
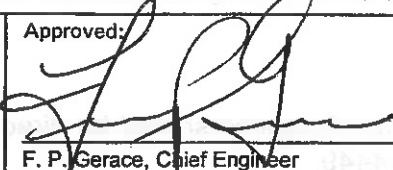


To:  <b>SUPERSEDED</b> BY <i>EFFECTIVE 6/6/03</i> EB03-029		New York State Department of Transportation <b>ENGINEERING          INSTRUCTION</b>	<b>EI</b> <b>99-020</b>
Title: <b>UTILITY FACILITIES LOCATED ON PRIVATE PROPERTY</b>			
Distribution: <input type="checkbox"/> Manufacturers (18) <input checked="" type="checkbox"/> Surveyors (33) <input checked="" type="checkbox"/> Main Office (30) <input checked="" type="checkbox"/> Consultants (34) <input type="checkbox"/> Local Govt. (31) <input type="checkbox"/> Contractors(39) <input checked="" type="checkbox"/> Regions/Agencies (32) <input type="checkbox"/> ( )	Approved:  F. P. Gerace, Chief Engineer		Date <b>7/14/99</b>

### SUPERSEDED ISSUANCES

This Engineering Instruction (EI) does not supersede any previous issuances.

### PURPOSE

The purpose of this Engineering Instruction is to announce a change in Department policy concerning reimbursement of relocation costs of utility facilities located on private property. For many years, the practice of the Department has been to reimburse these costs only if the Utility owned a real property interest (i.e. fee or easement) pursuant to Section 30 of the Highway Law, using a Right-of-Way Agreement of Adjustment. The agreement of adjustment was prepared and executed after the bill for relocation was submitted by the Utility to the Department. The amount of the agreement was determined by the Department after a final audit of the bill.

Beginning with projects let after April 1, 1999, the policy of the Department will be to reimburse utility relocations costs necessitated by a Department project for facilities located on private property from construction funds, in accordance with Section 10 (24-b) of the Highway Law. This will result in a more expeditious payment process. Also, since Section 10 (24-b) does not require the utility owner to have an interest in real property, all relocations on private property will be reimbursable.

The Attached agreement, titled "AGREEMENT TO PROVIDE COMPENSATION FOR THE REMOVAL, RELOCATION, REPLACEMENT OR RECONSTRUCTION OF UTILITY FACILITIES AND APPURTENANCES LOCATED ON PRIVATELY OWNED PROPERTY . . .," will be the instrument used to transfer funds to the utility. It will be processed similarly to the existing Municipal Agreement, that is after the HC140 (Utility Work Agreement) and before the relocation work has commenced.

The HC140 (Utility Work Agreement) shall be completed as before, except box "C" will be checked (Subdivision 24-b of Section 10) instead of box F (Subdivision 13 of Section 30).

All of these changes will be incorporated in the next revision of the Utility Reimbursement Procedure Manual.

Any utility relocation reimbursements already begun using the prior procedures pursuant to Section 30 of the Highway Law need not be revised. It is understood that it will be sometime before these existing agreements work their way through the old (or previous) system. All new arrangements, however, should utilize the new agreement pursuant to Section 10 (24-b) of the Highway Law.

**EFFECTIVE DATE**

This EI shall be effective for all projects submitted for letting on or after 4/1/99.

**CONTACT**

Questions regarding this issuance should be directed to Richard Lee of the Value Engineering and Utility Section @ (518) 457-4449.

