

**Lease
By and Between**

**The Wisconsin Department of Transportation
An Administrative Agency of the State of Wisconsin**

and

**The University of Wisconsin System
An Educational Agency of the State of Wisconsin**

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I. LEASE DESCRIPTION

Pursuant to authority vested in the Wisconsin Department of Transportation as set forth in section. This Lease Agreement (Lease), is made and entered into this 7th day of July, 2003 by and between the Wisconsin Department of Transportation (WisDOT) and the Board of Regents of the University of Wisconsin System (UW System) on behalf of _____ and provides for WisDOT to lease:

- Four strands of fiber optic cable, in which WisDOT has an indefeasible right of use as set forth in a separate agreement between WisDOT and Touch America. That agreement is attached hereto for information purposes only (**Appendix D**). The fiber optic cable identified herein is located primarily in the Interstate I-94 highway right of way (see route map attached as **Appendix A**) and extends from the Minnesota/Wisconsin border near Hudson, Wisconsin to the Illinois/Wisconsin border near Kenosha, Wisconsin.
- Floor space and access to electricity in signal regeneration facilities (huts) under development by WisDOT and to be located at specific sites outlined in **Appendix B**. Each hut will have internal fencing and separate access doors to provide secure separation between DOT and UW equipment as well as any equipment of other authorized users of the facilities.
- Floor space and access to electricity in DOT permanent locations outlined in **Appendix C** will be provided for UW optical signal regeneration equipment.

WisDOT deems it in the best interest of WisDOT, the UW System and the people of Wisconsin to lease these fibers and facilities to the UW System under the terms and conditions set forth herein. In consideration of the mutual covenants herein contained, WisDOT and UW System agree as follows:

II. RECITALS

- A. WisDOT has available for leasing to the UW system, four strands of fiber optic cable, located primarily in the I-94 Interstate Highway right of way extending from the Minnesota/Wisconsin border near Hudson, Wisconsin to the Illinois/Wisconsin border near Kenosha, Wisconsin. WisDOT is currently developing signal regeneration facilities for WisDOT use in this same corridor and will have those facilities available for use in 2003.
- B. This Lease represents an agreement between WisDOT and the UW System for the UW System's exclusive use of four fiber optic strands of the currently existing dark cable in which WisDOT has an indefeasible right and which is located as described in Paragraph A above (fiber optic cable). This Lease also provides for WisDOT to supply UW System with floor space and access to electricity in WisDOT signal regeneration huts and permanent DOT facilities as more specifically shown in **Appendices B and C** and Section 1.1. This Lease shall be for a period of 20 years commencing on the date of execution by WisDOT.

III. SCOPE OF LEASE

3.1 Premises Covered As set forth in the recitals hereto, WisDOT leases four strands of fiber optic cable, floor space and access to electricity to the UW System. Use of and needs associated with the leased strands, floor space and electricity shall be in a manner that is exclusively determined by the UW System, but which is not contrary to the Agreement that WisDOT has with Touch America Inc. UW System shall have sole and exclusive responsibility for providing services and equipment necessary for UW System to light and utilize the four strands of fiber optic cable. UW System shall also have sole and exclusive responsibility for network management and maintenance of the UW owned optical and electronic equipment, consistent with the Agreement between WisDOT and Touch America. In the event the Touch America IRU is superceded or transferred, the parties agree to negotiate appropriate amendments.

Conditions

- WisDOT will provide floor space in Division of State Patrol (DSP) locations in Eau Claire, Tomah and Waukesha or huts, including satisfactory environments for UW to install their own equipment.
 - o Locations covered under **Appendix B** include the following:
 - DOT Baldwin regeneration hut
 - DOT Northfield regeneration hut
 - DOT Dells regeneration hut
 - DOT CTH P (Watertown) regeneration hut
 - DOT Parkside regeneration hut
 - Huts will have interior security fencing floor to ceiling, with separate secured access doors for WisDOT and UW and any other users. WisDOT can provide UW detailed Hut drawings, upon request.

