



11.1 General

This chapter was developed to provide a guide that conforms to State and Federal policies for the payment of the cost of relocation and /or adjustment of utility facilities required to accommodate highway improvement projects. It should be noted that in many cases State guidelines are more restrictive than Federal regulations. When this situation occurs the State policies shall prevail when determining the amount due the utility for necessary adjustments.

11.2 Wisconsin Reimbursement Policy

Wis. Stat. s. 66.0831 [Attachment 1.2.3](#) requires that utilities protect or alter their facilities to accommodate a highway or street project, provided they are given reasonable notice and the work is reasonably necessary to complete the project. If the project is done by or for the state or by or for any county, city, village, or town, the cost of the protection or change shall be borne by the utility.

Wisconsin's policy for the payment of costs to relocate utility facilities is founded on the premise of the State gaining all right, title, and interest in lands being acquired for highway use from a utility where a utility has obtained a land interest. [Attachment 1.2.5](#) is Wis. Stat. s. 84.09, the basis of all WisDOT land acquisition. The utility's easements or prescriptive rights are the land interests that are being acquired. [Attachment 11.2.1](#) is the part of Wis. Stat. s. 32.09 that addresses the condemnation of an easement.

In exchange for this land interest the Highway agency agrees to pay the cost to relocate or adjust the utility facilities to accommodate the proposed highway project(s). A "Conveyance of Rights" document has been developed to accomplish the transfer of land rights to the State while reserving a future right to the utility for payment of facility adjustments should the utility choose to remain within the existing easement area (but out of the way of the highway). [Attachment 11.2.2](#) is a letter from the State Attorney General's Office discussing the concept of "just compensation" for utility takings.

A conveyance of rights from an earlier project (also referred to as "compensable by virtue of prior rights") may be the basis of payment for the relocation of utility facilities that are now within the highway right of way.

Normally municipally owned utility facilities that lie in highway or street right of way are not eligible for compensation. However, a provision exists in the state statutes that allows municipally owned utilities to recover the relocation cost for facilities located on highway right of way if the roadway being developed is a statutorily designated freeway. This policy is described in Wis. Stat. s. 84.295 (4m). See [Attachment 11.2.3](#). Under this policy municipally owned utilities are reimbursed for 90% of the eligible relocation cost. A municipally owned utility is not required to hold a land interest in the area being taken for the highway in order to receive reimbursement of relocation cost under this policy. In fact, if a utility does have a land right, the normal reimbursement policy takes effect.

Wis. Stat. s. 84.063(4)(a) and ch. Trans 220.06(1) Wis. Adm. Code require WisDOT to bear the cost of "second moves."

11.3 Agency Responsibilities

Central Office staff provides assistance to the Regions; reviews and recommends approval of utility agreements when necessary; establishes procedures in accordance with approved policy; and provides a liaison between the Regions and utility companies concerning policy and negotiations.

Region Offices are the focal point of utility coordination. They must recognize areas of potential conflict between utility facilities and highway improvements. They must work out satisfactory accommodations for each situation; arrange for relocation or adjustment of utility facilities; maintain liaison with the utility companies; work with utility companies to develop satisfactory estimates for the reimbursement of facility relocation costs; monitor utility relocation activities; and review and approve payment of utility invoices, second move compensation and utility agreement change orders.

11.4 Land Rights

Title to beds of all natural lakes and ponds, and of navigable rivers, belongs to the State. **State v. Trudeau**, 139 Wis.2d 91 (1987). **This means that all utility facilities in, or under, natural lakes, ponds and navigable rivers are non-compensable.**

WisDOT recognizes six different types of land rights. They are fee title, easements, prescriptive rights, conveyance of rights, long-term lease agreements (or similar documents), and discontinuance of highways.

1. **Fee title** - A utility company owns the land that its facilities are on. The transfer of the ownership of the land is a real estate transaction that is handled by the Region Real Estate Section. The relocation of the utility facilities located in the fee title area is handled by the Region Utility Coordinator and may require a release of rights document or a quit claim deed, depending on the situation.
2. **Easements** - Easements are agreements between the landowner and the utility company that restrict the use of the land by the landowner and provide rights to the utility company to construct on and occupy the land. Easements are usually recorded at the county register of deeds office, but there was a time when property owners objected to signing documents that were to be recorded against their land. In order to satisfy the property owner, some easements were never recorded, the property owner and the utility owner each held a copy. In other cases, the easements were just verbal agreements, and nothing was written down.

WisDOT does not recognize easements that are written to include portions of highway right of way unless the easement existed prior to the highway right of way and the easement was never extinguished. In almost all cases, the grantor does not have jurisdiction over highway lands. See [Attachment 11.4.1](#) for an opinion by the Attorney General.

3. **Prescriptive rights** – Wis. Stat. s. 893.28(2) (see [Attachment 11.4.2](#)) provides for acquiring a land right through prescriptive rights via adverse user. WisDOT recognizes that a utility can obtain a land right if it occupies private property continuously and unchallenged for 10 years. Wis. Stat. s.893.29 prevents anyone from obtaining adverse possession against the state or any other political subdivision. WisDOT requires proof that the utility facility has been in place on private property for 10 years, but **does not** require the utility to take formal legal action to establish the prescriptive right. [Attachment 11.4.3](#) is an opinion by the Attorney General verifying the compensability of prescriptive rights. **Please note** that after the Attorney General’s opinion was written, the statute was revised and changed the timeframe for establishing prescriptive rights from 6 years to 10 years.
4. **Conveyance of rights** - WisDOT may obtain a conveyance of rights from a utility. This conveyance of rights document (see [Attachment 11.4.4](#)) gives the utility certain rights to compensation for future relocations caused by a highway improvement project.
5. **Long term lease or similar document** - The Office of General Counsel views a long-term lease as a legal land division. If a utility has a long-term lease, WisDOT would consider it to be a land right. There may be other documents that can be construed to provide a utility with a land right. If you have a question regarding such a document, contact the Bureau of Technical Services Access and Utility Unit for assistance.
6. **Discontinuance of highways** – When WisDOT, or any local unit of government, discontinues a highway or sells off excess lands; the utility facilities that occupied the land retain their rights of occupancy and the rights of entrance, maintenance, construction, and repair of their structures. Wis. Stat. s. 66.1005 deals with this issue. See [Attachment 11.4.5](#) for an excerpt of the statute. It is best to include these rights as an easement upon the affected land at the time of discontinuance of the highway, so that it is clear to the purchaser and all future owners.

11.5 Release of Rights Documents

When a utility has an interest in the land being acquired for a highway it will be necessary to acquire that land interest in order to provide clear title and ownership of the highway. The type of document used to acquire these land rights will vary depending on the location of the utility facilities and the utility’s desire to remain within its original easement on highway land or to relocate to new lands.

Each permanent conveyance document, either the Quit Claim Deed or the Conveyance of Rights, must be signed by an authorized utility representative, and recorded with the County Register of Deeds. In order to record the documents, each will have to be authenticated by an attorney licensed to practice ~~law, or~~ [law or](#) notarized by a licensed Notary Public. A copy of the recorded conveyance document should be sent to the utility

company. The original recorded release of rights document must be kept in the Region project files. As mentioned later in this chapter, a copy is also sent to the Central Office Utility Unit when the utility agreement packet is submitted for processing.

For additional guidance on the release of rights documents involving Transportation Project Plats (recorded plats), see the [Chapter 8](#) section of this Guide that is titled “Transportation Project Plats.”

11.5.1 Quit Claim Deed

When a utility has land rights within the area being acquired for right of way and chooses to relocate off their existing easement onto new private easement they should provide a Quit Claim Deed, [Form DT1661](#), for the area they are vacating. The cost of acquiring a new easement as well as the relocation of facilities would normally be considered a reimbursable cost.

This type of release should also be used when the utility is removing their facility and not placing anything in the area of the old easement such as when they move to the other side of the highway, or if a line serves the properties from a different direction, away from the highway.

See [Attachment 11.5.1](#) for a sample Quit Claim Deed document.

11.5.2 Conveyance of Rights in Land

When a utility has land rights within the area being acquired for right of way and chooses to have its facilities remain within those easements, and stay within the new highway right of way, the utility would provide WisDOT with a Conveyance of Rights in Land. This saves WisDOT the cost of paying the utility to acquire a new private easement. When this type of conveyance is provided the utility will be entitled to future reimbursement costs associated with the relocation or adjustment of their facilities that exist at the time of the conveyance should they need relocation or adjustment to accommodate expanded or additional highway improvements.

The reason WisDOT has agreed to these future payments is because utilities could continually obtain easements just outside the right of way being acquired for highway use. This would result in WisDOT paying the future relocation costs plus easement acquisition costs should the need arise to acquire additional right of way in the future. This results in a series of moves over time, with continual relocation costs as well as costs for obtaining easements each time. The Conveyance of Rights in Land document eliminates the easement acquisition costs, both now and in the future.

See [Attachment 11.4.4](#) for a sample Conveyance of Rights document. This form was created as ED660 in 1962. It was later replaced by [Form DT1660](#).

11.5.3 Temporary Construction Easement (TCE)

A Temporary Limited Easement (TLE) is an interest in land that must be acquired when the project requires WisDOT or its contractors to temporarily use a portion of the owner’s property in order to complete the work associated with a highway improvement project. A TLE is limited in purpose and time.

Whenever a TLE is obtained in an area where a utility has a land interest, the interest of the utility company typically places restrictions on what kind of work can occur in this area. Often work associated with a highway project may violate those restrictions.

Due to the limited time for a TLE, a Quit Claim Deed (QCD) or a Conveyance of Rights in Land (CORIL) would be inappropriate because those documents permanently release the utility land interest. A temporary document is required in which the utility company acknowledges that they have an interest in the land and that they are aware of our proposed work. A TCE is the document most commonly used as it removes any utility company restrictions on the land for the duration of the highway project and allows the highway work to proceed.

A TCE is preferred and recommended for both occupied and unoccupied utility land interests in a TLE. For occupied utility land interests, the relocation of any utility facilities within the TLE are compensable. A TCE signed by the utility company is required in order to convey this temporary land interest and provide compensation for the relocation of any utility facilities. If a utility company is unwilling to sign a TCE for an unoccupied utility land interest, WisDOT may accept a statement from the utility stating that they are aware of the project and that the project will not adversely affect their utility land interests.

When a Permanent Limited Easement (PLE) is acquired in an area where a utility has a land interest, any utility facilities within the PLE are compensable. To determine the appropriate release document, follow the steps in this flowchart. When a CORIL or QCD is required per the flowchart, WisDOT is acquiring the PLE for "highway purposes". This gives WisDOT permitting authority within the area of the PLE. In this situation, the permanent release of the utility land interest makes sense. When a TCE is required per the flowchart, WisDOT is acquiring the PLE for a specific purpose. This type of acquisition will not give WisDOT permitting authority. In this situation, a temporary release of the utility land interests makes sense. The TCE expires when the work is completed and yet provides the department with a document that both acknowledges the utility land interest and temporarily releases any restrictions that might affect construction activities.

The DT2216 – Temporary Construction Easement, is the document that is used to obtain a temporary right from the utility company to occupy or use their land interest. For tied projects with one right of way plat and multiple construction projects that will utilize the land interest, only one TCE is required to cover all of the construction projects that are Let in one contract. The form is available on WisDOT's official forms website at this location:
<https://wisconsindot.gov/Pages/global-footer/formdocs/default.aspx#plans>

The format for the legal description is found in the WisDOT Guide to Utility Coordination (WGUC), Chapter 11.6 (Legal Descriptions).

The TCE document includes a statement indicating that the right to use the utility's land interest will terminate upon completion of the construction project for which it was executed. The definition of completion means opening the highway to the traveling public. When a construction project has not been completed within five years after the utility signed the TCE, it will terminate on the date that is five years after the utility signed it. If a TCE is terminated prior to the construction project being completed, another TCE will need to be executed to clear the project for Letting or to complete any highway work that has started. When a project is removed from the program by changing its status in FIIPS to *Inactive* (See Program Management Manual 05-05-30), any TCE's executed for that construction project shall terminate.

See Attachment 11.5.2 for a sample TCE document

Note: The original signed TCE should be filed per the Records Retention / Disposition Authority (RDA)
~~Whenever a Temporary Limited Easement (TLE) is obtained in an area where a utility has a land interest, any utility facilities within the TLE are compensable. In order to provide that compensation, WisDOT needs to acquire a temporary land right from the utility. A document signed by the utility company is needed to convey this temporary land interest. A Quit Claim Deed or a Conveyance of Rights in Land would be inappropriate because they are permanent documents. A temporary document is required in which the utility company acknowledges that they have an interest in the land and that they are aware of our proposed work. A Temporary Construction Easement is the document most commonly used.~~

~~Many utility company easements place restrictions on what kind of excavation can occur in the easement area. Often work associated with a highway project may violate those restrictions. A Temporary Construction Easement removes any utility company restrictions on the land for the duration of the highway project, allowing the highway work to proceed. If a utility company balks at signing a Temporary Construction Easement and they have no compensable relocations, WisDOT can settle for a letter from the utility stating that they are aware of the project and that the project will not adversely affect their easement rights. If there is some compensable relocation, we need to acquire a temporary land right from the utility in order to be able to pay them. The Temporary Construction Easement **must** be signed by the utility in order for them to receive payment.~~

~~There are two versions of the Temporary Construction Easement document. See Attachment 11.5.2 Page 1 for a sample of a Temporary Construction Easement for Traditional Plats, Form DT2216. A Temporary Construction Easement for a Transportation Project Plat (TPP) will have slightly different wording than a Temporary Construction Easement for a non-TPP project. The right of way plat for a TPP is recorded at the County Register of Deeds office. However, this will frequently take place late in the design process, possibly after the Project Plans package is sent to the utility companies. Since the Temporary Construction Easement is not recorded, it does not have to contain the recording information of the TPP. It can merely refer to the right of way plat by project ID number and state that the plat is available for viewing at the Region office. See Attachment 11.5.2 Page 2 for a sample of a Temporary Construction Easement for Transportation Project Plats, Form DT2217.~~

~~When a Permanent Limited Easement (PLE) is acquired in an area where a utility has a land interest, any utility facilities within the PLE are compensable. Since the department is not the underlying fee owner, a Conveyance of Rights is not the proper document to use because the utility would be giving up its right to be on the land and the department does not have the authority to grant permission to occupy the land to the utility. In a PLE area a Temporary Construction Easement should be used. This document expires when the work is completed and yet provides the department with a document that both acknowledges the utility land interest and temporarily releases any restrictions that might affect construction activities.~~

~~**Note: The original signed Temporary Construction Easement should be filed in the Region Project Real Estate files. Copies of the signed Temporary Construction Easement should be kept in the Region Utility Unit files and the Central Office Utility Unit files.**~~

11.6 Legal Descriptions

The legal description in the release of rights document must accurately describe the lands where the utility is conveying its land interest. There are several ways that the legal description can be written to accomplish this task. The following format is the recommended way of describing the land rights to be acquired by WisDOT.

General Format

All that part of the {list quarter-quarters} of Section __, T__N, R__(E or W), {continue listing quarter-quarters and Sections, Town and Range if necessary}, __ County, Wisconsin, subject to Grantor's easement or interests included in lands acquired by the Grantee for Project XXXX-XX-XX, Description, Subtitle, Highway, __ County, Wisconsin, dated __ and subsequent revisions, as filed with the County Clerk (or as recorded with the Register of Deeds) of __ County, State of Wisconsin.

Quarter-Quarter Example

All that part of the NW ¼ -SE ¼, the SW ¼-SE ¼, and the SE ¼-SE ¼, of Section 26, T21N, R6E, Wood County, Wisconsin, subject to Grantor's easement or interests included in lands acquired by the Grantee for Project 6320-00-21, STH 13 – Adams County Line (Ten Mile Creek Crossing), STH 73, Wood County, Wisconsin, dated October 1, 2002, and subsequent revisions, as filed with the County Clerk of Wood County, State of Wisconsin.

Government Lot Example

All that part of Government Lot 5, xxxxxxxxxxxxxx, subject to Grantor's easement and interests included in lands ...

Farm Lot Example

All that part of Farm Lot 13 of the Private Land Claims at Prairie du Chien, Wisconsin, subject to Grantor's easement and interests included in lands ...

Recordable Plat Example

All that part of the lands subject to Grantor's easements or interests included in lands acquired for the improvement of STH 13 by the Grantee in:

parcels 1, 3, 5, 6, 9, 10 and 15 of Transportation Project Plat 5255-03-21-4.01, recorded as Document # 1421537 and filed in TPP Cab Pg 6a;

parcels 20, 23, 25, and 28 of Transportation Project Plat 5255-03-21-4.02, recorded as Document # 1426154 and filed in TPP Cab Pg 7B;

parcels 31, 34, 37, 38, and 40 of Transportation Project Plat 5255-03-21-4.03, as Document #1435352 and filed in TPP Cab Pg 10B;

in the Walworth County Office of the Register of Deeds and all subsequent revisions.

Some utility companies want their existing easement recording information listed in the legal description because that is the land right that we are acquiring. When requested to do so, include the easement document numbers and recording information along with the parcel numbers that the easement applies to. This may require revising

the release of rights document to add the correct easement information prior to the utility company signing the release.

Plats are revised over time to correct errors, accommodate changes in design or property ownership, etc. In order to minimize the need to revise a release of rights document, the phrase “*and all subsequent revisions*” must be included in the legal description on the release. This will eliminate the need to revise and re-record the release document for traditional non-recorded plats. This will also reduce the likelihood of having to create a new release document on Transportation Project Plats (TPP, or recorded plats). However, if a TPP is revised to add parcels, you will need to record a new release of rights document if any of the new parcels affect a utility easement.

If you have to revise and re-record a release of rights document, you will need to include the following statement in the legal description:

“This Conveyance of Rights in Lands amends and supersedes the Conveyance of Rights in Lands recorded as Document # ___, Volume # ___, Page # ___, on ___Date___.”

Note: Substitute “Quit Claim Deed” for “Conveyance of Rights in Land” if the original document was a Quit Claim Deed.

See Chapter 8 of this Guide for guidance on revising a right of way plat to correct the utility information on the plat. Some corrections require an amended plat, while other corrections can be accomplished in the release of rights document.

11.7 Utility Agreements

Utility agreements should be approved and executed prior to PS&E submittal. In the event that they are not submitted by that time, the Utility Status Report, DT1080, has a section where the status of the utility agreements can be described. Highway improvement projects will be pulled from the letting if the utility agreements are not approved and executed by one week before the Ad Meeting.

If there are changes to the plan during construction that necessitate the relocation of compensable utility facilities that did not require relocation in the initial design, a utility agreement can be entered into post-letting as long as a release of rights document was obtained during the design process.

There are five types of utility agreements:

1. Audit Agreement

With this type of agreement, the state agrees to reimburse the utility company for the actual net cost of utility work including the cost of personnel, equipment, and materials. The amount is confirmed by an audit of company records. This is the most common agreement type. The agreement incorporates general guidelines governing performance of the work and specifies reimbursement based on the actual cost to the utility company. This type of agreement has evolved to cover most situations where cost may be expected to vary from the estimate. The Audit Agreement, [Form DT1541](#), is suitable for all types of compensable relocations.

The advantage of Audit Agreements is that net reimbursement is based on actual cost. The disadvantages of audit type agreements are the time and expense of the audit and the added time lapse before the agreement can be closed out. Also, if there is a discrepancy in the audit, the time to resolve the situation can be extensive.

The Audit Agreement can be used on any size agreement but must be used for agreements over \$50,000. See [Attachment 11.7.1](#) for a sample Audit Agreement.

2. Lump Sum Agreement

A Lump Sum Agreement, [Form DT1542](#), sets forth guidelines governing performance of the work and includes the provision for payment of a lump sum dollar amount to the utility company. The lump sum should cover the cost of all work items. To enter into a Lump Sum Agreement it is necessary for both WisDOT and the utility to agree to a lump sum dollar amount. The utility company must provide a fully detailed cost estimate that WisDOT can accept. There should be no contingency items in the estimate.

The advantages of a Lump Sum Agreement are quick processing of invoices and the lack of need for an audit after utility work has been completed. However, since more time must be spent in review of the agreement and estimate, more detail is required and there may be no savings over an audit type agreement. A Lump Sum Agreement is an advantage only when the scope of the work involved is very clear, no contingency items will be added, and there will be quick agreement on the lump sum amount.

Per WisDOT policy, the lump sum type agreement is limited to an amount of \$50,000.00 or less. See [Attachment 11.7.2](#) for a sample Lump Sum Agreement.

3. Municipal Utility Agreement

A Municipal Utility Agreement is used for municipally owned utilities on projects covered by Wis. Stat. s. 84.295(4m), which are projects on statutorily “designated freeways.” (See [Attachment 11.2.3](#)). This applies to facilities that are located on public lands that would otherwise not be compensable. In this case 90% of the eligible relocation costs are reimbursable. There is no maximum or minimum dollar amount. The eligible costs are the actual costs minus the salvage value, used life credit, and betterment.

Not all highways that are built to freeway standards are “designated freeways.” The [“Official State Trunk Highway System Maps”](#) booklet published annually by WisDOT has a list of highways that have been officially designated as freeways. It is important to note that “designated expressways” are not covered by Wis. Stat. s. 84.295(4m) and are therefore not compensable under this statute.

The Municipal Utility Agreement, whose official name is “Agreement For Payment For Relocation or Replacement of Municipal Utility Facilities Located on Public Held Land Required by Freeway Construction”, is [Form DT1575](#). See [Attachment 11.7.3](#) for a sample of a Municipal Utility Agreement.

The Municipal Utility Agreement also requires that a [DT25](#) form “Recommendation To Governor For Contract And Bond Approval” be filled out. These agreements must be approved by the Governor’s office.

Instead of parcel numbers, Municipal Utility Agreements have Utility Agreement (UA) numbers, which are shown as UA #101, UA #102, etc., on the right of way plat, the utility agreement or any other documentation. Generally there is only one, but sometimes, there are several municipalities involved, or several different agreements (one for sewer, one for water, one for municipal electric), so the UA number helps keep it straight as to which agreement it is to be charged to. Also, it could be a staged project with different UA numbers for each stage of the project. Select the UA number so that it is distinctive from the rest of the parcels. If there are more than 100 parcels on a plat, but less than 200 parcels, start with UA #201.

4. Utility Agreement – No land interest

There are rare occasions when WisDOT wants to pay a utility company to do work associated with an improvement project that benefits WisDOT and the utility has no land interest that is being acquired. An example of this would be when a community has obtained specially earmarked funds to place overhead utility facilities underground. Another example would be the 4-mile extension of a 3-phase electric line to serve a WisDOT truck scale.

Wis. Stat. s.84.06 (4), [Attachment 11.7.4](#), allows WisDOT to enter into a contract with utility companies without acquiring a land interest from the utility. This type of contract, or utility agreement, is used rarely. Consult with Central Office Utility Unit before deciding to proceed with such an agreement. When it is appropriate, use [Form DT2192](#) “Agreement for Payment for Relocation or Replacement of Utility Facilities.” This form can be used for both lump sum and percentage agreements. See [Attachment 11.7.5](#) pages 1 and 2 for a lump sum agreement and pages 3 and 4 for a percentage of total costs agreement.

5. Utility Agreements – Conveyance of Rights from a Previous Project

Where applicable, a conveyance of rights ([Form DT1660](#)) may be obtained from a utility when acquiring a new land interest. This document grants the utility the right to future compensation should the utility facility have to be moved for another transportation improvement project. There will be times when a utility has a conveyance of rights from a past improvement project and WisDOT is not acquiring a new land interest from the utility company. In this situation, the standard utility agreement forms (DT1541 and DT1542) do not apply. Two new utility agreement forms have been created to address this situation. The

audit agreement form is [DT2193](#) "Audit Agreement for Payment to Public Utility Based on Prior Land Rights." A sample form is shown in [Attachment 11.7.6](#). The lump sum form is [DT2194](#) "Lump Sum Agreement for Payment to Utility Based on Prior Land Rights." A sample form is shown in [Attachment 11.7.7](#).

11.8 Preliminary Estimate

As soon as the right of way plat is developed, the Region Utility Coordinator should review the plat to verify the areas in which utility companies are shown as having a land interest and reimbursable facilities. An estimate of the cost for each utility parcel should be made.

This estimate should be based on previous costs for similar work in the area by the utility. In some cases it may be necessary to contact the utility and request a preliminary estimate of the cost to adjust the reimbursable facilities. Once this information is gathered the cost for each parcel should be provided to the FIIPS coordinator in the Region Planning Unit and scheduled along with all other project costs. It is customary to schedule this work six months prior to the earliest work that will take place on the highway project. It is common for the utility work to take place sooner than the highway work. Since the exact schedule of the utility work is not known at the time funding is arranged, programming the cost six months prior to the earliest contract usually provides an adequate time frame for budgeting purposes.