AGREEMENT TO PROVIDE COMPENSATION  
FOR THE REMOVAL, RELOCATION, REPLACEMENT OR  
RECONSTRUCTION OF UTILITY FACILITIES AND APPURTENANCES LOCATED ON  
PRIVATELY OWNED PROPERTY,  
IN CONNECTION WITH PROJECT \_\_\_\_\_,  
PURSUANT TO SECTION 10, SUBDIVISION 24-b OF THE HIGHWAY LAW

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_, by and between the  
People of the State of New York (hereinafter referred to as "State"), acting by and through the  
Commissioner of Transportation (hereinafter referred to as "Commissioner"), having his  
principal office in the Administration and Engineering Building, 1220 Washington Avenue, State  
Campus, in the City and County of Albany and State of New York, and

\_\_\_\_\_ (hereinafter referred to as "Utility  
Owner"), located at \_\_\_\_\_

**WITNESSETH:**

WHEREAS, the Commissioner has determined that the above-captioned project will  
require the removal, relocation, replacement or reconstruction of the Utility Owner's utility  
facilities (hereinafter referred to as "Facilities") located on privately owned property, which  
Facilities are hereinafter described in Paragraph # 1, "General Description of Work"; and

WHEREAS, the Utility Owner is desirous of having the work of removal, relocation, replacement or reconstruction of its Facilities that are located on privately-owned property performed in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits moving to each of the parties hereto, and in pursuance of Subdivision 24-b of Section 10 of the Highway Law, it is agreed as follows:

1. General Description of Work. Such work herein contemplated consists generally of the \_\_\_\_\_

\_\_\_\_\_ and is more specifically described in the Utility Work Agreement, plan and cost estimate which provide for this work (attached hereto and incorporated herein as Exhibit 1), such data having been prepared by the Utility Owner, submitted to and duly approved by the Commissioner.

2. Time Schedule. Such work shall be undertaken and completed in accordance with a time schedule agreed upon between the State and the Utility Owner (attached hereto and incorporated herein as Exhibit 2). The Utility Owner shall coordinate its activities with the State's construction contractor so as to avoid unnecessary delays. The Utility Owner agrees and understands that adherence to such time frames is essential to the orderly progression of the State highway project by the State's contractor. Delays to the project caused by the failure of the

Utility Owner to adhere to the time schedule may result in damages to the State. Such damages may include actual liability by the State to its highway contractor which are measurable by a negotiated settlement or court award, and/or other ascertainable damages. In addition, there may be other damages suffered by the People of the State of New York using the highway Facilities and by the Department which are incapable of or are very difficult to accurately estimate, including but not limited to the inconvenience to the public of not being able to use the improved facility, and additional overhead, administrative and other personnel costs suffered by the Department in managing the delayed highway project.

In the event that the Utility Owner fails to relocate or adjust its Facilities in accordance with the aforementioned time schedule, the Utility Owner understands that, under the provisions of common law or any applicable statute, it may be responsible for the failure to relocate or adjust its Facilities in accordance with such agreed upon time frames. Where the Utility Owner is responsible for failure to relocate or adjust its Facilities in accordance with the agreed upon time frames, the Utility Owner shall be liable directly to the State's contractor for damages incurred as a result of delay in accordance with subdivision 3 of Section 11-102 of the General Obligations Law. In the event the State's contractor recovers directly from the State for damages incurred as a result of such delay, by a negotiated settlement, court award, and/or otherwise, the Utility Owner shall be liable to the State for such damages. In addition to damages described above, the Utility Owner, where it fails to move its Facilities in accordance with the schedule, shall also be liable for liquidated damages for costs incapable of or very difficult to accurately estimate. Such damages shall be assessed at \$1,000.00 per day. Delays caused by forces beyond

the control of the Utility Owner and where the Utility Owner is under emergency status shall not be included in delays for which the Utility Owner is responsible under this paragraph.

3. Method of Performance of Work. Such work shall be performed either (a) by the employment of the forces and the use of the equipment of the Utility Owner and by the use of any material on hand or necessary to be purchased by the Utility Owner, or (b) when consent therefor is given in writing by the Commissioner, by contract in conformity with the "Utility Reimbursement Procedure Manual" PUB 3 (1/87) as revised. All work within the State highway right-of-way shall be performed pursuant to a Highway Work Permit issued by the Department. If this method is deemed to be impracticable by the Utility Owner or Commissioner, then, upon written consent of the Commissioner, such other method or combination of methods shall be employed as the Commissioner shall approve. The utility Facilities shall be adjusted in accordance with this Agreement, as directed by the State's Engineer in Charge, without causing delay to the State's contractor, and before completion of the State's contract.

