



Local Programs Procedures

LPP 07-04 Manual Update

Subject: **New Policies and Procedures for “Utility Relocations”**

Reference: *Local Assistance Procedures Manual (LAPM)*, Chapter 14-Utility Relocations, Chapter 2-Roles and Responsibilities, Chapter 3-Project Authorization, Chapter 13-Right of Way, Chapter 20-Deficiencies and Sanctions, and *Local Assistance Program Guidelines (LAPG)*, Chapter 6-Highway Bridge Replacement and Rehabilitation Program

Effective Date: **September 28, 2007**

Approved: **Original Signed By**

TERRY L. ABBOTT, Chief
Division of Local Assistance

WHAT IS AN LPP

LPPs are Local Programs Procedures. These documents are used for the rapid deployment of new procedures and policies between updates of the Local Assistance manuals, guidelines and programs. They are numbered according to calendar year and order in which released. This is the fourth LPP issued in 2007; hence, it is LPP 07-04.

PURPOSE

The purpose of this LPP is to revise the chapter in its entirety and change the chapter title from Chapter 14, “Utility Facilities” to Chapter 14 “Utility Relocations,” of the *Local Assistance Procedures Manual*. Other changes were made to various chapters of the LAPM and *Local Assistance Program Guidelines (LAPG)* in reference to “Utility Relocations.”

Chapter 14 applies to construction projects *Off* the State Highway System (SHS), which are financed with federal funds. Locally sponsored projects *On* the SHS are to be accomplished in accordance with the Caltrans *Right of Way Manual (ROW Manual)* and the Caltrans *Encroachment Permits Manual*.

BACKGROUND

The last revisions to Chapter 14 were published in 2003. The current revision includes new policies and procedures which are now in effect, including revisions to Chapter 13, “Utility Relocations” of the ROW Manual.



USER FRIENDLY FEATURES

- These new procedures are incorporated in the electronic version of the LAPM that is available at the Division of Local Assistance (DLA) Home Page on the Internet at: <http://www.dot.ca.gov/hq/LocalPrograms/>. Under “Publications” select Local Assistance Procedures Manual.
- You may also purchase the Publications for Local Assistance DVD or CD, which acts as a one-stop shop for information and promotes flexible access to helpful information for local project delivery at: <http://www.dot.ca.gov/hq/LocalPrograms/lam/LApubsCD.htm>
- Additional user-friendly features were developed to make the manual easier to edit and to access on the DLA website. **Sidbars were used to indicate where revisions were made to the affected pages of various chapters included in this LPP. However, no sidebars were used to denote the changes in Chapter 14 since this chapter is released in its entirety.**
- To receive an electronic notification when new information is posted on the DLA website, please subscribe to the DLA list server at: <http://www.dot.ca.gov/hq/LocalPrograms/sub.htm>
- Comments and suggestions for improvement to the manual or the processes and procedures are welcome. They may be submitted to:

Department of Transportation
Division of Local Assistance, MS 1
Attention: Cathy Felkins
P.O. Box 942874
Sacramento, CA 94274-0001
FAX (916) 654-2409
Cathy_Felkins@dot.ca.gov

Description

Chapter 14 is hereby reissued in its entirety. The attached pages will replace the entire chapter in the hard copy of the LAPM and LAPG. Chapter 14 is also available online at: http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_p/p14utfac.pdf

Contact for Information and Assistance: The Caltrans District Local Assistance staff at the Division of Local Assistance website: <http://www.dot.ca.gov/hq/LocalPrograms/>

SUMMARY OF CHANGES

The pages in this LPP are also to replace the pages affected by the revisions in Chapters 2, 3, 13, 20 of the LAPM and Chapter 6 of the LAPG.

| LAPM Item | Change |
|---|---|
| Chapter 2 Exhibit 2-B page 2-18 | Under “Activity” column corrected Chapter 14 to “ <i>Utility Relocations.</i> ” |
| Chapter 3 Section 3.3 (Request for Authorization) page 3-9 | Under “Right of Way Utility Relocations” corrected the reference title from ... “Chapter 14, Utility Facilities”....to ... “ <i>Chapter 14, Utility Relocations</i> ”... . |
| Exhibit 3-C, page 3-26 | Under “Utility Relocations” corrected all reference titles from ... “Chapter 14, Utility Facilities”... title to ... “ <i>Chapter 14, Utility Relocations</i> ”... . |
| Exhibit 3-F, page 3-39 | Under “Utility Relocations/Adjustments:” corrected the reference title from ... “Chapter 14, Utility Facilities”... title to ... “ <i>Chapter 14, Utility Relocations</i> ”... . Under “Right of Way Certification:” corrected this instruction from ... “Right of Way Certification was approved by”....to read...” <i>Right of Way Certification was accepted by</i> ”.... |

| | |
|--|---|
| <p>Chapter 13 Section 13-2 (Federal-Aid and the Federal/State/Local Agency Relationship), page 13-3</p> | <p>Under “Caltrans Role” corrected the reference title from ... “Chapter 14 Utility Facilities”... to ... “<i>Chapter 14, Utility Relocations</i>”... .</p> |
| <p>Section 13-10 (Right of Way Certification), page 13-21</p> | <p>Under “Utility Relocation” corrected the reference title from ... “Chapter 14 Utility Facilities”... to ... “<i>Chapter 14, Utility Relocations</i>”....</p> |
| <p>Section 13-13 (Reimbursement/ Fiscal Policy), page 13-34</p> | <p>Under Item No. J third bullet, corrected the reference title from ... “Chapter 14 Utility Facilities”... to ... “<i>Chapter 14, Utility Relocations</i>”....</p> |
| <p>Chapter 20 Section 20.2 (Deficiencies), page 20-2</p> | <p>Under “Procedures Deficiencies” second bullet, corrected the reference title from ... “Chapter 14 Utility Facilities”... to ... “<i>Chapter 14, Utility Relocations</i>”....</p> |
| <p>LAPG Item</p> | <p>Change</p> |
| <p>Chapter 6 Section 6.5.5 (Utility Relocation Reimbursement) page 6-20</p> | <p>Corrected the reference title from ... “Chapter 14 Utility Facilities”... to ... “Chapter 14, Utility Relocations”... .</p> |

AUTHORITIES AND REFERENCES

- California Streets and Highways Code, Sections 673, 680, 702, 703, 705, and 706
- Code of Federal Regulations (CFR), 23 CFR 645
- Code of Federal Regulations (CFR), 48 CFR 31
- Government Code, Section 53630
- Code of Civil Procedures, Section 1268.350
- Water Code Sections 7034 and 7035
- Intermodal Surface Transportation Efficiency Act (ISTEA)
- Caltrans *Right of Way Manual* (ROW Manual)
- Caltrans *Encroachment Permits Manual*
- Caltrans *Project Development Procedures Manual*, Appendix LL, Utilities

CHAPTER 14 UTILITY RELOCATIONS

CONTENTS

| SECTION/SUBJECT | PAGE NUMBER |
|---|-------------|
| 14.1 INTRODUCTION | 14-1 |
| DEFINITIONS | 14-1 |
| UTILITY RELOCATION PROCEDURES | 14-2 |
| 14.2 FEDERAL REIMBURSEMENT | 14-5 |
| ANTICIPATED UTILITY RELOCATIONS | 14-5 |
| UNANTICIPATED UTILITY RELOCATION | 14-8 |
| SPECIAL AUTHORIZATIONS | 14-8 |
| 14.3 HIGH AND LOW RISK UNDERGROUND FACILITIES | 14-9 |
| 14.4 AUDIT REQUIREMENTS..... | 14-10 |
| 14.5 REFERENCES | 14-10 |

EXHIBITS

| SECTION/SUBJECT | PAGE NUMBER |
|---|-------------|
| EXHIBIT 14-A LOCAL AGENCY SUBMITTAL REQUIREMENTS FOR FEDERAL PARTICIPATION IN UTILITY RELOCATIONS | 14-11 |
| EXHIBIT 14-B LOCAL AGENCY UTILITY AGREEMENT PROVISIONS FOR FEDERAL PARTICIPATION | 14-15 |
| EXHIBIT 14-C - FHWA SPECIFIC AUTHORIZATION / APPROVAL OF UTILITY AGREEMENT | 14-17 |
| EXHIBIT 14-D NOTICE TO OWNER | 14-19 |
| EXHIBIT 14-E REPORT OF INVESTIGATION..... | 14-21 |
| EXHIBIT 14-F UTILITY AGREEMENTS..... | 14-27 |
| EXHIBIT 14-G UTILITY AGREEMENT CLAUSES | 14-29 |
| EXHIBIT 14-H STAGES OF R/W UTILITIES THROUGH STAGES OF PROJECT DEVELOPMENT..... | 14-41 |

This page intentionally left blank

CHAPTER 14 UTILITY RELOCATIONS

14.1 INTRODUCTION

The procedures in this chapter have been designed to comply with the FHWA's regulations and requirements under Code of the Federal Regulations (CFR) governing utility relocations. The purpose of this chapter is to provide guidelines to the local agency when performing Right of Way Utility Relocations on projects outside of the State Highway System (SHS) and financed with federal funds ("Off-System" project).

Utility Relocation procedures in this chapter only apply when relocating public utility facilities that serve the general public. Service connections and private utilities are handled through Right of Way Acquisition under Cost to Cure (23 CFR 710.203.)

Forms and Exhibits included in this chapter are to provide the local agency with working samples. The language in these forms has been reviewed and approved by Caltrans Legal Department. The local agency has the option to modify the format of these forms or to use its own forms. However, the local agency's own forms have to satisfy all required elements under 23 CFR 645.113, and the use of non-approved forms and clauses will require reviewing and approval by Caltrans Legal Department on a case-by-case basis.

For any locally sponsored project that involves any portion of a state's right of way under a Co-Op Agreement ("On System" Project), Right of Way Utility Relocations will be accomplished in accordance with the Utility Procedures described in the *Caltrans Right of Way Manual (ROW Manual)* and *Encroachment Permits Manual*.

These manuals are available online at the following URLs:

ROW Manual:

<http://www.dot.ca.gov/hq/row/rowman/manual/>

Encroachment Permits Manual:

http://www.dot.ca.gov/hq/traffops/developserv/permits/encroachment_permits_manual/

DEFINITIONS

Public Utility Facilities - publicly and privately owned utility facilities, which serve the public.

Impacted Utility Facility - a public utility facility has been identified as in conflict with the proposed activity of a transportation project.

Utility Relocation - any adjustment to the impacted utility facility required by the proposed transportation project.

Owner - utility company, municipal utility department, who owns the impacted facility.

Utility Coordinator - local agency's person who acts as a liaison with owners.

District Utility Coordinator: Caltrans Right of Way Utility Coordinator assigned to this project.

Conflict Resolution Plan - (a.k.a. Relocation Plan) plan from owner to resolve the conflict with activity of a transportation project. This plan should clearly define scope of work and the duration of construction.

Claim Letter - owner's liability determination along with supporting documentations. It is the owner's responsibility to support their claim.

Unanticipated Utility Relocation – unforeseen, or discovery utility relocations as a result of accident or incomplete utility verification/conflict identification.

UTILITY RELOCATION PROCEDURES

The following steps have been modeled after the Caltrans Right of Way Utility Relocations procedures. These activities are performed in different stages of project development (see Exhibit 14-H, "Stages of R/W Utilities Through Stages of Project Development") to ensure proper and complete utility clearance prior to Right of Way Certification.

This procedure is designed to identify utility conflicts early in the design stage. It provides the Project Engineer with an opportunity to evaluate the proposed plan and make adjustments to avoid or lessen the impact on existing utility facilities. Thus, it reduces utility relocation cost, saves time, and prevents discovery conflicts during construction.

It is strongly recommended that each local agency adopt and follow these procedures:

UTILITY VERIFICATION:

- In the early phase of the Design process, the Utility Coordinator sends a proposed project plan to owner and request for owners' facility map(s) of any facility located within project limits.