- o Locations covered under **Appendix C** include the following:
 - DSP D6 Eau Claire
 - DSP D5 Tomah
 - DSP D2 Waukesha

- o UW must provide WisDOT a list of names and cell phone numbers of people that will need access to these Hut and WisDOT buildings. UW needs to notify WisDOT's Network Monitoring and Repair Center (NMRC) of any personnel changes on a monthly basis.

- WisDOT will provide UW with the initial necessary AC and DC (max 50 amps) power at these spaces or huts. Any additional AC or DC installation will be billed to the UW based on time and material.
- UW will be responsible for all splicing and terminations at any location other than those shown above. WisDOT will provide the Fiber Termination Panels (FTPs) and entrance cables into the Huts and DSP sites. WisDOT will not provide the fiber patch cords between the FTPs and UW equipment.
- UW will be responsible for all fiber spurs from DOT spaces, handholes, or huts to their campuses (i.e. Eau Claire, Madison, Milwaukee). UW will need to coordinate with WisDOT for accessing the handholes for splicing and will be responsible for all costs associated with that access.
- WisDOT will not provide network management, monitoring, or repair of any UW equipment at these locations.
- WisDOT shall have responsibility for fiber restoral and cable locates (Diggers Hotline) on those TA fibers leased to UW and those fiber spurs that WisDOT places from the TA fiber into the Huts and DSP locations. WisDOT's Network Monitoring Repair Center (NMRC) vendor will provide 24x7 monitoring. Should the NMRC witness a loss of connectivity, the NMRC will resolve the problem within a single business day. The UW may independently contract with the DOT NMRC vendor for network monitoring and repair of these fibers, should a reduced network problem resolution response time be required. WisDOT will not have any responsibility for cable locates (Diggers Hotline) or restoral on any fiber spurs UW owns or is leasing from other sources.

3.2 Ownership of Improvements Any equipment, other improvements or appurtenances that are placed or constructed in, on or about the I-94 interstate highway right of way by UW System after the Lease commencement date and during the term of the lease shall, hereinafter be termed "Improvements", and shall be and remain the property of the UW System. Placement of an "improvement" in the I-94 interstate highway right of way is subject to approval by WisDOT and any other federal, state or local unit of government having a legal right to regulate the placement of such equipment, improvements or appurtenances. Any "improvement(s)" not specifically approved, in writing, by WisDOT shall be subject to immediate removal by WisDOT, and WisDOT shall be free from any liability, direct, indirect, incidental or consequential that UW system experiences as a result of such WisDOT action.

3.3 UW System and WisDOT acknowledge that this lease is a new and different type of cooperative venture between these two public agencies. Each party also acknowledges that effective utilization of this resource is a dynamic undertaking. As such the parties agree to cooperate with and work together to resolve, any and all technical, administrative or regulatory challenges that may present themselves during the term of this agreement. The parties also acknowledge that the lessee is not a telecommunications carrier under state or federal law by virtue of entering into this agreement. The parties also acknowledge that federal telecommunications law and regulations, present or future, could effect or limit the parties intended utilization of this fiber optic system. If any such application or interpretation of federal law or regulation were to limit the services and payments provided under this agreement, the parties agree that such Federal law limitation will be treated as an Act of God, and to the extent limited each party will be excused from any responsibility to, or damages or liability to the other party resulting from such application of federal law or regulation.

IV. LEASE PAYMENT TERMS

4.1 The UW System will make a payment to WisDOT of \$218,000 at the time of lease execution. The deposit shall be used to cover capital and consulting costs for signal regeneration facility construction. This deposit will be returned to the UW System on the last day of the lease unless the deposit has been applied, in full or in part, to the final payment on the lease.

4.2 The UW System shall make annual payments of \$218,000 for each of the 20 years of the lease based on the following schedule. The first payment will be made when the signal regeneration facilities are ready for occupancy. Subsequent payments will be made at the beginning of each State of Wisconsin fiscal year. The first and final payments shall be prorated for partial years if applicable.

Years 1-20 @ \$218,000 for a total of \$4,360,000

4.3 UW System may, anytime after the first two (2) years this agreement is in effect, provide WisDOT with a one-year advance notice of UW System's intention to terminate this agreement. UW System will be responsible for all payments during the one-year after notice, but shall have no further responsibility for any additional payments under this agreement. Notwithstanding anything to the contrary in this agreement, UW System will, upon the actual date of termination under this provision, relinquish all title right and interest held by UW System in the fiber optic resources identified elsewhere in this agreement.

