Minnesota Department of Transportation

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TO: District Engineers/Metro Division Engineer
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FROM: Mike Marttila, Director
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SUBJECT: UTILITY DELAY COST RECOVERY PROCESS

The following information is being provided as guidance in resolving utility delay cost issues between the project engineer and the contractor on Mn/DOT contracts.

In order for this process to be started the contractor must have suffered extraordinary delays to the construction operations not known at the time of bidding due specifically to utility relocation. The contractor must have made a claim against Mn/DOT in accordance with applicable Mn/DOT specifications and special provisions.

The Process will incorporate the following areas within the project development functions:

- Identification
- Coordination
- Verification
- Plan Information

Required steps that Mn/DOT must have taken in the above activities will dictate whether Mn/DOT has sufficient grounds for pursuing cost recovery measures from utility company(s) that cause extraordinary delays for which the contractor is seeking reimbursement from Mn/DOT.

Please review Technical Memorandum 01-02-TS-02 dealing with utility coordination and plan content for a description of the above four activities.

If the contractor changes the construction schedule so as to require changes to the utility company's relocation operation, or if the contractor does not provide proper coordination with the utility company(s) as outlined in Specification 1505, no claim for utility delays will be considered.

The following activities are the responsibility of the project engineer as part of the preparation for the administration of a construction project.

PRELIMINARY CONSTRUCTION COORDINATION

Project development should be coordinated between the preliminary/final design project manager and project engineer to address utility coordination and impacts. Mn/DOT's project engineer should meet with utility companies prior to establishing the construction schedule to consider utility relocation requirements and schedules. Project time and traffic should be developed in consideration of construction staging and utility relocation activities. If necessary, special provisions will be developed for the project to alert contractors of specific timing and coordination needs prior to bidding. The need for this activity will be determined on a project-by-project basis.

For projects involving complex utility relocation requirements, the project engineer should schedule pre-letting meetings and invite major plan holders, local government agencies (if involved), and utility companies to address relocation/adjustment requirements, issues/problems and construction scheduling.

After final plans along with Utility Coordination and/or Utility Verification Letters, special provisions, and time and traffic are received by the Utility Agreements Unit, they will initiate the appropriate utility notification actions. These may include Utility Agreements, Notice and Order letters, or Information Only letters. The notice and order letter is used to notify the utility company of the action they must take.

Utility Agreements are negotiated with the utility company when it is determined that the company will be reimbursed for its relocation work.

Notice and Orders are issued when the utility company is required to relocate its facility. The utility company is required to submit the following information to the resident engineer within 30 days:

- A plan and schedule of the proposed relocation/adjustment work.
- The name of the utility contact person in charge of the relocation/adjustment work along with the address, phone number and fax number.

CONSTRUCTION FIELD ACTIVITIES

If the utility company does not respond to the Notice and Order letter within the 30 day requirement by submitting the above information or contacting the project engineer, the project engineer will contact the utility representative with a follow up letter indicating that the information will be required to be submitted within 7 days. This letter should indicate that the failure to submit the information being requested in the Notice and Order may result in Mn/DOT holding the utility company responsible for all delay costs incurred by the State and/or the contractor.

Once the project engineer receives the plan and schedule from the utility company, the utility company, the construction contractor (if available), and the project engineer will review and approve a final draft of the plan and schedule. Having all three parties sign off on the final plan and schedule would be desirable.

At the first indication of delay caused by the utility company, (for example: the utility subcontractor is not showing up at the project site, limited and/or no activity by utility company

etc.) Mn/DOT's project engineer should document in the project diary or project file that it appears the utility relocation/adjustment work is not progressing satisfactorily, along with pertinent details. The project engineer should then contact the utility company's main contact person and advise them of the problem associated with the relocation/adjustment work.

If the project engineer determines that there could be a delay to the project after the discussion with the utility company, this condition should be brought to the attention of the contractor. If the contractor indicates that the delay will have an impact on the project, the project engineer should remind the contractor of the claim notification language in the contract, and that they should provide notices to both Mn/DOT and the utility company.

Mn/DOT's project engineer will follow-up on the contractor's contact with a letter to the utility company. Within both communication avenues used, the project engineer should indicate the possibility that contractor delay costs will be assessed if the utility relocation/adjustment work is not completed by the scheduled time agreed upon by all parties. A copy of this letter will be sent to the prime contractor, any affected subcontractors that are being impacted by the utility delay, and Mn/DOT's utility engineer.

Once a claim notice, as provided for in Specification 1517, has been sent by the contractor, the project engineer should review the procedures outlined above, and those covered in the Utility Coordination and Plan Content Technical Memorandum (01-02-TS-02), to ensure that Mn/DOT has complied with the requirements of that memorandum.

If the procedures outlined in this cost recovery process and the Technical Memorandum have been followed, the project engineer will determine what actions are appropriate for the project. If the work by the utility company directly results in a delay to the progress controlling operation, the project engineer will determine whether it is acceptable to allow a time extension until the utility delay has been resolved, or adjust the working day assessments in instances where progress is being limited. When this option is determined to be appropriate, it will be the contractor's responsibility to take appropriate action to recover any costs associated with the delay directly from the utility company as provided for in Specification 1507.3B.

If the project engineer determines that Mn/DOT did not follow the process outlined in Technical Memorandum (01-02-TS-02) in its dealings with the utility company, and that this failure to follow the process resulted at least in part to the utility company's delay, Mn/DOT will consider paying the reasonable costs associated with the delay to the contractor provided that the contractor has given notice as required in Specification 1517. A copy of the contractor's claim settlement agreement will be forwarded to the Mn/DOT utility engineer for appropriate action.

In the event that work cannot be suspended, or allowed to proceed at a slower pace, without serious impact to the project, the project engineer will order the contractor to continue working in/around the utility work, and the contractor will be compensated for its additional costs as extra work in accordance with Specifications 1507.3B and 1403. The project engineer will immediately notify the utility company of this decision, and advise them that the Department will pursue reimbursement of these costs from the utility company. A copy of this letter will be forwarded to the Mn/DOT utility engineer.

Once the work has been completed, and costs have been tabulated, the project engineer will meet with the contract administration engineer, utility engineer, and the State Attorney General's Office to determine what action is appropriate to recover the costs incurred by the Department. The

utility engineer will also determine what actions may be appropriate in Mn/DOT's future dealings with this utility company to prevent the problem from reoccurring.

While this process will not be able to cover all situations that arise on construction projects, it is anticipated that this memo will provide considerable guidance to project engineers in resolving utility delay problems.

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