Utility Coordinator forwards owners' map(s) to the Project Engineer. The Project Engineer plots all existing facilities onto UTILITY SHEET (refer to Caltrans *Design's Standard Plan* or *American Society of Civil Engineers [ASCE], Standard Guidelines for the Collection and Depiction of Existing Subsurface Utility Data*).

IDENTIFYING CONFLICT:

- Project Engineer identifies all impacted utility facilities within project limits.
- Provide conflict maps for each impacted facility to the Utility Coordinator.

REQUESTING CONFLICT RESOLUTION PLAN: (This step would be done only after the approval of the Project's Environmental Document.)

- Utility Coordinator contacts and informs the owner(s) of the conflict(s) and requests conflict resolution plan(s), detail cost estimate(s), and owner's liability determination.
- When the above items are received from owner(s), the Utility Coordinator will forward the plan(s) to the Project Engineer for approval.

LIABILITY DETERMINATION:

After the conflict resolution plan(s) is approved by the Project Engineer:

- A liability determination must be made to determine whether the local agency is legally liable for any portion or all of the relocation cost. (See Chapter 13, "Utility Relocation," Section 13.04.00 of *ROW Manual* for guidance.)

- Liability can be determined by property rights, franchise rights/agreements, state and local statutes/ordinances, permits, or finding by the local agency's counsel.
- Complete "Report of Investigation" (**ROI**) (see Exhibit 14-E.) This is the document that determines the local agency's liability for relocation costs.
- The cost of relocating such facilities is eligible for federal participation:
 - a) Only when the relocation is made necessary by the proposed construction.
 - b) Only when the local agency is legally liable to pay for any portion of the relocation.

Utility Coordinator shall send proposed copy of ROI, Notice to Owner (**NTO**), and Utility Agreement to DLAE and Caltrans District Utility Coordinator for review and approval, prior to sending out to owner.

NOTE: For an "On-System" project, the local agency must ensure that all utility relocations and encroachments are accomplished in accordance with Caltrans policies, procedures, standards, practices, and statutes. In addition, any existing agreements or contracts between the Department of Transportation (Caltrans) and a utility owner will also obligate the local agency in such circumstances.

NOTIFYING OWNER:

- After the conflict resolution plan is approved and liability is determined, Utility Coordinator shall seek concurrence from the owner in case the liability determination is different from owner's claim letter.
- Once the owner concurs with liability (this is referred to as "Meeting of the Minds"), the Utility Coordinator will issue a written NTO ("Notice to Owner," see Exhibit 14-D) to the owner. The local agency must make all necessary arrangements with the owners of affected utility facilities for their relocations.
- The NTO will clearly define the impacted facility, owner's conflict resolution plan number and date, estimated completion date, and liabilities.
- The local agency shall provide all other necessary permit(s) related to the relocation to the owner prior to the commencing of work. **Only when any ordered work is located within the SHS, a Caltrans Encroachment Permit is required.** Utility Coordinator can request the permit through the Caltrans District Utility Coordinator.
- If the local agency is liable for any portion of the relocation, a Utility Agreement (see Exhibit 14-F, "Utility Agreements" and Exhibit 14-G, "Utility Agreement Clauses") will also be prepared and sent to owner along with the NTO.
- The local agency's liability portion and authority to pay for the relocation must be clearly cited in its Utility Agreement and in the "liability" section of the NTO.

NOTE: For an "On-System" project, on freeway projects, state policy and procedure take precedence for cost liability determination even where relocation work to support or accommodate the project may take place outside of the state's right of way.

RIGHT OF WAY UTILITY CLEARANCE MEMO:

- Once all utility conflicts have been resolved, the Project Engineer and the Utility Coordinator will issue a Utility Clearance Memo that clearly lists all conflicts, locations, the NTO numbers and issued date, liability, and estimated completion date.
- The information on this memo will be incorporated into the **Right of Way Certification**.

MANAGING THE PHYSICAL RELOCATION:

- Prior to any physical relocation work being commenced, the Project Engineer and Utility Coordinator shall make sure all agreements have been executed, Specific Authorization/Approval of Utility Agreement has been approved (if federal funding is sought), and funding has been secured.
- Project Engineer and Utility Coordinator shall monitor the progress and verify that the relocation has been carried out according to the conflict resolution plan and schedule.

MANAGING RELOCATION INVOICES:

- The Utility Coordinator will process utility relocation invoices for reimbursement in accordance to the procedures described in Chapter 5, "Accounting/Invoices," of the LAPM.
- Project Engineer and Utility Coordinator shall make sure the owner provides credit when applicable, for salvage value, betterment, and all supporting documents are attached to the invoice.

UTILITY RECORDS KEEPING:

Utility Coordinator will create a Utility File for each impacted facility. These records will be retained by the local agency as required by FHWA regulations.

Section 23 CFR 645.119 (c)(1)(iv), Alternate Procedure approval, requires documentation of actions taken in compliance with state and federal policies. All engineering decisions affecting the utility relocation from the beginning of planning to the completion of relocation and billing, should be documented in the local agency's Utility File diary.

It is essential that documented field verification of the progress and completion of all reimbursable utility work be provided by the local agency. This required documentation is met by the use of detailed inspector's diaries or their equivalent.

If the local agency wishes not to request federal participation for the utility relocation work on projects off the SHS, even though they will be requesting federal participation in other right of way activities and/or the construction phases of the project, the local agency may use its own utility relocation policy and procedure as long as they comply with FHWA's regulations and requirements under 23 CFR Part 645 and other related federal regulations. However, the local agency must provide the proposed utility relocation plan to the DLAE for forwarding to the Caltrans District Utility Coordinator for review so that proper right of way certification on utility relocation matters may be given prior to construction.

14.2 FEDERAL REIMBURSEMENT

Federal regulations governing utility relocation are described extensively in 23 CFR Part 645. Local agencies should be familiar with these regulations. The following procedures are based on the above-mentioned and other federal regulations. **When the local agency requests federal participation in utility relocations, these regulations must be followed.**

Under the Intermodal Surface Transportation Efficiency Act (ISTEA) and the FHWA Alternate Procedure process 23 CFR 645.119, and E-76, utility relocation work has been delegated to Caltrans on “State-Authorized” projects for full review oversight requirements by FHWA (see Figure 2-1 “FHWA Oversight,” Chapter 2 of the LAPM), and Caltrans also has approval authority for “Specific Authorization” and “Approval of the Utility Agreement.”

The Utility Coordinator will send all submissions to the Caltrans District Utility Coordinator for review and approval.

The following items must be included in the request:

1. Copy of Notice to Owner
2. Fully executed Utility Agreement
3. Approved owner’s conflict resolution plan showing the necessary relocations
4. The completed Report of Investigation and any supporting documents
5. An itemized estimate of the local agency’s relocation costs

Such review typically takes three (3) weeks. Submission must be submitted in advance of the proposed ROW Certification date. The DLAE is not responsible for delays due to an incomplete or erroneous relocation package.

ANTICIPATED UTILITY RELOCATIONS

To apply and qualify for federal reimbursement, these steps must be followed:

AUTHORIZATION TO PROCEED (E-76)

Prior to the start of any physical utility relocation work, the local agency must complete the “Request for Authorization to Proceed with Utility Relocation” form (see Exhibit 3-C, in Chapter 3 and Exhibit 3-E “Request for Authorization Data Sheet,” of the LAPM,) where all anticipated utility facilities requiring relocation will be listed with an estimated cost to relocate each facility.

On page 2 of the above referenced Exhibit 3-C, under Utility Relocation, the “Alternate Procedure” box must be checked. The completed E-76 must request the use of the Alternate Procedure 23 CFR 645.119 (e) (2)) and must include a list of every utility facility anticipated to be relocated along with the utility company’s name and best available estimate of the total local agency costs involved for each facility.

The E-76 request must be submitted to the DLAE, who will forward the request to the Caltrans District Utility Coordinator for review and comment. The E-76 request form will then be processed by the DLAE.

SPECIFIC AUTHORIZATION TO RELOCATE UTILITIES

In addition to the Request for Authorization to Proceed and prior to commencement of any physical relocation, the local agency must also request and receive a Specific Authorization to Relocate Utilities (Form RW 13-15-or Exhibit 14-C in this chapter) for each utility relocation. Either the utility owner or the construction contractor may perform all or portions of the utility facility relocation for which Specific Authorization approval is requested.

NOTE: RW Form 13-15 (Exhibit 14-C) is a dual form, containing both the “FHWA Specific Authorization to Relocate Utilities” and “FHWA Approval of Utility Agreement.”

i) Work by Utility Owner or Owner’s Contractor

If the relocations are to be performed by the utility owner and federal participation is requested, the Field Review Form (see Chapter 7, “Field Review,” of the LAPM) should include the item with sufficient detail to allow programming of the work in the right of way phase for approval by FHWA under a Utility Agreement.

NOTE: Prevailing Wages are required for any works performed by Owner’s contractor (Labor Code Section 1720)

ii) Work by Local Agency’s Highway Contractor

If the relocations are to be performed during the construction phase by the local agency’s highway contractor, the work should be included in the plans and specifications like any other work. The local agency must add an explanation to this effect to the “Remarks” section of the Specific Authorization Request to Relocate Utilities (Exhibit 14-C) and must attach a copy of the approved Specific Authorization to the Right of Way Certification submittal. Utility relocation costs may be included in the highway contract as a bid item, as supplemental work, or as a contract change order, and financed from funds in the construction work authorization.

In the event a major change in scope of work and/or relocation cost is found to be necessary, a revised Specific Authorization to Relocate Utilities must be immediately submitted for authorization prior to the new work being commenced.

Any minor change that does not include changes in scope of the work, addition or deletion of the proposed conflict resolution plan, may be submitted in a letter to Caltrans describing the change including revised maps and estimate, and requesting that the change be included under the original authorization.

APPROVAL OF UTILITY AGREEMENT

The local agency must submit each executed Utility Agreement and a request for FHWA approval of the Utility Agreement to the DLAE for processing. This approval authority has been delegated to Caltrans Division of Right of Way and Land Surveys by FHWA. Such review and approval typically takes three (3) weeks if the local agency used the pre-approved utility clause (“Utility Agreement Clauses,” Exhibit 14-G, of this chapter).

Upon approval, Caltrans will provide the local agency with the FHWA Approval of Utility Agreement form (Exhibit 14-C) for each Utility Agreement. Any exceptions to the approval will be noted in writing on the “Remarks” section of the form, and the local agency will be requested to concur with the exceptions or to prepare a rebuttal. It is anticipated that agreement will be reached on all such items prior any physical work commencement to avoid the loss of eligibility.

It is strongly recommended that the standard Utility Agreement Clauses found in Exhibit 14-G be used in every circumstance. Use of nonstandard clauses requires Caltrans Headquarters Legal review and recommendation before the Utility Agreement can be executed. When applicable, the following items should be shown in the itemized estimate(s) of the relocation costs.

i) Credits

- FHWA Regulations (23 CFR 645.117 (h)) require salvage credit to any highway or freeway project for the value of facilities removed as part of the relocation for future use or resale.
- FHWA Regulations (23 CFR 645.117 (h)) also require betterment credit for the cost of any betterment to the facility being replaced or adjusted.

NOTE: When it is an “On-System” project.

State law (Section 705 of the California Streets and Highways Code) requires that utility owners itemize estimate, and invoice for utility relocation to show a credit for the used life of an existing utility facility being replaced in connection with improvement to a freeway. Where these credits are received by the local agency, they must be properly listed on the invoice and deducted from the total federal-aid reimbursement amount.

ii) Removal Only

Where the entire utility transaction consists of removal without replacement, consideration should be given to handling it as a right of way clearance item and invoicing for federal reimbursement in that fashion. If processed as a right of way clearance activity, the following conditions apply:

- The utility owner must have a property right in the existing location, which is compensable in eminent domain.
- The local agency must enter into an agreement with the owner providing for the removal of the facility. In support of the invoice for federal reimbursement, the file must contain information to show that the cost of removal by the utility owner was more cost-effective than the local agency buying the facilities and having them removed by some other method.