V. GENERAL CONDITIONS

5.1 Successors and Assigns The covenants, conditions, and agreements contained in this Lease shall bind and inure to the benefit of the parties hereto and their respective successors and their assigns.

5.2 Lease Preparation WisDOT and UW System agree to treat this lease as jointly prepared, and it is understood that neither party hereto may use, in defense or support of any legal proceeding, one against the other, that the other party drafted the language and is responsible for any vague or uncertain language.

5.3 Relationship of Parties Nothing herein contained is intended or should be construed as creating or establishing a partnership, joint venture or agency relationship between WisDOT and UW System.

5.4 Wisconsin Law WisDOT and UW System agree that the terms and conditions of this Lease shall be construed in accordance with the laws of the State of Wisconsin.

5.5 Contents of Lease This Lease, with any exhibits, attachments, amendments and supplements attached hereto or incorporated herein by reference, constitutes the entire understanding by and between WisDOT and UW System. Any documents or other items expressly referenced or incorporated herein supersede any documents, items or information generated in prior negotiations, agreements, understandings or statements at any time made or had by the parties, any of their agents or employees.

5.6 Amendments No amendment or modification hereof may be deemed valid unless reduced to writing and dated and signed by the parties hereto. No waiver of any of the provisions of this Lease or any rights granted by the terms hereof shall be valid unless such waiver is in writing, and is duly executed and dated by the party granting the waiver.

5.7 Severability If any term, covenant, condition or provision of this Lease or the application thereof to any circumstance shall be invalid or unenforceable as a matter of law, the remaining terms, covenants, conditions, and provisions of this Lease or the application thereof to any circumstances or to any person, firm or entity, shall not be affected thereby, and each remaining term, covenant, condition and provision of this Lease shall be enforceable to the fullest extent permitted by law.

5.8 Quiet Enjoyment WisDOT hereby covenants and agrees, to the extent of WisDOT's indefeasible rights in the fiber optic cable, that UW System shall have peaceful and quiet possession and enjoyment of the four strands of fiber optic cable against all parties claiming adversely thereto, so long as UW System performs and abides by all covenants and agreements in this Lease. UW System acknowledges that the four strands of fiber optic cable are located, primarily, in the right of way of the I-94 Interstate Highway, and that the primary purpose of that highway right of way is for the safe and efficient use and movement of motor vehicles. UW System also acknowledges, from time to time, that highway maintenance, repair services and reconstruction

could interfere with UW System's full and satisfactory use of the four strands of fiber optic cable. UW System accepts this Lease with a clear understanding that WisDOT, under no circumstance, will be liable or otherwise responsible to UW System for any damages, direct, indirect, incidental or consequential, resulting from delay or disruption of the flow of information via the four strands fiber optic cable that may result from highway maintenance, repair, reconstruction or other authorized service. WisDOT shall, where disruption or delay of more than four (4) hours is specifically due to WisDOT's actions or inactions, reimburse UW System an amount equal to one full (1) day's lease payment.

5.9 Subletting or Assignment UW System may not sublet or assign any part of this lease without the prior written approval of WisDOT, which approval shall not be unreasonably withheld.

5.10 Insurance UW System shall maintain, for the life of the Lease, the following types of insurance. Alternatively UW System shall provide WisDOT with written verification that it self insures or is otherwise immune from liability.

(a) Comprehensive General Liability - \$1,000,000 combined single limits per occurrence.

(b) Auto Liability - \$1,000,000 combined single limits per occurrence.

UW System agrees to assume full responsibility for any and all damages, expenses, attorneys fees or other expenses as a result directly or indirectly from any action or inaction by UW System, it's agents, employees, or any other person acting with permission of the UW System, which costs, fees and expenses occur because of or result from actions or inaction taken by or with permission of the UW System while using, maintaining, servicing the leased strands of fiber optic cable.

5.11 Copy Deemed Duplicate Original Any fully executed copy of this Lease shall be deemed for all purposes as a duplicate original hereof.

