



# **RIGHT-OF-WAY OPERATIONS MANUAL**

## **Chapter Forty-One Utilities Agreement Preparation**

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# **Chapter Forty-One**

## **41-1           UTILITY AGREEMENT PREPARATION**

Utility agreements are the contracts entered into between the Department and a utility company, railroad, city, or county to relocate and pay for facilities in conflict with a highway construction project(s).

Although most states do not pay to relocate public utilities for highway construction projects, Montana statute provides for 75% reimbursement for relocating public utilities, which are located within existing public rights-of-way on Federal-Aid System construction projects. Both public utilities and non-utilities located outside of public rights-of-way are reimbursed for all costs, provided they can show a valid prior existing right by an easement or other instrument.

Unfortunately, the definition of a public utility in several State statutes is ambiguous. Usually, we think of a public utility as an electrical, natural gas or telephone company. One State statute defines an oil pipeline as a public utility (common carrier) but does not include a natural gas pipeline facility in the definition of a public utility. When there is a question concerning the status of a facility, we request an opinion from our Legal Services Group. Even though a natural gas pipeline facility is not a public utility by statute, a legal opinion has said that they qualify as public utility. Other examples of public utilities are municipally owned water and sewer facilities and some water and sewer districts. If you have a question about a utility, contact the Helena Utilities Section.

Sometimes, particularly for a small municipal water or sewer system, the highway contractor will relocate the facility. We do this because smaller towns do not have the expertise to do the work. The owner may be charged back for their percentage (usually 25%) of the costs plus a percentage for Department traffic control and mobilization. Most other utility companies will perform the relocation work with their own forces or by a contractor they select; when municipal work is not done by our contractor, the work is reimbursed under an actual cost agreement following the procedure discussed in section 41-3.4.

The utility relocation should be completed by the letting date. In most instances, portions of utility relocations are completed after the contract for the project is awarded. This happens because letting dates are accelerated and utility companies do not have the time to do the work or because it makes sense to relocate the facilities in conjunction with the contractor's operation. On major urban reconstruction projects, it may inconvenience the public less to have the street closed only once for all the work. In addition, considerable cost savings can be realized for traffic control, patching, etc.

#### **41-1.1 House Bill 320**

House Bill 320, passed by the 1997 legislature, allows the Department to determine how a utility company is to estimate utility relocations. Most utility relocations will be accomplished either by unit cost or lump sum. There will be occasions where the Helena Utilities Section will approve an actual cost utility relocation because of the nature of the relocation work involved. Electrical/gas transmission and water and sewer relocations will be performed at actual cost unless prior arrangements are made to establish unit costs. If unit cost or lump sum agreement is used, you do not have to approve contractors. If actual cost is used, contractor bids over \$5,000 must be approved (See Section 41-3.4).

Another advantage of House Bill 320 is that engineering is not a reimbursable item within the public right-of-way; therefore, consultant-engineering firms do not have to be approved. Each year the utility company will submit an average engineering cost percentage for the previous year. When the Department pays for engineering (when the existing utility facility in conflict is located on private right-of-way), the engineering percent will be applied to that portion of the relocation.

#### **41-1.2 Order Material Early**

Because of delivery time for material, the utility company may need to order material early. The need to order material early should be determined at the Utility Plan-In-Hand. Early material ordering is permitted provided:

1. The utility company submits an estimate of cost for the material to be ordered.
2. The district requests the necessary authority to in turn authorize the utility to order material early.
3. The Helena Utilities Section can authorize the utility company to order material up to \$100,000. Cost of material above that amount must be approved by FHWA.
4. Incidental Construction Fund must be programmed.

### **41-2 UTILITY RELOCATION PROCESS**

The approved utility agreement prepared by the Helena Utilities Section will authorize the utility company to:

- perform preliminary engineering work,
- order material,
- secure right-of-way easements, and
- perform necessary staking.

Authorization to proceed with the work is granted by the district.

Usually, the right-of-way for the project is not secured prior to the utility company beginning work. Normally, the utility company will want to install the facilities on new highway right-of-way. The utility company should not be discouraged from going to work. However, prior to doing so, the utility company must contact the property owner and get permission to locate their facilities on future highway right-of-way. If the utility company must secure and pay for an easement to relocate facilities within future highway right-of-way, those costs are reimbursable at the agreement percentage. However, the utility must surrender the easements to the Department after the Department secures the property.

#### **41-2.1 Percentage Participation**

The participation percentage of the Department will not be revised after the agreement is approved. However, if a change in the participation percentage is necessary after distribution of the agreement, the Helena Utilities Section must approve the change.

The percentage is agreed to during the Utility Plan-in-Hand based upon existing facilities in conflict. By State statute, the Department will reimburse a utility company for 75% of the cost to relocate facilities located on existing Federal-Aid System highway right-of-way and all the costs where a public utility facility occupies private right-of-way. The mixture of public utility facilities in conflict on private and highway right-of-way is the reason Department participation will vary from agreement to agreement.

#### **41-2.2 Examples**

Following are two examples of percentage participation calculations:

1. Example 1. At a Utility Plan-in-Hand in Eastern Montana 2 Department Utility Agents and an electrical engineer decided 25 poles needed to be changed out that were in direct conflict with highway construction. Of the poles to be changed, 10 are on private right-of-way and 15 are on highway right-of-way.

*State percentage calculated:*

$$15/25 \times 75\% = 45\% \text{ plus } 10/25 \times 100\% = 40\% = \underline{\underline{85.00\%}}$$

*Utility percentage calculated:*

$$15/25 \times 25\% = \underline{\underline{15.00\%}}$$

When the estimate was received, the Utility Agent decided he really needed to change out 28 poles to get his line corrected. Of the 28 poles, 11 are on private right-of-way and 17 are on highway right-of-way.