Where legitimate “removal without replacement” charges are included in a utility owner’s invoice and the local agency has not arranged to receive a credit for salvage (see above), the charges may be invoiced for federal reimbursement only when they are reduced by the amount of salvage attributable to the subject facilities, as shown by the utility owner’s records available for audit as noted in the Utility Agreement (48 CFR 31).

iii) Using Right of Way Clearance Contract

Where utility relocation work is performed by the local agency under a right of way clearance contract, a conformed copy of the executed contract must be forwarded to the DLAE before submitting an invoice for federal reimbursement.

iv) Using Consultants

When a local agency or utility owner employs a consulting engineer to perform engineering services in connection with a specific utility relocation and federal participation is involved, the procedures in Chapter 10, “Consultant Selection,” of

the LAPM shall apply. The consultant agreement must satisfy the criteria specified in Chapter 13, Section 14 of the Caltrans *ROW Manual* including a completed pre-award evaluation, if applicable. These steps must be performed by the local agency early in the process to avoid loss of eligibility.

NONREIMBURSABLE

FHWA regulations prohibit federal reimbursement for costs of interest during construction or interest on funds borrowed by the owner for performing the relocation.

UNANTICIPATED UTILITY RELOCATION

After the normal period to apply for Specific Authorization to Relocate Utilities has expired and an unanticipated utility relocation is encountered, the Utility Coordinator must immediately notify the DLAE and request a Special Authorization to Relocate Utilities.

The Special Authorization to Relocate Utilities is reserved for those cases where required work could not be identified in time to secure normal authorization, or when the contractor's operations will be delayed. The local agency must provide a statement with full explanation of the special circumstances for the request. Requests for Special Authorization to Relocate Utilities must be based on substantial reasons.

Special Authorization to Relocate Utilities must be upgraded by the local agency to full Specific Authorization status before the local agency submits an invoice for reimbursement.

SPECIAL AUTHORIZATIONS

There are two types of Special Authorization to Relocate Utilities: 1) written, and 2) verbal. Both verbal and written Special Authorization to Relocate Utilities is "preliminary authorization." The request will be reviewed and approved on case-by-case basis. No utility work may begin before Special Authorization to Relocate Utilities is obtained, or risk the eligibility for reimbursement.

The submittal for either written or verbal Special Authorization to Relocate Utilities request must contain:

- Reason for special "preliminary authorization."
- Name of the owner, type of facility, as they are listed in the E-76.
- Best available liability determination, including documentation such as an ROI.
- Best available itemized cost and estimate.
- Breakdown of time, material, and equipment costs.
- Relocation plan showing the right of way, access control, existing and proposed utility facility.
- The name of the entity who will perform the work (if the utility owner's contractor, explain how the contractor was selected).

WRITTEN AUTHORIZATION

If a written Special Authorization to Relocate Utilities is obtained, a complete request package (“Submittal Requirements for Federal Participation in Utility Relocations,” Exhibit 14-A in this chapter) must be submitted to the DLAE within 30 days. The DLAE will forward the request package to the Caltrans District Utility Coordinator for review and approval.

The approval should contain a statement that the Caltrans District Utility Coordinator has reviewed the relocation plans and is familiar with the circumstances requiring Special Authorization to Relocate Utilities.

VERBAL AUTHORIZATION

Verbal Special Authorization to Proceed may be requested, if during construction a previously unknown utility conflict is discovered that will delay the contractor. Verbal Special Authorization to Proceed may be obtained from the Caltrans District Utility Coordinator (via the DLAE) by telephone or fax. The Caltrans District Utility Coordinator will confirm each verbal authorization via letter to the local agency’s Project Engineer. Such confirmation letters shall be issued within five (5) working days or sooner, depending on the complexity of the relocation and the circumstances, which necessitate it. A copy of each confirmation letter will be sent to the DLAE.

If Verbal Special Authorization to Proceed is obtained, the local agency must furnish a written submittal to the DLAE confirming the information and containing a fully documented relocation plan. This must be accomplished within 30 days. An appropriate diary of decisions and discussions shall be maintained.

14.3 HIGH AND LOW RISK UNDERGROUND FACILITIES

Caltrans’ Policy on High and Low Risk Underground Facilities Within Highway Rights of Way requires all high risk utility facilities located within project limits are positively identified and to be shown on project plan.

For Federally Participating “Off-System” projects, compliance with the state’s policy on High and Low Risk Underground Facilities is not mandatory. It is, however, highly recommended that this policy be followed to insure the maximum safety during construction of the project.

NOTE: When it is an “On-System” project.

All local agency projects on the SHS shall conform to the state’s “Policy on High and Low Risk Underground Facilities within Highway Rights of Way.” See *Caltrans Project Development Procedures Manual* (PDPM), Appendix LL, Utilities. A copy of the policy may be obtained from Caltrans Division of Design. It is also available online at: http://www.dot.ca.gov/hq/oppd/pdpm/apdx_htm/apdx_ll/apdx_ll.htm

When performing Right of Way Utility Relocation on a “On-System” project, local agency’s Project Engineer must complete the “Project Engineer’s Certification of Utility Facilities” and submit it as an attachment to the project certification, as required by the policy.

14.4 AUDIT REQUIREMENTS

Utility Coordinator is responsible to submit request for any applicable audits as described in Section 5.8 of Chapter 5 of the LAPM.

NOTE: When it is an “On-System” project.

The following are requirements for Pre-Award Evaluation and Post Award Audit. The Utility Coordinator is responsible to submit requests for audit when applicable:

PRE-AWARD EVALUATION:

Caltrans pre-award evaluation is required for Utility Agreements, contracts and subcontracts involving federal funds. The local agency shall make a written request through the DLAE, for a pre-award evaluation to Caltrans Audits on Utility Agreements which exceed \$250,000, for lump sum Utility Agreements over \$100,000, or where a consultant will perform preliminary engineering exceeding \$250,000. These requirements are subject to change. Please contact the Caltrans District Utility Coordinator for information on current authorization limits and details.

POST AWARD AUDIT:

The state is responsible to conduct final post audits of actual and necessary costs incurred by utility owners pursuant to a Utility Agreement or contract on federal-aid projects. This also applies to subcontractors under the prime agreement.

14.5 REFERENCES

- 23 *Code of Federal Regulations* (CFR) 645
- 48 *Code of Federal Regulations* (CFR), Chapter 1, Part 31
- *California Streets and Highways Code*, Sections 702, 703, 705, and 706
- *Caltrans Encroachment Permits Manual*
- *Caltrans Project Development Procedures Manual*, Appendix LL, Utilities
- *Caltrans Right of Way Manual* (ROW Manual)
- *Code of Civil Procedure*, Section 1268.350
- *Government Code*, Section 53630
- *Intermodal Surface Transportation Efficiency Act* (ISTEA)
- *Water Code* Sections 7034 and 7035

**Exhibit 14-A Local Agency Submittal Requirements
for Federal Participation in Utility Relocations****LOCAL AGENCY SUBMITTAL REQUIREMENTS FOR FEDERAL PARTICIPATION IN
UTILITY RELOCATIONS**

To obtain federal participation for a specific utility relocation, a request for "Specific Authorization" must be submitted to Caltrans. The request must contain the following:

1. A color coded plan prepared on highway layout sheets, clearly, and accurately showing the following:
 - Existing and proposed right of way lines
 - Existing and proposed access control lines (if applicable)
 - Existing and proposed highway centerline
 - For the existing and for the proposed utility facility, show their:
 - Location
 - Type
 - Size
 - Length
 - Clearly plot and label the type of property rights the owner is claiming as a prior right (if applicable)
 - Clearly plot and label the type of proposed property rights to be supplied by the state (if applicable)
 - Show geometric features if the relocation is related to them
 - Provide a color coded legend and title block on the plan
2. One copy of a detailed itemized estimate of cost showing, as a minimum the following:
 - Estimated cost of labor
 - Estimated cost of materials (list the major items of materials)
 - Estimated cost of transportation and equipment
 - Estimated cost of overhead (include a list of major components)
 - Estimated cost of any new right of way required

- Estimated credit for salvage and depreciation
- Estimated credit for betterment

The estimate submitted with the request for Specific Authorization must contain an entry for each of the items listed above. If a particular item is not applicable, a zero amount shall be shown.

Unit costs such as broad gauge units of property may be used for estimate purposes where the utility owner uses such units in its own operation. These costs normally include overhead, labor, transportation, equipment, and materials. Right of way costs and estimated credits must be given separately. If this type of estimate is used, it must be identified as a "broad gauge" estimate.

If it is not possible to obtain an adequate estimate from the owner, the local agency may prepare an estimate based on the owner's plan using current cost data from similar utility relocation work. Justification for use of an estimate prepared by the local agency must be submitted with the request.

If the estimate is to be used for a lump sum Utility Agreement, federal regulations require that it must be accurate, comprehensive, verifiable, and in sufficient detail to give a clear picture of the work involved and the cost of the individual items. The estimate should be broken down by:

- Direct labor by class, rate, and time
- Labor surcharges
- Overhead and indirect construction charges
- Materials and supplies, by item, quantity, and price
- Handling charges
- Transportation
- Equipment by size, type, rate, and time
- Preliminary engineering
- Construction engineering
- Salvage and depreciation credits
- Betterment credit
- Other items as required by 23 CFR 645

Utility owners should be advised that lump sum agreements cannot be entered into on federal-aid projects, unless the owners are prepared to supply the required detailed itemized estimate in the planning stage. Please contact the Caltrans District Utility Coordinator (via the District Local Assistance Engineer [DLAE]) for information on additional requirements and/or restrictions.

3. Copies of the proposed Utility Agreement and Notice to Owner
4. Documentation supporting owner's claim of prior rights
5. A letter of transmittal in triplicate requesting Specific Authorization containing:

The file data including county, route, notice number, Utility Agreement number (if different), federal project number, and name of the utility owner. If both right of way and construction funds are involved, the right of way and construction federal project numbers must be shown (the Utility Agreement must also contain both numbers). If all of the work is to be performed by the highway contractor, only the construction federal project number need be shown.

Location of the work by geographical limits.

General description of what is to be done including a list of the major facilities involved.

A statement describing who will perform the work. In order to comply with federal requirements, the transmittal must contain one or more of the following statements as applicable:

THE WORK WILL BE PERFORMED BY:

- **The utility owner's forces:** The local agency has determined this is cost-effective and has verified the owner is qualified to perform the work in a satisfactory manner with its own personnel and equipment.
- **The utility owner's continuing contractor:** The local agency has determined this is cost-effective and verified the contract between the owner and the contractor is in writing and that similar work is regularly performed for the owner under the contract at reasonable costs.
- **Competitive bid contract:** The owner is not adequately staffed or equipped to perform the work with its own forces. The local agency will verify that the utility owner will award the contract for the work to the lowest, qualified, responsible bidder based on an appropriate solicitation.
- **The Local Agency's highway contractor:** The utility work is to be included in the local agency's highway construction contract. The local agency has determined this is the most cost-effective method.

The local agency is responsible for making the determination and documenting within a statement, the following:

- The dates between which it is anticipated the work will be performed.
- A determination as to whether the local agency's payment standards or 23 CFR 645 payment standards are more restrictive and the reasons supporting said determination.
- An explanation of any significant difference between the existing facility and the proposed rearrangement as shown on the plans and the itemized estimate of cost. For example, if an increase in size or capacity is shown on the plans and betterment credits are not reflected in the itemized estimate, an explanation and justification must be included.
- If prior rights of the owner are involved and a Joint Use Agreement or Consent to Common Use Agreement is required, include the following statement: "Joint Use Agreement(s) or Consent to Common Use Agreement(s) will be executed by both parties, and an original copy will be retained by the local agency."

- If the utility will occupy any portion of the new highway right of way and does not have prior rights in the old location, include a statement that the relocation plan does not contain encroachments contrary to the policy of the authority having jurisdiction over the right of way and that the appropriate standard encroachment permit will be issued.