5.12 Heading The captions used throughout this Lease are for convenience and reference only, and the words contained therein shall in no way be held or used to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Lease.

5.13 Continuation of Lease All covenants, agreements, representations and warranties made by UW System in this Lease shall survive termination of this Lease and shall continue in full force and effect as long as any lease payments or other amounts payable under this Lease remain unpaid.

5.14 Warranty of Signature Each signatory of this Lease Agreement, for WisDOT and UW System, hereby represent and warrant that he/she has full and complete authority to execute this Lease. This representation and warranty is made for the purpose of inducing WisDOT and UW System to execute this Lease.

5.15 News Releases News releases pertaining to this Lease shall not be made by UW System without notifying and consulting with WisDOT.

5.16 Incorporation of State of Wisconsin Terms All terms and conditions directly or indirectly required by the Wisconsin Constitution, Wisconsin Statute, or Wisconsin Administrative Rule to be included in an agreement of this nature executed by an administrative agency of the State of Wisconsin, which are not specifically set forth or attached to this Lease, are incorporated herein by reference. WisDOT and UW System agree that any term, condition, provision of the Wisconsin Constitution, Wisconsin Statutes or Administrative Rules that limit the authority of WisDOT or UW System to commit to any term, provision, condition of this Lease shall cause such term or condition to be null and void. The remainder of the Lease shall survive and shall be equitably interpreted in accordance with the terms of paragraph 5.7

Neither the WisDOT nor UW System official executing this Lease shall be liable to the other or to any third party who may have relied on any ultra vires commitment on the part of either WisDOT or the UW System.

5.17 Meetings and Conferences Meetings and conferences, as may be necessary for the discussion and review of the terms of this Lease and maintenance, service or other authorized activities by UW System within WisDOT's highway right of way, may be scheduled at the request of WisDOT or the UW System.

5.18 Conflict of Interest The UW System warrants that neither it nor any of its affiliates has any known public or private interest, and shall not knowingly directly or indirectly obtain any such interest which would conflict in any manner with UW System's lease of and utilization of the four strands of fiber optic cable described herein.

5.19 Surrender At End of Term UW System agrees, upon the last day of the term of this Lease or of any extension hereof, or of any sooner termination of this Lease, to peaceably and quietly surrender and yield up to WisDOT the entirety of the leased fiber optic strands described herein, or in any amendment or extension hereto. UW system agrees that upon any such surrender of the fiber optic strands that the strands shall be in as good order and condition as the same were at the commencement of the term of this Lease, reasonable wear and tear excepted.

5.20 Notices All notices to WisDOT shall be personally delivered or shall be sent by registered or certified mail, addressed to WisDOT at the following address, or at such other address as WisDOT shall hereafter designate in writing to the UW System.

5.21 Options If additional fiber optic resources become available to WisDOT, the parties may amend this agreement to accommodate additional UW access and need as is reasonable.

Wisconsin Department of Transportation
Attention: Joyce Gelderman,
Director, Bureau of Automation Services
P.O. Box 7915
Madison, WI 53707-7915

All notices to the UW System shall be personally delivered or shall be sent by registered or certified mail, addressed to the UW System at the following address, or at such other address as the UW System shall hereafter designate in writing to WisDOT.

University of Wisconsin System Administration
Attention: Brian Remer
Office of Learning and Information Technology
740 Regent Street, Suite 203
Madison, WI 53715

5.21 Consent Whenever the consent or approval of either party is required pursuant to this Lease, such consent or approval shall not be unreasonably withheld, delayed or qualified.

IN WITNESS WHEREOF, the parties have executed this Lease so as to be effective on the date of execution by WisDOT.