**Question 1.** Should cost share be recalculated?

**No, Change is not significant.  $17/28 \times 25\% = \underline{15.18\%}$**

**Question 2.** The estimate received reflected the cost share calculated at the Utility Plan-in-hand. Does that complicate matters?

**No, we will use it.**

2. **Example 2.** At a Utility Plan-in-Hand in Southwestern Montana **2** Department Utility Agent and **3** representatives of a telephone company believed that **3600 m** (12,000 ft) of **25** pr cable conflicted with construction. Of the total, **3000 m** (10,000 ft) of this cable was within the existing highway right-of-way and **600 m** (2,000 ft) was on private right-of-way. There was a span of **210 m** (700 ft) in the middle of the project where the cable was not in conflict and was within highway right-of-way. The telephone company engineers did not know if they would replace the entire line or splice in to the **210 m** (700 ft) section not in conflict.

*State percentage calculated:*

$$\begin{aligned} 3000/3600 \times 75\% &= 62.50\% \text{ plus} \\ 600/3600 \times 100\% &= \underline{16.67\%} \\ &\quad \underline{\underline{79.17\%}} \end{aligned}$$

*Utility percentage calculated:*

$$3000/3600 \times 25\% = \underline{20.83\%}$$

When the fast process agreement was received, the Engineer showed **3810 m** (12,700 ft) of **50** pr cable being placed in the ground. The betterment was deducted in the agreement.

**Question 1.** Should the cost share be changed to reflect the **3810 m** (12,700 ft) being replaced?

**No, change is not significant.  $10,700/12,700 \times 25\% = \underline{21.06\%}$**

**Question 2.** Would the cost share change if there were no betterment?

**No.**

#### **41-2.3 Agreement Administration**

The district is responsible for the day-to-day administration of the agreement, with oversight assistance from the Helena Utilities Section.

#### **41-2.4 Final Engineering**

On more complex utility relocations, the district will have to stake the right-of-way prior to the utility staking the reroute and completing final design. On urban projects with several utilities involved, the Utility Agent should arrange for a joint meeting with all utility companies to discuss joint trenching and placement of facilities. In these cases, it may be helpful to have the Helena Utilities Section in attendance.

After the utility company completes their final engineering the Utility Agent should review the relocation route with the utility company for any conflicts with the proposed construction features (e.g., pipes, manholes), clearance of the proposed aerial crossings and depth of underground crossings. Make sure the installations meet the minimum requirements as set forth in Chapter 43 “Guidelines for Utility Occupancy on Highway Right-of-Way” of this ***Manual***, after the road construction project has been finished.

#### **41-2.5 Occupancy Agreements**

The Utility Agent should determine the appropriate occupancy agreement by which the relocated facility will occupy the highway right-of-way. These may be one of the following:

1. Encroachment Permit. Encroachment permits are usually reserved for non-utility occupancy, such as cable television, private water, or sewer facility.
2. Occupancy Agreement. This permit is by which a utility facility will occupy existing and new highway right-of-way.
3. Common Use Agreement. This permit is issued when a utility facility occupies private right-of-way by easement or other instrument, and the Department purchased the right-of-way later or if the facility occupied existing highway right-of-way by easement or other agreement prior to the State’s acquisition of the right-of-way.

These types of permits should be approved prior to the utility company proceeding with work.

#### **41-2.6 Authorization to Proceed with Work**

After review and approval of the appropriate permit, the utility company can be authorized to proceed with the work by the district. The letter should advise the utility company to:

1. Notify the District when the relocation work is going to start and the estimated completion date.
2. Traffic control must conform to the ***Work Zone Safety Handbook*** and the ***Manual of Uniform Traffic Control Devices***.

The district should also keep a copy of the letter.

See **AUTHORIZATION TO PROCEED FORM** (Form 963).

The District Utility Agent shall enter the date the authorization to proceed was written into the **UTILITY TRACKING SYSTEM**.

#### **41-2.7 Inspection Procedures**

The District Utility Agent will review each agreement and determine the number of inspections needed for the agreement to verify the following on the project. In any case, a minimum of two inspections is required. In performing the inspections, the District Utility Agent considers whether:

- the installation is free from conflict with the construction project,
- the relocation is accomplished in compliance with the intent of the utility agreement,
- the size and type of material used is in accordance with the utility agreement,
- betterment work is in accordance with the utility agreement, and
- the hours and equipment used is representative of the relocation work to be performed. This is not required for unit cost agreements.

The Helena Utilities Section Utility Construction Supervisor will review the number of inspections and comment if the Utility Construction Supervisor disagrees with the proposed number of inspections. The minimum number of inspections required for each agreement will be documented in the Utility Tracking System. The review will only show the minimum number of inspections required for the agreement; the District Utility Agent may increase the number of inspections.

The District Utility Agent will make the inspections while the relocation is being accomplished and document the inspection by filling out the FIELD INSPECTION REPORT. The District Utility Agent shall fill out and maintain the FIELD INSPECTION REPORT in the project file for every time the representative inspects on the project. The Field Inspection Reports will be submitted with the final bill.

See **FIELD INSPECTION REPORT FORM** (Form 964).

#### **41-3 TYPES OF RELOCATION AGREEMENTS**

The District Utility Agent should check to see what type of agreement is being administered, actual cost, lump sum, fast process, or unit cost. Refer to the section of this **Manual** that covers that type of agreement.

##### **41-3.1 Fast Process Agreements**

Fast process agreements are generally initiated in the field for minor relocation work if the dollar amount is less than \$50,000 for the State's share. Payment for a fast process agreement is usually a lump sum. Costs are supported at the time the agreement is written. If the utility agent determines the costs are unreasonable, the fast process estimate should be questioned, corrected, rejected, or converted to an actual unit cost agreement before sending it to the Helena Utilities Section for approval.