11.9 Plan Submittals

As soon as the relocation order is approved and construction plans have been sufficiently completed the Region shall send the affected utilities a copy of the construction plan and right of way plat. In the case of Trans 220 projects the submittal shall include a copy of [Form DT1078](#) indicating the type of work being undertaken as well as the date due for the utility's work plan and estimate if reimbursable work is involved. (See [Chapter 10](#), Sending Plans to Utilities for additional information).

Items normally included in this submittal are:

1. A Conveyance of Rights in Land, [Form DT1660](#) or Quit Claim Deed, [Form DT1661](#) document (*only if the right of way plat is not a Transportation Project Plat or if the TPP is already recorded*).
2. One copy of the agreement document, typically a Lump Sum, [Form DT1542](#) or Audit, [Form DT1541](#).
3. One copy of the construction plan with cross sections as well as any other necessary detail sheets and storm drainage information the utility will need to plan their relocation.
4. One copy of the complete right of way plat.
5. The necessary Trans 220 materials.
6. One copy of the Utility Worksheet, [Form DT2236](#). This worksheet provides a guide to lead the utility through the work plan process.

11.10 Sub-Contracting By Utility

Utility work required to accommodate a highway improvement is often over and above the utility's normal workload and capacity. Due to this extra work load a utility is often required to seek the assistance of sub-contractors to perform the relocation work to meet highway improvement schedules. Work by sub-contractors falls into two distinct areas, work performed under competitive bid-contract and work by continuing contractors.

11.10.1 Competitive Bid

When a utility chooses to sub-contract all or a portion of the reimbursable utility work required to accommodate a highway project, the utility must first obtain permission from the highway agency responsible for payment of the utility relocation cost. In order to use a sub-contractor the utility will be required to obtain at least three competitive bids for the work to be performed. The utility must provide the highway agency with a copy of all bids submitted and provide the name of the contractor selected. The contractor submitting the low bid should be selected. If the utility does not want to use the low bidder a detailed explanation must be provided stating why the low bidder is not being given the contract. If the low bid is not selected the highway agency may, at its discretion, request the work to be re-bid. No construction work shall be performed by the utility or its sub-contractor prior to approval of the contract. Any work performed prior to approval and/or before a notice to proceed with work has been issued by the highway agency may be subject to citation and may result in non-payment by the highway agency.

11.10.2 Continuing Contractor

Many utilities maintain contracts with private contractors capable of performing the variety of work the particular utility requires to maintain its operation. Typically the rates the private contractor will charge for this work are predetermined and on record with the utility. If a utility chooses to use a continuing contractor for work on a reimbursable highway project the State must approve the rates and accounting methods used by the utility to select the continuing contractor. These practices are subject to review annually by the Audit Section of the Bureau of State Highway Programs. The practices used to select a continuing contractor must conform to all State and Federal requirements.

11.11 Reimbursement Philosophy

As defined in Wisconsin's Reimbursement Policy (at the beginning of this chapter) the State will pay for the cost to relocate or adjust utility facilities that occupy an area being acquired for highway right of way wherein the utility has acquired a land interest either through executed easements or under prescriptive rights as defined in Wis Stat. s. 893.28(2). The land interest could also be a conveyance of rights document from a previous highway improvement project.

In most situations the facilities eligible for relocation costs are easily recognized. However, it is rare that all of the utility work involved with a project is in the new acquisition area. When utility facilities fall within the right of way acquisition area as well as within the existing right of way, the task of developing an accurate estimate can be somewhat more difficult. In this situation, WisDOT pays a percentage of the total project cost. This percentage is derived from the ratio of the amount of the facility in the compensable area to the total amount of the facility in the existing right of way and the compensable area. The "amount of the facility" used in the previous sentence can be linear foot, number of poles, or a square foot area for special facilities. This same percentage will later be applied to the invoice.

All decisions are based on **actual existing locations, not intended locations**. For example, if there is a telephone easement adjacent to the highway right of way but 500 feet of the cable was placed on highway right of way, that 500 feet is **not** compensable.

11.11.1 Service Drops

Service drops are generally not considered to be compensable by themselves. Their costs are included in the total costs of the project, and the percentage of payment for the distribution facility, derived as stated below, is applied to the total cost of the project. Generally, if none of the distribution facility is on private land, none of the service connections are considered compensable, even though some work may need to be done on private land to complete the connection. There are exceptions to this. If an easement has been acquired specifically for a service drop, the service drop may be considered compensable. Also, large service drops for factories or large public buildings such as schools may be compensable. These service drops more closely resemble distribution facilities than service connections. If you are uncertain about whether a service drop is compensable, contact the Statewide Utility Project Coordinator.

11.11.2 Buried Facilities

For buried line facilities, the ratio of the length of the existing line in compensable areas to the total length of the line in the compensable areas and inside existing highway right of way that is affected by the highway project is used to compute the compensable ratio of the estimate. **Compensable areas would include new acquisition areas and areas where there is a conveyance of rights from a previous project.** This ratio is then applied to all of the work required to replace the existing facility. To aide in the computation of this ratio the Utility Estimation Report, [Form DT1850](#) has been developed. This form has been found to be helpful in the development of complex estimates, especially in the case of underground facilities such as telephone lines and gas lines. (See "[Utility Estimation Report](#)" in this Chapter)

Compensable ratio = % of work paid for by WisDOT = Total length in compensable areas / (Total compensable length + the affected length in existing highway right of way).

First test: Is the affected work all within the existing right of way? If yes, the compensation ratio is 0%.

It is unusual that a buried cable would have an existing pedestal at the point where the construction limits intersect the buried line. It is unreasonable to always expect the utility company to add pedestals at or near this point, because additional pedestals affect the quality of the signal transmitted. There are times when that may

make sense, but not always. For buried cable, the utility company will often replace the cable to the next existing pedestal, which might be outside of either the new acquisition area or the existing right of way. The compensable ratio will always be based on the lengths as shown in the formula above. However, that ratio will be applied to the total cost which includes the work done on private lands outside of the newly acquired right of way. The costs of replacing cable that is outside of existing right of way and newly acquired right of way can be included in the total estimate, it is just not used to compute the compensable ratio. The goal is to make the utility whole again, and in a position that is neither better nor worse than what they enjoyed before the highway project.

This same logic applies to pipelines, sewers, water mains and gas mains, where additional work might be required on private lands outside of the acquisition areas. Pipelines may have maximum angles that they can bend and sewers may need to go to the next manhole. Water mains and gas mains can generally be spliced almost anywhere, but there may be exceptions for either engineering or system operation reasons.

11.11.3 Overhead Facilities

The compensable percentage for overhead facilities is computed by counting the number of poles. The ratio of compensable poles to total poles in the compensable area and affected poles within the right of way is used to determine the WisDOT share of the estimate. **Compensable areas would include new acquisition areas and areas where there is a conveyance of rights from a previous project.** In general, **if the center of a pole is on the highway right of way line or inside the existing right of way, the entire pole is considered non-compensable.** WisDOT does not recognize the intent of the placement of a pole. If the center of the pole is placed inside of or on the right of way we consider it non-compensable even if there is an easement adjacent to the right of way. Similarly, if the center of the pole is outside of the right of way we consider it compensable, even if there is no recorded easement and all of the other poles are inside the right of way. Our decisions are based on actual placement, not intent.

There is one exception to this policy. For large steel poles or transmission towers that are partially inside the right of way, the compensability can be prorated based on the percentage of the facility on private lands. This exception is made to recognize that these facilities are high-cost items and should be treated differently than "normal" poles.

Compensable ratio = % of work paid for by WisDOT = Number of compensable poles / (total number of poles in new acquisition area + the affected poles in existing right of way).

The compensable ratio would be applied to all of the work that is needed to make the line whole again. It may be that poles on private lands outside of the acquisition area need to be adjusted. These poles would not be included in the number of compensable poles nor would they be included in the total affected pole count. The compensable ratio would be applied to them and they would be included in the estimate of work done. However, there is a point where betterment has to be considered. A few poles within a line would not be considered to be betterment, but if a half-mile length of poles is in conflict and the power company chooses to replace two miles of the line, the poles that are not in conflict would be considered betterment and would not be eligible for compensation. Granted, it might make sense to replace the entire two miles, but at this point they are improving their system rather than just replacing what they had before. This is going beyond the concept of making them whole again.

Another situation that might be encountered is a perpendicular crossing of the highway where the grade of the highway is changing to the point that the line must be adjusted to maintain proper clearance over the highway. If no additional right of way is being acquired the adjustment is not compensable. If a pole on either side of the highway were in an acquisition area, the adjustment would be compensable. If there is a pole inside the highway right of way, that pole would not be compensable and the compensation ratio would reflect that. If there are no poles in the acquisition area, there is no compensation due, because for overhead facilities the ratio is based on poles and not cable length.

11.11.4 Spot Facilities

Spot facilities such as transmission towers, cabinets, gas regulator pits, pumping stations, etc., are normally outside existing right of way and therefore fully compensable. However, there have been occasions when the facility straddled the right of way line and was partially compensable. In these cases you may use a compensable percentage for the spot facility based on area outside of the right of way. For example, if 3 legs of a four-legged transmission tower are outside the existing right of way, it is 75% compensable. Or, say a 4-foot by 4-foot cabinet

(16 square feet) is centered on the right of way with two feet in the new acquisition ($2 \times 4 = 8$ square feet), then it is 50% compensable. $8\text{sf}/16\text{sf} = 50\%$. The ratio of work paid for by WisDOT = Area in new acquisition/Total area of facility.

Examples of some typical reimbursable situations are illustrated in Attachments 11.11.1 through 11.11.3. [Attachment 11.11.1](#) gives examples of buried facilities, [Attachment 11.11.2](#) has overhead examples and [Attachment 11.11.3](#) shows limited easement acquisition areas.

11.11.5 Municipal Utilities on Designated Freeway Projects Wis. Stat. s. 84.295(4m)

Per Wis. Stat. s. 84.295(4m), the compensable ratio for municipally owned utility facilities on publicly held lands on designated freeway projects is 90%. Not every highway built to freeway standards is a designated freeway. There is a process spelled out in Wis. Stat. s. 84.295 that must be followed in order for a freeway to be a designated freeway.

11.12 Developing the Cost Estimate

11.12.1 General

The purpose of an estimate is to provide a reasonably accurate determination of the expected net cost of work by utility forces. The estimate should be prepared with sufficient detail to provide the highway personnel reviewing it with a reasonable basis for analysis. Lump sum estimates are required to be in much greater detail than those for audit type contracts.

The estimate should provide a concise statement of the work to be accomplished. The number of major units to be removed, replaced, or relocated should be mentioned, and the reason for incorporating any special procedures or special sizes or types of material should be given. Any unusual field conditions, such as anticipated inclement weather, rough terrain, subsurface rock ledges, swamps, or other adverse circumstances that have influenced the estimated cost and that are not readily apparent from the utility plans should be mentioned.

It is often desirable to assist the utility in the preparation of the estimate. This will vary based on the complexity of the estimate and the experience of the utility representative responsible for preparation of the estimate. If the estimate is complex or the estimator is inexperienced it is recommended the Region Utility Coordinator assist in the development of the estimate. This effort will in most cases eliminate the need to return the estimate to the utility for revisions after review by the Region. On complex projects it is recommended that the Utility Projects Coordinator be included in the meeting. This can eliminate the need for lengthy explanations or changes when the agreement is submitted to Central Office for processing.

If a meeting is arranged with a utility for the development of an estimate, the utility representative should first mark-up a copy of the right of way plat to reflect:

1. The existing facilities in the right of way, = non-compensable
2. The facilities on private property within the right of way taking area, and
3. The new facilities being installed to replace the affected facilities. = doesn't count

The utility should review the highway plans to verify the locations of their existing facilities. The utility should provide the estimated cost of the proposed new facilities. It will also be necessary to determine the used life credit and salvage value of any material being retired.

11.12.2 Right of Way Cost

Right of way costs should, in conjunction with the plans, clearly show that replacement land interests are being acquired in like kind to the interest being conveyed for highway purposes. All charges for replacement right of way should be reviewed for reasonableness and to ensure that no betterment will result.

11.12.3 Preliminary Engineering Costs

The preliminary engineering cost data presented in the estimate should provide information as to how it was accumulated or calculated. In the event that it is an overhead, the derivation of the percentage should be shown. If these costs are accumulated directly, the estimate should so indicate by use of the words "Direct Engineering Charges."

11.12.4 Labor Costs

The estimated labor costs should be separated into installation, removal, and maintenance groups, or such similar groupings as may be required by the prescribed utility system of accounts. Labor hours should be shown by class and rate, with payroll additives and other overhead factors shown individually with a statement of what is included in each.

11.12.5 Material and Supplies Costs

All major items of cost to be installed should be listed and the description, number of units, unit price, and total cost provided. Minor replacement items of hardware that do not affect a betterment determination need not be listed separately but may be lumped together under the title of "Miscellaneous Hardware." Any cost item that indicates an item of betterment should be listed as a betterment under that title.

11.13 Credits

Wisconsin's reimbursement policy requires that the State receive certain credits to arrive at a net reimbursable cost to allow the utility a payment to account for the actual damage being incurred by the utility. The following credits must be applied in the development of the estimate. In the case of Audit Agreements it may be necessary to re-compute the actual dollar value of these credits at the time the fieldwork is completed, the new facility is placed in service, and the old plant is retired.

11.13.1 Used Life

Used life credit shall be required when new material replaces old material. We understand that the utility, if accomplishing such work at its own volition and expense, would assign costs to the depreciation accruals to offset the replacement costs. It seems only equitable that the state should also follow this procedure.

The justification for requiring a utility to provide a used life credit based upon original cost is to assure the utility's capital structure is neither enhanced nor depleted after the land taking. The net cost of relocating a particular unit of utility property should not vary whether paid for by the state or the utility.

The present interest in a utility's partially depreciated, partially worn out facility could be said to be the depreciated book value of the facility (remaining life), which is the original cost minus the accrued depreciation. It is obvious that only the remaining life is the portion of the facility that can be damaged. Therefore, the used life credit will increase with the age of the facility and the utility's interest (depreciated book value) will correspondingly decrease.

In some situations municipal utilities may not depreciate their facilities. This is often found in the case of water utilities whose facilities often have an expected life in excess of one hundred years. When this situation arises no used life credit will be shown and the utility should be required to provide a letter to that affect.

If this credit were not provided, a utility having a very old facility would enjoy replacement with a new facility at State expense.

On July 11, 2000, WisDOT changed its policy on when used life credit is required. Used life credit is now only required on utility facilities such as a building, pumping station, filtration plant, power plant, substation, or any other similar operational unit. Credit for accrued depreciation shall not be required for a segment of the utility's service, distribution, or transmission lines. This change was made to align WisDOT policy with that of the FHWA, which was changed in 1985. See [Attachment 11.13.1](#) for the memo that changed the used life credit policy.

Additional information concerning this topic can be found in [Procedure 18-15-20](#) of the FDM.

11.13.2 Salvage Credit

Salvage values of materials recovered from a compensable utility facility adjustment represent the value of the "unused" life of the installation and shall be credited to the job. The costs incurred during the removal of the material may be deducted from the credit given the highway agency.

The credit to be applied in the reimbursable work estimate shall follow the standard accounting practices normally used by the utility. Therefore, if it is the practice of the utility to return salvaged items to its stores at new or current day prices this policy shall be followed when returning material associated with a reimbursable utility parcel.

Additional information on this topic can be found in Procedure 18-15-20 of the FDM.

11.13.3 Plant Loss

The acquisition of a compensable utility land interest for highway purposes may cause the premature retirement of the facilities located thereon without any replacement of their function. Under these conditions, a determination of the damages to the utility caused by the highway acquisition in excess of the raw land value is required so that the amount of just compensation can be established.

An example of when plant loss applies would be a distribution line that serves five properties. The five properties are being acquired for a highway interchange and the properties no longer need service. The utility would be forced to prematurely retire the distribution line without constructing any replacement line. This line would be eligible for plant loss.

Normal utility bookkeeping procedures utilize the concept of "plant loss." This item represents the actual net dollar loss to the utility resulting from the premature retirement of the facility. It is calculated by reducing the depreciated book value (original cost less depreciation) by the amount of any salvage and increasing this result by the cost of removal. It is a simple, readily ascertainable figure that is in accord with basic accounting principles.

Additional information on this topic can be found in [Procedure 18-15-20](#) of the FDM.

11.13.4 Betterment

In its broadest sense, betterment is any improvement in the new facility that did not exist in the facility being replaced, relocated or adjusted. To determine whether or not a betterment is present requires a comparison of the new and old segment of line. If the new line has a greater capacity, a better material, longer expected service life, is stronger, safer and less subject to natural hazards, or requires less maintenance and service, a betterment is indicated.

Betterment necessitated by the highway project and which represents the most economical adjustment of facilities, are compensable to the same extent as the non-betterment utility work. Similarly, betterment constructed solely for utility purposes at the option of the utility is not compensable.

Betterment made to accommodate improved codes or ordinances or to conform to up-grades in industry standards does not have to be considered betterment when computing the utility estimate. The utility should provide documentation to substantiate that the improvement has been or is being made throughout the company and does not represent an improvement for which a betterment credit would apply.

When it is determined that a betterment will be gained by the utility it will be necessary to determine the dollar amount of the betterment to be applied as a credit in the reimbursable estimate. Normally the betterment is the difference between the costs to install the new improved facility less what it would have cost to install a facility comparable to that being retired. The Utility Estimation Report ([Form DT1850](#)) is designed to aid in the determination of these credits to arrive at a net reimbursable cost.

When the betterment consists of a single item of material, it can often be agreed that the betterment credit is the difference in cost between the betterment material and the replacement in like kind material. This approach is only applicable when labor, associated material, and installation costs are the same for both materials, as shown by utility records. The betterment credit may be in the form of either a lump sum or a per-unit measurement amount. For example the difference in cost-per-foot between a 400 pair cable and a 600 pair cable may be \$1.20. The betterment credit would then be \$1.20 times the length of cable installed. The other installation costs would be considered roughly the same for either size cable.

Some betterment made at the option of the utility will be so thoroughly intermixed with the reimbursable portions that the costs cannot be readily segregated. In this case it may be necessary for the utility to make two estimates by the same method, one for the costs of the facility as they propose to build it (A), and one for the costs of a replacement "in-kind" of the existing facility (B). The ratio of the estimated cost of the "in-kind" (B) to the

betterment (A) can be used to determine what percent of the actual final invoice is compensable (B/A%). It should be noted that any departure from the agreed upon work plan will modify the ratio of the compensable to non-compensable work and must be thoroughly documented, with the adjusted ratio used to compute the final invoice. The Federal Bureau of Public Roads approved this method in December of 1963 (see [Attachment 11.13.2](#)).

There are times when it is virtually impossible to determine what the betterment is. Changes in technology, a change in the system operations, etc. may make it very difficult to determine the betterment credit. An example of this might be where the existing telephone cables affected by a highway on relocation are being replaced by a number of system changes and improved technology to the point where it is difficult to use the “in-kind to proposed percentage” method suggested above. In these cases, it is permissible to base compensation on an “in-kind” estimate, where the utility develops an estimate for what it would cost to construct an “in-kind” facility, but they actually construct something different.

The justification for using an “in-kind” estimate is based on the following excerpts from FDM [Procedure 18-15-20](#), (emphasis added).

“Utility land interests acquired for highway purposes are negotiated under replacement of facility procedures which give due consideration to the high degree of public interest that utility owners are endowed by law. Based upon the statutory requirement that a utility must stand ready to serve all qualified applicants in its service area, it is usually necessary to replace the minimum function of the facilities affected by the highway improvement.”

“The reimbursement concept in negotiating for utility and railroad lands with functional facilities located thereon is to provide a work by utility forces contract and payment procedure that will leave the company in the same relative position after the property taking that they enjoyed before, with their financial condition neither enhanced nor worsened and with their ability to serve unimpaired.”

“The state's responsibility in these matters is limited to reimbursement by statute or as a right of way damage. The state obligation can therefore be interpreted to be a reimbursement consideration for the utility cost in replacing in kind the company's present interest in the affected facility at a value not to exceed that which it would cost the utility to accomplish the work in its normal course of business.”

Under the discussion on betterment:

“Some betterments made at the option of the utility will be so thoroughly intermixed with the reimbursable portions of the work that the costs cannot be readily segregated. In this case it may be necessary for the utility to estimate, by the same method, the cost of the replacement in like kind facility.”

Additional information on this topic can be found in [Procedure 18-15-20](#) of the FDM.

11.14 Utility Estimation Report (Form DT1850)

The utility estimation report was developed to provide a formal format for the development of utility estimates to conform to State and Federal standards. This form provides a line by line process to arrive at a fair share of the total project (work order) cost to be applied to the final invoice. The form allows flexibility for use by all types of utilities. The use of this form is not mandatory, however it is suggested for any estimate complex in nature where it would be difficult to arrive at a fair share of state and utility costs to be applied at invoice time.

As stated in the “Wisconsin Reimbursement Policy” earlier in this chapter, a utility company can be reimbursed for the relocation or adjustment to its facilities where said facilities are located on lands in which the utility has acquired a land right and the facilities require relocation to accommodate highway improvements. Where facilities to be adjusted occupy both highway right of way and private property in which the utility has acquired an interest it is necessary to determine the portion of relocation cost that should be paid by the highway agency. A review of the Utility Estimation Report ([Attachment 11.14.1](#)) will indicate that the form is designed to categorize the cost by “Existing Facility” and “New Facility.” The left side of the form (Existing Facility) is used to determine the portion of the existing facility that is reimbursable. The percentage determined in column 6 (Existing Facility) is then applied to the net reimbursable cost in column 13 (New Facility).

The following is an explanation by column or row number for use of the Utility Estimation Report:

1. **Plan Sheet:** Alphanumeric identifier to relate a line item to specific highway or utility plan sheet(s).
2. **Type:** Description of existing utility item, i.e, 200 pair telephone cable, 4" dia. gas line, 8" dia. force main, etc. "Item" can be used as a proxy to cover all the "nuts and bolts" and there can be as many line "items" as needed to cover an area.
3. **Station(s) of Total Relocation:** Highway plan stationing for existing facility item requiring relocation.
4. **Total Reimbursable Plus Non-reimbursable:** Include total quantity in conflict with proposed highway construction. Do not include items outside the existing right of way that are not in an area of proposed right of way acquisition.
5. **Reimbursable Quantity:** Quantity of existing facility on land to be purchased for highway improvements.
6. **% Reimbursement:** Column 5 divided by column 4, resultant times 100.
7. **Credit To State Share Salvage \$:** Credit for salvage value, if any, for quantity listed in column 5. This shall be a credit to the State at invoice time, again based on utility accounting procedures. **Credit To State Share Used Life \$:** Credit for used life for quantity listed in column 5. This will be a credit to the State at invoice time based on the ratio of the number of years in service at time placed to the projected life times the installed cost. Computation shall be by standard utility accounting procedures.
8. **Type of New Facility:** Description of new facility designed to replace existing facility.
9. **Quantity of New Facility:** Quantity of new facility included in work order intended to replace existing facility listed in columns 2, 3 and 4.
10. **Total Estimated Cost to Install:** Total installed cost of the new facility item at latest available rates.
11. **Total Betterment (\$):** Difference between the Total Cost in column 11 and what the cost would have been to install the existing size facility along the new facility alignment. Improvements required by codes or changed industry standards need not be credited as betterment. Attach computation of estimates.
12. **Net Cost (\$) to Replace In-Kind:** Column 11 minus column 12.
13. **Net Reimbursable Cost (\$):** Column 13 multiplied by column 6, the resultant divided by 100.
14. **Reimbursable Cost Less Credits (\$):** This is the estimated State's dollar responsibility per item. It is figured by column 13 minus column 7. The sum column 14 is the total estimated Reimbursable Contract Cost. If this sum is less than \$50,000 a "Lump Sum" type contract may be used.
15. **Total % State Participation:** This is the percent to be applied to the actual project's invoice, along with appropriate credits, to determine how much the State will pay. Column 13 divided by column 12, the resultant times 100.

It is often the case that the items listed in the Utility Estimation Report do not include all of the utility's cost required to complete the utility installation. Items in this category may include; engineering, real estate, clearing and grubbing, boring, and overheads not included in the utility's unit cost for computing installation cost. When this situation occurs it will be necessary to develop an estimate summary sheet. An example of a typical estimate summary sheet is shown in [Attachment 11.14.2](#).

The State's responsibility shall be the Total Actual Project Cost less the Total Betterment Cost from column 12 times the percent from line 15. From this resultant shall be subtracted the Total State's Share of Salvage and Used Life credit from column 7. Note that Salvage and Used Life Costs can be re-computed for the date that the facility is actually put into service. Betterment shall be re-computed based on actual material plus installation costs at the time of installation. See "[Utility Invoicing](#)" in this chapter for additional information. [Attachment 11.14.3](#) and [Attachment 11.14.4](#) provide examples of typical telephone and electric estimates prepared on the Utility Estimation Report.

