UTILITIES- AND RAIL AGREEMENTS

PLUG IN AND GET ON TRACK
QUESTIONS?

- What can I help with?
LAWS

- Railroad Law is 23 CFR 646
- Utility Laws, Rules and Regulations:
  - Code of Federal Regulations: 23 CFR 645A
  - ORS 366.321
  - ORS 373.020
  - OAR 734-055 Accommodation Policy
LAWS (CONTINUED)

• Under 23 CFR 645A 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 Local Public Agency (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.
GUIDANCE

- **Utility Relocation Guide** - Provides an overview of the utility evaluation and relocation process, including roles and responsibilities, and examples of completed forms.

- **Utility Relocation Manual** - Primary resource for the Utility Relocation Program. It details the related rules, laws, utility coordination work during project development, invoicing and reimbursement policies and guidance.

- [https://www.oregon.gov/ODOT/ROW/Pages/Utilities.aspx](https://www.oregon.gov/ODOT/ROW/Pages/Utilities.aspx)
CONTACT INFORMATION AT ODOT

- The ODOT Railroad and Utility Liaison position provides one stop expertise for utility coordination and railroad operations, safety, and design for project delivery of multimodal transportation systems.

Tammy Saldivar
ODOT State Utility and Rail Liaison
(503)986-3658 office
(503)385-6594 cell
Utilityandrailprogra@odot.state.or.us
UTILITIES
KEY TO SUCCESS

• Be sure to have a Utility Coordinator who stays involved.
• He/she will be responsible to ensure nothing gets overlooked or falls through the cracks.

Recent example in Region 1
UTILITY PROCESS

Can be found in the Utility Guide
REIMBURSABLE VERSUS NON-REIMBURSABLE

• What is a Non-Reimbursable Utility?
• What is a Reimbursable Utility?
NON-REIMBURSABLE UTILITY

- A Utility that is in the ROW by permit
- A Utility that is in place by a Franchise agreement unless specified otherwise in the agreement.
REIMBURSABLE UTILITY

- Utilities that have a property right
- A City facility in a City Street
- County facility in a County Road.
- State Highway routed over a City Street if the facility was there prior to the highway.
WHAT PART OF FACILITY IS REIMBURSABLE?

• The part which is within the project limits and found to be in conflict with the proposed construction.

• Acceptable Expenditures:
  • Like kind that is currently in place.
  • Upgrade due to code requirements or laws
  • Reimbursement based on Actual Cost as agreed upon in the original cost estimate (RIF).
    Reimbursement outside of the scope must be justified.
WHAT PART OF FACILITY IS REIMBURSABLE? (CONTINUED)

• Non-acceptable expenditure:
  • Betterments
    • Upgrading a facility for future use.
    • Relocate an Arial facility to an underground facility.
    • Betterments above and beyond what code requires.
CONTACT YOUR LOCAL AGENCY LIAISON

• If you have questions on whether something is reimbursable or not contact the LAL and they can assist you.

• All reimbursable documentation needs to be turned into the LAL to determine if the facility is eligible for reimbursement. The LAL will then turn the information over to the State Utility Liaison.
  • A signed Reimbursement Information Form from the Utility with a cost estimate
  • Prior Right Documentation
Communications facility in an easement
SUL DUTIES FOR REIMBURSABLE UTILITY

- Ensure STIP Utility Relocation (UR) budget is set up
- Ensure a UR EA is set up
- Prepare all Notices to Proceed for reimbursable Preliminary Engineering (PE), Construction, and Materials.
- Review the Utility Coordinator’s recommended Utility Owner’s invoice. Then submit the invoice for payment if SUL concurs.
These are sent at around 30% design (DAP)

- **Project notification Letter** - sent to any utility within the project limits when the utility won’t be impacted

- **Conflict Letter for Reimbursable work** (First Notice as per OAR 734-055) - sent when a Utility needs to relocate and is assumed to qualify for reimbursement from the project

- **Conflict Letter for non-Reimbursable work** (First Notice as per OAR 734-055) - sent when a Utility needs to relocate and does not qualify for reimbursement (The reimbursable status is determined by the RUS and SUL, but utilities are given the opportunity to challenge that status with proper documentation)
FORMS (CONTINUED)

Sent once relocation is agreed upon- usually before final plans.