Fast process/lump sum agreements require less documentation than other agreements; therefore, the estimates must be reviewed carefully prior to approval. The utility companies are not required to keep diaries for fast process agreements. The utility companies may use contractors to do the work without approval of the Department.

There are occasions when a fast process utility agreement can be actual unit cost. For example, if the estimated costs seem to be high the Helena Utilities Section can convert the fast process agreement from lump sum to actual unit cost or initiate a standard utility agreement.

Fast process agreements can be used in the following instances:

1. To relocate a utility pole or above ground utility facility that could be considered a potential hazard on an existing Federal-aid route (non-project related).

2. To install service to a department facility (e.g., electrical service to traffic signals or luminaries).
3. If during the utility relocation, a utility facility is found to be in conflict and no agreement is in place for that utility company.
4. If the relocation work is completed and paid, a fast process agreement can be initiated to cover the cost for additional work.

Fast process agreements cannot be used to supplement an actual cost or unit cost agreement if the work is not completed, or the bill has been paid. A utility work order should be used for these cases.

Once the actual field work begins the district utility agent shall enter the start date into the **UTILITY TRACKING SYSTEM**.

After the work has been completed the utility agent **MUST** document the date that the utility company completed the relocation work. This will be the date that the utility agent will enter the **UTILITY TRACKING SYSTEM** and use on Form 965 (CB-7).

The utility agent shall enter the completion card for the 846 accounts in the **PRECONSTRUCTION MANAGEMENT SYSTEM** as soon as the utility company completed work.

The first page of the fast process agreement is also the **final bill**. The utility company is not required to submit a final bill. The utility agent must complete the bottom of the agreement and submit it, along with inspection reports and straight-line drawings, no later than 60 days after the completion of the work to the Helena Utilities Section.

#### **41-3.2 Unit Cost Agreements**

Unit cost agreements are agreements that the costs for each unit have been submitted to the Department by the utility company, reviewed and approved before the utility company begins work. In addition to submitting the units for approval, the utility company must submit an estimate of units needed for each project. See the Forms for unit costs.

A standard unit has been established so all utility companies will use the same unit for all relocation projects statewide, (e.g., an A7-1 power pole construction is the same for all electrical companies throughout the State). The utility agent should review the **UNIT STANDARDS & DESCRIPTIONS** so that each unit is easily recognized when a utility company uses a unit on a project.

Under unit cost agreements the Department pays for the relocation of existing facilities. Therefore, the estimate should reflect replacement of existing units in conflict, regardless of any betterment work accomplished.

Unit cost agreements require less documentation than the actual cost agreements by the utility company. The utility companies are not required to keep diaries.

The utility company may use contractors to do the relocation work without approval by the Department because the units are an average of utility company and contractor prices.

Once the actual fieldwork begins the utility agent shall enter the start date into the **UTILITY TRACKING SYSTEM**.

Some units are to be negotiated by the utility agent and the utility company prior to or during the relocation work.

The utility agent should keep in close contact with the utility company to determine if units (e.g., rock sawing) will be needed to complete the relocation project. Units not in the original estimate or intended to be negotiated must be approved by the utility agent prior to being used on the project or the utility company will not be paid for the unit. If the increase in units is substantial, the utility agent should initiate a utility work order. If you do not have time to initiate a utility work order immediately, call the Helena Utilities Section for prior approval then follow up with a utility work order. The utility agent should document in the **FIELD INSPECTION REPORT** when the utility company was authorized to use the additional units.

After the work is complete the utility agent **MUST** document the date that the utility company completed the field relocation work. This will be the date that the utility agent enters the **UTILITY TRACKING SYSTEM** and uses on Form 965.

The utility agent shall enter the completion date for the 846 accounts in the **PRECONSTRUCTION MANAGEMENT SYSTEM** as soon as the utility company has completed the relocation work.

The utility agent should request that the utility company send the final quantity sheet requesting payment for the units used on the project, however the utility company has 365 days from the completion of the field relocation work to submit the **FINAL BILL**.

The procedure for processing these bills can be found in Section 41-5.

In the case that a unit cost agreement is utilized, MDT Audit Services will perform an audit of various utility companies and related projects. The Utility company is responsible for providing all documentation necessary to support all unit costs. If the audit findings conclude that there is a financial discrepancy of \$1,000 (over/under) between the final invoice and the supporting documentation, MDT Utility Manager and ROW Bureau Chief have the authority to negotiate a settlement to write off the amount

with the Utility company. If both MDT and the Utility company agree to write off the amount as being immaterial and not cost beneficial to process, MDT will document the decision in writing and distribute to MDT Audit Services, MDT Fiscal Operations, and the Utility company. If MDT and the Utility company do not agree to write off the immaterial amount, MDT Utilities Section will coordinate with the Utility company to process the amount owed to the utility company or due to MDT. A final decision to process the over/under amount will be documented in writing by MDT Utilities Section and distributed to MDT Audit Services, MDT Fiscal Operations, and the Utility company.

#### **41-3.3 Lump Sum Agreements**

Lump sum agreements are agreements that the utility company and the Department agree on the amount to be paid at the time the agreement is written. The work is usually well defined, and the work or cost will not change.

Lump sum agreements should not be considered unless the relocation work is well defined, and the project design is not subject to change.

If during the project construction design changes do affect the utility relocation, consideration should be given to either changing the agreement to actual unit cost or initiating another utility agreement. In no case can a lump sum agreement be converted to actual unit cost without the approval of the Helena Utilities Section.

Lump sum agreements require less documentation than the actual cost agreements because the review is completed during the agreement stages. The utility companies are not required to keep diaries while working on the relocation.