11.15 Processing an Estimate

11.15.1 Review of the Estimate by the Region

A complete and thorough review of the estimate and work plan by the Region is required prior to submittal to the Central Office. This review should include, but not be limited to, the following:

1. The estimate should be compared to the right of way plat to insure the utility is being reimbursed in areas in which they hold valid land rights. Any areas of doubt should be discussed with the utility and if necessary the right of way plat should be amended to reflect the changes. This is especially important due to the fact that compensation for future moves may depend on the locations of the existing facilities as they relate to public and private right of way as shown on the recorded plat.

2. The estimate should be checked to insure no math errors are present. In the case of large computer developed estimates it may suffice to review the estimate for logic to insure the reimbursement philosophy is being followed.
3. The conveyance documents should be compared to the right of way plat to insure the land rights shown in the conveyance conform to those shown on the right of way plat.
4. The utility's relocation (work plan) should be reviewed in detail by several people within the Region to ensure it will conform to the proposed highway improvements. The work plan should be reviewed by the following units within the Region:

The **Region Utility Permit Coordinator** to insure the utility relocation plan will conform to the "Accommodation Policy" for utility facilities located on highway right of way. In that the utility's relocation plan often also serves as the "Work Plan" required under the provisions of Trans 220 the review by the Region Utility Permit Coordinator will serve to cover both areas of concern.

The **Region Environmental Coordinator(s)** should review the utility's relocation plan to ensure it meets the requirements of their unit. The utility should also be informed of any areas of contaminated soil that could impact the utility's relocation plan. The erosion control plan should be reviewed to make sure it addresses the needs of any sensitive areas on the project. The Region Environmental Coordinator may determine that additional DNR or other agency permits are required.

The **designer** or consultant responsible for design of the project should review the utility work plan to ensure it will conform to (fit) the proposed design for the highway. It is often necessary to arrange a meeting with the designer to jointly review the relocation plan.

It is often advantageous to have the utility's relocation or work plan reviewed by the **Region Real Estate Section**. In some cases the utility will request advance acquisition of some real estate parcels to accommodate their relocation effort. The Region's ability to accommodate this request will greatly enhance the utility's ability to clear the way to accommodate the highway project. An alternative method of accomplishing this is to provide the Region Real Estate Section with a list of parcels that are affected by utility work.

11.15.2 Submittal to Central Office

After review by the Region Office the reimbursable estimate packet shall be submitted to Central Office by the Region Utility Coordinator for final review and approval. Items included in this submittal are:

1. Cover memo that briefly describes:
 - a. The amount of the agreement and company name,
 - b. What type of facilities are involved,
 - c. How compensability and credits were determined,
 - d. Agreements or arrangements made between local units of government and utilities,
 - e. Other information pertinent to the prosecution of the agreement (See [Attachment 11.15.1](#)). The cover memo must recommend approval and bear a signature by the Region Utility Coordinator.
2. One copy of the release of rights document. The original should not be submitted to Central Office. The original should be sent to the Register of Deeds of the respective county for recording. A copy of the recorded document should be returned to the utility.
3. One copy of the utility's plan and estimate.
4. Original of the utility agreement (Lump Sum or Audit). If the Utility desires an original signature for their records, two originals should be included for Central Office signature approval.
5. A copy of the right of way plat with compensable areas and facilities highlighted.

11.15.3 Review by Central Office

Several sections have to process the agreements before they are considered "done" and the milestone is met. Please allow 8 weeks for processing in Central Office.

The Utility and Access Unit of the Bureau of Technical Services (BTS), Division of Transportation Systems Development (DTSD) reviews the agreement for acceptable engineering concepts, reasonable prices, and compliance with state and federal policy and procedure.

After review, the Manager of Real Estate Acquisition & Services Section of BTS approves the agreement and estimate.

Upon approval, the original agreement is sent to Central Files. A copy of the agreement is sent to the Division of Transportation Infrastructure Management (DTIM), Bureau of State Highway Programs (BSHP), Program Finance Section, where the project is authorized for charging in the Financial Intergrated Improvement Programming System (FIIPS). The agreement is then sent to the Division of Business Management, Bureau of Business Services (BBS), Fiscal Services Section, Expenditure Accounting Unit, where the project is encumbered in the Expenditure Accounting Programming System (EAPS). The agreement does not become "official" until the BBS Expenditure Accounting Unit has entered the agreement into the financial system. The date of authorization will be the date that the agreement was signed by the Manager of Real Estate Acquisition & Services Section. A copy of the agreement (or the second original if two originals are sent to Central Office) is returned to the Region. The Region provides a copy to the utility for their records and authorizes the utility to begin work. [Attachment 11.15.2](#) is a sample cover letter for sending the approved utility agreement and work plan approval to the utility. Please note that for Transportation Project Plats (recorded plats), the release of rights document should be sent to the utility for execution at the time the approved agreement is sent, assuming that the plat has been recorded by this time.

Municipal Utility Agreements, those using [Form DT1575](#), are handled a little differently in Central Office and require more time for processing. These agreements are reviewed in the Utility and Access Unit BTS just like other utility agreements, but there the similarity ends. Once approved by the Utilities and Access Unit, they are sent to the Contracts Manager in the Contract, Audit and Administration Section of BSHP in DTIM. The Contracts Manager sends the agreements to the Secretary of Transportation's Office for signature. The agreements are then sent to the Governor for approval and signature. After return from the Governor's office, the Contracts Manager signs the agreements and returns them to the Utility and Access Unit. The agreements are then processed in the Utility and Access Unit, with copies sent to Program Finance Section of BSHP where the project is authorized for charging in FIIPS. The agreements are then sent to the BBS Expenditure Accounting Unit where the project is encumbered in the EAPS system. The date of authorization will be the date that the agreement was signed by the Contracts Manager. The procedure for sending copies to the Region and then on to the utility remains the same as the other utility agreements mentioned above except that there is no release of rights document

Note: It will take 4 to 6 weeks to get the Governor's signature after the agreement leaves the Utility and Access Unit.

11.16 Utility Agreement Change Order (UACO)

~~See Job Aid – Interim Guidance – Utility Agreement Change Order & Second Move Compensation (click here)~~
 It sometimes becomes necessary for a utility company to revise its relocation plan. This may be due to increased costs, to accommodate changes in the highway plan, or to accommodate changes made by other utility companies. When a UACO is required it should be discussed with the Region Utility Representative (RUR) to ensure they agree with the proposed revision. It may also be necessary to receive approval for the new utility location from the Region Utility Permit Coordinator (RUPC).

A change order is required:

- If the increase in costs exceeds 25% of the current agreement amount, or the value of the increase exceeds \$100,000.
- If any significant change in the extent or scope of the work under the current agreement
- If it has been determined that the cost is eligible for Second Move Compensation (SMC)
 - If seeking compensation when no previous agreement exists
 - If seeking compensation when utility previously waived compensation
- If a decrease of \$300,000 or more, contact the region programming unit

11.17 Processing a Utility Agreement Change Order

See Job Aid – [Processing a Utility Agreement Change Order \(UACO\)](#), found under the **Utility Coordinator Job aids** on [MyDTSD-Utilities](#)~~the-DOTNET~~. Link is available to WisDOT Staff only.

11.17.1 Central Office

The Utility and Access Unit of BTS is available for technical assistance to the regions and will review and approve UACO's when requested by the region.

11.18 Processing [a Second Moves Compensation \(SMC\)](#)

~~See Job Aid – Interim Guidance – Utility Agreement Change Order & Second Move Compensation (click here)~~
As mentioned in the WisDOT Guide to Utility Coordination (Ch 11.2 Wisconsin Reimbursement Policy), WisDOT is required by law to pay for second moves necessitated by changes to the plan. The documentation required for a second move is similar to documentation for a utility agreement. The major difference is the second move will typically occur during construction and the timing of the approval process is more critical.

Law reference:

Wis. Stat. s.84.063(4)(a) and ch. Trans 220.06(1) Wis. Adm. Code require WisDOT to bear the cost of “second moves”.

Determining SMC eligibility

There are many factors that are considered when the region determines if a utility is eligible for SMC.

The SMC Eligibility Flowchart has been created to assist the region in determining if an SMC is applicable.

The SMC documentation (UACO) should be reviewed and approved by the region utility unit prior to authorizing the utility to relocate facilities in conflict. If the utility unit was not notified of an SMC during construction, the utility unit can process the UACO and payment at the time the invoice is submitted.

Situations may arise that are not necessarily covered in the flow chart of elsewhere. When this occurs, the regions may contact the Statewide Utility Engineer (SWUE) or Statewide Utility Project Coordinator (SWUC) with the Bureau of Technical Services, Utility and Access Unit for their assistance.

11.19 Utility Invoicing

Review of any reimbursement claim for utility work is primarily the responsibility of the Region, with technical assistance from the Utility and Access Unit. In general, the Region Office reviews the invoice so they can certify that the work was completed satisfactorily, in the agreed upon manner. The Region also reviews the technical aspects of the claim for adherence to the intent of the agreement. The Audit and Contract Administration Section of BSHP will review company records to verify proper accounting procedures and charges.

The intent of the utility invoicing review procedure is to provide for payment of 100 percent of the invoiced amount that can reasonably be determined by the Region to be owed to the utility under a specific agreement based upon Region supervision, records, and knowledge of the job. It is expected that the Region review will be able to check engineering items such as material, labor, equipment, salvage, etc., but will not be able to check overhead loading, etc., which are verifiable only at the utility offices. The larger utilities with which the Department has a continuing contractual relationship offer little risk, as any overpayments can be recovered. A very small utility that is rarely encountered or one that has a limited record keeping system may require additional conferences on its invoice before a reasonable amount may be determined.

Expenses incurred prior to the authorization date (utility agreement approval date) are not eligible for reimbursement with two exceptions, design engineering and the purchase of materials. Materials purchased prior to the date that the utility agreement is signed by the Manager of Real Estate Acquisition & Services Section are eligible for compensation as long as the materials are not incorporated into the work prior to the utility agreement being signed. This acknowledges that some materials have long delivery times and must be ordered many months (sometimes over a year) in advance of construction. The Region should send a letter authorizing the utility to order materials prior to the approval of the agreement when the Region becomes aware of the long delivery times. A 1963 memo from the Bureau of Public Roads authorizing such advance purchases is reproduced in [Attachment 11.19.1](#).

Upon receipt of one copy of the invoice submitted by the company, the appropriate Region personnel will review each invoice and determine the supportable amount based upon Region records, supervision, and knowledge of the utility work. The invoice should be checked for arithmetic correctness, the inclusion of the appropriate credits, and should be of similar form and amount of the agreement estimate. Acceptable variations from the estimate should be explained. Unacceptable variations, such as contested expenditures, etc., should be deleted from the amount of the voucher and explanation provided after reasonable attempts have been made to correct the invoice by contact with the utility.

An **invoice for a lump sum agreement** can be very basic. The scope of work was previously agreed to and the dollar amount was established in the estimate. The invoice should reflect the agreed to amount, and the appropriate company and project information should be included on the invoice.

An **invoice for an audit agreement** needs to be more detailed. The invoice should contain a statement by the utility that the invoice represents actual charges incurred in the accomplishment of the work agreed to in the estimate. It must also set forth the State's share or obligation. The invoice submittal needs to contain sufficient detail information to determine that the actual costs incurred are consistent with the intent of the estimate and that the invoiced costs are supported by the utility company's cost bookkeeping system. An invoice for the exact amount of the estimate should be viewed with caution. While it is possible that the actual costs are the same as the estimated costs, history has shown that this is rarely true unless the company uses a materials-based cost accounting system. An invoice that just provides the dollar amount and project identification information is insufficient for an audit agreement. There needs to be supporting documentation explaining how the total actual cost was arrived at. If you receive an invoice for an audit agreement and there is no cost detail, contact the utility company and request the additional supporting information. See [Attachment 11.19.2](#) for a sample letter to send to the utility company. If a considerable amount of time has passed since the estimate was first developed, there may be changes to the used life credit or plant loss. These credits should be reviewed and appropriate changes made if necessary.

It is important that the invoices be processed in a timely manner. State Statute 16.528(2)(a) requires payment within 30 days or interest is due. See [Attachment 11.19.3](#). If there are discrepancies or questions regarding the invoice, the 30-day time limit does not start until the questions are answered and the discrepancies resolved. When there are discrepancies or questions that cannot be resolved within a day or two, a "Notice of Good Faith Dispute/Improper Invoice," [Form DT1568](#), must be completed and a copy sent to the utility. This form effectively stops the clock until the dispute is resolved. A sample DT1568 is shown in [Attachment 11.19.4](#).

Utility companies should invoice the DOT within one year of the completion of the associated highway work. For this purpose, the completion of the highway work is defined as having the project seeded and mulched, or open to traffic if it is late in the calendar year. If a Region does not receive an invoice within that time period, a letter should be written to the utility company requesting an invoice. See [Attachment 11.19.5](#) for a sample letter.

A sample invoice from a utility company for a lump sum utility agreement is shown in [Attachment 11.19.6](#). A sample invoice for an audit agreement is shown in [Attachment 11.19.7](#). These can be used to give a utility company an idea of what we need.

11.20 Processing of a Utility Invoice

See Job Aid – [Processing of a Utility Invoice](#) found under **Utility Coordinator Job Aids** on [MyDTSD-Utilities-the-DOTNET](#). Link is available to WisDOT Staff only.

11.21 Utility Relocation Included in the Highway Improvement Project

There are times when a utility will find it advantageous to include all or part of the relocation of their facilities as bid items on a highway improvement contract. This also gives the prime highway contractor more control over the prosecution and progress of the utility work. Placing utility work into the highway contract can be beneficial for both WisDOT and the utility company.

The way this is handled depends on whether any of the utility work involved is compensable or not.

11.21.1 No Compensable Work –No Utility Agreement Form

Municipal water, sewer, and communication work is sometimes included in the highway contract at the request of the municipality. This can often be handled by including the work in the "State-Municipal Agreement for a Highway Improvement Project" and setting up the appropriate bid items in categories that are 100% locally funded. The municipality is responsible for the design, specifications, inspection and acceptance of the final work. For more information on the "State-Municipal Agreement for a Highway Improvement Project" see the Program Management Manual.

Other utility work such as electric, gas, and telecommunications may be added to the highway contract. This is done less often for numerous reasons one of which is that this kind of work often requires specialized skills. The

utility company can put company-specific requirements for work procedures and materials in the special provisions. This will be adequate for some types of work. In other cases, a utility company may be very selective about who can work on their facilities. If the utility company wants to place restrictive qualifications on the subcontractors that can do the work, they must provide at least three qualified utility contracting companies as options for the prime bidder to choose from.

This approach can also be used to avoid utility relocations. For example, a utility company may want to pay for the extension of a box culvert, retaining wall, median barrier or other structure in order to avoid having to relocate a utility facility. As long as the request does not adversely impact the functionality or operation of the highway and it does not hinder the operation or maintenance of the utility facility, this may be a cost-effective solution. This option works best when there is good communication between the utility and WisDOT during the design stage.

Obviously the decision to include the utility work in the highway contract must take place during the design stage, although there can be exceptions where the work is added as a change order. The designer, the project owner (State, County or Local government), and the utility must all agree that this is a desirable thing to do. Once this determination has been made, there needs to be an exchange of paperwork that constitutes an agreement specifying what each party will do and what their responsibilities are.

As mentioned above, municipal sewer, water and communications work can be included in the highway contract through the "State-Municipal Agreement for a Highway Improvement Project." For other non-municipally owned utilities and for municipally-owned utility facilities on projects where there is no the "State-Municipal Agreement for a Highway Improvement Project", there is a 3-step agreement letter process that commits each party to various responsibilities.

The **first formal step** is a letter from the utility company requesting that the work be included in the highway contract. See [Attachment 11.21.1](#). There should be informal discussions between the utility, the designer and the project owner prior to the official request. If the decision is made to include the work in the highway contract, it should be made clear what the utility would pay for and what they will be expected to provide. They may provide materials, engineering/design, specifications for materials and/or construction practices, inspection, testing and final acceptance. They must also realize that the bid price cannot be negotiated and if the work is included in the contract they will have no control over acceptance of the bid price. WisDOT will accept the lowest bid for the total cost of the project. It is possible that the utility bid prices could be higher than the company normally pays for similar work.

The **second step** is an agreement letter from WisDOT accepting the idea of placing the work in the highway contract and providing the utility company with information they need to know such as bid item numbers and estimated costs. If the utility is preparing design plans and specifications, the due date for that information should be included in this letter so that we receive the information in time to be included in the PS&E submittal. See [Attachment 11.21.2](#) for a sample agreement letter.

These two letters, from the utility and from WisDOT form the agreement documents that commit both parties to incorporating the work into the highway contract. There is no separate "utility agreement" form.

The **third step** is a letter written to the utility after the contract has been awarded. This letter informs the utility of the final bid prices, the highway contractor, the date of the pre-construction meeting (if known), and the WisDOT and/or consultant contact person for the project. See [Attachment 11.21.3](#) for a sample contract award information letter.

11.21.2 When There is Compensable Work

If any portion of the utility relocation work is compensable, you will need to use one of the utility agreement forms mentioned elsewhere in this Chapter in addition to the 3-step letter agreement process discussed above. This is necessary because in addition to the construction bid items, there will be additional compensable work tasks that must be paid for, including utility design, construction inspection and utility administrative costs. There may be additional construction costs that will not be bid items in the highway construction contract.

The bid items that are for compensable work may be 100% State/Federally funded, 90% State/Federally funded and 10% locally funded for municipal utility work on ss 84.295 freeway projects, or some other percentage of State/Federal funding for projects that are partially compensable. This "other" percentage can be determined by

using computations similar to those found in Section 11.11 [Reimbursement Philosophy](#) in this chapter. The category for these bid items should reflect the proper percentage of participation.

If it is known that some of the work will be included in the highway construction contract at the time the utility agreement is developed, only include the work that will not be in the highway construction contract in the utility agreement. Do not include the work that will be bid items in the let contract. We do not want to double count the value of that work. So, if all of the water pipe installation will be done in the highway contract, the utility agreement would only cover the design, construction inspection, and administrative costs. It would not include the water pipe installation costs, which would be encumbered under the highway construction project ID number.

If the decision to include the utility work in the highway contract is made after the utility agreement is executed, the utility agreement would initially be for the total amount of work that the DOT is responsible for. When this happens, a Utility Agreement Change Order must be executed to decrease the value of the utility agreement. The reason for the change order should explain that some of the work originally covered by the agreement will now be in the highway construction contract and thus the agreement is being decreased in value to reflect that change. The change order should mention that WisDOT is still responsible for paying for the work, but it is being encumbered under a different project ID number. This will help the utility company to understand that WisDOT is still paying for the work, but we need to change order the utility agreement for bookkeeping purposes so that the utility construction work is not double counted. See Job Aid – [Processing a Utility Agreement Change Order \(UACO\)](#), found under **Utility Coordinator Job aids** on [MyDTSD-Utilities](#)~~the DOTNET~~. Link is available to WisDOT Staff only.

11.22 Buy America Certification

See Job Aid – Buy America ([click here](#))

On projects where federal funds are used for design or construction, utilities seeking compensation for their facility relocations shall conform to the provisions of Buy America. When steel and/or iron products are used for permanent incorporation in the compensable work, a DT2249 *Utility's Certificate of Compliance for Steel and Iron Items* shall be submitted with the invoice for the compensable work. For more information regarding Buy America see <http://www.fhwa.dot.gov/utilities/buyam.cfm>.

WIS. STAT. S. 32.09, RULES GOVERNING DETERMINATION OF JUST COMPENSATION.

(6) In the case of a partial taking of property other than an easement, the compensation to be paid by the condemnor shall be the greater of either the fair market value of the property taken as of the date of evaluation or the sum determined by deducting from the fair market value of the whole property immediately before the date of evaluation, the fair market value of the remainder immediately after the date of evaluation, assuming the completion of the public improvement and giving effect, without allowance of offset for general benefits, and without restriction because of enumeration but without duplication, to the following items of loss or damage to the property where shown to exist:

- (a)** Loss of land including improvements and fixtures actually taken.
- (b)** Deprivation or restriction of existing right of access to highway from abutting land, provided that nothing herein shall operate to restrict the power of the state or any of its subdivisions or any municipality to deprive or restrict such access without compensation under any duly authorized exercise of the police power.
- (c)** Loss of air rights.
- (d)** Loss of a legal nonconforming use.
- (e)** Damages resulting from actual severance of land including damages resulting from severance of improvements or fixtures and proximity damage to improvements remaining on condemnee's land. In determining severance damages under this paragraph, the condemnor may consider damages which may arise during construction of the public improvement, including damages from noise, dirt, temporary interference with vehicular or pedestrian access to the property and limitations on use of the property. The condemnor may also consider costs of extra travel made necessary by the public improvement based on the increased distance after construction of the public improvement necessary to reach any point on the property from any other point on the property.
- (f)** Damages to property abutting on a highway right of way due to change of grade where accompanied by a taking of land.
- (g)** Cost of fencing reasonably necessary to separate land taken from remainder of condemnee's land, less the amount allowed for fencing taken under par. (a), but no such damage shall be allowed where the public improvement includes fencing of right of way without cost to abutting lands.

(6g) In the case of the taking of an easement, the compensation to be paid by the condemnor shall be determined by deducting from the fair market value of the whole property immediately before the date of evaluation, the fair market value of the remainder immediately after the date of evaluation, assuming the completion of the public improvement and giving effect, without allowance of offset for general benefits, and without restriction because of enumeration but without duplication, to the items of loss or damage to the property enumerated in sub.(6) (a) to (g) where shown to exist.

Note: This is just an excerpt and not the whole statute.

(Pertinent utility related statute language included here - see statutes for complete language.)

**The State of Wisconsin
Office of Attorney General
Madison**

George Thompson
Attorney General

Walter J. Cole
Deputy Attorney General

November 13, 1964

Mr. E. J. Byrkit
Chief Design Engineer
State Highway Commission
Madison, Wisconsin 53701

Re: Program for Bureau of Public Roads Division
Office Review of a State's Procedures and Practices
Relating to Highway Utility Matters – Law Section Review

Dear Mr. Byrkitt:

This will acknowledge receipt of a letter from Mr. Robert H. Paddock, Division Engineer, Bureau of Public Roads, in which he asks for further comment on the Wisconsin procedures and practices relating to highways and public utilities.

Specifically, he has requested further clarification on statements set forth in a legal memorandum, dated October 1963.

C. Determine the measure of damages to a utility's facility (if compensable) under the following circumstances:

1. Relocation (vertical or horizontal) is within the highway.
2. Relocation to a location outside the highway.
3. Retirement without relocation.
 - a. Where no physical property belonging to the utility is taken.
 - b. Where physical property belonging to the utility is taken.

In answering the above questions, I have attempted to do so by a general statement of Wisconsin Law. The questions are so interrelated that I have not attempted to follow the proposed outline.

Where a utility is located off existing right of way and has a property right in its location, it must be considered the same as any other property owner, except that payment is figured in a different manner. Of necessity, the determination of "just compensation" in utility takings must be made on a different basis than "fair market value". Comparable sales are non-existent, the income approach useless and cost less depreciation unrealistic. About the only way a fair determination of just compensation can be made is to attempt to determine how the utility can be made whole again without allowing any benefits over and above the costs of an equitable restoration. For this reason, the State allows an amount equal to 1) the costs of the equivalent replacement right of way where their property rights have been taken, 2) the net cost of rebuilding the utility facility to restore its existing function.

The cost of equivalent replacement right of way is considered to represent an equitable measure of the value of the lands being acquired from the utility.

The net cost of rebuilding the utility facility requires that the out-of-pocket relocation costs be reduced by the salvage value of the existing facility, the value of any betterments made at the option of the utility, a consideration of the utility's present interest in the existing facility (used life credit). It is intended that, to the extent permitted by PPM 30-4, all costs shall be determined as though the utility were doing the work for itself and at its own expense. The legal theory offers relatively few problems, but the practical application poses a multitude of difficulties due to varying factual situations.

When the Highway Commission finds it necessary, they must pay just compensation, this again is computed as the net cost of reasonable change in location, giving the appropriate consideration to salvage, used life and betterments when made at the option of the utility. Plant loss (that portion of capital investment not recaptured through depreciation) may be an item to be included where the utility has a land right and where the utility facility is removed and not replaced.

In instances suitable to both parties, the utility may make conveyances to the State of a sufficient interest to accommodate the highway with the provision that the State will pay for subsequent dislocation caused by future highway changes that may be necessary (Form E-D-660-62). Consideration in such instance is often nominal.