- **Time Requirement Letter** (Second Notice as per OAR 734-055)- Sent to every utility that will relocate highlighting the utility relocation plan and relocation deadline.
  - It is up to the coordinator to be sure the utilities relocated on schedule.

Signed after all TRLs are sent out- due at PS&E

- **Utility Certification** (explained below)- this is tied to the ROW certification.
WHERE FORMS ARE LOCATED

- [https://www.oregon.gov/ODOT/ROW/Pages/Utility-Forms.aspx](https://www.oregon.gov/ODOT/ROW/Pages/Utility-Forms.aspx)

Utilities website- form link

Local Public Agency Resources
The Federal Highway Administration places overall responsibility for county and city federal-aid road projects with ODOT, as ODOT is the designated agency responsible for implementing Oregon’s federally funded highway program. The local agency program is administered by ODOT through the regional offices and their local liaisons.

The Local Public Agency Procedures Guide outlines the basic requirements governing the relocation and reimbursement procedures and practices to be used by a local public agency on federally-funded local projects. The procedures are intended for use by local agencies as guidelines in the execution of their projects.

Local Agency Project Forms

<table>
<thead>
<tr>
<th>Document Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
UTILITY CERTIFICATION

• By Certifying the Project, we are taking the risk off the contractor, but only for the utilities that were located during the OneCall. We are guaranteeing that the utilities located and added to the base map within the project have been notified, and a plan is in place to relocate.

• We are not stating that all work will be complete.

• The SUL only co-certifies with the LPA.
WHAT THE SUL LOOKS FOR WHEN CO-CERTIFYING

- All required Notifications have been sent out and SUL has copies
- The plans, specifications and Utility Certification match
- Project is using the correct Local Agency Utility Certification form
Utility Certification for Local Public Agency Project

Date: (IDENTIFY DATE)

To: (ODOT LIAISON), ODOT Local Agency Liaison

CC: Tammy Saldivar

From: (YOUR NAME), Utility Coordinator

Key Number: (IDENTIFY PROJECT KEY NUMBER)

Project Name: (PROJECT NAME)

Subject: Utility Certification for (SELECT FROM DROPDOWN)

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Note: This certification is valid for six months, from the date identified above.

This memo certifies that for this project, based on (SELECT PLAN TYPE) dated (DATE OF LAST PLAN SET SUBMITTED TO UTILITY), (INDICATE WORK STATUS – SELECT FROM DROPDOWN) as required for proper coordination with the physical construction schedule.

The bid date for this project is (BID DATE).

Appropriate notification identifying all utility relocation work together with status offer schedule for completion for each utility company involved within the limits of this project has been made a part of the special provisions.

Utility Providers

The following utilities are within the project limits and will be adjusting, relocating, or installing facilities before, during, or after construction. Relocation time requirements for these utilities are attached to this certification:

- (IDENTIFY UTILITIES OR INDICATE NONE)

The following utilities are within the project limits but no conflicts are anticipated:

- (IDENTIFY UTILITIES OR INDICATE NONE)

Exceptions

The following exceptions have been identified: (IDENTIFY AND EXPLAIN EXCEPTION, OR INDICATE NONE)
ADD WORK AGREEMENTS/ CONSTRUCTION IMPROVEMENT AGREEMENTS

• If there is a non-reimbursable utility and the contractor will be completing the work.
• Utility to request in writing for the work to be added to the contract (email).
• SUL will create the Add work agreement for the Utility to sign.
• Utility will return signed document to SUL.
• SUL to submit signed agreement to finance for billings to occur, with copy going to LAL.
Department of Transportation
Right of Way Section
4040 Fairview Industrial Drive NE
Salem, OR 97301-1142
Phone: (503) 986-3000
Fax: (503) 986-3825

Subject: Add Work Letter Agreement

To: 

This letter serves as an agreement between [Utility Name] and the Oregon Department of Transportation (ODOT) for utility relocation work that is to be added to the above noted Oregon Transportation Commission project. This agreement sets forth the provisions for including utility work into the ODOT project.