For local agency use, please refer to the Caltrans-approved "Report of Investigation," Form RW 13-3 in the Caltrans *ROW Manual*.

Distribution: 1) Local agency submits to DLAE

Exhibit 14-B Local Agency Utility Agreement Provisions for Federal Participation**LOCAL AGENCY UTILITY AGREEMENT PROVISIONS
FOR FEDERAL PARTICIPATION**

The following provisions apply to Utility Agreements on federally participating utility relocations:

1. The federal project number identification (right of way or construction, whichever is appropriate) must be stamped or typed on each copy of the Utility Agreement.
2. The Utility Agreement must contain the following:
 - The basis for liability
 - A description of the work
 - The location of the work
 - A schedule for accomplishing the work
 - The method of performing the work
 - Provision for an acceptable method of developing relocation costs
 - The Utility Agreement must incorporate 23 CFR 645 by reference using one of the following:
 - “It is understood that said highway is a federal-aid highway and accordingly, 23 CFR 645 is hereby incorporated into this Agreement.”

Where the owner protests the inclusion of 23 CFR 645:

“It is understood that said highway is a federal-aid highway and accordingly, 23 CFR 645 is hereby incorporated into this Agreement with the understanding that provisions governing reimbursement procedures are applicable to the relationship between the local agency, the state, and the United States.”

“Incorporation of 23 CFR 645 is not required in agreements with federal agencies.”

Refer to Exhibit 14-G, “Utility Agreement Clauses,” of this chapter for more utility clauses. Chapter 13, “Utility Relocation,” Section 13.07.00.00 of the Caltrans *ROW Manual* may be used as a guide for the preparation of Utility Agreements.

3. Where the actual cost of the utility relocation exceeds by 25% the estimated cost included in the Utility Agreement, an amendment to the Utility Agreement must be prepared and executed.
4. The local agency must promptly submit a conformed copy of the fully executed Utility Agreement along with the “Request for FHWA Approval of Utility Agreement” (Exhibit 14-C in this chapter) to the DLAE for processing by the Caltrans District Utility Coordinator. No utility owner or consultant invoices will be processed until the Utility Agreement has been granted written FHWA Approval of Utility Agreement by Caltrans.

The following must be included with the transmittal:

- Two copies of the transmittal memorandum.
- One copy of the local agency's detailed itemized estimate of relocation cost. This is not needed if a satisfactory estimate was included with the local agency's request for Specific Authorization (Exhibit 14-C in this chapter) and there is no significant change.
- One set of "as built" plans, if complete, or a statement that there is no significant change anticipated from the relocation plan previously submitted in the Specific Authorization request package.

Exhibit 14-C FHWA Specific Authorization/Approval of Utility Agreement

Memorandum

To: DEPARTMENT OF TRANSPORTATION
LOCAL ASSISTANCE

Date : _____
File No.: _____

Attention: _____
District DLAE

From: _____
(LOCAL AGENCY)

Subject: FHWA SPECIFIC AUTHORIZATION TO RELOCATE UTILITIES
 FHWA APPROVAL OF UTILITY AGREEMENT

OWNER'S NAME:

PROJECT DESCRIPTION:

NOTICE NUMBER:

UA NUMBER:

E-76 ALT PROC APPROVED: STATUS CERT DATE:

RELOCATION COST ESTIMATE: \$ EA:

DESCRIPTION OF RELOCATION WORK:

REMARKS:

- THE UTILITY RELOCATION WORK AUTHORIZED COMPLIES WITH THE PROCEDURES IN 23 CFR 645.
- THE UTILITY AGREEMENT APPROVED COMPLIES WITH THE PROCEDURES IN 23 CFR 645.

EFFECTIVE DATE: _____

BY: _____
District Utility Coordinator

Distribution: 1) Utility Coordinator – File, 2) DLAE – File, 3) District Utility Coordinator – File,
4) Office Chief – Federal Programs Accounting (MS-33), 5) Office Chief – Budget Federal Resources (MS- 24)
6) Office Chief – HQ RW Utilities (MS-37)

This page intentionally left blank

Exhibit 14-D Notice to Owner

NOTICE TO OWNER

(Name of LOCAL AGENCY)

Page 1 of 1

NOTICE TO OWNER

No. _____

| | | | |
|-------------------------|---|----------------------|------------------|
| COUNTY | ROUTE/ STREET | POST MILE | PROJECT # |
| (Name of the County) | | | |
| Federal Aid No. | | | |
| Owner's Plan No. | | | |
| Date: | "On-System" Yes <input type="checkbox"/> No <input type="checkbox"/> | | |

To: (Name of the Owner)
(Owner address)

Because of the (Name of Local Agency's) transportation project to (project description), in (Name of the City and County),

which affects your facilities: (impacted facility) as shown on Map (number).

You are hereby ordered to: _____.

Your work schedule shall be: from _____, 200X to _____, 200X.

Notify (Name Project Engineer), telephone (999) 123-4567, _____ hours prior to initial start of work, and an additional _____ hours notification for subsequent starts when the work schedule is interrupted.

Liability is _____ % Owner (or Agency) pursuant to _____.

Owner Rep: _____
Public Works Coordinator
(Rep's address if differ from the above)

cc: Resident Engineer
Permit

By _____
(Name)
Local Agency Director

THIS NOTICE DOES NOT CONSTITUTE A PERMIT. OBTAIN AN ENCROACHMENT PERMIT BEFORE STARTING WORK.

Distribution: 1) Owner, 2) Utility Coordinator – File, 3) RE – File
4) DLAE – File, 5) District Utility Coordinator - File

This page intentionally left blank

Exhibit 14-E Report of Investigation

REPORT OF INVESTIGATION

(Name of LOCAL AGENCY)

REPORT OF INVESTIGATION

| COUNTY | ROUTE | POST MILE | PROJECT # |
|--------|-------|-----------|-----------|
| | | | |

| | |
|---------------------------|--|
| Fed. Aid No. | |
| Notice to Owner No. | |
| Utility Owner | |
| Impacted Utility Facility | |

This Report of Investigation is submitted for review and approval. The following support documents are attached:

Approval of FHWA Specific Authorization is is not requested.

- A copy of the Utility Relocation Plan as described in Sections 13.05.03.00 and 13.05.03.01 of the ROW Manual.
- A copy of the owner's liability claim letter.
- A copy of the owner's estimate of cost.
- A copy of the proposed Utility Agreement.
- A copy of the proposed Notice To Owner.
- A copy of the owner's prior rights claim supporting documentation.

1. PROJECT LOCATION AND DESCRIPTION:

2. LIABILITY DATA:

- A. PROJECT IS AN:
- “On-System”
 - “Off-System”
 - Other

B. DATES:

Route adoption: Dd/mm/yyyy (if applicable)

Freeway resolution: Dd/mm/yyyy (if applicable)

Appraisal map: Dd/mm/yyyy (if applicable)

Installation of Existing Facilities: Dd/mm/yyyy

C. UTILITY OWNER IS: Public
Private

D. EXISTING UTILITY FACILITY IS LOCATED:

| | Yes | No |
|--|--------------------------|--------------------------|
| 1) In existing State Highway right of way? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2) On other public way, i.e., city street? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3) On private property? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4) Intersecting installation? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5) Longitudinal installation? | <input type="checkbox"/> | <input type="checkbox"/> |

E. UTILITY OWNER'S AUTHORITY FOR INSTALLATION:

| | |
|--|--------------------------|
| 1) Fee-owned land | <input type="checkbox"/> |
| 2) Recorded easement | <input type="checkbox"/> |
| 3) Unrecorded easement | <input type="checkbox"/> |
| 4) Prescriptive right | <input type="checkbox"/> |
| 5) Joint Use Agreement (JUA) or Consent to Common Use Agreement (CCUA) | <input type="checkbox"/> |
| 6) Franchise | <input type="checkbox"/> |
| 7) State permit | <input type="checkbox"/> |
| 8) County permit | <input type="checkbox"/> |
| 9) City permit | <input type="checkbox"/> |
| 10) Joint Pole Agreement* | <input type="checkbox"/> |
| 11) Other (describe below) | <input type="checkbox"/> |

F. Yes No

- Is the owner's authority for installation based on a deed (item E.1), 2), 3) or 5) above)? If **YES**, the preparer of this Report of Investigation asserts that to the best of her/his ability:
- The deed has been read.
- The description has been accurately plotted and is clearly shown on the attached plan.
- The title has been investigated and that:
- The grantor was the owner as of the date on the deed.
- The owner's facilities are located within the area described in the deed.
- The public agency has prior rights to the area described in the deed or recorded map to which the state will be the successor in interest. If **YES**, show the date the public acquired their rights and explain the nature of those rights here or in the narrative.

Yes No

- G. Are there contractual obligations contained in the documents checked in item E. above that require the owner to relocate, or are there special conditions in the owner's authority for installation?

If **YES**, explain here in narrative:

- H. LIABILITY RECOMMENDATION IS BASED ON (check all that apply):

- Section _____ of the Streets and Highway Code
- Section _____ of the Master Contract, dated _____
- Water Code Section 7034
- Water Code Section 7035
- Prior and superior rights of the Utility Owner
- Other, explain:

- I. LIABILITY APPORTIONMENT:

Agency _____ % Utility Owner _____ %

Explain
apportionment:

3. RELOCATION PLAN DETAILS:

- A. IT IS ANTICIPATED THE UTILITY WORK WILL BE COMPLETED BY:

Prior/concurrent/after
construction _____ (dd/mm/yyyy).

- B. ENCROACHMENTS:

- There will be no encroachments within the project area.
- There are encroachments **and**:

- Yes No
 All new or existing encroachments comply with current agency's Policy.
If "NO," a copy of the letter approving the exception to the encroachment policy is attached.
- The Caltrans standard Encroachment Permit will be or has been issued. If "NO," explain in narrative.

C. LUMP SUM:

- Yes No
 The lump sum payment method will be used.
If "YES," a detailed and itemized estimate is attached.

D. THIS RELOCATION WILL BE FUNDED WITH:

- Yes No
 Agency funds only.
- Federal participation in the funding.

4. THE WORK WILL BE PERFORMED BY: (check those which apply)

- The utility owner's forces:** The district has determined this is cost-effective and has verified the owner is qualified to perform the work in a satisfactory manner with its own personnel and equipment.
- The utility owner's continuing contractor:** The district has determined this is cost-effective and verified the contract between the owner and the contractor is in writing and that similar work is regularly performed for the owner under the contract at reasonable costs.
- Competitive bid contract:** The owner is not adequately staffed or equipped to perform the work with its own forces. The district will verify that the utility owner will award the contract for the work to the lowest qualified responsible bidder based on an appropriate solicitation
- State's highway contractor:** The utility work is to be included in state's highway construction contract. The district has determined this is the most cost-effective method.

5. REVIEW OF ESTIMATE:

Depreciation: \$ _____ None*
Salvage: \$ _____ None* * If none, state why below.

6. BETTERMENT:

- There is no betterment.
- Betterment in the amount of \$ _____ has been identified for:

7. CERTIFICATION:

Yes No

The project engineer has certified that the relocation plan will clear the project.

The Utility Coordinator has reviewed the proposed relocation and has determined it is a cost-effective plan to functionally restore the utility owner’s operating facilities that existed prior to the state’s highway project.

8. ATTACH A NARRATIVE DISCUSSION OF THE PROPOSED UTILITY WORK TO THIS REPORT WHICH INCLUDES:

- A. Description of existing utility facility and its location.
- B. Discussion of owner’s authority for installation of the existing utility facility.
- C. Description and justification of proposed relocation plan.
- D. Property rights needed.
- E. Any non-standard aspects of the relocation, documents, etc.