Under Wisconsin law, utilities are not paid for "damages". These cases must be treated as acquisitions of rights of way, although the end result, in dollars, may be the same. It is immaterial to the State whether or not the utility does or does not rebuild its line under the ordinary right of way approach, once just compensation has been agreed upon and the right of way has been cleared for highway construction. Physical property of the utility is ordinarily treated as personal property and may be removed by the utility for further use or salvage. Of course, there may be instances where utility property is, in fact, part of the real estate and must be taken if the utility insists. In such cases, where the property right of the utility is superior, we must deal with the utility as with any other property owner.

I stress again that in Wisconsin law utilities must be dealt with as with other landowners when their property rights are superior. Ordinarily, they exist in highways at sufferance. On highways built on easement, subsequent utility occupancy of highway right of way may be considered an additional burden on the land and require an easement from the fee holder. These subservient easements do not constitute a basis for payment in the event the utility must be moved for highway purposes.

When no physical or real property belonging to a utility is taken, and yet the utility must retire facilities because of the highway construction, just compensation, if any, would be determined as in the case of any other landowner. Injury caused by land locking, loss of access, change of grade, etc., would have to be evaluated.

When the acquisition of utility real and physical property requires the retirement of a utility facility without replacement, a reasonable measure of just compensation for the physical property is termed "plant loss". This item is generally calculated by adding the original cost and the cost of removal and subtracting the sum of the salvage and accrued depreciation (used life). This represents the net value of the remaining life of the facility.

The Bureau of Public Roads has also asked for comment on the following statement:

"Under our present policy, the costs of replacement right of way that are acquired by or on behalf of a utility, that are located outside of either publicly-owned lands or highway right of way be reimbursed, provided such costs are incurred pursuant to the conditions set forth in paragraph 3a (1) of PPM 30-4 and provided further that the cost of a relocation is in accordance with all applicable State and Federal requirements."

As stated above, the State does not acquire replacement right of way as such, however, where applicable, the costs for replacement right of way may be used in computing just compensation. The Wisconsin Constitution does not allow the State to engage in works of internal improvements (with certain exceptions). This precludes the State from directly engaging in the replacement and rebuilding of utility lines.

Sincerely,

George Thompson
Attorney General

Richard E. Barrett
Assistant Attorney General

Wis. Stat. s. 84.295(4m), Municipal utility relocation; freeway construction.

(a) The state shall pay 90% of the eligible costs of the relocation or replacement of any municipal utility facilities required by the construction of any freeway undertaken by the department. The affected municipal utility shall pay the balance of such costs.

(b) This subsection applies only to relocations or replacements that:

1. Involve municipal utility facilities located on publicly held lands prior to such relocation or replacement;
2. Are not eligible for state reimbursement under any other provision of law; and
3. Take place after July 1, 1976.

(c) In administering this subsection the department shall use the same procedures and accounting principles as are applicable to utility relocations and replacements for which full reimbursement is required by law.

(d) In order to be eligible for reimbursement under this subsection, any entry upon or occupation of state freeway right of way after relocation or replacement by a metropolitan sewerage district acting under s. 200.11 (5) (b) shall be done in a manner acceptable to the department.

(e) In this subsection:

1. "Eligible costs" mean the actual costs of relocating or replacing utility facilities less the:
 - a. Salvage value of the old facilities;
 - b. Used life credit on the old facilities; and
 - c. Cost of any upgrading of the facilities being replaced or relocated made solely for the benefit and at the election of the utility and not attributable to the freeway construction.
2. "Municipal utility facilities" mean any utility facilities owned by any town, village, or city or any joint local water authority created under s. 66.0823 or any town sanitary district established under subch. IX of ch. 60, or under the jurisdiction of any metropolitan sewerage district established under ss. 200.01 to 200.15.
3. "Publicly held lands" include any right or interest in real estate held by the state or by any county, city, village, town or other body politic and corporate.

Note: This is just an excerpt and not the whole statute.

(Pertinent utility related statute language included here - see statutes for complete language.)

**The State of Wisconsin
Office of Attorney General**

September 28, 1959

Mr. J. S. Piltz
Engineer of Design
State Highway Commission of Wisconsin
State Office Building
Madison 2, Wisconsin

Attention: Mr. T. R. Kinsey

Gentlemen:

Re: Project P 1387-1(22)
CTH "M" – Sayner Road
CTH "N"
Vilas County

Reference is made to your letter addressed to Mr. R. E. Barrett, Assistant Attorney General, dated May 20, 1959, relative to the above-captioned matter. This will answer your inquiry stated therein.

The facts outlined in the enclosed memorandum from Mr. Boyce of Rhinelander conclusively support the fact that the road under consideration is a presumptive four-rod right-of-way within the provisions of sec. 80.01(2), Wis. Stats.

You have enclosed a copy of a pole line easement grant from the Conservation Commission to Wisconsin Valley Electric Company. It must be presumed that this grant of a pole line easement embraced territorial limits outside and beyond the right of way of County Trunk Highway "N". The reason for this is that the Conservation Commission had no jurisdiction or authority to grant any rights in and to the presumptive four-rod right-of-way of County Trunk Highway "N". Therefore, if the utility maintains a portion of its utility structures within the four-rod right-of-way of County Trunk Highway "N", it maintains such structures there not by any right acquired, but as an encroacher, or at best, as a licensee under sufferance from the State of Wisconsin.

Therefore, it is our opinion that the State has no obligation to participate in the relocation cost of the utility structures.

Sincerely,

John W. Reynolds
Attorney General
By:
William Wilker
Attorney

May 20, 1959

Mr. R. E. Barrett
Asst. Attorney General
State Capitol
Madison, Wisconsin

Dear Sir:

Subject: Project P 1387-1(22)
C.T.H. "M" – Sayner Road
C.T.H. "N"
Vilas County

The construction of the subject project will necessitate the relocation of a number of poles of the Wisconsin Public Service Corporation presently located within the presumptive four-rod right-of-way width of C.T.H. "N" in Vilas County.

The utility maintains that the relocation costs should be paid for by the state and bases its claim on an easement granted in 1930 to a predecessor utility by the Conservation Commission.

Town of Arbor Vitae records indicate that in 1921 this was a town road. The easement grants the utility rights over state lands along the roadway which presumably have to be outside of the right of way limits of the town road. As the records do not indicate the original width, it is assumed that the right-of-way is four rods wide.

The question at hand is whether the utility has a compensable easement within the presumptive four-rod right-of-way width of C.T.H. "N". It would appear that the Conservation Commission did not intend, nor have the power, to grant an easement over town road right-of-way. As neither the easement nor town records indicate right-of-way width, it would seem that the four-rod width would govern, and the utility relocation would not be compensable. Individual land owners in the area recognize the four-rod right-of-way width.

To aid in your evaluation of the problem, we are attaching a copy of each of the following exhibits:

1. Easement and map.
2. T. R. Kinsey's memorandum of May 11, 1959.
3. R.M. Boyce's memorandum of May 18, 1959.
4. Location of poles for which the utility claims compensation.

Please advise us of any obligation of the state toward the utility as far as participation in relocation costs is concerned.

Sincerely,
STATE HIGHWAY COMMISSION OF WISCONSIN
J.S. Piltz, Engineer of Design
By: Utilities Planning Engineer

DEPARTMENTAL CORRESPONDENCE

May 18, 1966

To: Mr. E. L. Roettiger
Attn: T. R. Kinsey

From: Mr. Max Tuttle
District 7 – Rhinelander

Subject: Project P 1387-1(22)
CTH "M" – Sayner Road
CTH "N"
Vilas County

As you requested in your letter dated May 11, 1959, we have had old records searched with the following results that answer some of your questions:

1. Resolution No. 11 passed by the Vilas County Board of Supervisors reads in part "Be it hereby resolved that highways "H", "K", "M" and "N" as shown on the 1939 aerial map be added to the County Trunk System effective December 31, 1941." The Commission approved this addition under System Change P-794 as indicated in a letter to the Vilas County Clerk dated June 4, 1941.
2. Records of the Town of Arbor Vitae (Volume 2, Page 287) indicate that the Town entered into a contract to have work done on the road on May 23, 1921. This would indicate that it was a town road as of that date.
3. There is no record that we could find to show that this was ever a private road nor can we find how much, or in what manner, right-of-way was acquired. It was never a forest development road.

To the best of our knowledge, this has always been a public road with a right-of-way presumed to be 4 rods wide, partly occupied by the utility's pole line. We believe that the Conservation Commission easement could only give the utility the right to cut the trees necessary for the construction and maintenance of their line.

By:
R.M. Boyce
Right of Way Engineer

Wis. Stat. s. 893.28 Prescriptive rights by adverse user.

- (1) Continuous adverse use of rights in real estate of another for at least 20 years, except as provided in s. 893.29 establishes the prescriptive right to continue the use. Any person who in connection with his or her predecessor in interest has made continuous adverse use of rights in the land of another for 20 years, except as provided by s. 893.29, may commence an action to establish prescriptive rights under ch. 843.
- (2) Continuous use of rights in real estate of another for at least 10 years by a domestic corporation organized to furnish telegraph or telecommunications service or transmit heat, power or electric current to the public or for public purposes, by a cooperative association organized under ch. 185 or 193 to furnish telegraph or telecommunications service, or by a cooperative organized under ch. 185 to transmit heat, power or electric current to its members, establishes the prescriptive right to continue the use, except as provided by s. 893.29. A person who has established a prescriptive right under this subsection may commence an action to establish prescriptive rights under ch. 843.
- (3) The mere use of a way over unenclosed land is presumed to be permissive and not adverse.

History: 1979 c. 323; 1985 a. 297 s. 76; 2005 a. 441.

Once the right to a prescriptive easement has accrued by virtue of compliance with sub. (1) for the requisite 20-year period, the holder of the prescriptive easement must comply with the recording requirements within 30 years under s. 893.33 (2) or lose the right to continued use. *Schauer v. Baker*, 2004 WI App 41, 270 Wis. 2d 714, 678 N.W.2d 258, 02-1674. As sub. (1) is written, it is more natural to read "of another" to modify "real estate," rather than "rights." That is, by continuous use, one may gain a prescriptive right in another's real estate. The real estate in which a right is gained must belong to another person. A setback restriction in an owner's deed was not a "right in real estate" belonging to "another" that the owner could use adversely by continually violating the setback. *Hall v. Liebovich Living Trust*, 2007 WI App 112, 300 Wis. 2d 725, 731 N.W.2d 649, 06-0040. Sub. (2) applies to permissive uses. An agreement that permitted an electric utility to construct and maintain electrical poles and transmission lines on a landowner's property that was revocable upon 30 days' written notice gave the utility "rights in real estate of another" under sub. (2). Use of the property for more than 10 years by the utility established the prescriptive right to continue the use. *Williams v. American Transmission Company, LLC*, 2007 WI App 246, 306 Wis. 2d 181, 742 N.W.2d 882, 07-0052.

Wis. Stat. s. 893.29 No adverse possession against the state or political subdivisions.

- (1) No title to or interest in real property belonging to the state or a city, village, town, county, school district, sewerage commission, sewerage district or any other unit of government within this state may be obtained by adverse possession, prescription or user under s. 893.25, 893.26, 893.27 or 893.28 unless the adverse possession, prescription or user continues uninterruptedly for more than 20 years and is based upon a continuously maintained fence line which has been mutually agreed upon by the current landowners.
- (2m) Subsection (1) does not affect title to or interest in real property obtained by adverse possession, prescription or user under s. 893.25, 893.26, 893.27 or 893.28 before April 29, 1998.

History: 1979 c. 323; 1983 a. 178; 1983 a. 189 s. 329 (16); 1997 a. 108.

Judicial Council Committee's Note, 1979: This section is based on present s. 893.10 (1), but the period for adverse possession against the state is reduced from 40 to 30 [20] years. The previous provision presumably applied to the property of political subdivisions of the state, but this has been made express in this section. Note that regardless of which of ss. 893.25 to 893.28 apply against a private owner, this section requires 30 [20] years for the obtaining of any rights in public land. Because of the 30-year [20-year] period, adverse possession of the kind described in the 20-year statute is sufficient so that recording and good faith affect only the type of possession required and the amount of land possessed (see s. 893.26 (3) and (4)). Payment of taxes is irrelevant. [Bill 326-A] Adverse possession provisions have prospective application only. Possession must be taken after the provision goes into effect. *Petropoulos v. City of West Allis*, 148 Wis. 2d 762, 436 N.W.2d 880 (Ct. App. 1989). This section does not apply to a railroad. A railroad right of way is subject to adverse possession, the same as other lands. *Maiers v. Wang*, 192 Wis. 2d 115, 531 N.W.2d 54 (1995). In the absence of an express provision to the contrary, one who adversely possesses under an earlier version of the adverse possession statute may continue possession under the terms of that statute even after its repeal and re-creation. *Department of Natural Resources v. Building and All Related or Attached Structures*, 2011 WI App 119, 336 Wis. 2d 642, 803 N.W.2d 86, 10-2076.

The State of Wisconsin
Office of Attorney General
Madison

November 14, 1966

Mr. B. J. Mullen
Director of R/W
State Highway Commission
1 West Wilson Street
Madison, Wisconsin 53702

Subject: Utility Relocations Eligibility

Attention: D. J. Topp
Chief of R/W Operations

Gentlemen:

On June 24, 1966, I wrote you concerning the status of public utilities on private lands that have been in place for more than six years even though there is no conveyance of any sort of record.

I pointed out in that opinion that the matter was governed by sec. 182.017, Stats., which states in essence that the landowner could not bring an action in inverse condemnation after six years. The landowner has lost his right to oust the utility or to sue the utility through inverse condemnation. The state desiring to acquire the interest of the landowner and the utility is in no different position than the position between the landowner and the utility. Therefore, the state must, in my opinion, either acquire the interest of the landowner and the utility by negotiation and contract, or should this fail, resort to eminent domain.

I trust that this will clarify my opinion, since I understand the Bureau of Public Roads desires a positive legal statement that the state must either purchase or condemn.

Sincerely,

Bronson C. La Follette
Attorney General

Richard E. Barrett
Assistant Attorney General

Document Number

CONVEYANCE OF RIGHTS IN LAND

Wisconsin Department of Transportation
Exempt from fee s.77.25(2r) Wis. Stats.
DT1660 12/2005 (Replaces ED660) s.84.09(1) Wis. Stats.

Emerald City Electric GRANTOR, for and in consideration of the sum of One Dollar (\$1) and other good and valuable consideration, grants and conveys any and all rights and interest which, by virtue of prior title, easement, license, or other legal devices, GRANTOR holds in the land described below to the State of Wisconsin, Department of Transportation, GRANTEE, for the purposes of constructing, operating, and maintaining a public highway and appurtenant facilities on, over, under, or across the said land; provided, however that GRANTOR reserves to itself the subordinate right to cross, traverse, or otherwise occupy said land with its present and future overhead or underground transmission lines, appurtenant facilities, and supporting structures in a manner consistent with the purposes of this conveyance and in a manner which will not interfere with normal highway maintenance and operation; provided, further, that the costs of any relocation or alteration, now or in the future, of the transmission lines, appurtenant facilities, or supporting structures when required by the GRANTEE for any reason, including accommodating future expanded or additional highway facilities on, over, under or across said land, will be paid by the GRANTEE; provided, however, that the costs of such relocation or alteration, or of the installation of new or additional facilities when done at the instance of and for the purposes of the GRANTOR, will be defrayed by the GRANTOR.

This conveyance shall be binding on the GRANTOR, GRANTEE, and their respective successors and assigns.

Any person named in this conveyance may make an appeal from the amount of compensation within six months after the date of recording of this conveyance as set forth in s.32.05(2a) Wisconsin Statutes. For the purpose of any such appeal, the amount of compensation stated on the conveyance shall be treated as the award, and the date the conveyance is recorded shall be treated as the date of taking and the date of evaluation.

Other persons having an interest in record in the property: NONE

Legal Description

See attached legal description

The undersigned certify that this instrument is executed pursuant to a resolution of the Board of Directors (or shareholders, stockholders, or members, if authorized by law) of GRANTOR corporation or cooperative.

Acknowledgement

(Grantor Name)

(Signature)

(Title)

(Print Name)

(Signature)

(Title)

(Print Name)

(Date)
State of _____)
_____) ss.
_____ County)
On the above date, this instrument was acknowledged before me by the named person(s).

(Signature, Notary Public)

(Print or Type Name, Notary Public)

(Date Commission Expires)

This space is reserved for recording data

Return to
Jack Staral
Wisconsin Department of Transportation
Northwest Region - Eau Claire
P.O. Box 1234
Eau Claire WI 54701

Parcel Identification Number/Tax Key Number
See attached list

Utility or RW Project ID 1052-05-49 This instrument was drafted by Wis. Dept. of Transportation RW Parcel No. 188

Parcel Identification Number/Tax Key Number

22810-1911-0150-0000
22810-1911-0125-0000
22810-2022-0375-0000
22810-2022-0002-0000
22810-2022-0100-0000
22810-2021-0375-0000
22810-2021-0325-0000
22810-2021-0002-0000
22810-2021-0225-0000
22810-2021-0075-0000
22810-2021-0125-0000
22810-2012-7274-0001
22810-2012-7309-0003
22810-2012-6521-0001
22810-1944-0750-0000
22810-2011-0125-0000

Legal Description

The said lands are situated in the Town of Wheaton, Chippewa County, Wisconsin, and are shown on the map filed by the Grantee with the County Highway Committee and County Clerk of the said County as required by Section 84.09(1), Wisconsin Statutes, and are described as follows:

All that part of

The NE ¼ - NE ¼ Section 19, T28N, R10W

The NW ¼ - NW ¼ of Section 20, T28N, R10W

The NE ¼ - NW ¼ Section 20, T28N, R10W, and

The NW ¼ - NE ¼ of Section 20, T28N, R10W.

In Chippewa County, Wisconsin subject to Grantor's easement or interests, which are included in lands acquired by the Grantee for Project 1052-05-22, IH 94-Green Bay Road, STH 29, dated March 20, 1998, and subsequent revisions as filed with the County Clerk of Chippewa County, State of Wisconsin.

Wis. Stat. s. 66.1005, Reversion of title.

(4) Whenever any public highway or public ground has been vacated or discontinued the easements and rights incidental thereto acquired by or belonging to any county, school district, town, village or city or to any utility or person in any underground or overground structures, improvements or services and all rights of entrance, maintenance, construction and repair of the same shall continue, unless written consent to the discontinuance of such easements and rights by the owner thereof is a part of the vacation or discontinuance proceedings and reference thereto is made in the vacation or discontinuance resolution, ordinance or order, or discontinued by failure to use the same for a period of 4 years from the time that the public highway or public ground was vacated or discontinued. Upon the failure of the interested parties to reach an agreement permitting discontinuance of such easements and rights or upon refusal of the owner of such easements and rights to give written consent to the discontinuance thereof, such easements and rights may be discontinued in the vacation or discontinuance proceedings in any case where benefits or damages are to be assessed as herein provided. Damages for the discontinuance of such easements and rights, in the amount of the present value of the property to be removed or abandoned, plus the cost of removal, less the salvage thereon, or in such other amount as may be agreed upon between the interested parties, shall be assessed against the land benefited in the proceedings for assessment of damages or benefits upon the vacation or discontinuance of the public highway or public ground. The owner of such easements and rights, upon application to the treasurer and upon furnishing satisfactory proof shall be entitled to any payments of or upon such assessment of damages. Any person aggrieved by such assessment may appeal therefrom in the same time and manner as is provided for appeals from assessments of damages or benefits in vacation or discontinuance proceedings in the town, village or city.

(5) Subsection (2) does not apply to state or county trunk highways.

Abandonment of highway discussed. Heise v. Village of Pewaukee, 92 W (2d) 333, 285 NW (2d) 859 (1979).
Because landowner's offer to dedicate road was not "accepted" by town within 4 years, no dedication resulted. Mushel v. Town of Molitor, 123 W (2d) 136, 365 NW (2d) 622 (Ct. App. 1985).

Note: This is just an excerpt and not the whole statute.

(Pertinent utility related statute language included here - see statutes for complete language.)

Document Number
QUIT CLAIM DEED By Utility

Wisconsin Department of Transportation
Exempt from fee s.77.25(2r) Wis. Stats.
DT1661 12/2005 (Replaces ED661)

THIS DEED, made by Emerald City Electric Company GRANTOR, a utility organized and existing under the laws of the State of Wisconsin and authorized to transact business in the State of Wisconsin, with its principal place of business at 1114 Barnes Street City of Delavan County of Walworth State of Wisconsin quit claims to the State of Wisconsin, Department of Transportation, GRANTEE, all of its title, rights, or interests in and to the lands described, reserving to itself the ownership and title of its facilities or personalities occupying the described lands, and which the GRANTOR, at its own cost and expense will remove from the lands, or will so relocate, change, or alter that they will not interfere with or be interfered with or be interfered with by the normal operation and maintenance of a public highway on the described lands, for the sum of One Dollar (\$1) and other good and valuable consideration. Any person named in this deed may make an appeal from the amount of compensation within six months after the date of recording of this deed as set forth in s.32.05(2a) Wisconsin Statutes. For the purpose of any such appeal, the amount of compensation stated on the deed shall be treated as the award, and the date the deed is recorded shall be treated as the date of taking and the date of evaluation. Other persons having an interest of record in the property: None. If not appropriate, cross out None and list name(s).

NONE

Legal Description

All that part of the lands subject to Grantor's easements or interests included in lands acquired for the improvement of STH 13 by the Grantee in:
parcels 1, 3, 5, 6, 9, 10 and 15 of Transportation Project Plat 5255-03-21-4.01, recorded as Document # 1421537 and filed in TPP Cab Pg 6a;
parcels 20, 23, 25, and 28 of Transportation Project Plat 5255-03-21-4.02, recorded as Document # 1426154 and filed in TPP Cab Pg 7B;
parcels 31, 34, 37, 38, and 40 of Transportation Project Plat 5255-03-21-4.03, recorded as Document #1435352 and filed in TPP Cab Pg 10B;
in the Walworth County Office of the Register of Deeds and all subsequent revisions.

The undersigned certify that this instrument is executed pursuant to a resolution of the Board of Directors (or shareholders, stockholders, or members, if authorized by law) of GRANTOR corporation or cooperative.

Acknowledgement

(Grantor Name)

(Signature)

(Title)

(Print Name)

(Signature)

(Title)

(Print Name)

(Date)
State of _____)
_____) ss.
_____ County)
On the above date, this instrument was acknowledged before me by the named person(s).

(Signature, Notary Public)

(Print or Type Name, Notary Public)

(Date Commission Expires)

This space is reserved for recording data

Return to
Dalton Brunette
Wisconsin Department of Transportation
Southeast Region
141 NW Barstow Street
Waukesha, WI 53187-0798

Parcel Identification Number/Tax Key Number
See attached list

Utility or RAW Project ID 1107-02-45 This instrument was drafted by Wis. Dept. of Transportation RAW Parcel No. 42

Parcel Identification Number/Tax Key Number

22810-1911-0150-0000
22810-1911-0125-0000
22810-2022-0375-0000
22810-2022-0002-0000
22810-2022-0100-0000
22810-2021-0375-0000
22810-2021-0325-0000
22810-2021-0002-0000
22810-2021-0225-0000
22810-2021-0075-0000
22810-2021-0125-0000
22810-2012-7274-0001
22810-2012-7309-0003
22810-2012-6521-0001
22810-1944-0750-0000
22810-2011-0125-0000

Legal Description

If too long for page 1 of the form – enter Legal Description here (delete title and this text if not needed)

TEMPORARY CONSTRUCTION EASEMENT

Wisconsin Department of Transportation
DT2216 7/2017 s.84.09(1) Wis. Stats.

Our Electric Company, Grantor, which has an interest in the lands described below, grants to the Wisconsin Department of Transportation, Grantee, the right and permission to occupy Grantor's easement area for highway improvement purposes, which may include but are not limited to: 1) Constructing slopes and drainage facilities on the following described lands, including the right to operate necessary equipment thereon; 2) The right of ingress and egress, as long as required for such public purpose, including the right to preserve, protect, remove or plant thereon any vegetation that the highway authorities may deem desirable to prevent erosion of the soil, provided such activities are consistent with the rights held by the Grantor under its easement.

Legal Description:

All that part of the lands subject to the Grantor's easements or interests in lands acquired for the improvement of USH 14 by the Grantee in: Parcel(s) 1 and 2 of transportation project plat 1234-00-20, filed in transportation project plat cabinet No. TPP-E189m as document #12345648 recorded in Juneau County, Wisconsin.

This Temporary Construction Easement establishes the right of Grantee to occupy lands on which Grantor has easement interests. However, Grantor reserves to itself the right to continue to use said easement area with its present and future overhead and/or underground facilities in a manner which is consistent with this grant, and further, that the costs of any relocation or alteration of any facilities of Grantor required by Grantee to accomplish its work, now or in the future, will be paid by Grantee.

This Temporary Construction Easement shall terminate upon completion of Construction Project No. 1234-00-70 for which this instrument is given.