For the utility work to be included in the above mentioned project, [Utility Name] will be responsible for paying 100% of the relocation installation costs. [Utility Name] requested to add the work to the contract in an email dated

The estimated cost to accommodate [Utility Name] relocation work is shown below:

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Item Code</th>
<th>Unit</th>
<th>Quantity</th>
<th>Estimated Unit Price</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor Adjustment of Manholes</td>
<td>0499-0919000</td>
<td>EACH</td>
<td>100</td>
<td>$750.00</td>
<td>$75,000</td>
</tr>
<tr>
<td>Major Adjustment of Manholes</td>
<td>0499-0919000</td>
<td>EACH</td>
<td>100</td>
<td>$2,000.00</td>
<td>$200,000</td>
</tr>
<tr>
<td>Attaching Boxes</td>
<td>0499-09000000</td>
<td>EACH</td>
<td>100</td>
<td>$500.00</td>
<td>$50,000</td>
</tr>
<tr>
<td>Utility Attachment Constructor</td>
<td>0499-09009000</td>
<td>LS</td>
<td>1</td>
<td>$6,000.00</td>
<td>$6,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$341,000</td>
</tr>
</tbody>
</table>

With regard to the payment of funds, the Oregon Constitution states that the revenue collected from taxes on motor vehicle use and fuel are used exclusively for highway purposes. However, funds cannot be utilized for non-highway purposes, i.e., non-reimbursable utility work. Therefore, funds covering the cost of non-highway construction must be deducted from the earliest reimbursement the highway construction contract in advance of the actual construction. Since ODOT will administrate the contract for this project, [Utility Name] will be required to make a deposit of funds to ODOT for non-reimbursable work included in the contract.

All work added to the project will comply with Ray America requirements as described in Section 00160020 of the Oregon Standard Specifications for Construction.
# PS&E Completeness Checklist

**Note:** Items not identified for PS&E delivery but applicable for complete project archival are to be documented as to location, such as “on file”. This means all relevant information is to be documented within the project master file and available for audit.

<table>
<thead>
<tr>
<th>2. Right of Way, Utilities and Railroad</th>
<th>Location</th>
<th>Completed?</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. All right of way certification Block 4 properties (hold overs) are shown on the plans and listed within the Special Provisions.</td>
<td>On file</td>
<td>Yes ☐ No ☐ N/A ☐</td>
<td>Reference LAG Manual Section C, Chapter 7</td>
</tr>
<tr>
<td>b. All utility project notification letters, conflict letters and time requirement letters were sent to the utility owner and the State Utility Liaison.</td>
<td>On file</td>
<td>Yes ☐ No ☐</td>
<td>Required per OAR 734-005-0045 and 23 CFR 845 Reference LAG Manual Section C, Chapter 13</td>
</tr>
<tr>
<td>c. All Utility Reimbursement Agreements have been signed by all parties (fully executed).</td>
<td>On file</td>
<td>Yes ☐ No ☐ N/A ☐</td>
<td>Reference LAG Manual Section C, Chapter 13</td>
</tr>
<tr>
<td>d. If all utilities have not been relocated prior to advertisement, the bid documents include a special provision stipulating utility coordination with the prime contractor for each utility.</td>
<td>In Special Provisions (Section 00160.50)</td>
<td>Yes ☐ No ☐ N/A ☐</td>
<td>Reference LAG Manual Section C, Chapter 13</td>
</tr>
<tr>
<td>a. All Railroad Agreements and Crossing Order(s) have been signed by all parties (fully executed). The appropriate railroad liability insurance requirements are provided in the bid documents.</td>
<td>On file</td>
<td>Yes ☐ No ☐ N/A ☐</td>
<td>Reference 23 CFR 648 and LAG Manual Section C, Chapter 13</td>
</tr>
</tbody>
</table>
SPECIAL PROVISIONS

