 wt, API5L X52, PSL-2, ERW, PEB, DRL, 14/16 mils FBE	\$163,607	Line Pipe	
2	Bore Pipe - 14" OD, 0.375 wt, API5L X52, PSL-2, ERW, PEB, DRL, 14/16 mils FBE, 30 mils ARO	\$28,513	Line Pipe	
3	Bore Pipe - 8" OD, 0.322 wt, API5L X52, PSL-2, ERW, PEB, DRL, 14/16 mils FBE, 30 mils ARO	\$8,390	Line Pipe	
4	Segmentable Fittings - 8" OD, 0.322 wt, Y-52, 14/16 mils FBE	\$9,000	Pipe, Valves & Fittings	
5	Segmentable Fittings - 14" OD, 0.375 wt, Y-52, 14/16 mils FBE	\$20,000	Pipe, Valves & Fittings	
6	Signs	\$350	Safety Supplies	
7	Contingency for tangible items (10%)	\$22,986		
8	Sales Tax on all tangible items (8.25%)	\$20,860		
	<b>Subtotal Tangible Items</b>	<b>\$ 273,707</b>		

Line Item No.	Item Description	Total Cost	Expense Type Description	Comments/Assumptions
<b>Intangibles and Contract Services</b>				
9	Contract 14" Pipeline Installation	\$243,380	Contractor Services	
10	Boring Service - 10"	\$85,884	Contractor Services	
11	Construction Services - 8"	\$10,000	Contractor Services	
12	Boring Service - 8"	\$45,600	Contractor Services	
13	Allowance for extra depth	\$4,452	Contractor Services	
14	Allowance for double-ditching	\$3,710	Contractor Services	
15	Allowance for CP test leads	\$2,000	Contractor Services	
16	Directional Drilling	\$35,785	Contractor Services	
17	X-Ray Services	\$46,800	Contractor Services	
18	A/C Mitigation	\$150,000	Contractor Services	
19	Internal ROW services	\$54,000	ROW Easements	
20	Internal Front End Engineering / Project Management / Field Employees	\$44,000	Salaries & Wages	
21	Frac Tank Mob and Demob	\$1,000	Trucks & Cranes	
22	Frac Tank Rental	\$1,600	Trucks & Cranes	
23	Water for hydrotest	\$2,520	Chemicals - Other	
24	Vacuum Truck to haul water to frac tank	\$1,200	Trucks & Cranes	
25	FOB included in pipeline price	\$0		
26	Transportation of miscellaneous equipment and materials to various work sites	\$10,000	Trucks & Cranes	
27	Surveying	\$41,553	Land Survey Costs	
28	Install surface markers	\$350	Contractor Services	
29	Business Interruption Cost	\$49,492	Expense	
30	Pipeline Inspectors	\$53,625	Supervision - 3rd Party	Approx Business Interruption Cost
31	Contingency for unknown items (10%)	\$88,695		
	<b>Subtotal Intangible Items</b>	<b>\$ 975,646</b>		

<b>Total of Tangible and Intangible Items</b>	<b>\$ 1,249,353</b>
<b>Indirect Cost - (3%)</b>	<b>\$ 37,481</b>
<b>Total Estimate</b>	<b>\$ 1,286,833</b>



## Exhibit D - Eligibility Ratio Table

UTILITY	Length in Proposed ROW South/ Current Utility ESMT	Length in 100' FBCTRA ROW	Length in 100' TxDOT ROW	Length in Existing or Proposed ROW North/ Current Utility ESMT	Total Length in Linear Feet	% in FBCTRA ROW (Non-Reimbursable)	% in TxDOT ROW (50% Reimbursable)	% in PROP ROW/ Existing Easement (100% Reimbursable)	Proposed Reimbursement of Relocation Cost
Southcross 8" Natural Gas Pipeline	116	120	120	230	586	20.50%	20.50%	59.00%	69.25%
Southcross 14" Natural Gas Pipeline	0	100	100	5,580	5,780	1.70%	1.70%	96.50%	97.45%