The utility companies may use contractors to do the relocation work without approval of the Department.

After the work has been completed, the utility agent **MUST** document the date that the utility company completed the relocation work. Enter this date in the **UTILITY TRACKING SYSTEM** and use on Form 965.

The utility agent shall enter the completion date for the 846 accounts in the **PRECONSTRUCTION MANAGEMENT SYSTEM** as soon as the utility company has completed the relocation work.

The utility agent should request that the utility company submit a bill for payment for the lump-sum amount shown in the agreement as soon as the work is completed. However, the utility company has 365 days from the completion of the relocation work to submit the **FINAL BILL**.

The procedure for processing bills can be found in Section 41-5.

#### **41-3.4 Actual Cost Agreements**

Actual cost agreements are agreements that the utility company is reimbursed for actual costs to perform the relocation work at the percentage shown in the utility agreement, less betterment. The agreement estimate is based on anticipated labor, material, and equipment to perform the work.

Actual cost agreements should be discouraged because they are the most difficult to administer, document and verify at final billing. The decision to allow actual cost agreements is made by the Helena Utilities Section and only if the utility company has a compelling reason for not entering a unit cost, lump sum, or fast process agreement.

In the case that an actual cost agreement is utilized, MDT Audit Services will perform an audit of all costs based on the submittal of the final invoices received by MDT Utilities staff. The Utility company is responsible for providing all documentation necessary to support all invoiced costs. If the audit findings conclude that there is a financial discrepancy of \$1,000 (over/under) between the final invoice and the supporting documentation, MDT Utility Manager and ROW Bureau Chief have the authority to negotiate a settlement to write off the amount with the Utility company. If both MDT and the Utility company agree to write off the amount as being immaterial and not cost beneficial to process, MDT will document the decision in writing and distribute to MDT Audit Services, MDT Fiscal Operations, and the Utility company. If MDT and the Utility company do not agree to write off the immaterial amount, MDT Utilities Section will coordinate with the Utility company to process the amount owed to the utility company or due to MDT. A final decision to process the over/under amount will be documented in writing by MDT Utilities Section and distributed to MDT Audit Services, MDT Fiscal Operations, and the Utility company.

Actual cost agreements require the greatest amount of documentation and approvals by both the utility company and the Department. The utility company and its contractors are required to keep diaries while they are working on the relocation. This type of agreement requires the utility agent to carefully monitor the utility company work.

The utility agent should request how the utility company anticipates accomplishing the work. If the utility company is going to do the work with company forces, the utility agent should note this on an inspection report. No further action is required.

When the anticipated amount of contractor work is under \$5,000, the utility company can use a contractor by simply notifying the utility agent. No other approval is necessary. The utility agent should document the conversation in the diary.

Most utility companies will use a contractor to perform the work. Usually, the contractor has been approved by the Helena Utilities Section prior to sending the agreement to the district. If the utility company anticipates using a contractor that has not been approved or proposes to use a combination of company forces and a contractor, and the estimated work by a contractor is greater than \$5,000, the policy in the following sections must be used.

#### **41-3.5 Contractors For Actual Cost Agreements**

Public utility companies generally enter into one of two types of agreements with contractors:

1. Continuing Contract. A bid process usually initiates these agreements. The low bidder receives a long-term unit price contract. The rates are updated periodically.
2. Agreed Price Contract. This type of agreement is usually a negotiated agreed price agreement between the utility company and the contractor. The prices are re-negotiated periodically. Dock crews usually come under this category.

The Department will treat both the continuing and agreed price contract the same for the purpose of approving contractors for highway utility relocation work.

#### **41-3.6 Use of Agreed Price or Continuing Contracts**

A public utility company can use the contractor on highway utility relocation projects by agreed price or continuing contract when:

1. MDT has reviewed and approved the contract between the utility company and the contractor.
2. The utility company is not staffed to perform the work or the Department schedule for letting does not allow the use of company personnel.
3. The total cost of the contractor work per project is \$100,000 or less.
4. The rates charged the Department are the same or less than charged for utility company work.
5. The utility company submits a PROJECT APPROVAL FOR UTILITY CONTRACTOR form for each project.
6. The Department will approve a utility company's agreed price or continuing contract annually or whenever the contract prices change and are submitted to the Helena Utilities Section.

7. All contractors work over \$100,000 for a utility relocation project must be let by the bid process, unless otherwise approved by the Department.

#### **41-4 PROCEDURE FOR CONTRACT APPROVAL**

The utility company must submit a copy of the signed contract, including prices and overheads, to the Helena Utilities Section.

The Helena Utilities Section will review and approve the contract, prices, overheads and bid tabs.

A copy of the approved package will be forwarded to all Districts. The original package shall remain on file in the Helena Utilities Section.

The Helena Utilities Section will notify the utility company of approval.

##### **41-4.1 Procedure for Project Approval of Utility Contractors**

The utility company must submit a completed PROJECT APPROVAL FOR UTILITY CONTRACTOR form for each project to the appropriate District. Approval must be obtained prior to the contractor starting work on any highway utility relocation project where an actual cost agreement is in place.

The district shall review the information and verify that the district has a current copy of the contract.

The district shall recommend approval and submit the PROJECT APPROVAL FOR UTILITY CONTRACTOR form to the Helena Utilities Section.

The Helena Utilities Section shall review and approve the PROJECT APPROVAL FOR UTILITY CONTRACTOR form and forward the information to the district.

The Helena Utilities Section will notify the utility company of approval by letter with a copy of the signed PROJECT APPROVAL FOR UTILITY CONTRACTOR form. (Form 950)

If during the work, the contractor estimate is anticipated to exceed \$ 100,000, the utility company must notify the district and receive approval prior to the contractor continuing work.