4. Reimbursement of Costs. Upon written notice from the Utility Owner to the Commissioner that such work has been completed, and upon final inspection thereof to the satisfaction of the State, or in case the Utility Owner finds it necessary to have partial reimbursement made intermittently between the start of such work of construction and the final inspection thereof by the State, the State shall reimburse the Utility Owner up to 90% of the documented costs of such work. The balance of such reimbursement shall be made by the State upon final inspection of such work and the acceptance thereof by the State. The State's

obligation under this Agreement shall not exceed \$ \_\_\_\_\_, unless a Supplemental Agreement is made therefor. All items included by the Utility Owner in said record of costs shall be subject to final determination by the Commissioner, and the Commissioner reserves the right to reduce or to eliminate any of such items as he may deem proper for the best interest of the State.

5. Releases. As a condition of and prior to payment by the State of the aforesaid reimbursement, the Utility Owner shall furnish to the State, in a form acceptable to the Commissioner:

- (a) a release forever discharging the State from any and all claims, damages, or causes of action arising from or growing out of the acts or failures to act of the Utility Owner, its agents, employees, contractors, subcontractors, or representatives under this Agreement; and
- (b) a release of all claims arising from or growing out of any estate or interest in real property acquired for the purpose of the above-captioned project.

6. Maintenance of Facilities. The Utility Owner shall continue to maintain such relocated or replacement Facilities and such Facilities shall continue to be the sole obligation of the Utility Owner for so long as such Facilities shall remain in existence.

7. Other Contracts Relative to Work. The Commissioner reserves the right to let other contracts in connection with the above-captioned project. The Utility Owner shall properly connect and coordinate its work with that of such other contractors. Temporary structures,

equipment or materials of the Utility Owner, its agents or contractors, shall be located where directed and if not so located they shall be moved when so directed.

8. Access To and Control of Work. The State shall have access to all phases of such work during its prosecution and to records pertaining thereto, including time records, payrolls, invoices, work orders, etc.

9. Unsatisfactory Work. Should such work or progress of same, performed by the Utility Owner or any of its contractors or subcontractors, at any time be unsatisfactory to the State, that fact will, without unnecessary delay, be brought to the attention of the Utility Owner which shall take remedial action promptly. In the event that the Commissioner determines that such remedial action is unsatisfactory or has not occurred within a reasonable time, he may withhold any or all moneys due to the Utility Owner. The State, and the State's contractor, in such circumstances, shall also be entitled to such relief in the form and in the manner set forth in paragraph 2 of this Agreement.

10. Retention of Records. All records established by the Utility Owner pursuant to this Agreement shall be maintained by the Utility Owner for a period of not less than six years after payment of the final voucher by the Federal Government to the State in connection with a federal-aid project or the custody of such records shall be turned over to the Commissioner. Such records shall be available for inspection by representatives of the State upon reasonable notice during regular business hours.

11. Contract Clauses Required in Work. In connection with any contract let by the Utility Owner for all or any part of such work, it is understood between the parties hereto that the contract shall comply with all applicable Federal, State and local laws, copies of the Federal and State required contract provisions appearing as Schedule A and Schedule B, attached hereto.

12. Worker's Compensation Insurance. The Utility Owner shall procure and maintain, until final acceptance by the State of the work covered by this Agreement, a policy, which shall be delivered to the State, covering the obligations of the Utility Owner in accordance with the provisions of the Worker's Compensation Law, covering all operations under this Agreement, whether performed by the Utility Owner or by its subcontractors. Before commencing the work, the Utility Owner shall furnish to the Commissioner a certificate of insurance in form satisfactory to the Commissioner showing that it has complied with this paragraph. This Agreement shall be void and of no effect unless the Utility Owner making or performing same shall secure compensation for the benefit of, and keep insured during the life of said Agreement, such employees in compliance with the provisions of the Worker's Compensation Law. (State Finance Law Section 142).