The Grantor has an easement or prescriptive right and therefore grants this Temporary Construction Easement as a holder of a property interest and not as a property owner.

The Grantor's easement is recorded as Document #56780001 in the Juneau County Register of Deeds Office or exists by prescriptive rights as defined by Section 893.28 Wisconsin Statutes.

The undersigned certify that this instrument is executed with the full right, power and authority to do so on behalf of GRANTOR.

(Grantor Name)

(Signature) _____ (Date)

(Title)

(Print Name)

(Signature) _____ (Date)

(Title)

(Print Name)

Right of Way Project ID 1234-00-20

UTL No. 100

**TEMPORARY CONSTRUCTION EASEMENT
(Traditional Right-of-Way Plat)**

Wisconsin Department of Transportation
DT2216 5/2006

Our Electric Company, Grantor, which has an interest in the lands described below, hereby grants to the Wisconsin Department of Transportation (WIDOT), Grantee, the right and permission to occupy Grantor's lands for highway improvement purposes, which may include but are not limited to: 1) Constructing and maintaining highway facilities on the following described lands, including the right to operate necessary equipment and machinery for ingress and egress, as long as required for such public purpose, including the right to preserve, maintain, and remove thereon any vegetation that the highway authorities may deem desirable to prevent erosion and other damage; provided that such activities are consistent with the rights held by the Grantor under its easement.

Wisconsin Department of Transportation (WIDOT), Grantee, the right and permission to occupy Grantor's lands for highway improvement purposes, which may include but are not limited to: 1) Constructing and maintaining highway facilities on the following described lands, including the right to operate necessary equipment and machinery for ingress and egress, as long as required for such public purpose, including the right to preserve, maintain, and remove thereon any vegetation that the highway authorities may deem desirable to prevent erosion and other damage; provided that such activities are consistent with the rights held by the Grantor under its easement.

The said lands are situated in the Town of Dale, Sheboygan County, Wisconsin, which is a part of the Right-of-Way Plat for Project No. 2234-02-21, filed with the County Clerk and County Highway Committee of the said County as required by Section 84.02 of the Wisconsin Statutes. This plat is also available for viewing at the WIDOT Office located at 944 Vanderperren Way, Green Bay, Wisconsin.

on Sheet Number(s) 4.05, filed with the County Clerk and County Highway Committee of the said County as required by Section 84.02 of the Wisconsin Statutes. This plat is also available for viewing at the WIDOT Office located at 944 Vanderperren Way, Green Bay, Wisconsin.

The said lands are part of Parcel(s) 37 as shown on said Right-of-Way Plat, which is a part of the Right-of-Way Plat for Project No. 2234-02-21, filed with the County Clerk and County Highway Committee of the said County as required by Section 84.02 of the Wisconsin Statutes. The said lands are further described as lying in the NE 1/4 of the SW 1/4 of Section(s) 27, T25N, R16E, Town of Rushton, Sheboygan County, Wisconsin.

er described as lying in the NE 1/4 of the SW 1/4 of Section(s) 27, T25N, R16E, Town of Rushton, Sheboygan County, Wisconsin.

This Temporary Construction Easement establishes the right of the Grantee to use the lands on which Grantor has easement interests. However, Grantor reserves to itself the right to place, maintain, and repair overhead and/or underground facilities in a manner which does not interfere with the easement area with its present and future use. Grantor, and further, that the costs of any relocation or alteration of any facilities of Grantor required for the completion of its work, now or in the future, will be paid by Grantee.

lands on which Grantor has easement interests. However, Grantor reserves to itself the right to place, maintain, and repair overhead and/or underground facilities in a manner which does not interfere with the easement area with its present and future use. Grantor, and further, that the costs of any relocation or alteration of any facilities of Grantor required for the completion of its work, now or in the future, will be paid by Grantee.

This Temporary Construction Easement shall terminate on the date that the Grantee has completed its work and therefore grants this Temporary Construction Easement as a holder of a property interest.

Construction Project No. 2234-01-72 for which the Grantee is the property owner and therefore grants this Temporary Construction Easement as a holder of a property interest.

The Grantor's easement is recorded as Document No. _____ at the Sheboygan County Register of Deeds Office or exists by prescriptive rights as defined by Section 84.02 of the Wisconsin Statutes.

Sheboygan County Register of Deeds Office or exists by prescriptive rights as defined by Section 84.02 of the Wisconsin Statutes.

August 7, 2005
(Document Created Date)

Our Electric Company
(Company)

(Signature) (Date)

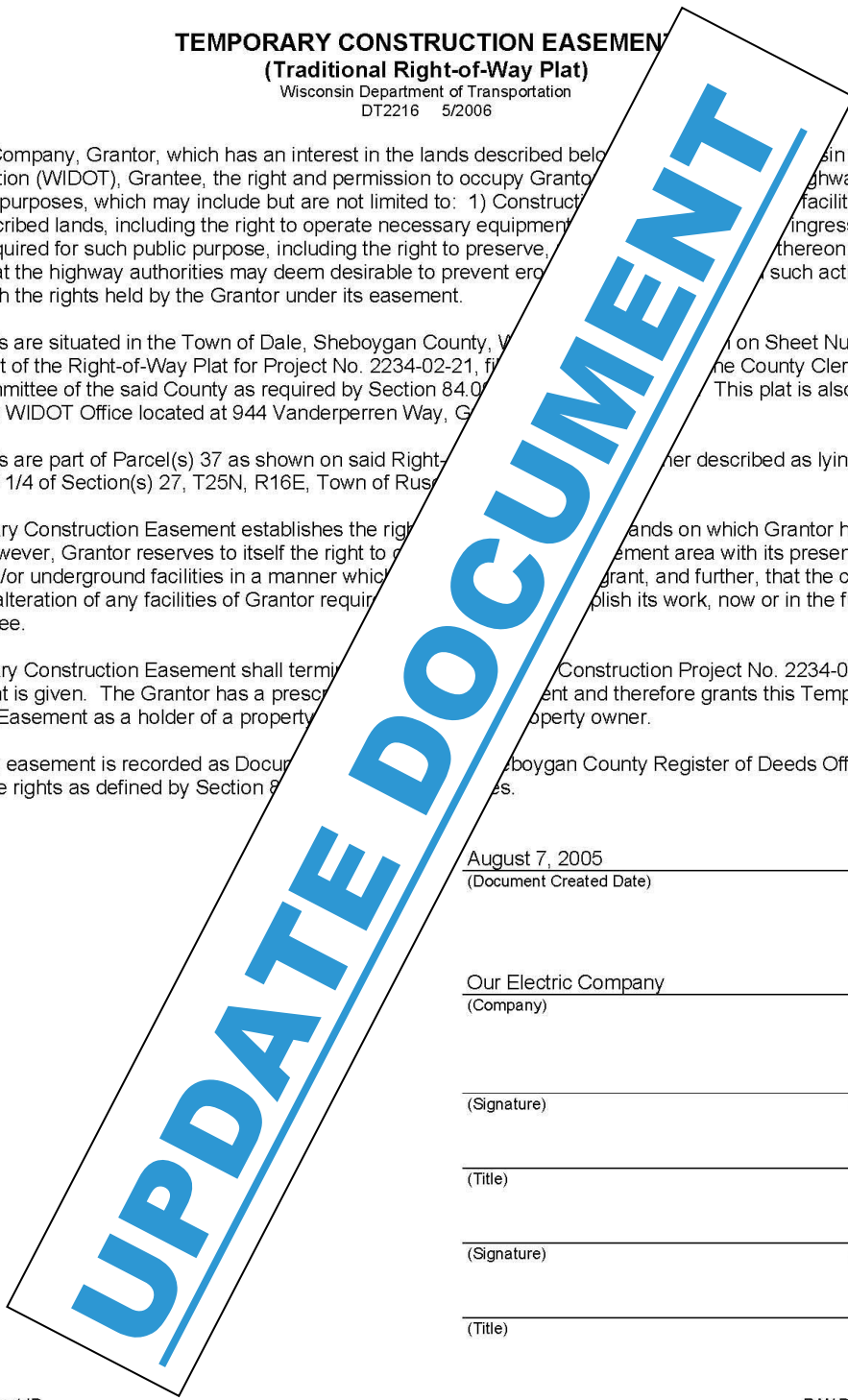
(Title)

(Signature) (Date)

(Title)

Utility or R/W Project ID

R/W Parcel No.



**AUDIT AGREEMENT FOR PAYMENT FOR LANDS OR INTERESTS IN
LANDS ACQUIRED FROM PUBLIC UTILITY**

Wisconsin Department of Transportation
DT1541 7/2013 s.84.09(1) Wis. Stats.

This Agreement is made and entered into by and between the Wisconsin Department of Transportation, hereinafter designated as the "DEPARTMENT," and **Frontier North Inc.**, a public utility company, a quasi utility or cooperative hereinafter designated as the "COMPANY," for the payment for certain lands or interests in lands acquired by the Wisconsin Department of Transportation from the COMPANY in connection with a Wisconsin transportation improvement designated:

Project: 1166-12-74
STEVENS POINT - WAUSAU
BUS 51 INTERCHANGE
IH 39, Marathon County

Utility Project ID: 1166-12-44
Parcel #: 105

Said parcel is included in the DEPARTMENT's Order and map filed with the County Highway Committee and County Clerk as required by Section 84.09(1), Wisconsin Statutes.

WITNESSETH: For and in consideration of the conveyance by separate instrument to the State of Wisconsin of certain lands or interests or rights in said lands in which the COMPANY holds a real property interest, the DEPARTMENT will pay to the COMPANY an amount equal to the net cost incurred by the COMPANY for the actual removal, relocation, alteration, or other rearrangement of the COMPANY facilities situated on the said lands required to restore equivalent function as necessary, in kind if feasible, of the affected segment of COMPANY facility.

The work covered by the Agreement is set forth in the Exhibit hereto attached and made a part hereof. The Exhibit consists of a statement of the work and a proposed schedule for its accomplishment and coordination if necessary with the companion transportation work, an estimate of costs, plans and special provisions, if any.

The work shall be performed under normal COMPANY practices and the costs thereof computed and determined in accordance with the work order accounting procedure prescribed or approved for the COMPANY by the regulatory agency having jurisdiction, including applicable provisions of the Code of Federal Regulations 23, Part 645, Subpart A - Utility Relocations, Adjustments, and Reimbursement. It is further understood, however, that:

1. All salvage shall be credited to the project in the manner prescribed under the COMPANY's accounting procedure for work undertaken at the expense and volition of the COMPANY. When recovered materials are to be disposed of by sale or as scrap, the COMPANY shall either have filed with the DEPARTMENT an acceptable statement outlining the COMPANY's current standard practice and procedure for disposal of such material or shall give written notice to the DEPARTMENT of the location and time said recovered materials will be available for inspection.
2. A credit shall be given representative of the amount of depreciation accrual, if any, assignable to the facilities subject to replacement. Such credit shall be calculated for all facilities covered by the Code of Federal Regulations 23, Section 645.117(h). The amount of the credit shall be based upon the original installed cost, the age of the facility and the applicable depreciation rates, but may also consider the average service lives certified by the regulatory agency having jurisdiction and the expected remaining service lives of the existing materials.
3. Work under this Agreement shall not start until the COMPANY has received written notice from the DEPARTMENT to proceed with the work. The COMPANY shall give prior notice to the appropriate Regional Transportation Office of the DEPARTMENT when it proposes to commence its construction operations and shall give similar notification when operations are resumed subsequent to suspension of operations. Any significant change in the extent or scope of the work under this agreement must be covered by a written change order or an extra work order. **It is expressly understood and agreed that any work by the COMPANY prior to authorization by the DEPARTMENT shall be at the COMPANY's sole expense.**

The COMPANY shall not subcontract any portion of the work included under this Agreement without the prior approval of the DEPARTMENT except for work of relatively minor cost or nature. Any existing continuing contract, under which the COMPANY now has certain work regularly performed, will be considered to conform to the requirements of this section, provided the contract is submitted for the DEPARTMENT's prior approval.

The COMPANY shall keep and make available to the DEPARTMENT detailed payrolls for office and field personnel, equipment use records, materials used, and salvage records including the condition and disposition of the removed and salvaged materials, as well as payments to any utility subcontractor if the work is performed in that manner.

4. Upon completion of the work contemplated under this Agreement, the COMPANY will submit invoices to the DEPARTMENT setting forth the actual and related indirect cost in substantially the same detail and order indicated in the estimate attached to this Agreement. Each copy of such invoice shall identify the location where the supporting records for the costs included in the billing may be reviewed as well as the name of the COMPANY custodian of such records. Invoices shall be submitted within one year of the completion of the companion highway construction project.

The COMPANY agrees to permit audit of said invoices by the DEPARTMENT and by the Federal Highway Administration, if necessary, and to offer prompt support for any item cited for review or be deemed to concur in the deletion or correction thereof. The supportable net amount of the invoice verified by audit as being in compliance with the provisions of this Agreement shall be paid by the DEPARTMENT and will be accepted as full compensation for the rights or interests in the lands conveyed, including all damages, costs and expenses incurred by the COMPANY and arising from or necessitated by the said conveyance.

The COMPANY shall comply with the Buy America requirements specified under 23 USC 313 and 23 CFR 635.410 when any part of this highway improvement project involves funding by the Federal Aid Highway Program. To complete processing of invoices submitted, the COMPANY shall provide to the DEPARTMENT a signed DT2249, *Utility's Certificate of Compliance for Steel and Iron Items*.

5. In Connection with the performance of work under this contract, the COMPANY agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5) Wisconsin Statutes, sexual orientation as defined s.111.32(13m) Wisconsin Statutes or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the COMPANY further agrees to take affirmative action to ensure equal employment opportunities. The COMPANY agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
6. The execution of this Agreement by the DEPARTMENT shall not relieve the COMPANY from compliance with applicable Federal and State laws, Wisconsin Administrative Codes, and local laws or ordinances which may affect the performance of the work covered herein, and shall not be construed to supersede any other governmental agency requirements for plan approval or authority to undertake the utility alteration work.

This Agreement does not supplant any permit required under Section 84.08, 86.07(2), or 86.16, Wisconsin Statutes. No COMPANY work affecting highway lands shall be undertaken without any required separate permit, which may be processed and approved concurrently with this Agreement.
7. It is further agreed that any legal action taken by the COMPANY because of dispute arising through this transaction shall be for monetary considerations only, and shall not be for the revocation of the conveyance for the lands or rights or interests therein.
8. The Agreement is not binding upon the parties hereto until this document has been fully executed by the COMPANY and the DEPARTMENT.

IN WITNESS, the parties have caused this Agreement to be executed by their proper officers and representatives on the year and the day below written.

WISCONSIN DEPARTMENT OF TRANSPORTATION

(Division Administrator)

(Date)

Frontier North Inc.

(Company)

(Signature) (Date)

(Title)

(Signature) (Date)

(Title)

LUMP SUM AGREEMENT FOR PAYMENT FOR LANDS OR INTERESTS IN LANDS ACQUIRED FROM PUBLIC UTILITY

Wisconsin Department of Transportation
DT1542 7/2013 s.84.09(1) Wis. Stats.

This Agreement is made and entered into by and between the Wisconsin Department of Transportation, hereinafter designated as the "DEPARTMENT," and **Frontier North Inc.**, a public utility company, a quasi utility or cooperative hereinafter designated as the "COMPANY," to provide for the lump sum payment in the amount of \$ _____ for lands or interests in lands being acquired from the COMPANY in connection with a highway improvement designated:

Project: 1166-12-74
STEVENS POINT - WAUSAU
BUS 51 INTERCHANGE
IH 39, Marathon County

Utility Project ID: 1166-12-44
Parcel #: 105

Said parcel is included in the DEPARTMENT's Order and map filed with the County Highway Committee and County Clerk as required by Section 84.09(1), Wisconsin Statutes.

WITNESSETH: WHEREAS the COMPANY now has facilities located on the aforesaid parcel lands, and the DEPARTMENT has requested the COMPANY to remove, relocate, rebuild or otherwise rearrange said facilities in order that these lands may be vacated to the extent required for the designated highway improvement.

NOW, THEREFORE, it is mutually agreed as follows:

1. The COMPANY will convey to the DEPARTMENT, by separate instrument, the parcel of land or land interests identified above.
2. The COMPANY agrees to remove, relocate, rearrange or rebuild its facilities situated on said parcel as required by the DEPARTMENT to construct and operate the above-described highway improvement.

The work necessary for this purpose is indicated in the Exhibit attached hereto and made a part hereof. The Exhibit consists of a statement of the work and proposed schedule for its accomplishment, the estimate of cost, plans and special provisions, if any.

The work shall be performed under normal COMPANY practices and the costs thereof computed and determined in accordance with the work order accounting procedure prescribed or approved for the COMPANY by the regulatory agency having jurisdiction, including applicable provisions of the Code of Federal Regulations 23, Part 645, Subpart A - Utility Relocations, Adjustments, and Reimbursement. Credits for anticipated salvage and accrued depreciation, if any, have been provided in the same amount and computed in the same manner as if the work were being undertaken at the expense and volition of the COMPANY.

3. The DEPARTMENT agrees to pay the COMPANY the lump sum amount indicated above after the parcel has been conveyed to it and after the adjustment of the COMPANY's facilities presently situated thereon has been satisfactorily completed. An invoice shall be submitted by the COMPANY within one year of the completion of the companion highway project.

Payment of such lump sum amount by the DEPARTMENT to the COMPANY shall constitute full and final compensation for the parcel conveyed, including all damages, costs and expenses incurred by the COMPANY and arising from or necessitated by the conveyance. Any legal action taken by the COMPANY because of dispute arising through this transaction shall be for monetary considerations only, and shall not be for the revocation of the conveyed parcel.

4. In connection with the performance of work under this Agreement, the COMPANY agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5) Wisconsin Statutes, sexual orientation as defined in s.111.32(13m) Wisconsin Statutes or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the COMPANY further agrees to take affirmative action to ensure equal employment opportunities.

The COMPANY shall comply with the Buy America requirements specified under 23 USC 313 and 23 CFR 635.410 when any part of this highway improvement project involves funding by the Federal Aid Highway Program. To complete processing of invoices submitted, the COMPANY shall provide to the DEPARTMENT a signed DT2249, *Utility's Certificate of Compliance for Steel and Iron Items*.

5. The execution of this Agreement by the DEPARTMENT shall not relieve the COMPANY from compliance with applicable Federal and State laws, Wisconsin Administrative Codes, and local laws or ordinances which may affect the performance of the work covered herein, and shall not be construed to supersede any other governmental agency requirements for plan approval or authority to undertake the utility alteration work.

This Agreement does not supplant any permit required under Section 84.08, 86.07(2), or 86.16, Wisconsin

Statutes. No COMPANY work affecting highway lands shall be undertaken without any required separate permit, which may be processed and approved concurrently with this Agreement.

6. The Agreement is not binding upon the parties hereto until this document has been fully executed by the COMPANY and the DEPARTMENT. **It is expressly understood and agreed that any work by the COMPANY prior to authorization by the DEPARTMENT shall be at the COMPANY's sole expense.**

IN WITNESS, the parties have caused this Agreement to be executed by their proper officers and representatives on the year and the day below written.

WISCONSIN DEPARTMENT OF TRANSPORTATION

(Division Administrator)

(Date)

Frontier North Inc.

(Company)

(Signature) (Date)

(Title)

(Signature) (Date)

(Title)

**AGREEMENT FOR PAYMENT
For Relocation or Replacement of Municipal Utility Facilities
Located on Public Held Land Required by Freeway Construction**

Wisconsin Department of Transportation
DT1575 7/2013 s.84.295(4m) Wis. Stats.

Municipal Utility Owner Village of Rothschild	
Project Description – Include Title: STEVENS POINT - WAUSAU Limits: BUS 51 INTERCHANGE Highway: IH 39 County: Marathon	Project ID(s) Design: 1166-12-04 Construction: 1166-12-74 Right of Way: 1166-12-24 UA No.: 202 Utility: 1166-12-42

This Agreement is made and entered into by and between the Wisconsin Department of Transportation, designated as the "DEPARTMENT," and the above-identified municipal utility, designated as the "MUNICIPAL UTILITY," for the payment for the relocation or replacement of certain municipal utility facilities on publicly held lands as required by the construction of the freeway project identified above.

For and in consideration of the acceptable relocation or replacement of the MUNICIPAL UTILITY facilities presently located on publicly held lands which must be modified to accommodate the construction of the above-identified freeway, the DEPARTMENT will pay an amount equal to 90% of the net cost incurred by the MUNICIPAL UTILITY for the actual removal, relocation, alteration or other rearrangement of the MUNICIPAL UTILITY facilities situated on the lands required to restore equivalent function as necessary and in kind, if feasible, of the affected segment of the MUNICIPAL UTILITY facility.

The work covered by this Agreement is set forth and made a part of the attached Exhibit. The Exhibit consists of a statement of the work and a proposed schedule for its accomplishment and coordination, if necessary, with the companion highway work, an estimate of costs, plans and special provisions, if any.

The work shall be performed under normal MUNICIPAL UTILITY practices and the costs computed and determined in accordance with the work order accounting procedure prescribed or approved for the MUNICIPAL UTILITY by the regulatory agency having jurisdiction, including applicable provisions of the Code of Federal Regulations 23, Part 645, Subpart A - Utility Relocations, Adjustments, and Reimbursement.

It is further understood that:

1. All salvage shall be credited to the project in the manner prescribed under the MUNICIPAL UTILITY's accounting procedure for work undertaken at the expense and volition of the MUNICIPAL UTILITY. When recovered materials are to be disposed of by sale as scrap, the MUNICIPAL UTILITY shall either have filed with the DEPARTMENT an acceptable statement outlining the MUNICIPAL UTILITY's current standard practice and procedure for disposal of such material or shall give written notice to the DEPARTMENT of the location and time said recovered materials will be available for inspection.
2. A credit shall be given representative of the amount of depreciation accrual, if any, assignable to the facilities subject to replacement. Such credit shall be calculated in accordance with s.645.117(h)(2) of the Code of Federal Regulations, Title 23. The amount of the credit shall be based upon the original installed cost, the age of the facility and the applicable depreciation rates, but may also consider the average service lives certified by the regulatory agency having jurisdiction and the expected remaining service lives of the existing materials.
3. Work under this Agreement shall not start until the MUNICIPAL UTILITY has received written notice from the DEPARTMENT to proceed with the work. The MUNICIPAL UTILITY shall give prior notice to the appropriate DEPARTMENT Regional Transportation Office when it proposes to commence its construction operations and shall give similar notification when operations are resumed subsequent to suspension of operations. Any significant change in the extent or scope of the work under this Agreement must be covered by a written change order or any extra work order. **It is expressly understood and agreed that any work done by the MUNICIPAL UTILITY prior to authorization by the DEPARTMENT shall be at the MUNICIPAL UTILITY's sole expense.**

The MUNICIPAL UTILITY shall not subcontract any portion of the work included under this Agreement without the prior approval of the DEPARTMENT except for work of relatively minor cost or nature. Any existing continuing contract, under which the MUNICIPAL UTILITY now has certain work regularly performed, will be considered to conform to the requirements of this section, provided the contract is submitted for the Regional Director's prior approval.

The MUNICIPAL UTILITY shall keep and make available to the DEPARTMENT detailed payrolls for office and field personnel, equipment use records, materials used, and salvage records including the condition and disposition of the removed and salvaged materials, as well as payments to any MUNICIPAL UTILITY subcontractor if the work is performed in that manner.

The MUNICIPAL UTILITY agrees to maintain all records of costs incurred that are covered by this Agreement for a period of 3 years from the date of final payment for inspection by the DEPARTMENT and the Federal Highway Administration.

4. Upon completion of the work contemplated under this Agreement, the MUNICIPAL UTILITY will submit invoices to the DEPARTMENT setting forth the actual and related indirect cost in substantially the same detail and order indicated in the estimate attached to this Agreement. Each copy of such invoice shall identify the location where the supporting records for the costs included in the billing may be reviewed as well as the name of the MUNICIPAL UTILITY custodian of such records. Invoice shall be submitted within one year of the completion of the companion highway project.

The MUNICIPAL UTILITY agrees to permit audit of said invoices by the DEPARTMENT and by the Federal Highway Administration, if necessary, and to offer prompt support for any item cited for review or be deemed to concur in the item's deletion or correction. The supportable net amount of the invoice verified by audit as being in compliance with the provisions of this Agreement shall be paid by the DEPARTMENT and will be accepted as full compensation for the agreed upon work including all damages, costs and expenses incurred by the MUNICIPAL UTILITY and arising from or necessitated by the work.

The MUNICIPAL UTILITY shall comply with the Buy America requirements specified under 23 USC 313 and 23 CFR 635.410 when any part of this highway improvement project involves funding by the Federal Aid Highway Program. To complete processing of invoices submitted, the MUNICIPAL UTILITY shall provide to the DEPARTMENT a signed DT2249, *Utility Certificate of Compliance for Steel and Iron Items*.