#### **41-4.2 Procedure for Verifying Reasonableness of Costs**

1. Prior to starting work the utility contract must be reviewed and approved by MDT for rates, etc.
2. Helena Utility Section will review any contract with questionable rates. The contract will not be approved until questionable items are resolved.
3. The utility company must submit an estimated cost for contractor work by project and verify that the contract and rates are current.
4. The utility contractor will be required to maintain diaries of labor and equipment.
5. The district will maintain inspection reports to substantiate contractor work dates.
6. The District and Helena Utilities Section will check diaries and inspection reports against the final bill to ensure contractor hours.

#### **41-4.3 Documenting the Work**

The utility company shall complete line drawings of the utility relocation work and submit it with the final bill. The line drawing should show the new relocated facilities. The plan sheet from the agreement may be used for the line drawing or a separate drawing can be made showing the centerline, approximate stations of the facilities and the type, size, gauge, and length of the new facility. Where discrepancies exist between the line drawing and the final bill, the utility agent and the utility company should resolve them.

### **41-5 PROGRESS BILLS**

Utility companies are encouraged to submit progress bills, for all types of agreements as soon as the work is completed. They may submit a bill for up to 90% of the State's share of the agreement by completing Forms 965 and 966. The utility agent must certify the percentage of the work is completed. If you are not certain if the percentage of work for the progress bill is correct, adjust the percentage accordingly and advise the utility company.

Before submitting a progress bill for payment, the utility agent should:

1. Check to see if Forms 966 and 965 are completed.
2. Check the percentage indicated on the bill.
3. Complete and sign the Forms 966 and 965.
4. Make a digital copy of the bill. One copy will be retained in the district files.

5. After all checks are made and the billed quantities are correct, complete Form 965. See an example of a completed form. Completed Form 965 and sign in the space provided. The original will be sent to Helena, the copy will be retained in the district files.
6. Make a cover memo (Form 986) to send the bill to the Helena Utilities Section Utility Construction Supervisor in Helena. The memo should include the following:
  0. Federal-aid project number,
  1. project designation,
  2. control number, and
  3. a list of the items being sent to Helena.
7. The following items shall be sent along with the cover memo to Helena:
  4. 1 original of Form 965 signed,
  5. 1 original of the progress bill

## **41-6 FINAL BILLS**

The utility agent should request that the utility company submit the final bill when the work is completed; however, the utility company has 365 days from the completion of the field relocation work to submit the FINAL BILL. The utility company may wish, and is encouraged, to submit progress bills monthly for larger utility agreements.

Final bills must be submitted in the same format as the agreement estimate.

The utility agent must reconcile the bill with the actual field work. Discrepancies in material, labor or equipment must be resolved prior to submitting the bill.

The Department accepts 5% as a default Material OH rate, without the associated required supporting data.

### **41-6.1 Actual Cost – Final Bill**

The following procedures will be followed when processing an actual cost final bill:

1. Check to see if this is a Progress or Final Bill.
2. Check to verify that the following statement is on the bill.

“I certify that this claim is correct and just in all respects, and that payment or credit has not been received.”

DATE:

COMPANY:

BY:

TITLE:

LOCATION WHERE RECORDS AND ACCOUNTS BILLED MAY BE AUDITED:

3. Check to see if final bill contains the Federal-aid project number and project designation.
4. Check to see if final bill has date that preliminary engineering was started, date actual relocation was started, and date actual relocation was completed.
5. Check to see if diaries accompany final bill. If diaries do not accompany bill **DO NOT** process the bill until the utility company submits the diaries.
6. Check to see if the final bill is in the same format as the agreement estimate.
7. **The following must be detailed in the bill:**
  - a. CONSTRUCTION LABOR (using utility company personnel). The bill shall show the hours and wage classification.
  - b. MATERIALS. The bill shall have a listing of all materials, description, quantity, and price used on the project.
  - c. SALVAGE. The bill shall have a listing of all materials returned to inventory and those sold as salvage. The materials returned to inventory shall be at the same rate when it was billed to the project.
  - d. EQUIPMENT. The bill shall contain all equipment used, except those owned and used by contracted labor, if bid. The hours and the hourly rate must be included in the bill.
  - e. OVERHEADS. Usually both the direct (benefits) and indirect (general and administrative) overhead will be in this section. They may or may not be combined.
  - f. CONTRACT LABOR. If a contractor is used on the relocation project, the name of the contractor(s) shall be included on the final bill. A copy of the contractor's bill to the utility shall accompany the final bill.
  - g. CONSULTANT ENGINEERING. If a consultant is used on the relocation project and if the utility company claims a prior right (requiring 100% reimbursement), a copy of the consultant's bill to the utility shall be included with the final bill.

- h. **MISCELLANEOUS ITEMS.** This may include items such as meals, lodging, miscellaneous direct expenses, and sometimes equipment rentals (although these should be listed under equipment). A copy of the invoices shall accompany the final bill.
  8. Make an additional copy of the bill submitted to MDT. Use 1 of these copies as a working copy to check and verify the bill. This checked copy must be submitted to the Helena Utilities Section with the final bill.
  9. Check for math errors. If there is an error notify the utility company about the error. The utility company may authorize you to make the correction without sending a revised bill.
  10. Compare diaries to the final bill. If they do not match, contact the utility company, and correct the errors.
  11. Compare the material quantities to the line drawings that were made during, or after completing the relocation. If the materials do not match, notify the utility company, and resolve the difference in quantities.
  12. Review rates, hours, and material quantities to see if they reasonably compare to the agreement estimate. If they do not compare, make a note on the checked copy of the bill, and contact the utility company for an explanation of the difference. If an error has occurred, request the utility to submit a revised bill, or obtain authorization to make the correction.
  13. After all checks are made and the quantities are correct, complete Form 965. Make 1 copy of the completed Form 965 and sign the original and the copy in the space provided. The original will be sent to Helena, the copy will be retained in the district files.
  14. Make a cover memo (Form 986) to send the bill to the Helena Utilities Section Utility Construction Supervisor. The memo should include the following:

    - Federal-aid project number,
    - project designation,
    - control number, and
    - a list of the items being sent to Helena.
  15. The following items shall be sent along with the cover memo to Helena:

    - 1 original of Form 965 signed.
    - 1 original of the Final Bill and Detailed Report, the copy being the checked copy of the bill.
    - utility company diaries.