13. Liability Insurance. The Utility Owner shall procure and maintain until final acceptance by the State of the work covered by the Agreement, insurance for liability for damages imposed by law, of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State, covering all operations under the Agreement, whether performed by it or by subcontractors. Before commencing the work, the

Utility Owner shall furnish to the Commissioner a certificate or certificates of insurance in form satisfactory to the Commissioner showing that it has complied with this paragraph, which certificate or certificates shall provide that the policies shall not be changed or canceled until 30 days' written notice has been given to the Commissioner. The kinds and amounts of insurance are as follows:

**Bodily Injury Liability and Property Damage Liability Combined Single Limit**

Each Occurrence	Aggregate
\$1,000,000	\$2,000,000

for all damages arising during the policy period, shall be furnished in the types specified, viz:

(1) Liability insurance issued to and covering the liability for damages imposed by law upon the Utility Owner with respect to all work performed by it under this Agreement.

(2) Contractor's liability insurance issued to and covering the liability for damages imposed by law upon (a) each contractor with respect to all work performed by said contractor under this Agreement for or with the Utility Owner, and (b) each subcontractor with respect to all work performed by said subcontractor for or with the said contractor.

(3) Protective liability insurance issued to and covering the liability for damages imposed by law upon the Utility Owner with respect to all work under this Agreement performed for the Utility Owner by its contractors or their subcontractors.

(4) Completed operations' liability insurance issued to and covering the liability for damages imposed by law upon the Utility Owner and its contractors or their subcontractors arising between the date of final cessation of work and the date of final acceptance thereof, out of that part of the work performed by each.

(5) Protective liability insurance issued to and covering the liability for damages imposed by law upon The People of the State of New York, the State of New York and the Commissioner of Transportation and all employees of the Commissioner of Transportation both officially and personally, any municipality in which the work is being performed, and/or any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work or any consultant inspecting engineer or inspector working for or on the above-captioned project, and their agents or employees, with respect to all operations under this Agreement by the Utility Owner or its contractors or subcontractors, including omissions and supervisory acts of the State, municipality, public benefit corporation or consultant.

(6) Automobile liability and property damage insurance. A policy covering the use in connection with the work covered by the this Agreement of all owned, non-owned and hired vehicles bearing, or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear license plates.

14. Funds Available. It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the moneys available to the State and

no liability on account thereof shall be incurred by the State beyond moneys available for the purposes hereof.

15. Assignment or Other Disposition of Contract. The Utility Owner agrees not to assign, transfer, convey, sublet or otherwise dispose of this contract or any part thereof or of its rights, title or interest therein, or its power to execute such contract, to any person, company, or Utility Owner without previous consent in writing of the Commissioner of Transportation.

16. General Operating Agreements. Where the Utility Owner and the State have previously entered into a General Operating Agreement, and there is a conflict between the terms of, or the procedures established by such General Operating Agreement and this Agreement, the terms and procedures of this Agreement shall take precedent and govern.

IN WITNESS WHEREOF, the State has caused this instrument to be signed by the said Commissioner of Transportation, and the Utility Owner has caused this instrument to be signed by its duly authorized officer.

This Agreement shall commence on \_\_\_\_\_, 19\_\_, and shall expire \_\_\_\_\_ year(s) from that date unless a Supplemental Agreement is entered into extending the term of this Agreement.

RECOMMENDED FOR APPROVAL STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

by \_\_\_\_\_  
Commissioner of Transportation

\_\_\_\_\_  
Utility Owner

by \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
Attorney General

APPROVED

\_\_\_\_\_  
State Comptroller