- In connection with the performance of work under this contract, the MUNICIPAL UTILITY agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5) Wisconsin Statutes, sexual orientation as defined in s.111.32(13m) Wisconsin Statutes or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Except with respect to sexual orientation, the MUNICIPAL UTILITY further agrees to take affirmative action to ensure equal employment opportunities. The MUNICIPAL UTILITY agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
- The execution of this Agreement by the DEPARTMENT shall not relieve the MUNICIPAL UTILITY from compliance with applicable Federal and State laws, Wisconsin Administrative Codes, and local laws or ordinances which may affect the performance of the work covered, and shall not be construed to supersede any other governmental agency requirements for plan approval or authority to undertake the utility alteration work.

This Agreement does not supplant any permit required under sections 84.08, 86.07(2), or 86.16, Wisconsin Statutes. No MUNICIPAL UTILITY work affecting highway lands shall be undertaken without any required separate permit, which may be processed and approved concurrently with this Agreement.

In accordance with section 84.295(4m)(d), Wisconsin Statutes, any entry upon or occupation of freeway right of way under this Agreement by a Metropolitan Sewerage District acting under section 66.24(5)(b), Wisconsin Statutes, shall be done in a manner acceptable to the DEPARTMENT.

- The Agreement is not binding upon the parties until this document has been fully executed by the MUNICIPAL UTILITY and the DEPARTMENT.

The parties have caused this Agreement to be executed by their proper officers and representatives on the date shown.

WISCONSIN DEPARTMENT OF TRANSPORTATION

MUNICIPAL UTILITY

(Contract Manager) (Date)

(Print Name)

(Company Name)

(Authorized Signature) (Date)

(Title)

OFFICE OF THE GOVERNOR

(Governor of Wisconsin) (Date)

(Print Name)

(Print Name)

(Authorized Signature) (Date)

(Title)

(Print Name)

(Authorized Signature) (Date)

(Title)

(Print Name)

Wis. Stat. s. 84.06(4) Special contracts with utilities

84.06 Highway construction.

(4) Special contracts with railroads and utilities. If an improvement undertaken by the department will cross or affect the property or facilities of a railroad or public utility company, the department may, upon finding that it is feasible and advantageous to the state, arrange to perform portions of the improvement work affecting such facilities or property or perform work of altering, rearranging, or relocating such facilities by contract with the railroad or public utility. Such contract shall be between the railroad company or public utility and the state and need not be based on bids. The contract may be entered into on behalf of the state by the secretary. Every such contract is exempted from s. 779.14 and from all provisions of chs. 16 and 230, except ss. 16.528, 16.752, 16.753, and 16.754. No such contract in which the total estimated debt to be incurred exceeds \$5,000 shall be valid until approved by the governor. As used in this subsection, "public utility" means the same as in s. 196.01 (5), and includes a telecommunications carrier as defined in s. 196.01 (8m), and "railroad" means the same as in s. 195.02. "Property" as used in this subsection includes but is not limited to tracks, trestles, signals, grade crossings, rights-of-way, stations, pole lines, plants, substations, and other facilities. Nothing in this subsection shall be construed to relieve any railroad or public utility from any financial obligation, expense, duty, or responsibility otherwise provided by law relative to such property.

**AGREEMENT FOR PAYMENT
For Relocation or Replacement of Utility Facilities**

Wisconsin Department of Transportation
DT2192 7/2013 s.84.06(4) Wis. Stats.

Municipal Utility Name	
Project Description - Include Title: Limits: Highway: County:	Project ID(s) Design: Construction: Right of Way: UA No.: Utility:

This Agreement is made and entered into by and between the Wisconsin Department of Transportation, designated as the "DEPARTMENT," and the above-identified utility, designated as the "UTILITY," for the payment for the relocation or replacement of certain utility facilities on publicly held lands as required by the construction of the Transportation improvement project identified above.

For and in consideration of the acceptable relocation or replacement of the UTILITY facilities presently located on publicly held lands which must be modified to accommodate the construction of the above-identified improvement project, the DEPARTMENT will pay an amount equal to _____ of the net cost incurred by the UTILITY for the actual removal, relocation, alteration or other rearrangement of the UTILITY facilities to restore equivalent function as necessary and in kind, if feasible, of the affected segment of the UTILITY facility.

The work covered by this Agreement is set forth and made a part of the attached Exhibit. The Exhibit consists of a statement of the work and a proposed schedule for its accomplishment and coordination, if necessary, with the companion highway work, an estimate of costs, plans and special provisions, if any.

The work shall be performed under normal UTILITY practices and the costs computed and determined in accordance with the work order accounting procedure prescribed or approved for the UTILITY by the regulatory agency having jurisdiction, including applicable provisions of the Code of Federal Regulations 23, Part 645, Subpart A - Utility Relocations, Adjustments, and Reimbursement.

It is further understood that:

1. All salvage shall be credited to the project in the manner prescribed under the UTILITY's accounting procedure for work undertaken at the expense and volition of the UTILITY. When recovered materials are to be disposed of by sale as scrap, the UTILITY shall either have filed with the DEPARTMENT an acceptable statement outlining the UTILITY's current standard practice and procedure for disposal of such material or shall give written notice to the DEPARTMENT of the location and time said recovered materials will be available for inspection.
2. A credit shall be given representative of the amount of depreciation accrual, if any, assignable to the facilities subject to replacement. Such credit shall be calculated in accordance with s.645.117(h)(2) of the Code of Federal Regulations, Title 23. The amount of the credit shall be based upon the original installed cost, the age of the facility and the applicable depreciation rates, but may also consider the average service lives certified by the regulatory agency having jurisdiction and the expected remaining service lives of the existing materials.
3. Work under this Agreement shall not start until the UTILITY has received written notice from the DEPARTMENT to proceed with the work. The UTILITY shall give prior notice to the appropriate DEPARTMENT Office when it proposes to commence its construction operations and shall give similar notification when operations are resumed subsequent to suspension of operations. Any significant change in the extent or scope of the work under this Agreement must be covered by a written change order. **It is expressly understood and agreed that any work done by the UTILITY prior to authorization by the DEPARTMENT shall be at the UTILITY's sole expense.**

The UTILITY shall not subcontract any portion of the work included under this Agreement without the prior approval of the DEPARTMENT except for work of relatively minor cost or nature. Any existing continuing contract, under which the UTILITY now has certain work regularly performed, will be considered to conform to the requirements of this section, provided the contract is submitted for the DEPARTMENT's prior approval.

The UTILITY shall keep and make available to the DEPARTMENT detailed payrolls for office and field personnel, equipment use records, materials used, and salvage records including the condition and disposition of the removed and salvaged materials, as well as payments to any UTILITY subcontractor if the work is performed in that manner.

The UTILITY agrees to maintain all records of costs incurred that are covered by this Agreement for a period of 3 years from the date of final payment for inspection by the DEPARTMENT and the Federal Highway Administration.

Utility Project ID

Utility Agreement – No Land Interest

4. Upon completion of the work contemplated under this Agreement, the UTILITY will submit invoices to the DEPARTMENT setting forth the actual and related indirect cost in substantially the same detail and order indicated in the estimate attached to this Agreement. Each copy of such invoice shall identify the location where the supporting records for the costs included in the billing may be reviewed as well as the name of the UTILITY custodian of such records. Invoice shall be submitted within one year of the completion of the companion highway project.

The UTILITY agrees to permit audit of said invoices by the DEPARTMENT and by the Federal Highway Administration, if necessary, and to offer prompt support for any item cited for review or be deemed to concur in the item's deletion or correction. The supportable net amount of the invoice verified by audit as being in compliance with the provisions of this Agreement shall be paid by the DEPARTMENT and will be accepted as full compensation for the agreed upon work including all damages, costs and expenses incurred by the UTILITY and arising from or necessitated by the work.

The UTILITY shall comply with the Buy America requirements specified under 23 USC 313 and 23 CFR 635.410 when any part of this highway improvement project involves funding by the Federal Aid Highway Program. To complete processing of invoices submitted, the UTILITY shall provide to the DEPARTMENT a signed DT2249, *Utility's Certificate of Compliance for Steel and Iron Items*.

5. In connection with the performance of work under this contract, the UTILITY agrees not to discriminate against any employe or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5) Wisconsin Statutes, sexual orientation as defined in s.111.32(13m) Wisconsin Statutes or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Except with respect to sexual orientation, the UTILITY further agrees to take affirmative action to ensure equal employment opportunities. The UTILITY agrees to post in conspicuous places, available for employes and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

6. The execution of this Agreement by the DEPARTMENT shall not relieve the UTILITY from compliance with applicable Federal and State laws, Wisconsin Administrative Codes, and local laws or ordinances which may affect the performance of the work covered, and shall not be construed to supersede any other governmental agency requirements for plan approval or authority to undertake the utility alteration work.

This Agreement does not supplant any permit required under sections 84.08, 86.07(2), or 86.16, Wisconsin Statutes. No UTILITY work affecting highway lands shall be undertaken without any required separate permit, which may be processed and approved concurrently with this Agreement.

7. The Agreement is not binding upon the parties until this document has been fully executed by the UTILITY and the DEPARTMENT.

The parties have caused this Agreement to be executed by their proper officers and representatives on the date shown.

WISCONSIN DEPARTMENT OF TRANSPORTATION

UTILITY COMPANY

 (Contract Manager) (Date)

 (Print Name)

 (Company Name)

 (Authorized Signature) (Date)

 (Title)

OFFICE OF THE GOVERNOR

 (Governor of Wisconsin) (Date)

 (Print Name)

 (Print Name)

 (Authorized Signature) (Date)

 (Title)

 (Print Name)

 (Authorized Signature) (Date)

 (Title)

 (Print Name)

**AGREEMENT FOR PAYMENT
For Relocation or Replacement of Utility Facilities**

Wisconsin Department of Transportation
DT2192 9/2005 s.84.06(4) Wis. Stats.

Utility Name Alliant Energy
Project Description – Include Project ID, Title, Subtitle, Highway, County 5225-03-41 Dodgeville - Spring Green Rd. STH 132 - CTH A STH 23 Iowa County

This Agreement is made and entered into by and between the Wisconsin Department of Transportation, designated as the "DEPARTMENT", and the above-identified utility, designated as the "UTILITY", for the payment for the relocation or replacement of certain utility facilities on publicly held lands as required by the construction of the Transportation improvement project identified above.

For and in consideration of the acceptable relocation or replacement of the UTILITY facilities presently located on publicly held lands which must be modified to accommodate the construction of the above-identified improvement project, the DEPARTMENT will pay an amount equal to 80% of the net cost incurred by the UTILITY for the actual removal, relocation, alteration or other rearrangement of the UTILITY facilities to restore equivalent function as necessary and in kind, if feasible, of the affected segment of the UTILITY facility.

The work covered by this Agreement is set forth and made a part of the attached Exhibit. The Exhibit consists of a statement of the work and a proposed schedule for its accomplishment and coordination, if necessary, with the companion highway work, an estimate of costs, plans and special provisions, if any.

The work shall be performed under normal UTILITY practices and the costs computed and determined in accordance with the work order accounting procedure prescribed or approved for the UTILITY by the regulatory agency having jurisdiction, including applicable provisions of the Code of Federal Regulations 23, Part 645, Subpart A - Utility Relocations, Adjustments, and Reimbursement.

It is further understood that:

1. All salvage shall be credited to the project in the manner prescribed under the UTILITY's accounting procedure for work undertaken at the expense and volition of the UTILITY. When recovered materials are to be disposed of by sale as scrap, the UTILITY shall either have filed with the DEPARTMENT an acceptable statement outlining the UTILITY's current standard practice and procedure for disposal of such material or shall give written notice to the DEPARTMENT of the location and time said recovered materials will be available for inspection.

2. A credit shall be given representative of the amount of depreciation accrual, if any, assignable to the facilities subject to replacement. Such credit shall be calculated in accordance with s.645.117(h)(2) of the Code of Federal Regulations, Title 23. The amount of the credit shall be based upon the original installed cost, the age of the facility and the applicable depreciation rates, but may also consider the average service lives certified by the regulatory agency having jurisdiction and the expected remaining service lives of the existing materials.

3. Work under this Agreement shall not start until the UTILITY has received written notice from the DEPARTMENT to proceed with the work. The UTILITY shall give prior notice to the appropriate DEPARTMENT Office when it proposes to commence its construction operations and shall give similar notification when operations are resumed subsequent to suspension of operations. Any significant change in the extent or scope of the work under this Agreement must be covered by a written change order. It is expressly understood and agreed that any work done by the UTILITY prior to authorization by the DEPARTMENT shall be at the UTILITY's sole expense.

The UTILITY shall not subcontract any portion of the work included under this Agreement without the prior approval of the DEPARTMENT except for work of relatively minor cost or nature. Any existing continuing contract, under which the UTILITY now has certain work regularly performed, will be considered to conform to the requirements of this section, provided the contract is submitted for the DEPARTMENT's prior approval.

The UTILITY shall keep and make available to the DEPARTMENT detailed payrolls for office and field personnel, equipment use records, materials used, and salvage records including the condition and disposition of the removed and salvaged materials, as well as payments to any UTILITY subcontractor if the work is performed in that manner.

The UTILITY agrees to maintain all records of costs incurred that are covered by this Agreement for a period of 3 years from the date of final payment for inspection by the DEPARTMENT and the Federal Highway Administration.

Utility Project ID 5225-03-41

Utility Agreement – No Land Interest

4. Upon completion of the work contemplated under this Agreement, the UTILITY will submit invoices to the DEPARTMENT setting forth the actual and related indirect cost in substantially the same detail and order indicated in the estimate attached to this Agreement. Each copy of such invoice shall identify the location where the supporting records for the costs included in the billing may be reviewed as well as the name of the UTILITY custodian of such records. Invoice shall be submitted within one year of the completion of the companion highway project.

The UTILITY agrees to permit audit of said invoices by the DEPARTMENT and by the Federal Highway Administration, if necessary, and to offer prompt support for any item cited for review or be deemed to concur in the item's deletion or correction. The supportable net amount of the invoice verified by audit as being in compliance with the provisions of this Agreement shall be paid by the DEPARTMENT and will be accepted as full compensation for the agreed upon work including all damages, costs and expenses incurred by the UTILITY and arising from or necessitated by the work.

5. In connection with the performance of work under this contract, the UTILITY agrees not to discriminate against any employe or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5) Wisconsin Statutes, sexual orientation as defined in s.111.32(13m) Wisconsin Statutes or national origin. This provision shall include, but not be

limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Except with respect to sexual orientation, the UTILITY further agrees to take affirmative action to ensure equal employment opportunities. The UTILITY agrees to post in conspicuous places, available for employes and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

6. The execution of this Agreement by the DEPARTMENT shall not relieve the UTILITY from compliance with applicable Federal and State laws, Wisconsin Administrative Codes, and local laws or ordinances which may affect the performance of the work covered, and shall not be construed to supersede any other governmental agency requirements for plan approval or authority to undertake the utility alteration work.

This Agreement does not supplant any permit required under sections 84.08, 86.07(2), or 86.16, Wisconsin Statutes. No UTILITY work affecting highway lands shall be undertaken without any required separate permit, which may be processed and approved concurrently with this Agreement.

7. The Agreement is not binding upon the parties until this document has been fully executed by the UTILITY and the DEPARTMENT.

The parties have caused this Agreement to be executed by their proper officers and representatives on the date shown.

Wisconsin Department of Transportation

(Contract Manager) (Date)

(Governor of Wisconsin) (Date)

Alliant Energy

(Utility)

(Signature) (Date)

(Title)

(Signature) (Date)

(Title)

(Signature) (Date)

(Title)

**AUDIT AGREEMENT FOR PAYMENT
TO PUBLIC UTILITY BASED ON PRIOR LAND RIGHTS**

Wisconsin Department of Transportation
DT2193 7/2013 s.84.09 Wis. Stats.

This Agreement is made and entered into by and between the Wisconsin Department of Transportation, hereinafter designated as the "DEPARTMENT," and _____, a public utility company, a quasi utility or cooperative hereinafter designated as the "COMPANY," for the payment for the relocation of utility facilities required by the Wisconsin Department of Transportation in connection with a Wisconsin Transportation improvement designated:

Project Description - Include	Project ID(s)
Title:	Design:
Limits:	Construction:
Highway:	Right of Way:
County:	UTL No.:
	Utility:

Said work is compensable based on a conveyance of rights from a previous Transportation improvement project recorded as _____ in the _____ County Deeds Registry.

For and in consideration of the conveyance document mentioned above, the DEPARTMENT will pay to the COMPANY an amount equal to the net cost incurred by the COMPANY for the actual removal, relocation, alteration, or other rearrangement of the COMPANY facilities situated on the said lands required to restore equivalent function as necessary, in kind if feasible, of the affected segment of COMPANY facility.

The work covered by the Agreement is set forth in the Exhibit hereto attached and made a part hereof. The Exhibit consists of a statement of the work and a proposed schedule for its accomplishment and coordination if necessary with the companion transportation work, an estimate of costs, plans and special provisions, if any.

The work shall be performed under normal COMPANY practices and the costs computed and determined in accordance with the work order accounting procedure prescribed or approved for the COMPANY by the regulatory agency having jurisdiction, including applicable provisions of the Code of Federal Regulations 23, Part 645, Subpart A - Utility Relocations, Adjustments, and Reimbursement. It is further understood, however, that:

1. All salvage shall be credited to the project in the manner prescribed under the COMPANY's accounting procedure for work undertaken at the expense and volition of the COMPANY. When recovered materials are to be disposed of by sale or as scrap, the COMPANY shall either have filed with the DEPARTMENT an acceptable statement outlining the COMPANY's current standard practice and procedure for disposal of such material or shall give written notice to the DEPARTMENT of the location and time said recovered materials will be available for inspection.
2. A credit shall be given representative of the amount of depreciation accrual, if any, assignable to the facilities subject to replacement. Such credit shall be calculated for all facilities covered by the Code of Federal Regulations 23, Section 645.117(h). The amount of the credit shall be based upon the original installed cost, the age of the facility and the applicable depreciation rates, but may also consider the average service lives certified by the regulatory agency having jurisdiction and the expected remaining service lives of the existing materials.
3. Work under this Agreement shall not start until the COMPANY has received written notice from the DEPARTMENT to proceed with the work. The COMPANY shall give prior notice to the appropriate Regional Transportation Office of the DEPARTMENT when it proposes to commence its construction operations and shall give similar notification when operations are resumed subsequent to suspension of operations. Any significant change in the extent or scope of the work under this agreement must be covered by a written change order or an extra work order. **It is expressly understood and agreed that any work by the COMPANY prior to authorization by the DEPARTMENT shall be at the COMPANY's sole expense.**

The COMPANY shall not subcontract any portion of the work included under this Agreement without the prior approval of the DEPARTMENT except for work of relatively minor cost or nature. Any existing continuing contract, under which the COMPANY now has certain work regularly performed, will be considered to conform to the requirements of this section, provided the contract is submitted for the DEPARTMENT's prior approval.

The COMPANY shall keep and make available to the DEPARTMENT detailed payrolls for office and field personnel, equipment use records, materials used, and salvage records including the condition and disposition of the removed and salvaged materials, as well as payments to any utility subcontractor if the work is performed in that manner.

4. Upon completion of the work contemplated under this Agreement, the COMPANY will submit invoices to the DEPARTMENT setting forth the actual and related indirect cost in substantially the same detail and order indicated in the estimate attached to this

Agreement. Each copy of such invoice shall identify the location where the supporting records for the costs included in the billing may be reviewed as well as the name of the COMPANY custodian of such records. Invoices shall be submitted within one year of the completion of the companion highway construction project.

The COMPANY agrees to permit audit of said invoices by the DEPARTMENT and by the Federal Highway Administration, if necessary, and to offer prompt support for any item cited for review or be deemed to concur in the deletion or correction thereof. The supportable net amount of the invoice verified by audit as being in compliance with the provisions of this Agreement shall be paid by the DEPARTMENT and will be accepted as full compensation for the rights or interests in the lands conveyed, including all damages, costs and expenses incurred by the COMPANY and arising from or necessitated by the said conveyance.

The COMPANY shall comply with the Buy America requirements specified under 23 USC 313 and 23 CFR 635.410 when any part of this highway improvement project involves funding by the Federal Aid Highway Program. To complete processing of invoices submitted, the COMPANY shall provide to the DEPARTMENT a signed DT2249, *Utility's Certificate of Compliance for Steel and Iron Items*.

5. In Connection with the performance of work under this contract, the COMPANY agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5) Wisconsin Statutes, sexual orientation as defined s.111.32(13m) Wisconsin Statutes or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the COMPANY further agrees to take affirmative action to ensure equal employment opportunities. The COMPANY agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
6. The execution of this Agreement by the DEPARTMENT shall not relieve the COMPANY from compliance with applicable Federal and State laws, Wisconsin Administrative Codes, and local laws or ordinances which may affect the performance of the work covered herein, and shall not be construed to supersede any other governmental agency requirements for plan approval or authority to undertake the utility alteration work.

This Agreement does not supplant any permit required under Section 84.08, 86.07(2), or 86.16, Wisconsin Statutes. No COMPANY work affecting highway lands shall be undertaken without any required separate permit, which may be processed and approved concurrently with this Agreement.

7. It is further agreed that any legal action taken by the COMPANY because of dispute arising through this transaction shall be for monetary considerations only.
8. The Agreement is not binding upon the parties hereto until this document has been fully executed by the COMPANY and the DEPARTMENT.

IN WITNESS, the parties have caused this Agreement to be executed by their proper officers and representatives on the year and the day below written.

**WISCONSIN DEPARTMENT OF
TRANSPORTATION**

UTILITY COMPANY

_____		_____	
(Division Administrator)		(Company Name)	
_____	(Date)	_____	(Date)
(Print Name)		(Authorized Signature)	(Date)
		_____	(Title)
		(Print Name)	
		_____	(Authorized Signature)
			(Date)
		_____	(Title)
		(Print Name)	

**LUMP SUM AGREEMENT FOR PAYMENT
TO PUBLIC UTILITY BASED ON PRIOR LAND RIGHTS**

Wisconsin Department of Transportation
DT2194 7/2013 s.84.09 Wis. Stats.

This Agreement is made and entered into by and between the Wisconsin Department of Transportation, hereinafter designated as the "DEPARTMENT," and _____, a public utility company, a quasi utility or cooperative hereinafter designated as the "COMPANY," to provide for the lump sum payment in the amount of \$ _____ for the relocation of utility facilities required in connection with a highway improvement designated:

Project Description – Include
Title:
Limits:
Highway:
County:

Project ID(s)
Design:
Construction:
Right of Way:
UTL No.:
Utility:

Said work is compensable based on a conveyance of rights from a previous Transportation improvement project recorded as _____ in the _____ County Deeds Registry.

WHEREAS the COMPANY now has facilities located on the aforesaid lands, and the DEPARTMENT has requested the COMPANY to remove, relocate, rebuild or otherwise rearrange said facilities to accommodate the designated highway improvement.

NOW, THEREFORE, it is mutually agreed as follows:

1. The COMPANY agrees to remove, relocate, rearrange or rebuild its facilities situated on said lands as required by the DEPARTMENT to construct and operate the above-described highway improvement.

The work necessary for this purpose is indicated in the Exhibit attached hereto and made a part hereof. The Exhibit consists of a statement of the work and proposed schedule for its accomplishment, the estimate of cost, plans and special provisions, if any.

The work shall be performed under normal COMPANY practices and the costs computed and determined in accordance with the work order accounting procedure prescribed or approved for the COMPANY by the regulatory agency having jurisdiction, including applicable provisions of the Code of Federal Regulations 23, Part 645, Subpart A - Utility Relocations, Adjustments, and Reimbursement. Credits for anticipated salvage and accrued depreciation, if any, have been provided in the same amount and computed in the same manner as if the work were being undertaken at the expense and volition of the COMPANY.

2. The DEPARTMENT agrees to pay the COMPANY the lump sum amount indicated above after the adjustment of the COMPANY's facilities presently situated on the lands covered by the conveyance document mentioned above has been satisfactorily completed. An invoice shall be submitted by the COMPANY within one year of the completion of the companion highway project.

Payment of such lump sum amount by the DEPARTMENT to the COMPANY shall constitute full and final compensation, including all damages, costs and expenses incurred by the COMPANY. Any legal action taken by the COMPANY because of dispute arising through this transaction shall be for monetary considerations only.

The COMPANY shall comply with the Buy America requirements specified under 23 USC 313 and 23 CFR 635.410 when any part of this highway improvement project involves funding by the Federal Aid Highway Program. To complete processing of invoices submitted, the COMPANY shall provide to the DEPARTMENT a signed DT2249, *Utility's Certificate of Compliance for Steel and Iron Items*.

