

**Procedures for
Utility Relocation/Reimbursement
for State and Federally Funded
Local Public Agency Projects**



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Purpose of Document

This document outlines the basic requirements governing Utility relocation/ reimbursement policies and procedures, intended to be used by a Local Public Agency (LPA) on state and federally funded local projects.

It was produced by the Project Administration Unit, Right of Way Section, Oregon Department of Transportation (ODOT). These procedures are intended to be used as general guidelines by LPA's in the execution of their projects.

Please contact the State Utility Liaison (SUL) at 503-986-3600

In addition, this document and all of the related forms and examples can be found at the following Web Site:

http://www.oregon.gov/ODOT/HWY/ROW/utility_lpa.shtml

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Introduction

ODOT is the state agency designated to implement Oregon's federal-aid highway program. In addition, the Federal Highway Administration (FHWA) has assigned overall responsibility for county and city federal-aid road projects to ODOT. The local agency program is administered by ODOT through the Regional offices and their Local Agency Liaison (LAL).

Federal regulations require the LPA to have an approved program and procedures for utility relocation and accommodation to be eligible for federal funding reimbursement. Lacking a federally approved program, the LPA must follow the ODOT utility relocation/reimbursement procedures.

The ODOT approved policy and procedures for utility relocation and reimbursement are contained in the following two documents:

- [Highway/Utility Guide](#)
- [Code of Federal Regulations: 23 CFR 645A](#)

The Highway/Utility Guide provides a baseline model of how utilities are to be recognized and incorporated into the project development process. The Code of Federal Regulations (CFR) describes the policy and procedures for utility reimbursement. Additional guidance and interpretation of 23 CFR 645A are contained in the *Federal Highway Administration Program Guide: Utility Relocation and Accommodation on Federal-Aid Highway Projects*.

The above-referenced documents can be downloaded from the following web site:

http://www.oregon.gov/ODOT/HWY/ROW/utility_lpa.shtml

The remainder of this document will focus on the minimum documentation requirements and deliverables for all projects and the procedures necessary for reimbursable utility relocations.

Documentation Requirements

All Projects

- Utility Certification

At any time during project development, but no later than two weeks prior to the contract advertising date, a [Utility Certification](#) must be completed before approval can be granted to advertise a project. The Certification is required for all projects, regardless of whether utilities are in conflict or not. It is prepared by the LPA and submitted to the LAL and the State Utility Liaison (SUL). The following excerpt from the CFR specifies the requirements for the Utility Certification:

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23 CFR 639.309 Authorization: Authorization to advertise the physical construction for bids or to proceed with force account construction thereof shall normally be issued as soon as, but not until, all of the following conditions have been met:

(a) The plans, specifications, and estimates (PS&E) therefore have been approved.

(b) A statement is received from the State, either separately or combined with the information required by §635.309(c), that either all right-of-way clearance, utility, and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. Where it is determined that the completion of such work in advance of the highway construction is not feasible or practical due to economy, special operational problems and the like, there shall be appropriate notification provided in the bid proposals identifying the right-of-way clearance, utility, and railroad work which is to be underway concurrently with the highway construction.

Additional Documentation Requirements

Projects with Conflicting Utilities (Non-Reimbursable)

- [Utility Conflict Letter](#) (non-reimbursable)

The LPA shall prepare and submit a letter, along with highlighted plans, outlining utility conflicts that require removal, relocation or other actions, to the appropriate utilities, the LAL, and the SUL. The letter will include the following information:

- Preliminary plans highlighting the conflicting utilities
- Tabulated list of utility conflicts

- [Timing Requirements Letter](#)

The LPA shall prepare and submit a notification letter to the appropriate utilities, LAL and the SUL, confirming the Utility's relocation and/ or construction schedule commitments. The letter may include language addressing contractor delays that are caused by the Utility's failure to meet its scheduled commitments and the possible consequences of the delay.

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Projects with Conflicting Utilities (Reimbursable)

- [Utility Conflict Letter](#) (reimbursable)

The LPA shall prepare and submit a letter, along with highlighted plans, outlining utility conflicts that require removal, relocation or other actions, to the appropriate utilities, the LAL, and the SUL. The letter will include the following information:

- Preliminary plans highlighting the conflicting utilities
- Tabulated list of utility conflicts
- Reimbursement Information Form

- [Timing Requirements Letter](#)

The LPA shall prepare and submit a notification letter to the appropriate utilities, LAL and the SUL, confirming the Utility's relocation and/ or construction schedule commitments. The letter may include language addressing contractor delays that are caused by the Utility's failure to meet its scheduled commitments and the possible consequences of the delay.