- 1 copy of the line drawings used to check the bill.
- 2 District inspection reports.

16. Enter the “Final Costs” into the **UTILITY TRACKING SYSTEM**.

#### **41-6.2 Lump Sum – Final Bills**

When processing a lump sum final bill, the utility agent should complete the following steps:

1. Check to see if bill indicates progress or final bill.
2. Check to verify that the final bill contains the following statement:

“I certify that this claim is correct and just in all respects, and that payment or credit has not been received.”

DATE:

COMPANY:

BY:

TITLE:

LOCATION WHERE RECORDS AND ACCOUNTS BILLED MAY BE AUDITED:

3. Check to see if final bill contains the Federal-aid project number and project designation.
4. Check to see if the final bill has date actual relocation was started and date actual relocation was completed.
5. Check to ensure the billed amount is the same as the agreement amount plus any work orders.
6. After all checks are made and the billed quantities are correct, complete Form 965. Make 1 copy of the completed Form 965 and sign each copy in the space provided. The original will be sent to Helena, the copy will be retained in the district files.
7. Make a cover memo (Form 986) to send the bill to the Helena Utilities Section Utility Construction Supervisor in Helena. The memo should include the following:
  - Federal-aid project number,
  - project designation,
  - control number, and
  - a list of the items being sent to Helena.

8. The following items shall be sent along with the cover memo to Helena:

- 1 original of Form 965 signed.
- 1 original of the Final Bill.
- 1 copy of the line drawings used to check the bill: and
- 2 District inspection reports.

9. Enter the Final Costs into the **UTILITY TRACKING SYSTEM**.

#### **41-6.3 Fast Process – Final Bill**

The utility company will not have to submit a final bill for fast process agreements, as the first sheet of the agreement is the final bill.

1. Within 60 days from the time the work described in the fast process agreement has been completed by the utility company, the utility agent will complete the first page of the agreement. One copy will be retained in the district files.

2. Complete Form 965. Make 1 copy of the completed Form 965 and sign each copy in the space provided. The original will be sent to Helena, the copy will be retained in the district files.

3. Make a cover memo (Form 986) to send the bill to the Helena Utilities Section Utility Construction Supervisor. The memo should include the following:

- Federal-aid project number,
- project designation,
- control number, and
- a list of the items being sent to Helena.

4. The following items shall be sent along with the cover memo to Helena:

- 1 original of Form 965 signed,
- 1 original of the final bill,
- 1 copy of the line drawings used to check the bill, and
- 2 District inspection reports.

5. Enter the Final Costs into the **UTILITY TRACKING SYSTEM**.

#### **41-6.4 Unit Cost – Final Bills**

The following procedures will be followed while processing the unit cost final bills:

1. Check to see if bill indicates progress or final bill.

2. Check to verify that the final bill includes the following statement:

"I certify that this claim is correct and just in all respects, and that payment or credit has not been received."

DATE:

COMPANY:

BY:

TITLE:

LOCATION WHERE RECORDS AND ACCOUNTS BILLED MAY BE AUDITED:

3. Check to see if the final bill contains the Federal-aid project number and project designation.
4. If utility has only submitted 1 copy of the bill, make an additional digital copy of the bill. Use 1 of these copies as a working copy to check and verify the bill. This checked copy must be submitted to the Helena Utilities Section in Helena with the final bill.
5. Check the quantity of units billed against the line drawings that were developed to verify the quantities are correct.
6. Check the units to ensure they were either shown on the original estimate, or have been given authorization to be used, on the project. For example, the utility company has billed a unit for frost, but the unit was not given authorization to be used on the project. This unit shall not be paid.
7. Check unit prices against unit price sheets for the year the work was completed. If work was completed in multiple years MDT reimburses utility companies on the unit cost submission in the year most of the construction takes place. If the utility company did not submit unit costs during the year the construction takes place, the reimbursement is based on the original estimate.
8. After all checks are made and the billed quantities are correct, complete Form 965. Make 1 copy of the completed Form 965 and sign each copy in the space provided. The original will be sent to Helena, the copy will be retained in the district files.
9. Make a cover memo (Form 986) to send the bill to the Helena Utilities Section Utility Construction Supervisor in Helena. The memo should include the following:
  - Federal-aid project number,
  - project designation,
  - control number, and
  - a list of the items being sent to Helena.

10. The following items shall be sent along with the cover memo to Helena:

- 1 original of Form 965 signed.
- 1 original of the final bill, 1 copy of the bill, the copy being the checked copy of the bill:
- 1 copy of the line drawings used to check the bill
- 2 District inspection reports

11. Enter final costs into the **UTILITY TRACKING SYSTEM**.

#### **41-7           UTILITY WORK ORDERS**

Utility work orders (Form 972) are initiated by the district before or during the utility relocation activities and must be initiated when the cost will exceed 15% of the State's share of the agreement cost.

##### **41-7.1 When a Work Order is Necessary**

Utility work orders should be initiated for the following reasons:

- when the scope of work changes approximately 15% or if the alignment, number of facilities (e.g., poles, footage of cable) change approximately 15% **or more**.
- if the agreement estimate is outdated by approximately 15%.
- if the Department's scope of work causes a 15% increase in costs: or
- where FHWA non-participation is questionable.