3. In connection with the performance of work under this Agreement, the COMPANY agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5) Wisconsin Statutes, sexual orientation as defined in s.111.32(13m) Wisconsin Statutes or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the COMPANY further agrees to take affirmative action to ensure equal employment opportunities.

4. The execution of this Agreement by the DEPARTMENT shall not relieve the COMPANY from compliance with applicable Federal and State laws, Wisconsin Administrative Codes, and local laws or ordinances which may affect the performance of the work covered herein, and shall not be construed to supersede any other governmental agency requirements for plan approval or authority to undertake the utility alteration work.

This Agreement does not supplant any permit required under Section 84.08, 86.07(2), or 86.16, Wisconsin Statutes. No COMPANY work affecting highway lands shall be undertaken without any required separate permit, which may be processed and approved concurrently with this Agreement.

5. The Agreement is not binding upon the parties hereto until this document has been fully executed by the COMPANY and the DEPARTMENT.

IN WITNESS, the parties have caused this Agreement to be executed by their proper officers and representatives on the year and the day below written.

WISCONSIN DEPARTMENT OF TRANSPORTATION

UTILITY COMPANY

 (Division Administrator) (Date)

 (Print Name)

 (Company Name)

 (Authorized Signature) (Date)

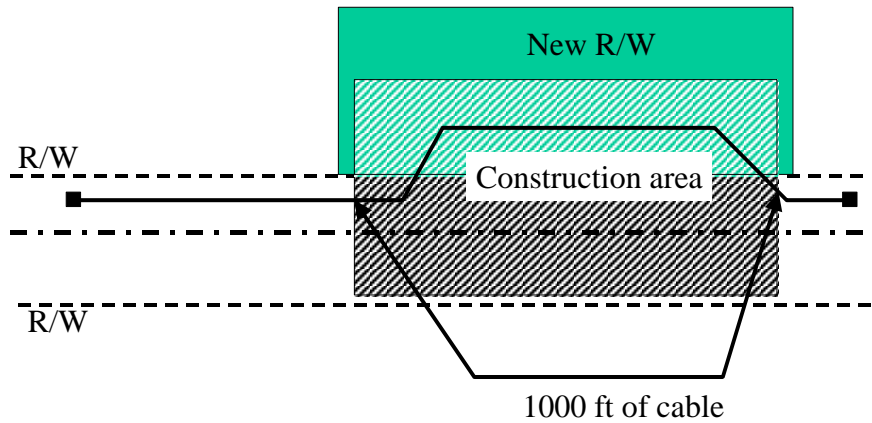
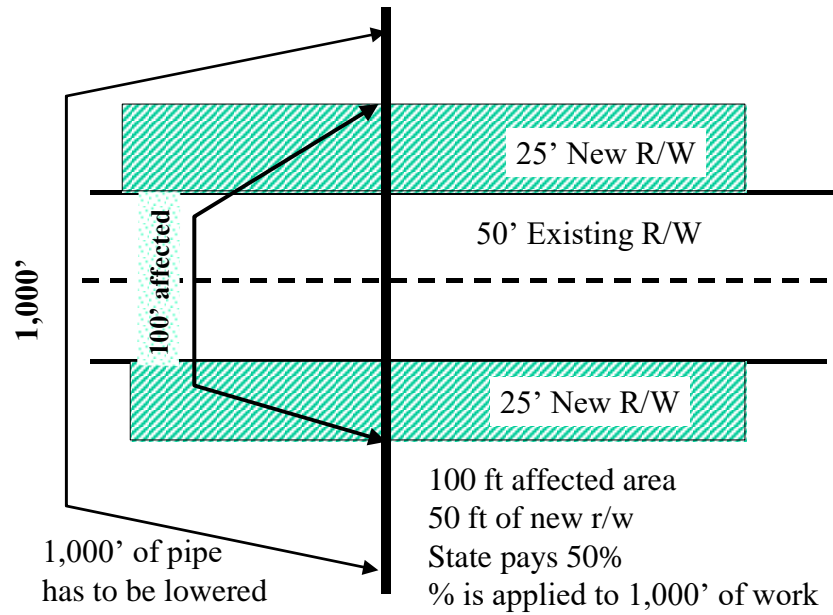
 (Title)

 (Print Name)

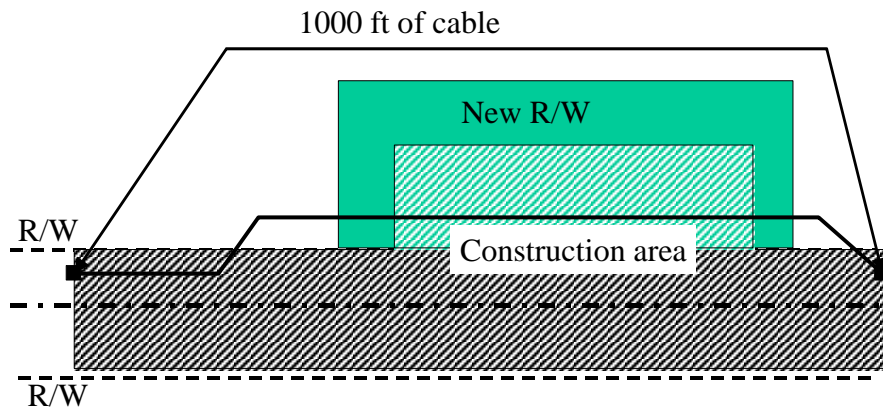
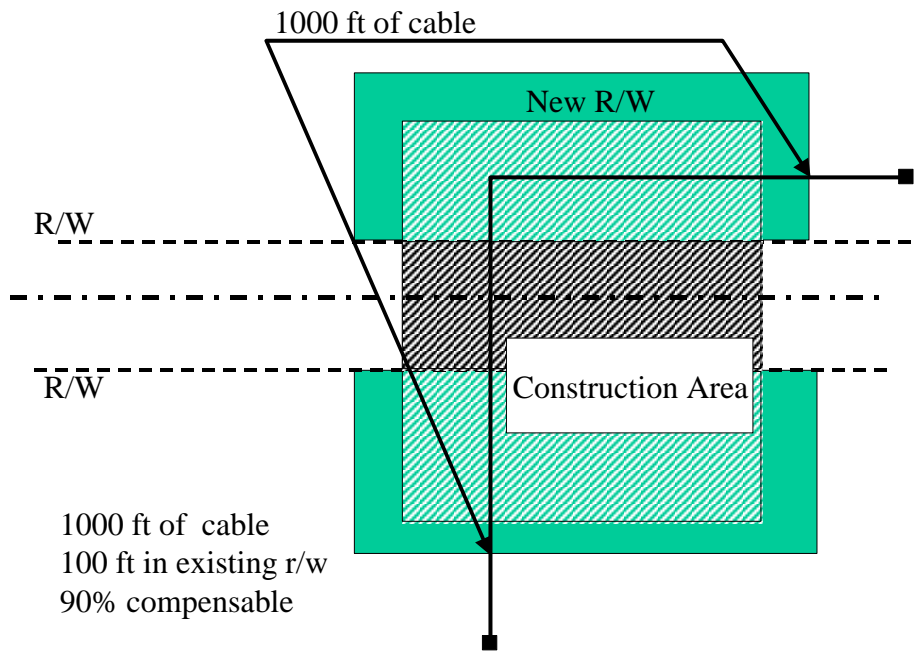
 (Authorized Signature) (Date)

 (Title)

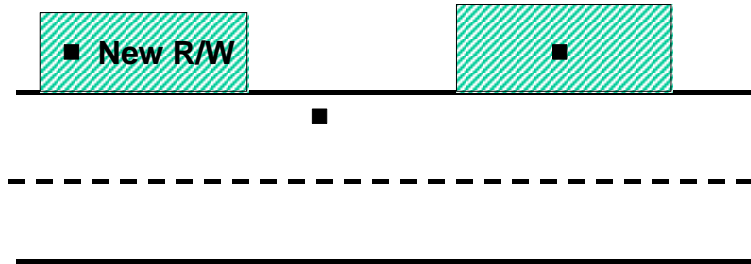
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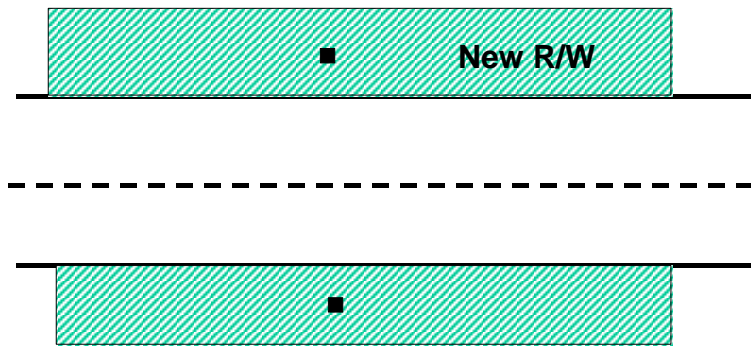
850 ft of cable in new r/w, 1000 ft total
85% compensable
Percentage applied to all work that needs to be done



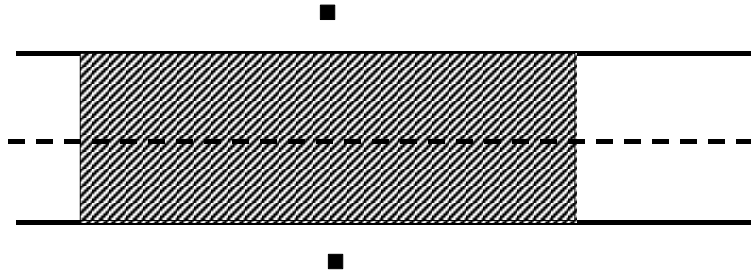
1000 ft of cable
300 ft in existing r/w
70% compensable



67% compensable (2 of 3)



100% compensable

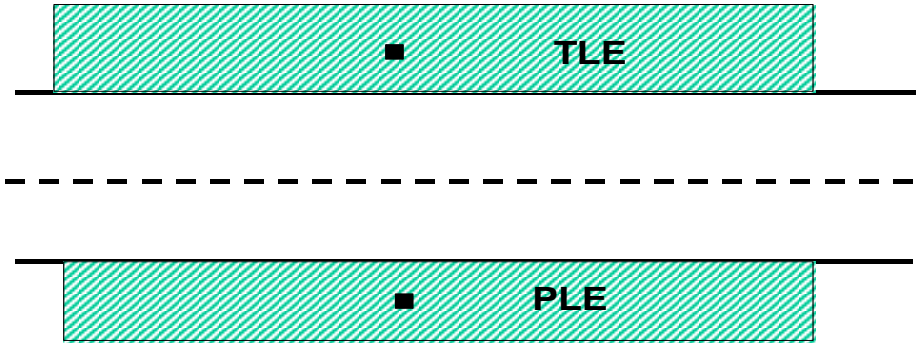


0% compensable
No land right being acquired



100% compensable

**Temporary (TLE) or Permanent (PLE)
Limited Easements are compensable**



Both poles are 100% compensable

Date: June 26, 2000

To: District Directors

From: John Haverberg, Director

Re: Utility Agreements Used Life Credit

Changes in the telecommunication industry have resulted in construction costs for new facilities to be substantially lower than they were in the past. Past WisDOT utility reimbursement policy requires the utility to credit DOT with any depreciation they have taken on the facility that is being replaced. In some cases, the depreciation already taken exceeds the cost of new construction, resulting in the utility company not receiving any compensation for a compensable relocation that is caused by a highway improvement project. Complaints from the industry regarding this situation have caused us to re-examine our policy regarding accrued depreciation credits (used life credits).

In 1985 the FHWA revised 23 CFR Section 645.117 to state "**Credit to the highway project will be required for the accrued depreciation of a utility facility being replaced, such as a building, pumping station, filtration plant, power plant, substation, or any other similar operational unit.... Credit for accrued depreciation shall not be required for a segment of the utility's service, distribution, or transmission lines.**"

WisDOT did not change our policy in 1985 because there was no problem with the old policy, and from an accounting point of view, the policy was valid. The policy was based on the idea that a utility should be at the same net book value after the relocation as before, the value should be neither enhanced nor impaired. However, from a practical point of view, if a section of cable is replaced for a highway project, it does not improve the overall facility. On both ends of the new section are older sections. When the utility upgrades the line, the entire length of the line will be replaced, they will not leave the newer "highway move" section in place. So therefore, the utility's realistic value is not enhanced when a small section of its network is replaced by a highway project.

Therefore, now that the changes in the telecommunication industry have led to replacement costs being significantly less than original construction costs, the Department has decided to align its policy with that of the FHWA and 23CFR Section 645.117.

Used life credit, or accrued depreciation, shall be required for buildings, pumping stations, filtration plants, power plants, substations, and other similar facilities. Used life credit shall not be required on a utility's service, distribution or transmission lines. This change in policy shall be effective the date this memo is signed.

Mike Cass
Administrator
Division of Transportation Infrastructure Development

Date July 11, 2000

**UNITED STATES GOVERNMENT MEMORANDUM
U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS**

DATE: December 31, 1963

TO: Division Engineers – Illinois, Indiana, Kentucky, Michigan, and Wisconsin

FROM: F.B. Farrell, Regional Engineer,
Homewood, Illinois

SUBJECT: Utilities (Region 4 Engineering Code 3.10)
Development of Relocation Costs when Utility Elects to Include a Betterment

Utility companies frequently elect to replace existing facilities with a new facility of greater capacity when relocation adjustments are required by reason of a highway project. The new facility may be in the same general location or at some other location farther removed from the project. This is especially true with the case of replacing existing Bell Telephone Systems with Microwave Systems.

We have normally required the utility to furnish an estimate covering the adjustment of their facility in the existing location. This estimate would be thoroughly reviewed, by both the State and the Bureau, and the reimbursement to the utility would be based on the one estimate with the further determination that the utility actually spent this amount of money on their new facility.

We recently received a field trip report made by Mr. J.E. Kirk, Chief, Utilities Staff, Office of Right-of-Way and Location, in which he discussed the results of a meeting between representatives of the State of Louisiana, the Bureau, and Southern Bell Telephone and Telegraph Company. We believe that the conclusions arrived at during this conference will aid your review of utility adjustments falling in this category.

- (1) The Utility would prepare an estimate to establish costs of hypothetical replacement facility, either a replica of existing overhead facilities or a buried cable of like capability. The estimate would be based on the most economical type of replacement.
- (2) The Utility would prepare an estimate of total costs of relocation for actual work contemplated. This estimate would reflect the total cost of installing new buried cable of greater capacity and other betterments required by the new facility.
- (3) A percentage factor would be established from (1) and (2) representing percentage of (2) eligible for payment by State and reimbursement by Bureau, which in turn could be applied to actual costs of (2) when utility bills are submitted to the State, giving appropriate consideration to extra work, if involved.
- (4) The following items may be included in these estimates as being eligible for Federal-aid reimbursement.
 - A. The cost of added lengths or tie-ins to old line as required by the project.

- B. The cost of removing existing plant.
 - C. The cost of right-of-way, if any.
- (5) Credit will be given for all material recovered that is reusable or has junk value.
- (6) Credit will be given for extended service life where involved on the basis of a percentage factor established by the ratio of the effective age – total life expectancy of existing aerial facilities as applied to the replacement costs (hypothetical estimate) but subject to later adjustment to account for variations between estimated and actual costs.

About the only difference between the above method and the procedure that we have been following is the use of the percentage factor. The percentage factor has merit in that it will reflect the normal discrepancies in the preparation of an estimate.

On those utility adjustments less than \$5,000, the utilities broad gauge unit prices may be used in preparing lump sum estimates with a breakdown of material, labor, equipment, overhead, etc. When broad gauge unit prices are used, the utility must furnish supporting cost standards or background data for use of State and Bureau personnel which will provide an accurate basis for reviewing utility proposals and will permit auditors a reasonable means to verify the estimated costs. The validity and reasonableness of a utilities broad gauge unit prices will be verified periodically by an audit performed by State and Bureau personnel.

F.L. Anthony
Acting Regional Engineer

Basis of Payment

The state shall pay for utility construction where the existing utility facility requiring adjustment is in the right of way taking area. Credits shall be applied for utility betterment and salvage value. The utility shall move their facilities occupying public right of way at their own expense unless prior rights exist. The utility shall also pay for facilities moved and/or improved at their option on continuing private lands but included in the total work plan.

Developing a State-Share Percentage

Because of the complex nature of an audit-type contract where both compensable and noncompensable work are involved, a State-share Percentage is developed at estimating time which, along with appropriate credits can be applied to actual total project costs at billing time. This Utility Estimating Form has been designed to aid in this computation.

Form Explanation by Column or Row Number

1. **Plan Sheet:** Alphanumeric identifier to relate a line item to specific highway or utility plan sheet(s).
2. **Type of Existing Facility:** Description of existing utility item, i.e., 200 pair cable, 4" dia. gas line, 8" dia. force main, etc. "Item" can be used as a proxy to cover all the "nuts and bolts" and there can be as many line "items" as needed to cover an area.
3. **Station(s) of Relocation:** Highway plan stationing for existing facility item requiring relocation.
4. **Total Reimbursable and Non-reimbursable:** Include total quantity in conflict with proposed highway construction. Do not include items outside the existing right of way that are not in an area of proposed right of way acquisition.
5. **Reimbursable Quantity:** Quantity of existing facility on land to be purchased for highway improvements.
6. **% Reimbursement:** Column 5 divided by Column 4, resultant times 100.
7. **Credit - State Share Salvage \$:** Credit for salvage value, if any, for quantity listed in column 5. This shall be a credit to the State at billing time, again based on utility accounting procedures.

At Time of Billing

The State's responsibility shall be the Total Actual Project Cost less the Total Betterment Cost from column 11 times the percent from item 15. From this resultant shall be subtracted the Total State's Share of Salvage Credit from

Final billing shall be submitted in the same form as the contract estimated per provisions of the contract.

8. **Type of New Facility:** Description of new facility designed to replace existing facility.
9. **Quantity of New Facility:** Quantity of new facility included in work order intended to replace existing facility listed in columns 2, 3, and 4.
10. **Total Estimated Cost (\$) to Install:** Total installed cost of the new facility item at latest available rates.
11. **Total Betterment (\$):** Difference between the Total Cost in column 10 and what the cost would have been to install the existing size facility along the new facility alignment. Improvements required by codes or changed industry standards need not be credited as betterments. Attach computation of estimates.
12. **Net Cost (\$) to Replace In-Kind:** Column 10 - Column 11.
13. **Net Reimbursable Cost (\$):** Column 12 x Column 6, the resultant divided by 100.
14. **Reimbursable Cost Less Credits (\$):** This is the estimated State's dollar responsibility per item. It is figured by column 13 minus column 7. The sum column 14 is the total Estimated Reimbursable Contract Cost. If this sum is less than \$50,000 a "Lump Sum" type Contract may be used.
15. **Total % State Participation:** This is the percent to be applied to the actual project billing, along with appropriate credits, to determine how much the State will pay. Column 13 divided by column 12, the resultant times 100.

column 7. Note that Salvage Costs can be recomputed for the date that the facility is actually put into service. Betterment shall be recomputed based on actual material plus installation costs at the time of installation.

Utility Estimate SUMMARY

Total Installation Cost		\$86,861
Engineering	+	\$ 6,600
Miscellaneous	+	\$ 0
Trees and Stumps (Sta 102)	+	\$ 750
Legal Review	+	\$ 200
Surveying		\$ 1,000
		=====
Subtotal		\$95,411
Betterment	-	\$ 4,113
		=====
Total of costs subject to %		\$91,298
State Share 74.49%		\$68,008
(per line #15 of Utility Estimation Report form DT1850)		

MINUS CREDITS AND PLUS ADD-ONS

Used Life (compensable portion only) -		\$ 9,664
Salvage (compensable portion only) -		\$ 500
Plant Loss (compensable portion only)	+	\$ 1,000
Right of Way (replacement areas only)	+	\$ 3,200

Total Estimated Cost to State = \$62,044

Utility Estimate SUMMARY

(Alternate method – costs/credits for total project, not separated for compensable areas)

Total Installation Cost		\$86,861
Engineering	+	\$ 7,800
Miscellaneous	+	\$ 0
Trees and Stumps (Sta 102)	+	\$ 750
Used Life (entire facility)	-	\$19,664
Salvage (entire facility)	-	\$ 1,500
Plant Loss (entire facility)	+	\$ 1,800
Right of Way (entire facility)	+	\$ 3,200
		=====
Subtotal		\$79,247
Betterment	-	\$ 4,113
		=====
Total of costs subject to %		\$75,134

State Share 74.49% = \$55,967
(per line #15 of Utility Estimation Report form DT1850)

Wisconsin Department of Transportation

UTILITY ESTIMATION REPORT - LUMP SUM or AUDIT TYPE

DT1850 6/2006

Utility: Century Tel
Project ID: 1140-02-41

Description: Delavan - Lake Geneva Rd., USH 50, Walworth County

1	2	3	EXISTING FACILITY				7	8	9	NEW FACILITY					14
			4	5	6	10				11	12	13	14		
PLAN SHEET	TYPE	STAS OF TOTAL RELOC	TOTAL REIMBURS PLUS NONREIMB (in feet)	REIMBURS QUANTITY (in feet)	% REIMBURS	CREDIT TO STATE SALVAGE \$	TYPE	TOTAL QUANTITY (in feet)	TOTAL ESTIMATED COST (\$ TO INSTALL	TOTAL BETTERMENT (\$)	NET COST (\$ TO REPLACE IN KIND 10-11	NET REIMBURS COST (\$ 12x6	REIMBURS COST LESS CREDITS (\$ 13-7		
4.16	BHAG 200	2295 TO 2310	1500	0	0%		AFAW 200	1620	\$ 8,100.00		\$ 8,100.00				
4.17	BHAG 200	2310 TO 2345	3520	1610	46%		AFAW 200	3618	\$ 18,090.00		\$ 18,090.00	\$ 8,274.12	\$ 8,274.12		
4.18	BHAG 200	2345 TO 2371	2680	2680	100%		AFAW 300	2742	\$ 17,832.00	\$ 4,113.00	\$ 13,719.00	\$ 13,719.00	\$ 13,719.00		
4.19	BHAG 200	2371 TO 2500	1296	600	46%		AFAW 300	1373	\$ 8,925.00		\$ 8,925.00	\$ 4,131.94	\$ 4,131.94		
4.19	PED CAB	2400	1	1	100%	\$ 180.00							\$ (180.00)		
4.2	BHAG 600	2500 TO 5280	2780	2780	100%	\$ 1,000.00	AFAW 800	3100	\$ 33,914.00	\$ 5,080.00	\$ 28,834.00	\$ 28,834.00	\$ 27,834.00		
TOTALS						\$ 1,180.00			\$ 86,861.00	\$ 9,193.00	\$ 77,668.00	\$ 54,959.06	\$ 53,779.06		
15. TOTAL % State Participation (Total 13 / Total 12) x 100 =										71%					

Correspondence/Memorandum

Date: January 5, 2000

To: Warren La Duke
Statewide Utility Projects Coordinator
Room 651 HFSTB

From: Payne Hertz
SE Region-Waukesha Utility Coordinator

RE: Utility Project ID 2130-07-40
R/W Project ID 2130-07-21 Parcel # 10
Wisconsin Electric Power Company
Construction Project ID 2130-07-70
Milwaukee - Green Bay Road
Good Hope Road Interchange
USH 41/45
Milwaukee County

RECOMMENDATION FOR APPROVAL:

The cost estimate and work plan for this project has been reviewed and is reasonable. The estimate and agreement are recommended for approval on behalf of the Department of Transportation.

SE Transportation Region - Waukesha

Region Utility Coordinator

Date

Bureau of Technical Services (BTS)

Statewide Utility Projects Coordinator

Date

The following materials relating to the subject project are submitted for parcel processing:

- One copy of the signed and executed Conveyance of Rights in Land – Form DT1660. (*i.e. release of rights document*)
- The original of the Lump Sum (*or Audit*) Agreement in the amount of \$9,982.00. *Two originals if the utility wants an original signature.*
- One copy of WEPCO's plans and cost estimate, including a summary worksheet showing the major cost areas and total cost.
- One copy of the right of way plat sheets that show the highlighted area of compensability.
- One copy of the plan and profile sheets that show the highlighted area of compensability.

The affected Transportation Project Plats and their recording dates are ____.

Brief discussion of what the agreement covers. Discuss any unusual circumstances or explain any items that are not clear. For example:

This agreement covers the relocation of 20 power poles, 9 of which are compensable, for a reimbursement ratio of 45%.

The used life credit is \$115.00, the salvaged material credit is \$890, and the betterment credit is \$0. All of these credits are shown in the estimate.

The plant loss value is \$0.

The funding for this project is 100% State Funds.

The Region Office or the local government will approve required permits prior to construction activity.

