

246811

IR-005-2(723)

12-ORA-5 PM 31.4/32.7
Expenditure Authorization:

Federal Aid No.:

Owner's File No.: 5678

UTILITY AGREEMENT NO. 12173

WHEREAS, the State of California, acting by and through the Department of Transportation, hereinafter called State, has issued Notice to Owner No. 7777 dated April 4, 1999, attached hereto, to Acme Utility Company, hereinafter called Owner, which Notice to Owner sets forth the terms and conditions pursuant to which Owner has been ordered to relocate certain Owner's facilities to clear the State's proposed freeway project on Route 5 in Santa Ana from 0.2 mile south of Fourth Street to Seventeenth Street, and;

WHEREAS, the reconstruction of the State's freeway project necessitates the relocation of Owner's utility facilities, and;

WHEREAS, State, in order to clear the right of way for the freeway construction, has ordered Owner to relocate the portions of its facilities within said Notice to Owner, hereafter called Owner's facilities, and;

WHEREAS, Owner claims it has rights that are prior and superior to those of State and refuses to relocate Owner's facilities as ordered and claims that State must pay the relocation costs for those facilities covered by the prior right hereafter "prior right" facilities, said right described in attached Notice to Owner, and;

WHEREAS, in accordance with Section 706 of the Streets and Highways Code, State may, without prejudice to its rights, or that of Owner, advance the costs of removal or relocation, and upon advancement by State of said costs, Owner shall remove or relocate Owner's facilities as stated in the attached Notice to Owner so as not to delay the freeway construction, and;

WHEREAS, State and Owner disagree on the issue of which is liable for the portion of the required relocation work known as the prior right facilities, State and Owner agree that, in order to expedite the freeway project, State shall deposit with Owner, in accordance with Section 706 of the Streets and Highways Code, 100% of the estimated relocation cost of \$200,000.00, and Owner agrees to do the relocation work as set forth in Notice to Owner No. 7777, dated April 4, 1999.

Utility Agreement No. 12173

NOW THEREFORE, it is agreed between State and Owner as follows:

1. Within 30 days of State's execution of this Agreement, State shall advance Owner 100% of the estimated cost of relocation, which advance shall be \$200,000.00.
 2. Owner shall relocate Owner's facilities in accordance with Notice to Owner No. 7777, dated April 4, 1999.
 3. Owner shall place the advance in a separate interest-bearing account pending final resolution of liability, and shall pay State all accrued interest, if Owner is ultimately found liable for relocation costs.
 4. In signing this Agreement, neither State nor Owner diminishes its position, waives any of its rights or accepts liability.
 5. State and Owner reserve the right to have such liability resolved by future negotiations or by an action in a court of competent jurisdiction pursuant to the provisions of Section 706 of the Streets and Highways Code.
 6. Owner agrees to perform the herein-described work with its own forces or by the Owner's contractor and to provide and furnish all necessary labor, materials, tools and equipment required therefore, and to prosecute said work diligently to completion.
 7. It is understood and agreed that the State will not pay for any betterment or increase in capacity of Owner's facilities in the new location and that Owner shall give credit to the State for all accrued depreciation on the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by Owner.
 8. Owner shall submit a Notice of Completion to the State within 30 days of the completion of the work described herein.
 9. It is understood that said highway is a Federal Aid Highway and, accordingly, 23 CFR 645 is hereby incorporated into this Agreement by reference; provided, however, that the provisions of any agreements entered into between the State and Owner pursuant to State law for apportioning the obligations and costs to be borne by each, or the use of accounting procedures prescribed by the applicable Federal or State regulatory body and approved by the Federal Highway Administration, shall govern in lieu of the requirements of said 23 CFR 645.
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THE ESTIMATED COST FOR THE ABOVE DESCRIBED WORK IS \$200,000.00.

R/W Funds EA	<u>246819</u>	<u>\$200,000.00</u>
Construction Funds EA	_____	\$_____

IN WITNESS WHEREOF, the parties hereto have executed this Utilities Agreement this _____ day of _____, 20____.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By _____
District Division Chief, Right of Way Date

OWNER

By _____
Name/Title Date

APPROVAL RECOMMENDED:

By _____
District Office Chief, Right of Way Date

By _____
Utility Coordinator Date