- Notice to Proceed with PE and Construction

The Notice to Proceed with PE and Construction is completed by the SUL. The SUL will send out the Notice to Proceed with PE after receiving the Reimbursement Information form. The Notice to proceed with Construction will be sent out by the SUL after the relocation plans are received and from the Utility and approved by the appropriate people.

PROCEDURES FOR REIMBURSABLE UTILITY RELOCATIONS

LPA / Utility Agreement

State law and federal regulations require the Utility and State to reach prior agreement on the nature of the Utility relocation work, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment (49 CFR 24.306).

No specific form of written agreement is prescribed. Therefore, in most cases, ODOT uses an exchange of correspondence that sets forth all essential terms and conditions and bears endorsement of both parties. A formal agreement is required if the Utility relocation involves continuing obligations by the LPA, such as maintenance of irrigation facilities. The exchange of correspondence that forms the informal Agreement is described below.

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Proposal (Part One of Agreement)

A Utility [Conflict Letter](#), prepared by the LPA, specifies the financial responsibilities of each party and the nature of the Utility relocation work by outlining the area(s) of conflict. The Reimbursement Information Form (RIF) is included with the Conflict Letter. The Utility must complete the RIF and submit to the LPA for approval *prior* to beginning any preliminary engineering work. Information on this form describes the methods of executing the engineering and construction work, the budget estimates, the method of reimbursement, whether betterments are included in the relocation, and necessary approvals for the Utility to proceed.

- [Reimbursement Information Form](#)

The Utility must complete the RIF and submit to the LPA for authorization in order to proceed with preliminary engineering work. ***The LPA must submit the RIF thru the LAL to the SUL for state or federal funding approval and authorization to proceed with preliminary engineering as soon as possible.*** The funding and approval process can take between one and four weeks after receipt of an acceptable RIF. The SUL will provide the Utility written authorization to proceed with preliminary engineering, and will also provide a copy of the authorization to the LPA and LAL. ***Preliminary engineering or relocation work by the Utility prior to authorization from the SUL is not eligible for state or federal funding participation. These expenses would then be the sole responsibility of the LPA.***

Prior authorization is not required for preliminary coordination and engineering work needed to determine the extent of conflicts and to complete the RIF.

Reimbursement Certification

Utilities entitled to reimbursement for facility relocation are required to submit legal documents, such as fee title, easements, deeds, or estoppel or prescriptive affidavits for facilities located on private property. The Utility should provide these documents to the LPA as soon as possible. Example forms for an easement by prescription or can be found in the Appendix of this document for use by the Utility. The Utility should select the form that applies to the appropriate situation. After the Utility submits the legal documentation of compensable property interest, the LPA completes the Reimbursement Certification Form and submits to the SUL through the LAL. A copy of this form is also included in the Appendix on page 11. ***The affidavits, if applicable, and the LPA's Certification must be submitted and approved prior to any reimbursement payment to the LPA.***

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Offer (Part Two of Agreement)

The agreement “offer” usually consists of a plan, specifications and estimate (PS&E), and a letter of transmittal from the Utility that details the work to be done, who is to do the work, and the financial responsibilities of both the Utility and LPA.

Acceptance (Part Three of Agreement)

The LPA shall submit a Reimbursement Package to the SUL for review and approval *prior* to the Utility starting any relocation work. Once approved, the SUL will provide written authorization to the Utility and send a copy to the LPA and LAL. **State or Federal funds will not be eligible for costs incurred by or on behalf of a utility prior to authorization by the SUL.** In certain cases, a verbal authorization may be granted by the SUL for work that must be expedited, provided that a satisfactory estimate has been submitted.

This process may involve multiple approvals for contracted work, such as the method of advertising and concurrence in award to the lowest qualified bidder.

- Reimbursement Package

A reimbursement package shall be submitted to the SUL through the LAL for review and approval *prior* to the Utility starting any relocation work. The reimbursement package should contain the following documents:

- Transmittal letter explaining the relocation work and financial responsibilities of each party
- [Conflict Letter](#) and RIF (if not submitted earlier)
- Utility PS&E
- [Reimbursement Certification Form](#)

Summary of Documentation for Utility Reimbursement

- LPA / Utility Agreement
 - [Conflict Letter](#)
 - [Reimbursement Information Form](#)
 - Federal funding approval
 - Reimbursement Package
 - Authorization Letter(s)
- [Reimbursement Certification](#)
 - Accompanying property rights documents from Utility

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Adding Utility Relocation Work to a Contract

A Utility may add work to the contract if the necessary agreements are in place. The Utility must submit a written request to the LPA to have work added to the contract. The LPA will contact the LAL, who forwards it to the SUL to have an Add Work Agreement completed.