Wisconsin Department of Transportation

August 19, 2003

Alan Ehlert
Tri-County Telephone Cooperative
23669 Washington Street
Independence, WI 54747

SUBJECT: TRANS 220 Work Plan and Utility Agreement Approval

Utility Project ID 7737-01-40
R/W Project ID 7737-01-21 Parcel # 3
Construction Project ID 7737-01-71 and 73
West County Line - STH 93 Road
STH 15
Trempealeau County

This letter is to inform you that I have received and approved your proposed work plan involving the relocation of your facilities for the subject project and have found it to be in conformance with Trans. 220. Also, the utility agreement for this project has been reviewed and approved. Enclosed is a copy of the approved utility agreement for your file.

I am also sending a copy of the release of rights document for this project. Please have this document signed and returned to me. As you know, the utility agreement is contingent on us receiving the signed release of rights document. Remember, I cannot process any invoices until I have received the signed release of rights document. (OPTIONAL PARAGRAPH – USE THIS PARAGRAPH ONLY WHEN YOU HAVE NOT ALREADY SENT THE RELEASE OF RIGHTS TO THEM.)

The utility portion of the Special Provisions of the DOT highway contract is based on your work plan. If any of this information changes, contact me immediately so that I can correct our contract documents. **A copy of the Special Provisions relating to your company is enclosed.** (OPTIONAL PARAGRAPH, USE WHEN APPROPRIATE)

You are hereby authorized to proceed with the relocation after all necessary permits to occupy highway rights of way have been approved. Permits and/or coordination with other agencies may also be required for your proposed relocation.

All required right of way has been acquired for this project. **OR** DOT real estate Parcels 7, 33, 67, 89 and 91 have not yet been acquired for this project. Please contact Randy Rudy, 608-246-3456, or randy.rudy@dot.state.wi.us for an update on the status of real estate acquisitions on this project.

INSERT HERE ANY PROJECT SPECIFIC INFORMATION THAT YOU NEED TO INCLUDE IN THE LETTER. (OPTIONAL PARAGRAPH)

INSERT HERE ANY UTILITY COMPANY SPECIFIC INFORMATION THAT YOU NEED TO INCLUDE IN THE LETTER. (OPTIONAL PARAGRAPH)

This project will be let to contractor bids on May 9, 2004 with construction starting in late May 2004 at the earliest.

Emerald City Engineering will be the DOT consultant managing the project. Please contact Emerald City Engineering at (715) 378-4493 or myself at (608)-785-9032 to arrange for any r/w staking you may need to complete your relocation work.

It will be necessary to notify us if any substantial change is made in the planned relocation of the facilities and if you plan to use a subcontractor. Please advise us of the date you plan to start construction and when you have completed the relocation.

Gary J. Jackson
SW Region-La Crosse Utility Coordinator
608-785-9032
gary.jackson@dot.state.wi.us

Enclosures as stated.

**U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
P.O. BOX 1269
Madison, Wisconsin**

October 17, 1963

State Highway Commission
Madison, Wisconsin

Gentlemen:

Subject: Project I 94-5(14)314, Milwaukee County
South County Line – Milwaukee Road (IH 94)
Wisconsin Electric Power Company (Parcel 4)

We have reviewed your letter of September 24 requesting our policy regarding the matter of purchasing materials for utility alterations in advance of authorizing the construction.

The purchase of materials in advance of authorization will not necessarily jeopardize the eligibility of federal participation, provided that material is not incorporated into the work prior to approval of the plans and estimates covering the alterations. Also, freight and handling charges incurred prior to authorization would be eligible for federal participation provided the cost records are segregated and the charges are substantiated as applicable to the pre-ordered material.

Sincerely,

E L High, for
Robert Paddock
Division Engineer

Wisconsin Department of Transportation

Date

Electric Ladyland Company
123 High Street
Lyons, WI 53123

RE: Utility Project ID xxxx-xx-40 Parcel 231
Lone Rock – Spring Green Road
STH 52 Iowa County

We have received your invoice or relocation costs associated with the above project and parcel, (invoice number _____). Upon review of this invoice we find it to be for the exact amount of the original estimate. In that this work was performed under an "Audit Agreement" (form DT1541) the invoice should be based on actual costs incurred for the reimbursable portion of the relocation cost rather than the original estimated amount. Also please make sure that there is sufficient detail in the information provided so that we can determine that the actual costs incurred are consistent with the intent of the estimate and that the invoiced costs are supported by your company's job cost bookkeeping system. We cannot make payment unless the proper documentation is in order.

It is possible that the actual costs are the same as the estimated amount, but generally we find this not to be true.

The original estimate submitted with this parcel indicated an amount of reimbursement at 68% for the cost incurred under the Lone Rock work order 6775 and 31.5% for cost incurred under the Spring Green work order 6458 (see attachment). These percentage reimbursements should be reflected in your final invoice. **NOTE to UTILITY COORDINATORS: Change this part to fit the specific situation for the project that you are writing about.**

Please review your invoice to ensure the proper procedure is being used to determine the State share of the project costs. Make any changes that are necessary and resubmit the invoice to me at the address above.

If the final invoice is more than 10 % higher or lower than the estimated amount please provide an explanation for the cost differential. There may have been variations in material prices, quantities, or time spent on the project that altered your costs. Please explain what happened so that we can understand the variation from the estimate.

I have attached a short explanation of the two types of agreements we use for utility relocation projects and some excerpts from the Federal and State regulations regarding utility agreements.

If you have any questions concerning this letter please feel free to contact me at () - or via email at _____@dot.state.wi.us

Sincerely,

Region Utility Coordinator

Some General Comments Regarding Agreements and Invoices

The State of Wisconsin uses two types of agreements for the reimbursement of utility facility relocation costs that are located on private property within the taking area of a proposed highway improvement project.

Lump Sum Agreement

The Lump Sum Agreement can be used for amounts up to \$50,000.00. The process for use of the lump sum agreement requires the utility to prepare an estimate for the reimbursable portion of the utility's relocation cost. The estimate should include sufficient detail to justify the total costs. This estimate is reviewed by the highway agency and, if found acceptable, approved and the utility is then authorized to proceed with work. Upon completion of work, the utility certifies work complete and provides an invoice to the highway agency for the agreed lump sum price included in the original agreement and estimate. The highway agency makes payment for the agreement amount and the project is then complete.

This type of agreement works best for smaller sized projects where the scope of work is easily defined and the quantities involved are not subject to variation.

Audit Agreement

This form of agreement can be used for any size project but must be used for agreements over \$50,000.00. The unique feature of this type of agreement is that it allows for payment of the actual reimbursable costs incurred by the utility rather than the estimated costs as with the Lump Sum Agreement.

The process for this type of agreement is the same as with the lump sum agreement in that the utility prepares a detailed estimate with exhibits and submits it to the highway agency for review. If acceptable the highway agency approves the agreement and authorizes the utility to proceed with work. Upon completion of work the utility certifies work complete and submits an invoice based on the actual costs incurred for the work. This assures the utility that they will be reimbursed for the actual costs to perform the work based on the charges that were incurred. The highway agency then reviews the invoice submitted by the utility and, if found to conform to the percentage of reimbursement and units as specified in the estimate, payment is made. With this type of agreement, the highway agency has the right to audit company records to ensure that the costs as invoiced were actually incurred by the utility.

Federal and State Agreement Requirements:

23CFR 645.113(c)

The agreement shall be supported by plans, specifications when required, and itemized cost estimates of the work agreed upon, including appropriate credits to the project, and shall be sufficiently informative and complete to provide the Transportation Department (TD) and the FHWA with a clear description of the work required.

223CFR 645.117(a)

(a) Developing and recording costs.

(1) All utility relocation costs shall be recorded by means of work orders in accordance with an approved work order system except when another method of developing and recording costs, such as lump-sum agreement, has been approved by the TD and the FHWA. Except for work done under contracts, the individual and total costs properly reported and recorded in the utility's accounts in accordance with the approved method for developing such costs, or the lump-sum agreement, shall constitute the maximum amount on which Federal participation may be based.

(2) Each utility shall keep its work order system or other approved accounting procedure in such a manner as to show the nature of each addition to or retirement from a facility, the total costs thereof,

and the source or sources of cost. Separate work orders may be issued for additions and retirements. Retirements, however, may be included with the construction work order provided that all items relating to retirements shall be kept separately from those relating to construction.

23CFR 745.117(i)

i) Billings.

(1) After the executed TD/utility agreement has been approved by the FHWA, the utility may be reimbursed through the STD by progress billings for costs incurred. Cost for materials stockpiled at the project site or specifically purchased and delivered to the utility for use on the project may also be reimbursed on progress billings following approval of the executed TD/utility agreement.

(2) The utility shall provide one final and complete billing of all costs incurred, or of the agreed-to lump-sum, within one year following completion of the utility relocation work, otherwise previous payments to the utility may be considered final, except as agreed to between the STD and the utility. Billings received from utilities more than one year following completion of the utility relocation work may be paid if the STD so desires, and Federal-aid highway funds may participate in these payments.

(3) All utility cost records and accounts relating to the project are subject to audit by representatives of the State and Federal Government for a period of 3 years from the date final payment has been received by the utility.

Wis. Stat. s. 16.528 Interest on late payments.**(1) DEFINITIONS.** In this section:

(a) "Agency" means an office, department, independent agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law, that is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority created in subch. II of ch. 114 or in ch. 231, 233, 234, 237, 238, or 279.

NOTE: Par. (a) is shown as amended eff. 1-1-15 by 2013 Wis. Act 20. Prior to 1-1-15 it reads:

(a) "Agency" means an office, department, independent agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law, that is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 231, 233, 234, 237, 238, or 279.

(b) "Subcontractor" has the meaning given in s. 66.0901 (1) (d).

(2) Interest payable.

(a) Except as provided in sub. (3) or as otherwise specifically provided, an agency which does not pay timely the amount due on an order or contract shall pay interest on the balance due from the 31st day after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or contract, whichever is later, or, if the agency does not comply with s. 16.53 (2), from the 31st day after receipt of an improperly completed invoice or receipt and acceptance of the property or service under the order or contract, whichever is later, at the rate specified in s. 71.82 (1) (a) compounded monthly.

(b) For the purposes of par. (a), a payment is timely if the payment is mailed, delivered or transferred by the later of the following:

1. The date specified on a properly completed invoice for the amount specified in the order or contract.
2. Except as provided in subd. 3., within 45 days after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or contract, or, if the agency does not comply with s. 16.53 (2), within 45 days after receipt of an improperly completed invoice or receipt and acceptance of the property or service under the order or contract, whichever is later.
3. For orders or contracts entered into on and after the first day of the 3rd 12-month period beginning after February 1, 1987, within 30 days after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or contract, or, if the agency does not comply with s. 16.53 (2), within 30 days after receipt of an improperly completed invoice or receipt and acceptance of the property or service under the order or contract, whichever is later.

(2m) INTEREST PAYABLE TO SUBCONTRACTORS.

(a) Except as provided in sub. (3) (e) or as otherwise specifically provided, principal contractors that engage subcontractors to perform part of the work on an order or contract from an agency shall pay subcontractors for satisfactory work in a timely fashion. A payment is timely if it is mailed, delivered or transferred to the subcontractor no later than 7 days after the principal contractor's receipt of any payment from the agency.

(b) If a subcontractor is not paid in a timely fashion, the principal contractor shall pay interest on the balance due from the 8th day after the principal contractor's receipt of any payment from the agency, at the rate specified in s. 71.82 (1) (a) compounded monthly.

(c) Subcontractors receiving payment under this subsection shall pay lower-tier subcontractors, and be liable for interest on late payments, in the same manner as principal contractors are required to pay subcontractors in pars. (a) and (b).

(3) EXCEPTIONS. Subsection (2) does not apply to the following:

- (a)** Any portion of an order or contract under which the payment is made from federal moneys.
- (b)** An order or contract that is subject to late payment interest or another late payment charge required by another law or rule specifically authorized by law.
- (c)** An order or contract between 2 or more agencies except if the order or contract involves prison industries.
- (d)** An order or contract for services which provides for the time of payment and the consequences of nontimely payment.
- (e)** An order or contract under which the amount due is subject to a good faith dispute if, before the date payment is not timely, notice of the dispute is sent by 1st class mail, personally delivered or sent in accordance with the procedure specified in the order or contract. In this paragraph, "good faith dispute" means a contention by an agency that goods delivered or services rendered were of a lesser quantity or quality than ordered or specified by contract, were faulty or were installed improperly; or any other reason giving cause for the withholding of payment by the agency until the dispute is settled.

(4) Appropriation from which paid. An agency which pays interest under this section shall pay the interest from the appropriation for administration of the program under which the order or contract was made or entered into unless payment from that appropriation is prohibited.

Notwithstanding ss. 20.115 to 20.765, if payment from the appropriation for administration of the program is prohibited, the interest payment shall be made from a general program operations appropriation of the agency determined by the agency. If the program is administered from more than one appropriation, the interest payment shall be made from the appropriation or appropriations for program administration determined by the agency.

(5) REPORTS OF INTEREST PAID. Annually before October 1, each agency shall report to the department the number of times in the previous fiscal year the agency paid interest under this section, the total amount of interest paid and the reasons why interest payments were not avoided by making timely payment.

(6) ATTORNEY FEES. Notwithstanding s. 814.04 (1), in an action to recover interest due under this section, the court shall award the prevailing party reasonable attorney fees.

History: 1985 a. 300; 1987 s. 312 s. 17; 1987 a. 399; 1989 a. 233; 1991 a. 39; 1995 a. 27, 241; 1999 a. 150 s. 672; 2001 a. 16; 2001 a. 30 s. 108; 2005 a. 74, 335; 2007 a. 20, 97; 2009 a. 28; 2011 a. 7, 10; 2013 a. 20.



Division of Transportation
System Development
 Southwest Region
 2101 Wright Street
 Madison, WI 53704-2583

Internet: www.dot.wisconsin.gov
 Telephone: 608-246-3801
 Teletypewriter (TTY): 608-246-5385
 Facsimile (FAX): 608-246-3843
 E-mail: madison.dtd@dot.state.wi.us

September 7, 2005

NEW GLOBAL TRANSMISSION COMPANY
 1456 ENERGY DRIVE
 P O BOX 789
 SUNNYVALE, WI 55500

NOTICE TO VENDOR OF GOOD FAITH DISPUTE / IMPROPER INVOICE

DT1568 5/2006 s.16.528, 16.53(2) Wis. Stats.

We have received the attached invoice. Because of a problem or lack of information, it has been removed from the payment process and returned to you. The box checked (below) identifies the problem. If appropriate, contact the person or department that placed the order to resolve the problem. Please return a corrected invoice or credit with this letter to the address shown above. Please reply within 10 business days.

Invoice Number	Date Invoice Received	Purchase Order Number	Current Date
GTR0007	September 8, 2005		

- No purchase order (PO) number is referenced on your invoice. Please provide the PO number on each invoice submitted. If you do not have a PO number, contact the person who placed the order for assistance.
- As of the following date: _____, the PO number referenced on your invoice is:
 - Invalid;
 - Expired;
 - Canceled.
- This credit memo cannot be processed because the referenced invoice has not been received. Please provide a copy of the invoice to which this credit applies.
- The vendor name shown on the invoice(s) does not match the PO. We do not make third party payments.
- The attached invoice was paid either as "Cash with Order", or against the invoice specified below. Payment was remitted by the dated check identified below. Please remove this invoice from our account.

Invoice Number	Check Number	Check Date
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- The pricing does not comply with the PO. If you have questions regarding the price, please telephone the Buyer, whose name is shown at the bottom of the PO.
- The description on the invoice does not match the description on the PO.
- No record exists which indicates the item(s) were received.
- Item(s) received were returned according to the authorization(s) specified below.

WDOT Return Material Instructions (Form DT1738)	Vendor Return Authorization Number
---	------------------------------------
- Incorrect item(s) were received; and/or item(s) do not meet purchase order specifications.
- Other Further documentation is needed to process this invoice.

DOT Contact Name	Title	Area Code - Telephone Number
Warren LaDuke	WisDOT Utility Coordinator	608-246-3852

If you have questions, please contact the DOT representative at the telephone number identified above.
 DOT Representative: Please send a copy of this completed form to the Bureau of Business Services, Expenditure Accounting.

Wisconsin Department of Transportation

Date

Chad Morse
Lathers Electric Company
1234 Idunno Road
Clinton WI 53525

Utility Project ID 2330-02-44
Sharon – Clinton Road
STH 69 Walworth County
Parcel 103

Our records indicate that the work for the above utility relocation project has been completed, but we have not received an invoice from you yet.

I would like to remind you that Wisconsin Department of Transportation requires invoicing within 1 year of the completion of the construction work.

Please check with your billing department on the status of the invoice for this project. If you are unable to produce an invoice in a timely manner, please contact me to discuss the situation.

Sincerely,

Taylor A. Peterson
SW Region Utility Coordinator
(XXX) XXX-XXXX

Electric Ernie's Gas Company
6906 Graduation Lane
Emerald City, Wisconsin

Invoice

Wisconsin Department of Transportation
North Central Region – Rhinelander Office

Relocation of gas main for highway Project 5255-03-41, STH 70, Oneida County

Total Costs per Lump Sum Agreement = \$38,789

Please send a check for this amount to the address listed above.

Electric Ernie's Gas Company
6906 Graduation Lane
Emerald City, Wisconsin

Invoice

Wisconsin Department of Transportation
North Central Region – Rhinelander Office

Work for highway move on STH 70, From STH 55 to East County Line, Forest County

Labor	\$24,468
Materials	\$87,839
Engineering	\$12,350
R/W	\$ 500

Subtotal	\$125,157
Overhead x.0.28	\$ 35,044

Total Cost = \$160,201

Compensable % = 73% per Audit Agreement 5255-03-42

Total WisDOT Cost = .73 x \$160,201 = \$116,947

See Detail attached.

Utility Company Letterhead

Date

DESIGN PROJECT ENGINEER NAME
Wisconsin Department of Transportation
ADDRESS

SUBJECT: UTILITY COMPANY NAME
Inclusion of Non-Participating Utility Item in WisDOT Contract
Construction Project ID 1060-05-71
Marquette Interchange North – South Freeway, Wells St. – North Ave.
IH 43 Milwaukee County

Dear DESIGN PROJECT ENGINEER NAME:

We would like to request that the Wisconsin Department of Transportation (WisDOT) incorporate certain utility work on behalf of UTILITY COMPANY NAME into the contract documents for the above noted highway improvement project.

Specifically, the work we would like to incorporate into the contract is *the installation of approximately 90 feet of 12-inch ductile iron water main in W. Juneau Ave. The new water main is to occupy the same location as an existing 12-inch cast iron water main 26 feet south of the centerline of W. Juneau Ave. The limits of the new installation shall start from a point 6.5 ft. east of the centerline of N. 11th St and continue East for approximately 90 feet to the water valve at Station 102+37, 26 feet right. [Describe all work involved].*

As part of this work, we propose to furnish the following:

*[List everything that the utility will provide or be responsible for such as:]
All 12-inch ductile iron pipe and fittings required.*

Contract specifications on the requirements of the work involved. This information will be provided to WisDOT by _____ for inclusion in the highway improvement contract documents.

Our staff or consultant will do the inspection and approval of all the above work.

We understand that this work will be incorporated into the highway improvement contract as a non-participating item and that the cost for its installation shall be borne by UTILITY COMPANY NAME. We further understand that we will be billed for all work associated with this installation, including labor and materials, along with WisDOT construction inspection and administrative costs, performed on our behalf under the WisDOT contract.

Thank you for your cooperation in this matter. If you have any questions please contact me at TELEPHONE NUMBER.

Sincerely,

UTILITY CONTACT NAME
Title

cc: REGION UTILITY COORDINATOR NAME, WisDOT

Wisconsin Department of Transportation

Date

UTILITY CONTACT NAME

Address

Subject: UTILITY COMPANY NAME
Inclusion of Non-Participating Utility Item in WisDOT Contract
Construction Project ID 1060-05-71
Marquette Interchange North – South Freeway, Wells St. – North Ave.
IH 43 Milwaukee County

Dear UTILITY CONTACT NAME:

The Wisconsin Department of Transportation (WisDOT) has received your letter dated ____ in which you requested WisDOT to include UTILITY COMPANY NAME utility work into the above highway improvement contract.

WisDOT agrees to *install approximately 90 feet of 12-inch ductile iron water pipe and fittings. [List or summarize the work involved]* as described in your letter, in *W. Juneau Avenue* on behalf of UTILITY COMPANY NAME.

This work is considered non-participating and 100% of the cost of its installation, including labor and materials, along with WisDOT construction inspection and administrative costs, shall be borne by UTILITY COMPANY NAME. The inspection and approval of these facilities is the responsibility of UTILITY COMPANY NAME.

When this agreement takes place before the PS&E submittal:

WisDOT will pay for the measured quantity at the contract unit price under the following bid items:

<u>SPV number (if known)</u>	<u>Description</u>	<u>Estimated quantity</u>
SPV.0090.3420	LF installation of 12-inch ductile iron pipe	90

WisDOT construction inspection and administrative costs are estimated at 5% if the total bid cost is over \$5,000 and 10% if the total bid cost is under \$5,000. WisDOT will be invoicing UTILITY COMPANY NAME for the actual costs upon completion of the work

Upon award of the contract, WisDOT will provide the actual bid prices to UTILITY COMPANY NAME, along with the name of the contractor and additional contact information regarding the construction project. Award of the contract is anticipated to be about 2 weeks after the DATE bid opening.

If you have any questions you may contact me at PHONE NUMBER or the Region Utility Coordinator, NAME at PHONE NUMBER.

Sincerely,
DESIGN PROJECT ENGINEER NAME
Title

cc: REGION UTILITY COORDINATOR NAME, WisDOT
REGION PLANNING MANAGER NAME, WisDOT
CONSTRUCTION PROJECT MANAGER NAME, WisDOT

For work added by change order:

WisDOT will pay for the measured quantity at the contract unit price under the following bid item:

Category Number: _____

<u>SPV number</u>	<u>Description</u>	<u>Bid Price</u>	<u>Estimated cost</u>
SPV.0090.3420	LF install 12-inch pipe	\$150.00	\$13,500

WisDOT construction inspection and administrative costs are estimated at \$ 675.00.

WisDOT will be invoicing the UTILITY COMPANY NAME for the actual costs upon completion of the work.

The Construction Project Manager for this contract is NAME at PHONE NUMBER. He/she will be your point of contact for information on contractor operations and schedule.

If you have any questions you may contact CONSTRUCTION PROJECT MANAGER NAME at PHONE NUMBER, or the Region Utility Coordinator, NAME at PHONE NUMBER.

Sincerely,

DESIGN PROJECT ENGINEER NAME

Title

cc: REGION UTILITY COORDINATOR NAME, WisDOT
REGION PLANNING MANAGER NAME, WisDOT
CONSTRUCTION PROJECT MANAGER NAME, WisDOT

Wisconsin Department of Transportation

Date

UTILITY CONTACT NAME

Address

Subject: UTILITY COMPANY NAME

Inclusion of Non-Participating Utility Item in WI DOT Contract

Construction Project ID 1060-05-71

Marquette Interchange North – South Freeway, Wells St. – North Ave.

IH 43 Milwaukee County

Dear UTILITY CONTACT NAME:

The Wisconsin Department of Transportation (WisDOT) has awarded a contract for the subject highway improvement project to HIGHWAY CONTRACTOR NAME.

Please note the following final contract SPV numbers that were assigned to UTILITY COMPANY NAME work and the related bid prices:

Category Number: _____

<u>SPV Number</u>	<u>Work item</u>	<u>Unit cost</u>	<u>Total Estimated Cost</u>
SPV.0090.4305	LF Removing Trench box	\$100.00	\$ 29,000.00
SPV.0090.4310	LF Abandoning Trench box	\$ 70.00	\$103,000.00
	WisDOT Inspection & Administrative Costs (5%)		<u>\$ 6,600.00</u>
	Grand Total Estimated Cost =		\$138,600.00

This work, as described in your DATE letter, is considered non-participating and 100% of the cost of its installation, including labor and materials, along with WisDOT construction inspection and administrative costs, shall be borne by UTILITY COMPANY NAME. The inspection and approval of these facilities is the responsibility of UTILITY COMPANY NAME. Upon completion of the work, WisDOT will be invoicing UTILITY COMPANY NAME for the cost of actual work.

The pre-construction meeting for this project has been scheduled for DATE, TIME, and LOCATION. Please have someone from UTILITY COMPANY NAME attend the meeting to answer any questions and to arrange for further coordination of construction activities.

The Construction Project Manager for this contract is NAME, at PHONE NUMBER. He/she will be your point of contact for information on contractor operations and schedule.

Sincerely,

DESIGN PROJECT ENGINEER NAME

Title

cc:

Region Utility Coordinator Name, WisDOT

Region Planning Manager Name, WisDOT

Construction Project Manager Name, WisDOT