WISCONSIN DEPARTMENT OF TRANSPORTATION

By: Joye Belderman

Date: 07-09-03

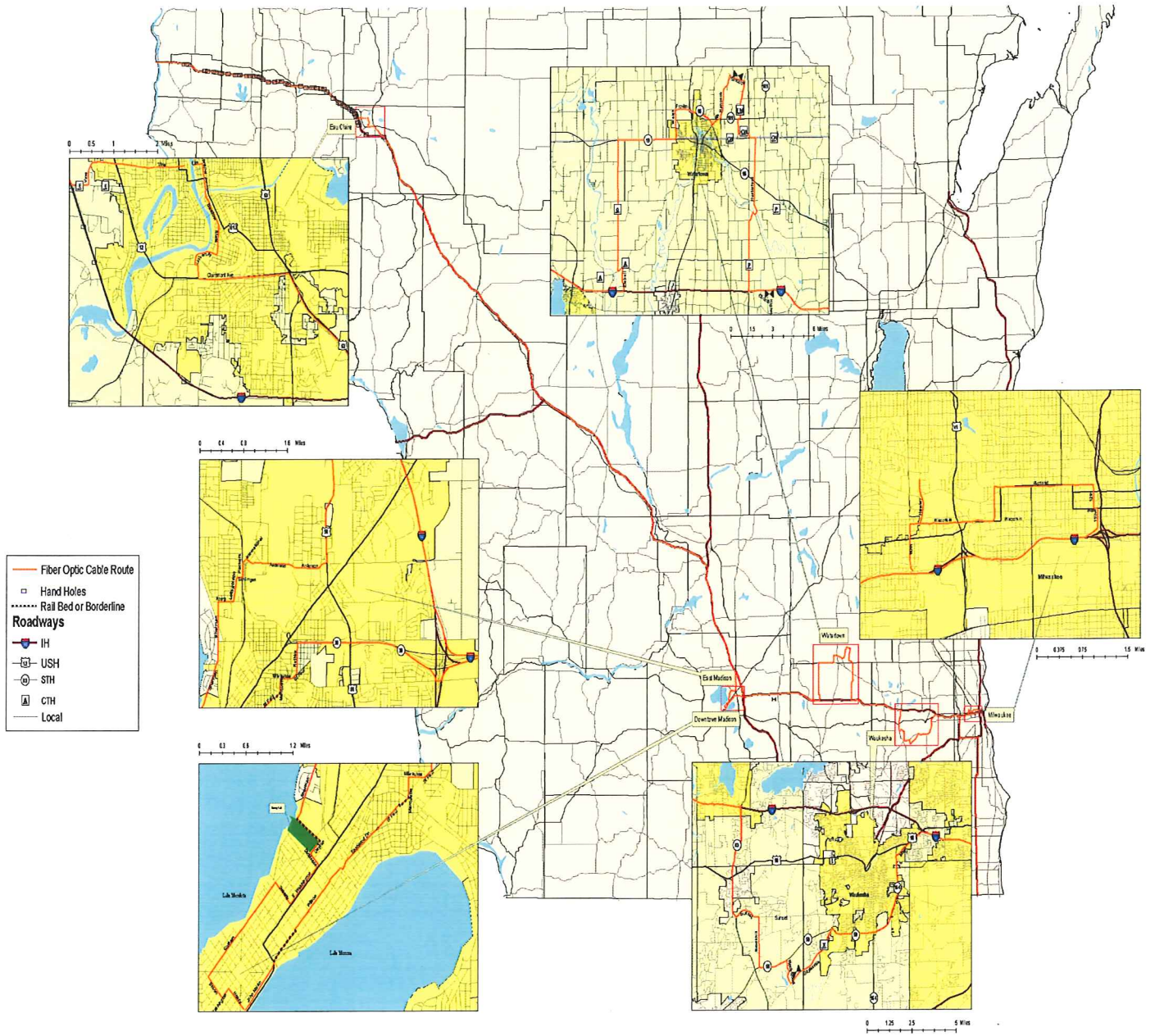
UNIVERSITY OF WISCONSIN SYSTEM

By: GM

Date: June 30, 2003

Appendix A

DOT – UW fiber Backbone

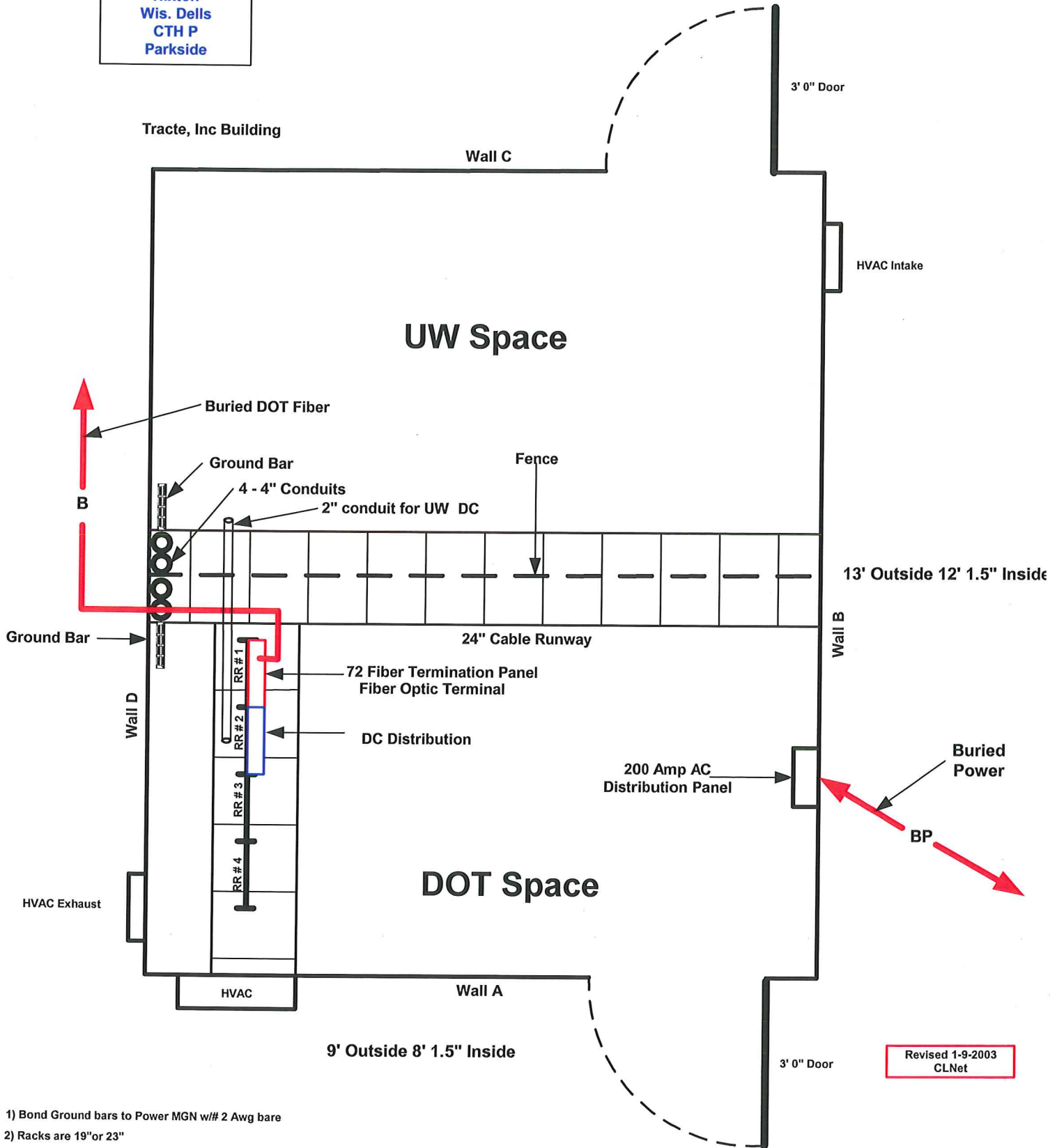


Appendix B

DOT - UW Typical Hut

Hut Locations:

- Baldwin
- Hixton
- Wis. Dells
- CTH P
- Parkside



1) Bond Ground bars to Power MGN w/# 2 Awg bare
2) Racks are 19" or 23"

Revised 1-9-2003
CLNet

Appendix C

DOT- UW Typical Rack-Cabinet Detail

DOT Locations:

- DSPD6 Eau Claire
- DSPD5 Tomah
- DSPD2 Waukesha

DOT 72 FOC
 DOT, 1-16
 UW, 1-4
 4 Dd
 D1N, 1-12
 DOT, 1-16
 UW, 1-4
 4 Dd
 D1N, 1-12