9. THE ESTIMATED COST TO THE PROJECT IS AS FOLLOWS:

Consisting of Design funds: \$ _____

Consisting of Construction funds: \$ _____

Consisting of Right of Way funds: \$ _____

Total: \$ _____

Prepared By:

Utility Coordinator

Date: _____

Approval
Recommended:By:

Agency Director

Date: _____

Distribution: 1) Utility Coordinator, 2) DLAE – File, 3) District Utility Coordinator - File

This page intentionally left blank

Exhibit 14-F Utility Agreements

UTILITY AGREEMENTS

(Name of LOCAL AGENCY)

UTILITY AGREEMENT

| | | | |
|---|--------------|-------------|------------------|
| County | Route | P.M. | Project # |
| | | | |
| Fed. Aid. No. | | | |
| Owner's File | | | |
| FEDERAL PARTICIPATION: On the Project : Yes/No | | | |
| On the Utilities: Yes/No | | | |

UTILITY AGREEMENT NO. XXXX.xx

The (Name of local agency) hereinafter called "LOCAL AGENCY" proposes to (project description) on _____ Street, in _____ City/Town, _____ County, California.

And: Owner's name

hereinafter called "OWNER," owns and maintains (impacted facility) facilities; within the limits of LOCAL AGENCY's project that requires relocation of said facilities to accommodate LOCAL AGENCY's project.

It is hereby mutually agreed that:

- I. WORK TO BE DONE:
(Use appropriate clause(s) in EXHIBIT 14-G, Section I)
- II. LIABILITY FOR WORK
(Use appropriate clause(s) in EXHIBIT 14-G, Section II)
- III. PERFORMANCE OF WORK
(Use appropriate clause(s) in EXHIBIT 14-G, Section III)
Use Clause III-6, Prevailing Wages, when applicable.
- IV. PAYMENT FOR WORK
(Use appropriate clause(s) in EXHIBIT 14-G, Section IV)

V. GENERAL CONDITIONS
(Use appropriate clause(s) in EXHIBIT 14-G, Section V)

IN WITNESS WHEREOF, the above parties have executed this Agreement the day and year above written.

LOCAL AGENCY

(OWNER)

By: _____
(Name)
Local Agency Director

By: _____
(Name)
(Title)

Date: _____

Date: _____

Distribution: 1) Owner, 2) Utility Coordinator, 3) DLAE –File, 4) District Utility Coordinator – File

EXHIBIT 14-G UTILITY AGREEMENT CLAUSES**UTILITY AGREEMENT CLAUSES**

Use of these clauses will reduce errors and omissions as well as save preparation, review, and approval time as the clauses have been pre-reviewed and approved by Caltrans, as well as most major Utility Owners. The clauses are numbered for each section of the Utility Agreement. The Local Agency preparing the Utility Agreement will need to select the appropriate clause(s) for each section. Some of the clauses pertain to involvement with State Highway Right of Way; a careful analysis should be made to determine which clauses would be appropriate.

Section I. Work to be Done:**I-1. Work Performed by Owner per Owner's Plan:**

“In accordance with Notice to Owner No. _____ dated _____, OWNER shall _____ . All work shall be performed substantially in accordance with OWNER's Plan No. _____ dated _____ consisting of _____ sheets, a copy of which is on file in the Office of the LOCAL AGENCY at _____ . Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to receipt by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner.”

NOTE: Significant changes in previously approved plans and itemized estimates require a revised FHWA Specific Authorization.

I-2. Work Performed by Local Agency's Contractor per Local Agency's Plans:

“In accordance with Notice to Owner No. _____ dated _____, LOCAL AGENCY shall relocate OWNER's _____ as shown on LOCAL AGENCY's contract plans for the improvement of _____ , which by this reference are made a part hereof. OWNER hereby acknowledges review of LOCAL AGENCY's plans for work and agrees to the construction in the manner proposed.

Deviations from the plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and acknowledged by the OWNER, will constitute an approved revision of the plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to receipt by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner. OWNER shall have the right to inspect the work during construction. Upon completion of the work by LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facilities.”

NOTE: Whenever liability is determined pursuant to Water Code Sections 7034 or 7035, Standard Clauses I-2, 3 or 4, may be modified by the deletion of the sentence: "Upon completion of the work by LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facility." (Also Clause V-10 will need to be added to the Utility Agreement.)

I-3. Work Performed by Local Agency's Contractor per Owner's Plan:

"In accordance with Notice to Owner No. _____ dated _____, LOCAL AGENCY shall relocate OWNER's _____ as shown on OWNER's Plan No. _____ dated _____, which plans are included in LOCAL AGENCY's Contract Plans for the improvement of _____ which, by this reference are made a part hereof.

Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and acknowledged by the OWNER, will constitute an approved revision of the OWNER's Plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to receipt by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner. OWNER shall have the right to inspect the work by LOCAL AGENCY's contractor during construction. Upon completion of the work by LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facilities."

NOTE: See NOTE under Clause I-2.

I-4. Work Performed by Both Owner and Local Agency's Contractor per Owner's Plan:

"In accordance with Notice to Owner No. _____ dated _____, OWNER shall _____ . All work shall be performed substantially in accordance with OWNER's Plan No. _____ dated _____ , consisting of _____ sheets, a copy of which is on file in the Office of the LOCAL AGENCY at _____."

"Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to receipt by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner."

"It is mutually agreed that the LOCAL AGENCY will include the work of _____ as part of the LOCAL AGENCY's highway construction contract. OWNER shall have access to all phases of the work to be performed by the LOCAL AGENCY for the purpose of inspection to ensure that the work being performed for the OWNER is in accordance with the specifications contained in the highway contract. Upon completion of the work performed by LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facilities."

NOTE: See NOTE under Clause I-2.

Section II. Liability for Work:II-1. Local Agency's Expense – California Streets and Highways Code (S&HC), Section 702 or 703:

“The existing facilities are lawfully maintained in their present location and qualify for relocation at LOCAL AGENCY’s expense under the provisions of Section (702) or (703) of the Streets and Highways Code.”

II-2. Local Agency's Expense - S&HC 704:

“This is a second or subsequent relocation of existing facilities within a period of ten years; therefore, relocation is at LOCAL AGENCY’s expense under the provisions of Section 704 of the Streets and Highways Code.”

II-3. Local Agency's Expense - Superior Rights:

“Existing facilities are located in their present position pursuant to rights superior to those of the LOCAL AGENCY and will be relocated at LOCAL AGENCY’s expense.”

II-4. Local Agency's Expense - Service Line on Private Property:

“The facilities are services installed and maintained on private property required for highway purposes and will be relocated at LOCAL AGENCY’s expense.”

II-5. Local Agency's Expense - Prescriptive Rights:

“The existing facilities are located in their present position pursuant to prescriptive rights prior and superior to those of the LOCAL AGENCY and will be relocated at LOCAL AGENCY’s expense.”

II-6. Owner's Expense - Encroachment Permit:

“The existing facilities are located within the LOCAL AGENCY's right of way under permit and will be relocated at OWNER's expense under the provisions of Sections (673) and (680) of the Streets and Highways Code.”

II-7. Owner's Expense - Trespass:

“The existing facilities are located within the LOCAL AGENCY's right of way in trespass and will be relocated at OWNER's expense.”

II-8. Local Agency or Prorated Expense – Right of Way Contract:

“The existing facilities described in Section I above will be relocated (at LOCAL AGENCY’s expense) (at _____% LOCAL AGENCY expense and _____% OWNER expense) as set forth in Right Of Way Contract No. _____ dated _____.”

II-9. Local Agency or Prorated Expense - Master Agreement:

“The existing facilities described in Section I above will be relocated (at LOCAL AGENCY’s expense) (at _____% LOCAL AGENCY’s expense and _____% OWNER’s expense) in accordance with (Section _____ of the Master Agreement dated _____) (Sections _____ of the Master Agreement dated _____ in accordance with the following proration: _____).”

NOTE: Where liability for portions of the utility facility to be relocated will be based on different sections of the Master Agreement, the equation used to develop the overall percentage of liability is to be included in the Agreement.

II-10. Prorated Expense - No Master Agreement:

“The existing facilities described in Section I above will be relocated at _____% LOCAL AGENCY’s expense and _____% OWNER’s expense in accordance with the following proration: _____.”

NOTE: Insert the equation used to develop the overall percentage of liability for the relocation following the word “proration.”

| II-11 Liability in Dispute - Deposit is not a Waiver of Rights

“Ordered work described as _____ is in dispute under Section _____ of the Streets and Highways Code. In signing this AGREEMENT neither LOCAL AGENCY nor OWNER shall diminish their position nor waive any of their rights nor does either party accept liability for the disputed work. LOCAL AGENCY and OWNER reserve the right to have liability resolved by future negotiations or by an action in a court of competent jurisdiction.”

NOTE: The appropriate Payment for Work clause (IV-1, 2, 8 or 9) must also be modified by inclusion of “after final liability determination” and “immediately following 90 days.”

Section III. Performance of Work:

III-1. Owner's Forces or Continuing Contractor Performs Work:

“OWNER agrees to perform the herein-described work with its own forces or to cause the herein described work to be performed by the OWNER's contractor, employed by written contract on a continuing basis to perform work of this type, and to provide and furnish all necessary labor, materials, tools, and equipment required therefore; and to prosecute said work diligently to completion.”

III-2. Owner Performs Work by Competitive Bid Process:

“OWNER agrees to cause the herein described work to be performed by a contract with the lowest qualified bidder, selected pursuant to a valid competitive bidding procedure, and to furnish or cause to be furnished all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion.”

III-3. Local Agency's Contractor Performs All or Portion of Work:

“OWNER shall have access to all phases of the relocation work to be performed by LOCAL AGENCY for the purpose of inspection to ensure that the work is in accordance with the specifications contained in the Highway Contract; however, all questions regarding the work being performed will be directed to LOCAL AGENCY's Resident Engineer for their evaluation and final disposition.”

III-4. Owner to Hire Consulting Engineer:

“Engineering services for locating, making of surveys, preparation of plans, specifications, estimates, supervision, inspection, _____ (delete or add services as established by the Owner's Agreement with the consultant) are to be furnished by the consulting engineering firm of _____ on a fee basis previously approved by LOCAL AGENCY. Cost principles for determining the reasonableness and allowability of consultant costs shall be determined in accordance with 48 CFR, Chapter 1, Part 31.”

III-5. Owner and Local Agency's Contractor Performs Work:

“OWNER agrees to perform the herein described work, excepting that work being performed by the LOCAL AGENCY's highway contractor, with its own forces and to provide and furnish all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion.”

III-6. Prevailing Wages Requirements for Contracted Work:

“Pursuant to Public Works Case No. 2001-059 determination by the California Department of Industrial Relations dated October 25, 2002, work performed by OWNER's contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above.”

Section IV. Payment for Work:IV-1. Owner Operates Under PUC or FCC Rules:

“The LOCAL AGENCY shall pay its share of the actual cost of the herein described work within 90 days after receipt of OWNER's itemized bill in quintuplicate, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual cost and expense incurred and charged or allocated to said work in accordance with the uniform system of accounts prescribed for OWNER by the California Public Utilities Commission (PUC) or Federal Communications Commission (FCC), whichever is applicable.”

“It is understood and agreed that the LOCAL AGENCY 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 LOCAL AGENCY 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.”

NOTES:

(1) **When a lump sum payment method is to be used, substitute Clause IV-8 or IV-9 as appropriate for Clause IV-1 or IV-2 and IV-3.**

(2) See Clause IV-10 for work being done by Local Agency's contractor.

IV-2. Owner Does Not Operate Under PUC or FCC Rules:

“The LOCAL AGENCY shall pay its share of the actual cost of the herein described work within 90 days after receipt of OWNER's itemized bill in quintuplicate, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual cost and expense. The OWNER shall maintain records of the actual costs incurred and charged or allocated to the project in accordance with recognized accounting principles.”

“It is understood and agreed that the LOCAL AGENCY 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 LOCAL AGENCY 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.”

NOTES:

(1) Section 705 of the S&H Code states that publicly owned sewers on freeways do not need to give credits for accrued depreciation. In these cases the following words “... for all accrued depreciation on the replaced facilities and ...” shall be eliminated from the second paragraph above.

(2) See Clause IV-1 for work done being done by Local Agency's contractor.