The SUL will send the Add work Agreement to the Utility to be signed. When the signed Add Work Agreement has been returned, the SUL will send the signed Agreement to the Highway Program office and to the LPA. The Highway Program office will contact the Utility to collect payment.

Utility Billings

Review of any reimbursement claim for utility work is primarily the responsibility of the LPA, with technical assistance from the SUL. In general, the LPA Office reviews the billing so they can certify that the work was completed satisfactorily, as agreed by all parties. The LPA also reviews the technical aspects of the billing to ensure adherence to the intent of the Agreement.

Expenses incurred prior to a State/Federal funding authorization date are not eligible for reimbursement, with the exception of preliminary coordination and engineering work needed to determine the extent of conflicts, and complete the RIF. Separate authorization can be requested for advance purchase of materials prior to the relocation authorization, as long as the materials are not incorporated into the work before relocation authorization has been given. This allows for materials that have long delivery times, and must be ordered in advance of construction.

The appropriate LPA personnel will review each detailed utility contract billing which has been submitted and determine the supportable amount based upon the agreement, agency records, supervision, and knowledge of the utility work. The bill should be checked for accuracy, including dollar amounts, appropriate credits, and should match the contract estimate. Variations from the contract estimate should be explained. Any unacceptable variations, such as contested expenditures, etc., should be deleted from the amount of the invoice and explained (after reasonable attempts have been made to correct the billing by contact with the Utility.)

Once the LPA has reviewed and approved the billing, the LPA will certify the following in a transmittal letter to the State:

“Based upon my review of the billing, I certify that the costs reflect actual expenditures to date and that the work performed and materials incorporated into the project substantially conforms to the agreement, contract plans, and estimate.”

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An **invoice for an Actual Cost Agreement** requires more detail. The billing should contain a statement by the Utility that the bill represents actual charges incurred in the execution of the work agreed to in the estimate. It must specify the Agency's share or obligation. The invoice submittal must contain sufficient detailed information to show that the actual costs incurred are consistent with the intent of the estimate, and that the invoiced costs are supported by the Utility's cost bookkeeping system. An invoice that matches the exact dollar amount of the estimate should be closely scrutinized.. While it is possible that the actual costs are exactly 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 only provides the dollar amount and project identification information is insufficient for an Actual Cost Agreement. There must be supporting documentation to explain how the total actual cost was determined. A request should be made to the Utility for additional supporting information if an invoice is submitted without cost details.

The intent of this procedure is to provide for payment of 100 percent of the billing amount that can be reasonably determined by the Agency to be paid to the Utility under a specific agreement, based upon LPA supervision, records, and knowledge of the job. It is expected that the LPA will be able to validate engineering claims for items such as material, labor, equipment, salvage, etc., but will not be able to verify costs for items such as overhead loading, mileage rates, etc., which are verifiable at the State Office.

It is important that all invoices be processed in a timely manner. State Statute ORS 279C.570 requires payment within 30 days that the invoice is submitted or interest is due. This statute also applies to city contracts for their utility relocations, thus, the 30-day time frame begins when the City Contractor submits their proper billing data to the City.

PROCESSING A UTILITY BILL

LPA Office

1. LPA receives the bill from the Utility.
2. LPA reviews the bill for accuracy, completeness, and verifies that the work is finished and has conformed to the Agreement. If the estimate was based on a percentage of the total work, the percent used at the time of billing should match.
3. LPA prepares cover memo.
4. LPA approves bill for payment and sends a cover memo and the original bill to the LAL, who will then submit it to the SUL.

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SUL

1. Receives bill and cover memo from the LAL.
2. Compares bill to agreement.
3. Confirms funding authorization with Highway Finance.
4. Approves bill and forwards to Financial Services for payment.
5. Keeps file copy of billing and backup for audit purposes.

Financial Services

1. Reviews invoice for proper accounting practices.
2. Authorizes payment of bill.
3. Images all invoices and documentation.
4. Sends check (payment) to Utility.

Appendix

[Certification - Estoppel Form](#)
[Certification - Prescription Form](#)
[Certification – Reimbursement](#)
[Certification – Utility Form](#)
[Conflict Letter Non-Reimbursable](#)
[Conflict Letter Reimbursable](#)
[Federal Funding Request \(Example\)](#)
[Reimbursement Information Form](#)
[Timing Requirements Letter \(2nd Notice\)](#)
[Utility Billing Approval Memo](#)

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