This item usually comes into question when the Department requires a public utility to relocate facilities a second time because of design changes or an error caused by the Department, which places the relocated facility in conflict. All questionable items should be discussed with the Helena Utilities Section to determine if FHWA participation is in question.

##### **41-7.2 Prior Approval**

It may be necessary to get prior verbal approval of a work order or fast process agreement while the work is underway. Discuss the reason for the work order or fast process agreement with the Helena Utilities Section prior to the work commencing and document the conversation regarding the use of the utility work order/fast process agreement.

### **41-7.3 Approval of Utility Work Orders**

The District Administrator may approve work orders up to \$10,000. An approved copy of the utility work order must be submitted to the Helena Utilities Section.

The Helena Utilities Section Supervisor may approve work orders up to \$100,000.

### **41-7.4 Acceptable Overruns**

Sometimes, the utility agent will not know if the utility company will overrun the agreement estimate until the final bill. In these cases, a utility work order is not necessary. The utility agent should obtain documentation from the utility company to be submitted with the final bill.

Document the reasons for the overrun on the district utility agents FIELD INSPECTION REPORT. The FIELD INSPECTION REPORT will provide adequate documentation of such minor changes. The overruns must not exceed 15% of the State's share of the agreement without a utility work order.

#### **UTILITY AGENTS' CHECKLIST**

1. If you receive an actual cost agreement, find out if the utility company is going to use a contractor. If the contractor has not been approved, get them approved prior to starting work.
2. Discuss the requirements for diaries with the utility company.
3. Go over the agreement work with the utility company, preferably in the field after they have staked it. Find out when they can do the work.
4. Have the right-of-way staked for the utility company. **Remember**, if you do not and they install a facility in the wrong location, it probably will be our fault and we will have to pay all the costs for the relocation.
5. Determine the time of year the work is accomplished and if the proposed timing will increase the relocation costs. Winter work will usually increase the cost of the relocation. If so, prepare a utility work order to cover these costs.
6. Determine if there are any changes in the plans due to a design change, or a change in the utility scope of work. If either is substantial, initiate a utility work order.
7. For complex relocation projects involving several public utility companies, have a meeting with all utilities involved to coordinate the relocation work.
8. Make sure the utility company has the latest plans and cross sections. Do not assume the utility company knows our plans. Review the plans with them.

9. Determine the number of utility inspections necessary for effective monitoring.
10. Approve the occupancy agreements and authorize the utility to proceed with work.
11. Monitor and document work. Check diaries during work on actual cost agreements. Submit utility work orders for substantial changes. Constantly check for design or right-of-way changes.
12. Have the utility submit progress payments on larger utility relocation projects.

#### **41-7.5 Process Final Bills**

Remember the Helena Utilities Section will monitor relocation activities during work. They are there to help and to ensure necessary procedures are followed to obtain Federal reimbursement. If during work, you are unsure of anything, call the Helena Utilities Section for consultation. We can help each other.

Do not change or approve additional work on lump sum agreements without discussing it with the Helena Utilities Section.

#### **41-7.6 Things to look for During Inspections**

1. Is a contractor approved for actual cost agreements?
2. Is a consultant inspecting and monitoring the relocation and are they approved on actual cost agreements?
3. Check diaries to determine if the workers at the site are representative of workers and equipment shown in the diary for actual cost agreements.
4. Has the scope of work, material, etc., changed?
5. Are the new facilities placed free from conflict, both underground and overhead? Remember all overhead crossings shall have a minimum of 6.4 m (21 ft) of clearance.
6. Document all conversations, observations, and activities.
7. Consult with the Helena Utilities Section whenever you have questions or changes.
8. Are the utility company raptor proofing electrical facilities installed within the right-of-way? Raptor proofing is required for all electrical facilities located in the highway right-of-way.

#### **41-7.7 Non-Salvaged Material**

The district has the option of accepting all or a portion of the non-salvaged material from a public utility relocation.

The utility company will be responsible to remove and dispose of all material, which is not returned to stores or material, which is considered hazardous. This includes non-salvageable poles. The cost to remove and dispose of such material is reimbursable at the agreement percentage.

The utility shall stockpile all other non-salvageable material for inspection by the district. The utility company shall dispose of material that cannot be sold. Funds generated from the sale shall be credited to the project.

All cost related to the removal, disposal and sale of material is reimbursable at the agreement percentage.

#### **41-7.8 Salvage Material**

Salvage material shall be returned to the utility company stores and the project credited for the items returned.

### **41-8 FEDERAL NON-PARTICIPATING COSTS**

There are occasions where a portion or all the costs for a public utility relocation will be paid by the Department with no participation by the Federal Highway Administration. Following are examples of these situations:

1. When a public utility company must relocate more than one time because of a design error or staking error by the Department.
2. When a public utility company has relocated their facilities, and a design change requires a second relocation.
3. Any other case where a public utility must be relocated a second time that is caused by the Department.

These costs will be coded as Class 20 instead of Class 10 on the final bill coding sheet. In addition, these costs are to be identified in the final bill along with a reason.

### **41-9 TRAFFIC CONTROL**

Public utility companies must conform to MDT requirements when working within the public right-of-way. The book entitled ***Guidelines for Work Zone Safety*** is a good guide for utility companies to use.

For special cases, utility companies should submit a traffic control plan for approval prior to beginning work to the District Office. Certified flag persons will be required when working within state rights-of-way.

**Remember:** No equipment or material should be stored within 9.1 m (30 ft) of the outside travel lane.

House Bill 99 passed by the 1997 legislature allows utility companies to use regulatory signing and invoke double penalty requirements. See the addendum to the ***Guidelines for Work Zone Safety***.