IV-3. For All Owners - Progress/Final Bills:

“Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit progress bills for costs incurred not to exceed OWNER's recorded costs as of the billing date less estimated credits applicable to completed work. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by LOCAL AGENCY of documentation supporting the cost increase and after an Amendment to this Agreement has been executed by the parties to this Agreement.”

“The OWNER shall submit a final bill to the LOCAL AGENCY within 180 days after the completion of the work described in Section I above. If the LOCAL AGENCY has not received a final bill within 180 days after notification of completion of OWNER's work described in Section I of this Agreement, and LOCAL AGENCY has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements as required for OWNER's facilities; LOCAL AGENCY will provide written notification to OWNER of its intent to close its file within 30 days and OWNER hereby acknowledges, to the extent allowed by law that all remaining costs will be deemed to have been abandoned.”

“The final billing shall be in the form of an itemized statement of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, the LOCAL AGENCY shall not pay final bills, which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the OWNER. If the final bill exceeds the OWNER's estimated costs solely as the result of a revised Notice to Owner as provided for in Section I, a copy of said revised Notice to Owner shall suffice as documentation.”

“In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an amended Agreement shall be executed by the parties to this Agreement prior to the payment of the OWNERS final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section I of this Agreement shall have the prior concurrence of LOCAL AGENCY.”

“Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final payment and will be available for audit in accordance with Contract Cost Principals and Procedures as set forth in 48 CFR, Chapter 1, Part 31 by LOCAL AGENCY and/or Federal Auditors.”

NOTES:

- (1) See NOTE under Clause IV-1.**
- (2) Audit standards of 48 CFR, Part 31 have been accepted as Caltrans standard for all projects.**
- (3) Under Clause IV-3, regarding the standard 180 days for Owner to submit a final bill, the Local Agency can negotiate a shorter time frame in which the Owner must submit their final bill.**

IV-4. Advance of Funds - Local Agency Liability:

“OWNER, at the present time, does not have sufficient funds available to proceed with the relocation of OWNER's facilities provided for herein. It is estimated that the cost of the work provided for by this Agreement and, as hereinafter set forth, is the sum of \$_____. LOCAL AGENCY agrees to advance to OWNER the sum of \$_____ to apply to the cost of the work to be undertaken as provided hereinabove. Said sum of \$_____ will be deposited by the LOCAL AGENCY with OWNER within 45 days after execution of the Agreement by the parties hereto and upon receipt of an OWNER's bill for the advance.”

“It is further agreed that upon receipt of the monies agreed upon to be advanced by LOCAL AGENCY herein, OWNER will deposit said monies in a separate interest-bearing account or trust fund in State or National Banks in California having the legal custody of said monies in accordance with and subject to the applicable provisions of Section 53630, et seq., of the Government Code, and all interest earned by said monies advanced by LOCAL AGENCY and deposited as provided for above shall be credited to LOCAL AGENCY.”

“In the event actual relocation costs as established herein are less than the sum of money advanced by LOCAL AGENCY to OWNER, OWNER hereby agrees to refund to LOCAL AGENCY the difference between said actual cost and the sum of money so advanced. In the event that the actual cost of relocation exceeds the amount of money advanced to OWNER, in accordance with the provisions of this Agreement, LOCAL AGENCY will reimburse OWNER said excess costs upon receipt of five (5) copies of an itemized bill as set forth herein.”

NOTE: Generally, advance of funds should not exceed 90% of the Agreement amount due to possible credits for depreciation, salvage, etc. No funds should be advanced to cover owner initiated betterments.

IV-5. Loan of Funds - Owner Liability:

“OWNER recognizes its legal obligation to relocate its facility at its own cost, but at the present time does not have sufficient funds available to proceed with the relocation of OWNER's facilities provided for herein. It is estimated that the cost of the work provided for by this Agreement, and as hereinafter set forth, is the sum of \$_____. LOCAL AGENCY agrees to advance to OWNER the sum of \$_____, in accordance with Section 706 of the Streets and Highways Code, to apply to the cost of the work to be undertaken as provided hereinabove. Said sum of \$_____ will be deposited by the LOCAL AGENCY with OWNER within 45 days after execution of the Agreement by the parties hereto and upon receipt of an OWNER's bill for the advance. It is understood that OWNER shall pay interest upon receipt of said advance. The rate of interest shall be the rate of earnings of the California Surplus Money Investment Fund and computation shall be in accordance with Section 1268.350 of the Code of Civil Procedure.”

IV-6. Agreement for Identified Betterments:

“It is understood that the relocation as herein contemplated includes betterment to OWNER's facilities by reason of increased capacity in the estimated amount of \$_____ (which represents _____% of the estimate dated _____. Said _____% shall be applied to the actual cost of work done) and OWNER shall credit the LOCAL AGENCY for the actual cost of said betterment; all of the accrued depreciation and the salvage value of any materials or parts salvaged and retained by OWNER.”

IV-7. Local Agency Performs Work - Owner Requested Betterments:

“The LOCAL AGENCY shall perform the work under Section I above at no expense to OWNER except as hereinafter provided.”

“It is understood that the relocation as herein contemplated includes betterment to OWNER's facilities by reason of increased capacity in the estimated amount of \$_____, said amount to be deposited upon demand in the _____ Office of the LOCAL AGENCY prior to the time that the subject freeway/highway contract bid is opened by the LOCAL AGENCY. The final betterment payment shall be calculated based upon the actual quantities installed as determined by the LOCAL AGENCY's engineer and the current cost data as determined from the records of the OWNER. In addition, the OWNER shall credit the LOCAL AGENCY at the time of the final bill for all the accrued depreciation and the salvage value of any material or parts salvaged and retained by the OWNER.”

IV-8. Lump Sum/Flat Sum Billing Agreements (Excluding SBC):

“Upon completion of the work, and within 90 days after receipt of OWNER's bill in quintuplicate, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, LOCAL AGENCY will pay OWNER the lump sum amount of \$_____. The above lump sum amount has been agreed upon between the LOCAL AGENCY and the OWNER and includes any credits due the LOCAL AGENCY for betterment, depreciation and salvage.”

NOTE: For lump sum amounts in excess of \$25,000, the following clause should be added.

“LOCAL AGENCY and OWNER further agree that for lump sum payments in excess of \$25,000 the LOCAL AGENCY shall have the option of performing an informal audit of OWNER's detailed records from which the billing is compiled. The purpose of LOCAL AGENCY's audit shall be to establish the continued acceptability of using lump sum payments for high cost relocations and shall not in any way affect the amount or acceptability of the lump sum amount herein agreed to. OWNER shall keep supporting detailed records available for LOCAL AGENCY review for a period of one year following OWNER's submittal of final bill.”

IV-9. Lump- Sum/Flat Sum SBC Billing Agreements:

“Upon completion of the potholing and relocation work, and within 90 days after receipt of OWNER's bill in quintuplicate, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead; LOCAL AGENCY will pay OWNER the lump sum amount of \$_____. The above lump sum amount for the physical relocation work has been agreed upon between the LOCAL AGENCY and the OWNER and includes any credits due the LOCAL AGENCY for betterment, depreciation, and salvage.”

“In addition to the amount specified above, the LOCAL AGENCY will pay the OWNER an additional amount of \$_____ for each pothole location requested by the LOCAL AGENCY in order to determine the location of the OWNER's facilities. It is estimated that _____ pothole locations will be required. The final cost for potholing will be the lump sum amount of \$_____ per pothole location times the actual number of pothole locations.”

NOTE: For lump sum amounts in excess of \$25,000, the following clause should be added.

“LOCAL AGENCY and OWNER further agree that for lump sum payments in excess of \$25,000 the LOCAL AGENCY shall have the option of performing an informal audit of OWNER's detailed records from which the billing is compiled. The purpose of LOCAL AGENCY's audit shall be to establish the continued acceptability of using lump sum payments for high cost relocations and shall not in any way affect the amount or acceptability of the lump sum amount herein agreed to. OWNER shall keep supporting detailed records available for LOCAL AGENCY review for a period of one year following OWNER's submittal of final bill.”

IV-10. Local Agency's Contractor Performs Portion of Work-Owner Liability:

NOTE: Insert the following Clause after Clause IV-1 or IV-2.

“The OWNER shall pay its share of the actual cost of said work included in the LOCAL AGENCY's highway construction contract within 90 days after receipt of LOCAL AGENCY's bill; compiled on the basis of the actual bid price of said contract. The estimated cost to OWNER for the work being performed by the LOCAL AGENCY's highway contractor is \$_____.”

“In the event actual final relocation costs as established herein are less than the sum of money advanced by OWNER to LOCAL AGENCY, LOCAL AGENCY hereby agrees to refund to OWNER the difference between said actual cost and the sum of money so advanced. In the event that the actual cost of relocation exceeds the amount of money advanced to LOCAL AGENCY, in accordance with the provisions of this Agreement, OWNER hereby agrees to reimburse LOCAL AGENCY said deficient costs upon receipt of an itemized bill as set forth herein.”

Section V. General Conditions:

V-1. Local Agency Liable for Review and Design Costs, and Project Cancellation Procedure Clause:

“All costs accrued by OWNER as a result of LOCAL AGENCY's request of ___ (date) ___ to review, study and/or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement.”

“If LOCAL AGENCY's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, LOCAL AGENCY will notify OWNER in writing, and LOCAL AGENCY reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.”

V-2. For All Owners - Notice of Completion:

“OWNER shall submit a Notice of Completion to the LOCAL AGENCY within 30 days of the completion of the work described herein.”

V-3. Owner to Acquire New Rights of Way:

“Total consideration for rights of way to be acquired by OWNER for this relocation shall not exceed (e.g., \$2,500) unless prior approval is given by the LOCAL AGENCY. Said property shall be appraised and acquired in accordance with lawful acquisition procedures.”

NOTE: A reasonable easement cost limitation should be stated to preclude excessive acquisition cost.

V-4. Local Agency to Provide New Rights of Way Over State Lands:

“Such Easement Deeds as deemed necessary by the LOCAL AGENCY will be delivered to OWNER conveying new rights of way for portions of the facilities relocated under this Agreement over available LOCAL AGENCY owned property outside the limits of the highway right of way.”

“LOCAL AGENCY's liability for the new rights of way will be at the proration shown for the relocation work involved under this Agreement.”

NOTE: New rights of way means a right of way described in the same language as found in the OWNER's document by which it acquired, or held, its original right of way.

V-5. Local Agency to Provide New Rights of Way Over Private Lands:

“LOCAL AGENCY will acquire new rights of way in the name of either the LOCAL AGENCY or OWNER through negotiation or condemnation and when acquired in LOCAL AGENCY's name, shall convey same to OWNER by Easement Deed. LOCAL AGENCY's liability for such rights of way will be at the proration shown for relocation work involved under this Agreement.”

NOTE: New rights of way means a right of way described in the same language as found in the OWNER's document by which it acquired, or held, its original right of way. In those cases where the OWNER requests acquisition be made in their name, it will be permissible to negotiate or condemn in their name; provided the OWNER has the power to condemn and the Local Agency has OWNER's consent for condemnation on OWNER's behalf. The above paragraph should be revised accordingly.

V-6. Joint Use Agreement (JUA) or Consent to Common Use Agreement (CCUA) to be issued:

“Where OWNER has prior rights in areas which will be within the highway right of way and where OWNER's facilities will remain on or be relocated on LOCAL AGENCY highway right of way, a Joint Use Agreement or Consent to Common Use Agreement shall be executed by the parties.”

V-7. Master Agreement Specifies Equal Replacement Rights:

“Upon completion of the work to be done by LOCAL AGENCY in accordance with the above-mentioned plans and specifications, the new facilities shall become the property of OWNER, and OWNER shall have the same rights in the new location that it had in the old location.”

V-8. Federal-Aid Clause - No Master Agreement:

“It is understood that said highway is a federal-aid highway and accordingly, 23 CFR 645 is hereby incorporated into this Agreement.”