• ODOT website has boiler plates (section 150s)

• https://www.oregon.gov/ODOT/Business/Pages/Boilerplate-SP-2018.aspx

• Needs to list all utilities and a contact for each, along with the timing information for the contractor to be aware of.
EXAMPLES OF SPECIAL PROVISIONS

00150.50(f) Utility Information:

There are no anticipated conflicts with the Utilities listed below. The Contractor shall contact those Utilities having buried facilities and request that they locate and mark them for their protection prior to construction.

<table>
<thead>
<tr>
<th>Utility</th>
<th>Contact Person’s Name and Phone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. City of Portland</td>
<td>Dave Nunamaker</td>
</tr>
<tr>
<td>Bureau of Environmental Services</td>
<td></td>
</tr>
<tr>
<td>2. City of Portland</td>
<td>Gabe Javier</td>
</tr>
<tr>
<td>Bureau of Transportation Signals and Lighting</td>
<td></td>
</tr>
</tbody>
</table>

The Contractor shall notify, in writing, the Bureau of Transportation Signals and Lighting, with a copy to the Engineer, at least 14 Calendar Days before cutting the fiber optic cable.
EXAMPLES OF SPECIAL PROVISIONS

The following organizations may be adjusting Utilities within the limits of the Project during the period of the Contract with relocation Work estimated to be completed by the following dates (times): The Contractor shall contact the Engineer to view the approved Utility Relocation Plan:

<table>
<thead>
<tr>
<th>Utility</th>
<th>Estimated Completion Date (Time)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. CenturyLink (CTL) – “Underground” facility</td>
<td>February 25, 2018</td>
</tr>
<tr>
<td>Scott Miller, CTL, Senior Engineer</td>
<td></td>
</tr>
<tr>
<td>8021 SW Capitol Hill Road</td>
<td></td>
</tr>
<tr>
<td>Portland, OR 97219</td>
<td></td>
</tr>
<tr>
<td>SE Elavel Street (Crossing OR213)</td>
<td></td>
</tr>
</tbody>
</table>

The Contractor shall notify, in writing, CenturyLink, with a copy to the Engineer, at least 7 Calendar Days before beginning Work on the Project.
RAILROADS...
KEEP IN MIND

Rail Triggers:

- Project within 500’ of a RR
- Signals
- New Installments near tracks
- Access
- RR may have improvement in same area
- Traffic control can become a factor
- Crossing orders
- Agreements take time
RAILROAD AGREEMENTS (NOT CROSSING ORDERS)

- **Preliminary Engineering Agreement** (Union Pacific only)
- **Construction and Maintenance (C&M) Agreement** - used when purchasing property and detailing what the RR is responsible to maintain and what ODOT is responsible to maintain.
- **Maintenance Consent Letter (MCL)/ Contractors Right of Entry (CROE)**
- **Service Agreement** - used to reimburse the RR for their work
- **Supplemental** - used to add to an existing agreement
- **Lease contract** - temporary use of the RR property or placement of highway facilities such as signs
COORDINATION AT A GLANCE

Process:

• PE agreement initiated which agrees to pay them for reviewing plans for the project.
• DAP plans submitted- review time 30-45 days
• Comments returned from RR and adjustments to design if needed.
• Advanced plans submitted- review time (30-45 days). May see additional comments to adjust design from.
• Final stamped plans- approval given and MCL/CROE initiated (30-45 days). This comes from ROW department of UP
IF ROW IS NEEDED TO BE PURCHASED FROM RR

• This will also initiate a Construction and Maintenance Agreement
• Timeline could take 9-18 months to execute
WHO CERTIFIES RAIL?

• ODOT cannot certify the rail on behalf of an LPA. Someone from the certified agency has to be responsible for this.
Portland Tunnel example
Where is the property line?