#### **41-10 CLEAR RECOVERY AREA**

Unlike the clear zone, which is variable, the clear recovery area is defined as 9.1 m (30 ft) from the outer edge of the outside travel lane on paved sections or 12.8 m (42 ft) from centerline on unpaved sections, or the clear zone whichever is greater.

#### **No Above Ground Utilities Should Be Placed Within These Limits Unless:**

1. The Preconstruction Engineer grants an exception.
2. The facility is behind guardrail or some location where it is inaccessible, such on a cut slope.
3. Posted speeds are less than 35 mph.
4. The facility is placed behind the curb.
5. The above ground facility is breakaway. Traffic Engineering Section has determined that the 150 mm (6 in) square telephone pedestal is breakaway.

#### **OSHA REQUIREMENTS**

MDT personnel are not OSHA inspectors, however there are instances where MDT personnel must take action to avoid injury to a worker.

The Director's Management Memorandum says:

*"MDT employees, upon observing a potential OSHA violation, within MDT highway right-of-way, shall notify the contractor/utility project superintendent in charge and request action be taken to immediately correct the potential violation or remove the employees and equipment from the danger area or cease operations. The MDT employee shall note in writing, the time, date, place, type of potential violation and the name of the superintendent notified. The potential violation incident is to be reported to the District Administrator. The District Administrator should report the potential violation to OSHA officials if the incident is not corrected."*

## **41-11 CONTRACT SPECIAL PROVISIONS**

The district is responsible for writing contract special provisions. The special provisions should be submitted to the contract plans section a minimum of 6 weeks prior to the letting date.

When utility relocation work is to be accomplished during construction, the special provisions should indicate the name of the company, contact person (with telephone number) and the work to be accomplished by station to station.

## **41-12 ENVIRONMENTAL ISSUES**

### **41-12.1      Permits**

Although the project environmental document covers the archaeological and historical requirements for utility relocations, the utility company is responsible to secure all other necessary permits (e.g., storm water discharge, stream crossing permits).

### **41-12.2      Categorical Exclusion**

There are occasions where a utility categorical exclusion will be used to relocate public utility facilities in advance of the project environmental document. An example is where a utility company requests to place new facilities out of the project limits and there would be cost savings to the Department by relocating existing facilities in conflict at the same time.

The Helena Utilities Section will activate the process by requesting the District and Environmental Services to determine if there are impacts. If there are no apparent impacts, the Helena Utilities Section can send the notification memorandum to the Fiscal Planning Section.

#### **41-12.3      Environmental Impacts**

If there is an environmental impact discovered during the utility relocation. The utility company must cease work, Environmental Services notified, and corrective action taken prior to work commencing. Underground storage tanks and unknown archeological evidence are two examples.

#### **41-12.4      Environmental Checklist**

The environmental checklist is not required for utility relocations for highway projects.

#### **41-13 TEMPORARY REROUTE**

Any materials recovered from temporary use and taken back into stores must be credited to the cost of the project.

#### **41-14 UTILITY RELOCATION ON PUBLIC LANDS –**

*(Forest Service, BLM, State Lands)*

MDT holds easements or permits for highways on public lands. Prior to a public utility relocating on or off the highway easement or permit, the utility company must secure the approval of the public agency. The only exception is on lands administered by the Department of Natural Resources and Conservation, (formerly the Department of State Lands), which allows the Department of Transportation to issue permits to public utility companies on their behalf where the Department of Transportation holds an easement on State lands.

#### **41-15      OFF-SYSTEM PROJECTS**

These are normally small bridge projects on county roads.

The Department will not pay for utility relocations where public utilities are in the existing right-of-way and must be relocated for the project. The reason for this is that the State statute says the Department will reimburse 75% of the costs for public utility relocations on Federal-aid systems. Public utilities located on private rights-of-way will be compensated for the relocation, provided they have a valid existing right to be there through a documented easement or other granting instrument.

#### **41-16      RAPTOR PROOFING**

The Department requires raptor proofing for all aerial electrical facilities relocated within the highway right-of-way. There are exceptions. Environmental Services must grant exceptions. Public utilities relocated outside of the new right-of-way do not have to be raptor proof. The Department will cost share in raptor proofing at the same percentage as the rest of the relocation.

## **41-17            TIMBER CLEARING**

Timber clearing is paid at the same percentage as the utility agreement. A review of the applicable right-of-way agreement is necessary to determine if the agreement stipulates those trees within the right-of-way must remain.

There are occasions where a third party owns the timber within the right-of-way and compensation for removal is necessary.

## **41-18            SUBSURFACE UTILITY AGENTING (SUE)**

Subsurface Utility Agenting is the process by which the Department uses the services of consultant firms to locate, survey and excavate aboveground and belowground utilities for future construction projects.

Helena Utilities Section secures (through the Consultant Design Section) term contracts with SUE firms. The District and Preconstruction Bureau are requested to nominate projects where the SUE process will benefit the project design and construction. This usually occurs at the preliminary alignment and grade review. The Helena Utilities Section can nominate projects where this process will facilitate the utility relocation process. Projects considered for the SUE process should include major rural reconstruction and urban projects.

The SUE process is conducted as follows:

1.     The SUE contractor locates, surveys and maps above and below ground utilities.
2.     The district designer and Helena Utilities Section determine where and the number of excavations to be performed to determine the exact location and elevation to underground utilities.
3.     If during the preliminary stages of utility agreement development, you determine the utility topography is incorrect, contact the Helena Utilities Section to initiate a SUE project. Contact the Helena Utilities Section if there is an occasion where the exact elevation is necessary to determine if there is a conflict.