V-9. Federal-Aid Clause - Master Agreement:

“It is understood that said highway is a federal-aid highway and accordingly, 23 CFR Part 645 is hereby incorporated into this Agreement by reference; provided, however, the provisions of any agreements entered into between the LOCAL AGENCY and the 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 (FHWA), shall govern in lieu of the requirements of said 23 CFR Part 645.”

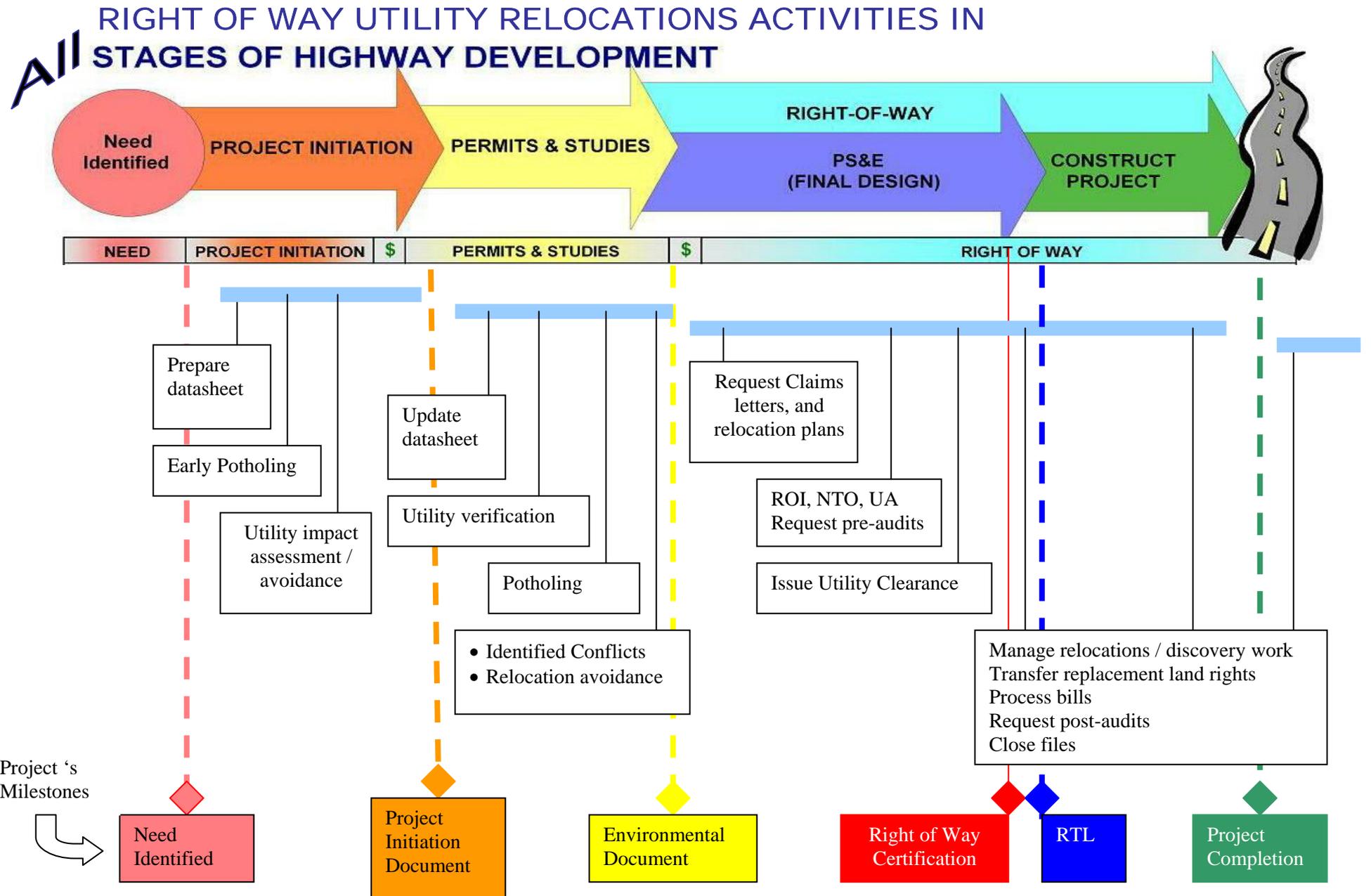
NOTE: The FHWA allows liability to be determined in accordance with the terms of Master Agreements in lieu of otherwise applicable S&H Code sections.

V-10. Facilities Replaced per Liability Determination Under Water Code Sections 7034 & 7035:

“Inasmuch as Water Code Sections (7034) and (7035) require LOCAL AGENCY to be responsible for the structural maintenance of the conduit portion of OWNER's facilities, which transports water under the highway at Engineer's Station _____, LOCAL AGENCY will repair or replace the conduit portion of OWNER's facilities, which lies within the LOCAL AGENCY highway right of way when such becomes necessary unless such repair or replacement is made necessary by negligent or wrongful acts of the OWNER, its agents, contractors or employees; provided that the OWNER shall keep the conduit clean and free from obstruction, debris, and other substances so as to ensure the free passage of water in said conduit. In no event shall LOCAL AGENCY be liable for any betterment, change, or alteration in said facility made by or at the request of the OWNER for its benefit.”

NOTE: See NOTE under Clause I-2 and Section 13.11.05.01 of the ROW Manual.

This page intentionally left blank



This page intentionally left blank

| FEDERAL-AID LOCAL ASSISTANCE RESPONSIBILITIES | | | |
|--|--|--------------------------------|---|
| ACTIVITY | Projects on the National Highway System (NHS) (Excluding Interstate ¹) | Projects not on the NHS | COMMENTS |
| | State-Authorized | State-Authorized | |
| | | | |
| Design Standards (Chapter 11) | | | |
| Approve Local Design Standards | State | Local Agency | Local agencies shall use Caltrans, AASHTO, or 3R standards for projects on the NHS. |
| Approve Design Exceptions | State | Local Agency | |
| Plans, Specifications & Estimate (Chapter 12) | | | |
| Approve PS&E Procedures | State | Not required | State approval of PS&E procedures limited to major NHS projects |
| Approve Exceptions to Competitive Bid Contracts | State | Local agency | |
| Approve Incidental Force Account Work | State | Local Agency | |
| Approve use of Proprietary Items | State | Not Required | |
| Approve Warranty Clauses | State | Not Required | |
| Prepare and Certify PS&E | Local Agency | Local Agency | |
| Accept PS&E Certification | State | State | State approval of PS&E procedures required for major NHS projects before State will accept PS&E Certification |
| Right of Way (Chapter 13) | | | |
| Qualify Local Agencies | State | State | |
| Qualify/Select Consultants | Local Agency | | |

¹ Projects on or impacting the Interstate regardless of funding will require a project-by-project review by FHWA. For these and all projects on state highways, the local agency should coordinate closely with the DLAE and District Project Development Manager to ensure that all required authorizations/obligations and other reviews and approvals are obtained in a timely manner and in accordance with state highway development procedures. Early consultation by Caltrans with FHWA will aid in coordination for necessary involvement and needed approvals, if any.

| FEDERAL-AID LOCAL ASSISTANCE RESPONSIBILITIES | | | |
|---|---|----------------------------|--|
| ACTIVITY | Projects on the National Highway System (NHS) (Excluding Interstate ¹) | Projects not on the NHS | COMMENTS |
| | State-Authorized | State-Authorized | |
| Right of Way (Chapter 13) -continued | | | |
| R/W Acquisition/Relocation Assistance | Qualified Local Agency/Consultants | | |
| Certify R/W | Local Agency | | |
| Accept R/W Certification | State | | |
| Approve R/W Certification | N/A | N/A | |
| Utility Relocations (Chapter 14) | | | |
| Approval of Utility Relocation Agreements involving Federal reimbursement | State | State | |
| Specific Authorization for Utility Relocation involving Federal reimbursement | State | State | |
| Utility Certification | Local Agency | Local Agency | See R/W Certifications |
| Advertise & Award Project (Chapter 15) | | | |
| Approve Local Agency Construction Administration Procedures | State | Not Required | State approval of procedures limited to major NHS projects. |
| Local Agency Construction Administration Certification | Local Agency | Local Agency | Not applicable for major NHS projects. |
| Accept Local Agency Construction Administration Certification | State | State | Not applicable for major NHS projects. |
| Advertise Project | Local Agency | Local Agency | Authorization to Proceed (E-76) required prior to advertisement |

¹ Projects on or impacting the Interstate regardless of funding will require a project-by-project review by FHWA. For these and all projects on state highways, the local agency should coordinate closely with the DLAE and District Project Development Manager to ensure that all required authorizations/obligations and other reviews and approvals are obtained in a timely manner and in accordance with state highway development procedures. Early consultation by Caltrans with FHWA will aid in coordination for necessary involvement and needed approvals, if any.

INTELLIGENT TRANSPORTATION SYSTEMS

For Intelligent Transportation Systems (ITS) projects, PE includes Systems Engineering, equipment, software development, and use of a Systems Manager or Systems Integrator (see Section 12.6, “Intelligent Transportation Systems Program,” of the LAPG for details on Systems Engineering and use of a Systems Manager or Systems Integrator).

The Systems Engineering analysis of major ITS projects, as defined in Section 12.6 of the LAPG, must be approved by the FHWA prior to advancing to detailed component design. Therefore, major ITS projects require two separate PE phase authorizations. The Systems Engineering Review Form (SERF) of major ITS projects must be approved by FHWA prior to, or shortly after (if prepared by a consultant) the first PE authorization. Development of the Systems Engineering Management Plan (SEMP) is contingent upon federal approval of the SERF. FHWA approval of the SEMP is required prior to the second PE authorization and proceeding to final detailed design.

Minor ITS projects can undergo the traditional one PE phase authorization and will not require FHWA approval of the SERF and SEMP. However, the local agency still must complete the SERF, as part of the Field Review Form.

RIGHT OF WAY

Eligible Right of Way (R/W) work includes the preparation of R/W plans, making economic studies, other R/W related-preliminary work, appraisal for parcel acquisition, review of appraisals, payments for real property acquired, preparation for and trial of condemnation cases, management of properties acquired, furnishing of relocation assistance, and other related labor expenses (see 23 CFR 710 for details). This work is covered in the local agency’s “Request for Authorization to Proceed with Right of Way,” (Exhibit 3-B of this chapter).

Only eligible work performed after federal “Authorization to Proceed” with R/W may receive federal reimbursement.

As noted above, some R/W activities necessary for the completion of the NEPA process may be authorized as part of PE. However, an approved NEPA document is required prior to the majority of R/W activities (e.g., negotiating with property owners, acquisition and relocation assistance, see Chapter 13, “Right of Way,” of the LAPM). The request for R/W authorization must include an approved NEPA document and completed Field Review Form if not submitted previously.

RIGHT OF WAY UTILITY RELOCATIONS

If federal reimbursement is sought for utility relocations (adjustments), all work must be performed in accordance with the FHWA’s “Alternate Procedure” 23 CFR 645.119 (e)(2). Refer to Chapter 14, “Utility Relocations,” of the LAPM for detailed information and procedures related to eligible costs, required federal actions (Authorization to Proceed [E-76], FHWA Specific Authorization to Relocate Utilities and FHWA Approval of Utility Agreement[s]), sequence of activities, notifications, support documentation and federal reimbursement.

The DLAE must identify the name of the utility owner, type of facility, and estimated cost to relocate/adjust each utility in the “State Comments” section of the E-76.

IMPORTANT: If federal funds are used to finance any phase of work on a project, all project R/W activities, including utility relocation must conform to requirements of 23 CFR, Part 645. Failure to comply will jeopardize federal funding.

CONSTRUCTION AND CONSTRUCTION ENGINEERING

Eligible construction costs include, the actual cost to construct the highway itself including its appurtenant facilities and any removal, adjustment or demolition of buildings or major obstruction, utility or railroad work that is a part of the physical construction of the project construction engineering, and administrative settlement of cost for contract claims.

