## AUDIT AGREEMENT FOR PAYMENT TO MUNICIPALITY FOR

## LANDS OR INTERESTS IN LANDS ACQUIRED FROM PUBLIC UTILITY

Locals 04/2019

This Agreement is made and entered into by and between the LOCAL PUBLIC AGENCY hereinafter designated as the “LPA”, the signatory       hereinafter designated as the "MUNICIPALITY," for the payment for certain lands or interests in lands acquired by the MUNICIPALITY from      , a public utility company, a quasi utility or cooperative hereinafter designated as the “COMPANY” in connection with a transportation improvement designated:

|  |  |  |  |
| --- | --- | --- | --- |
| Project Description | | Project ID(s) |  |
| Title:  Limits:  Highway:  County: |  | Design:  Construction:  Right of Way:  UTL No.:  Utility: |  |
| Facility type: | | | |

WITNESSETH: For and in consideration of the conveyance by separate instrument to the MUNICIPALITY of certain lands or interests or rights in said lands in which the COMPANY holds a real property interest, the LPA will pay to the MUNICIPALITY an amount equal to the net cost incurred by the COMPANY for the actual removal, relocation, alteration, or other rearrangement of the COMPANY facilities situated on the said lands required to restore equivalent function as necessary, in kind if feasible, of the affected segment of the COMPANY facility.

The work covered by the Agreement is set forth in the Exhibit hereto attached and made a part hereof. The Exhibit consists of a statement of the work and a proposed schedule for its accomplishment and coordination if necessary with the companion transportation work, an estimate of costs, plans and special provisions, if any.

The work shall be performed under normal COMPANY practices and the costs thereof computed and determined in accordance with the work order accounting procedure prescribed or approved for the COMPANY by the regulatory agency having jurisdiction, including applicable provisions of the Code of Federal Regulations 23, Part 645, Subpart A - Utility Relocations, Adjustments, and Reimbursement. It is further understood, however, that:

1. All salvage shall be credited to the project in the manner prescribed under the COMPANY's accounting procedure for work undertaken at the expense and volition of the COMPANY. When recovered materials are to be disposed of by sale or as scrap, the COMPANY shall either have filed with the MUNICIPALITY an acceptable statement outlining the COMPANY's current standard practice and procedure for disposal of such material or shall give written notice to the MUNICIPALITY of the location and time said recovered materials will be available for inspection.

2. A credit shall be given representative of the amount of depreciation accrual, if any, assignable to the facilities subject to replacement. Such credit shall be calculated for all facilities covered by the Code of Federal Regulations 23, Section 645.117(h). The amount of the credit shall be based upon the original installed cost, the age of the facility and the applicable depreciation rates, but may also consider the average service lives certified by the regulatory agency having jurisdiction and the expected remaining service lives of the existing materials.

3. Work under this Agreement shall not start until the COMPANY has received written notice from the MUNICIPALITY to proceed with the work. The COMPANY shall give prior notice to the MUNICIPALITY when it proposes to commence its construction operations and shall give similar notification when operations are resumed subsequent to suspension of operations. Any significant change in the extent or scope of the work under this agreement must be covered by a written change order or an extra work order. **It is expressly understood and agreed that any work by the COMPANY prior to authorization by the MUNICIPALITY shall be at the COMPANY's sole expense.**

The COMPANY shall not subcontract any portion of the work included under this Agreement without the prior approval of the MUNICIPALITY except for work of relatively minor cost or nature. Any existing continuing contract, under which the COMPANY now has certain work regularly performed, will be considered to conform to the requirements of this section, provided the contract is submitted for the MUNICIPALITY's prior approval.

The COMPANY shall keep and make available to the MUNICIPALITY detailed payrolls for office and field personnel, equipment use records, materials used, and salvage records including the condition and disposition of the removed and salvaged materials, as well as payments to any utility subcontractor if the work is performed in that manner.

4. Upon completion of the work contemplated under this Agreement, the COMPANY will submit invoices to the MUNICIPALITY setting forth the actual and related indirect cost in substantially the same detail and order indicated in the estimate attached to this Agreement. Each copy of such invoice shall identify the location where the supporting records for the costs included in the billing may be reviewed as well as the name of the COMPANY custodian of such records. Invoices shall be submitted within one year of the completion of the companion highway construction project.

The COMPANY agrees to permit audit of said invoices by the MUNICIPALITY, LPA, or by the Federal Highway Administration, if necessary, and to offer prompt support for any item cited for review or be deemed to concur in the deletion or correction thereof. The supportable net amount of the invoice verified by audit as being in compliance with the provisions of this Agreement shall be paid by the MUNICIPALITY to the COMPANY and will be accepted as full compensation for the rights or interests in the lands conveyed, including all damages, costs and expenses incurred by the COMPANY and arising from or necessitated by the said conveyance. Said invoice shall be submitted to the LPA’s Management Consultant with a request for reimbursement and a copy of the COMPANY invoice, record of payment, and supporting documentation who will forward it to the LPA’s Utility Projects Coordinator. The Utility Projects Coordinator shall review the invoice for compliance with the original agreement and applicable State and Federal regulations. When this compliance is assured, the Utility Projects Coordinator will authorize payment by the LPA to the MUNICIPALITY.

The MUNICIPAL UTILITY shall comply with the Buy America requirements specified under 23 USC 313 and 23 CFR 635.410 when any part of this highway improvement project involves funding by the Federal Aid Highway Program. To complete processing of invoices submitted, the MUNICIPAL UTILITY shall provide to the LPA a signed DT2249, *Utility’s Certificate of Compliance for Steel and Iron Items*.

1. In Connection with the performance of work under this contract, the COMPANY agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5) Wisconsin Statutes, sexual orientation as defined s.111.32(13m) Wisconsin Statutes or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the COMPANY further agrees to take affirmative action to ensure equal employment opportunities. The COMPANY agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

6. The execution of this Agreement by the MUNICIPALITY or LPA shall not relieve the COMPANY from compliance with applicable Federal and State laws, Wisconsin Administrative Codes, and local laws or ordinances which may affect the performance of the work covered herein, and shall not be construed to supersede any other governmental agency requirements for plan approval or authority to undertake the utility alteration work.

No COMPANY work affecting highway lands shall be undertaken without any required separate permit, which may be processed and approved concurrently with this Agreement.

7. It is further agreed that any legal action taken by the COMPANY because of dispute arising through this transaction shall be for monetary considerations only, and shall not be for the revocation of the conveyance for the lands or rights or interests therein.

1. The Agreement is not binding upon the parties hereto until this document has been fully executed by the LPA, MUNICIPALITY, and the COMPANY.

**IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be executed by their proper officers and representatives on the year and the day below written.

|  |  |  |  |
| --- | --- | --- | --- |
| **WISCONSIN LPA OF TRANSPORTATION** |  |  | |
| (Authorized Signature) |  | (Company Name) | |
| (Date) |  | (Signature) | (Date) |
|  | |
| LOCAL UNIT OF GOVERNMENT |  | (Title) | |
| (Authorized Signature) |  | (Signature) | (Date) |
|  | |
| (Date) |  | (Title) | |