Federal “Authorization to Proceed” with construction must be received prior to advertising the construction contract. **Projects advertised prior to federal authorization are NOT eligible for federal reimbursement.**

The request package for “Authorization to Proceed” with construction must include a Field Review Form, a copy of the approved environmental document (either a signed Categorical Exclusion [CE], Finding of No Significant Impact [FONSI], or Record of Decision [ROD]), if not previously submitted, approved right of way certification, project finance letter, engineer’s estimate, PS&E Certification (Exhibit 12-C), PS&E Checklist (Exhibit 12-D) and PS&E package.

Construction Engineering (CE) includes, the supervision and inspection of construction activities, additional staking functions considered necessary for effective control of the construction operations, testing materials incorporated into the construction, checking shop drawings, and measurements needed for establishing pay quantities. CE costs must be specifically included in the “Authorization to Proceed with Construction” and authorized to be eligible for federal reimbursement. CE costs must also be included on the project finance letter. If CE is authorized after construction begins, only those CE costs incurred after the date of the CE authorization are eligible for federal reimbursement.

Typically, the federal reimbursement of CE costs is limited to 15% of the total federal funds obligated for construction. Construction costs exclude costs of PE, right of way and CE. For implementation purposes, CE costs in excess of 15% on “State-Authorized” projects must be reviewed for reasonableness and approved by the Caltrans DLAE.

If Caltrans source inspection services will be requested, the local agency must submit/justify their request (refer to Exhibit 16-V “Source Inspection Request From Local Agency To Caltrans District Local Assistance Engineer,” of the LAPM) at least 30 days prior to local agency submittal of their “Request for Authorization to Proceed with Construction.” Caltrans may perform the requested source inspection services, subject to the availability of their inspectors (see “Source Inspection,” Section 16.14, “Quality Assurance Program,” of the LAPM).

Some ITS projects may be fully deployed without ever advancing to construction. There are other ITS projects with nonconstruction activities, which might be handled as consultant, low-bid, or service contracts (see the PE and/or procurement discussion of Section 12.6, “Intelligent Transportation Systems” of the LAPG).

EXHIBIT 3-C REQUEST FOR AUTHORIZATION TO PROCEED WITH UTILITY RELOCATION (Local Agency Letterhead)

To: (DLAE Name)
District Local Assistance Engineer
Caltrans, Office of Local Assistance
(District Address)

Date: _____
FTIP/FSTIP ID: _____
Federal Project No: _____
EA: _____
PPNO (For STIP Projects): _____
Project Description: _____

Dear (DLAE Name):

In order to proceed with Utility Relocation phase of work for the above-referenced project, we request that you secure Federal Authorization to Proceed and obligation of funds. The federal funds requested do not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

- Completed Request for R/W Authorization Form (Exhibit 3-B)
- Request for Authorization Data Sheet (Exhibit 3-E)
- Copy of FTIP/FSTIP Reference Sheet
- Completed Finance Letter (Exhibit 3-O)
- Copy of Executed Cooperative Agreement, if not previously submitted (only for projects on State Highway System)
- Request for Capitol Subvention Reimbursement Authority (Exhibit 3-H) (only for projects on State Highway System)

Field Review Form (Exhibit 7-B)

- Completed Field Review Form (Exhibit 7-B), or
- The Field Review Form was submitted previously on _____.

Environmental Document

- Type of NEPA Document. Approval Date: _____.
- Programmatic Categorical Exclusion (PCE) Form
- Categorical Exclusion (CE) Form
- Findings of No Significant Impact (FONSI)
- Record of Decision (ROD)
- Re-evaluation

Disadvantaged Business Enterprise (DBE)

- The Annual Anticipated DBE Participation Level (AADPL) for FFY _____ was approved by Caltrans on _____.
- All work for this phase of the project will be performed by local agency staff.
- For consultant contracts the Local Agency Proposer/Bidder-DBE (Consultant Contract) Information (Exhibit 10-O) will be provided immediately upon execution of the consultant contract.

Utility Relocation

- This Agency agrees to comply with 23 CFR 645.119 “Alternate Procedure” (as explained in Chapter 13, “Right of Way,” and Chapter 14, “Utility Relocations,” of the LAPM). This Alternate Procedure is provided to simplify the processing of utility relocations or adjustments under the provisions of 23 CFR 645. Under this procedure, the FHWA authorized the Department of Transportation (Caltrans) to act in relative position of the FHWA for review and approval of the arrangements, fees, estimates, plans, utility agreements, and other related matters required by such regulation as prerequisites for authorizing the utility owner to proceed with and complete the work.

It is understood that the scope of the Department’s approval authority under the Alternate Procedure includes all actions necessary to advance and complete all types of utility work under the provisions of such regulation, except Section 645.119 (B)(1) and 645.119 (b)(2). Two of such documents that need the Department’s approval are FHWA Specific Authorization and FHWA Approval of the Utility Agreement(s). See Chapter 14, “Utility Relocations,” of the LAPM for more information on the activities necessary for federal participation in utility relocations. The approval authority has been delegated to the Right of Way District Utility Coordinators.

California Transportation Commission (CTC) Allocation

Check which of the following applies:

- A CTC allocation is not required, or
 A CTC allocation of funds for the right of way component of work was made at the _____ meeting of the CTC, or
 A CTC allocation of funds has been scheduled for the _____ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon FHWA issuance of the “Authorization to Proceed” (and agency submittal of the “Field Review” form [Exhibit 7-B]), if not previously submitted), a “Program Supplement Agreement” and/or state approved “Finance Letter” will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are typically available for disbursement for a period of seven (7) and five (5) years respectively, from the beginning of the fiscal year(s) that those funds are appropriated in the State Budget Act, unless an extension is granted by the Department of Finance. It is anticipated that this phase of work will be completed by _____ (month, year).

Invoice Submittal

This Agency understands that only relocation work performed after federal “Authorization to Proceed” (E-76), approval of the Specific Authorization, and appropriate Utility Agreement is eligible for reimbursement. Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed “Program Supplement Agreement” and/or state approval Finance Letter. In addition, it is also understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended. If there are no eligible expenses, then a written explanation will be provided for that six (6) month period along with the target amount and date for the next invoice submittal.

CERTIFICATION

I certify that the facts and statements in this Request for Authorization Package are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and policies and procedures promulgated by the Federal Highway Administration and California Department of Transportation relative to the above-designated project.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated / encumbered, as well as, for all costs it incurred prior to receiving the FHWA issued Authorization to Proceed.

Estimated Completion Date: Enter the estimated completion date for each phase of work.

Environmental Data: Identify the federal NEPA Class of Action (PCE, CE, EA or EIS) for the project by inserting a check mark next to the appropriate class and indicate the date the NEPA Determination of document was signed. For PCEs, indicate the date DLAE signed the CE/CE/PCE form. For Regular CEs, indicate the date FHWA signed the CE/CE/PCE form. For EAs, indicate the date FHWA signed the FONSI, and for EISs, indicate the date FHWA signed the ROD.

For EISs, indicate the year of the public release of the EIS and the EIS Number (assigned by FHWA).

A copy of the signed NEPA Determination or document should accompany the requests for Authorization to Proceed with Right of Way and/or Construction.

Air Basin: The name of the Air Basin is required for projects funded with federal Congestion and Air Quality Improvement Program (CMAQ) funds.

Right of Way Acquired Parcels: Report the number of right of way parcels to be acquired and the estimated cost.

Family Relocation Assistance Payments (RAP-Family): Report the total number of family relocation assistance payments to be made and the estimated costs.

Business Relocation Assistance Payments (Business): Report the total number of business relocation assistance payments to be made and the estimated costs.

Last Resort Housing/Hardship (SRH/HRDSHP): Report the total number of Last Resort Housing/Hardship payments to be made and the estimated costs.

Utilities: Report the total estimated amount of utility payments to be made. Enter the amount to the nearest dollar.

Support: Report the total estimated dollar amount of the support payments to be made. Enter the amount rounded to the nearest dollar.

Total: Sum of all the R/W estimates above.

Utility Relocations/Adjustments: Enter the name of the utility owner, type of utility, and estimated cost to relocate/adjust each utility for which federal reimbursement is being requested. The local agency must be totally obligated to pay for the utility relocation work. Refer to Chapter 14, "Utility Relocations," of the *Local Assistance Procedures Manual* (LAPM) for requirements and information related to federal participation in utility relocation work.

#Parcels: Enter the number of parcels for each type of acquisition and/or activity

Acquisition Type and/or Activity: Enter the type of acquisition (residential, business or easement, partial or full take, etc.) and/or Activity (relocation assistance, type of easement, other type of compensation, etc.)

Acres: Enter the number of acres attributable to each acquisition type and/or activity.

Estimated Cost: Enter the estimated cost attributable to each acquisition type and/or activity.

Right of Way Certification: Enter the Right of Way Certification status (1,2, or 3) as defined in 23 CFR 635.309 and Chapter 13 "Right of Way" of the LAPM and enter the date the Right of Way Certification was accepted by the Caltrans Right of Way official.

Local Agency Comments: Provide any important project information related to the current request for authorization. If more space is needed, submit the information on a separate sheet of paper.

Person Preparing Request for Authorization: Enter the name, title, e-mail address, and phone number of the person preparing the request for authorization and to whom questions may be addressed.

Contact for Program Agreement: Enter the name, title, phone number and e-mail address of the person to whom the project funding agreements should be sent for signature by the local agency.

This page intentionally left blank

CALTRANS ROLE

When federal funding is used in any phase of a local assistance project, the FHWA places overall responsibility for the acquisition of right of way and the relocation of individuals, businesses, and utilities with Caltrans. Caltrans in turn has delegated substantial authority to local agencies. On these federal-aid projects, all right of way activities must be conducted in accordance with the Caltrans *Right of Way Manual*. The Caltrans *Right of Way Manual* can be found on the Internet at www.dot.ca.gov/hq/row.

When the project requires the relocation of utility facilities, Caltrans is responsible for approval of the “FHWA Specific Authorization to Relocate Utilities” and “FHWA Approval of Utility Agreement.” More information is available in Chapter 14 “Utility Relocations,” in the LAPM. These Agreement forms are both part of form RW 13-15 found in Chapter 13 of the Caltrans *Right of Way Manual*.

Caltrans is responsible for fully informing local agencies of their responsibilities accompanying federal-aid transportation projects by ensuring that every local agency receives all current regulations and procedural instructions affecting right of way activity, and on request will provide training, guidance and advice on right of way matters. Further information is provided in its *Right of Way Manual*. Caltrans *Right of Way Manual* and FHWA’s *Project Development Guide* are available to each local agency. Also, Flow Chart 13-1, “Flow Chart of Right of Way Procedures,” gives an excellent overview of the Right of Way process.

CALTRANS DISTRICT ROLES

When questions arise in the development of a federal-aid project, or if it is determined that property rights will be required on the project, the local Caltrans District Local Assistance Engineer (DLAE) should be promptly notified. The DLAE has overall responsibility as liaison with each local agency in that district. In addition, each district has a Right of Way Local Programs Coordinator who is responsible for working with each local agency whose projects involve federal funds.

As part of the overall responsibility assigned to Caltrans by FHWA, Caltrans Right of Way is required to monitor local agency’s procedures for right of way appraisal, acquisition, relocation assistance, property management, and utility relocations on all local assistance projects for compliance with applicable state and federal laws and regulations.

THE MONITORING PROCESS

The Caltrans District Right of Way Local Programs Coordinator will monitor right of way activities at any time during the project. Normally however, most monitoring is performed on a post-audit, spot-check basis to ensure that such activities are performed in compliance with federal and state laws and regulations. Acquisition and relocation activities must be in conformance with the Uniform Act, Federal Stewardship requirements, the FHWA *Project Development Guide* and the Caltrans *Right of Way Manual*. All right of way functional areas are subject to review. Spot-check monitoring will normally be limited to no more than 25 % of the total work performed. Additional reviews shall be made only when violations are discovered and then only to determine if the violations are prevalent or one-time occurrences (see below, “Monitoring Findings”).

The reviewer shall bring all violations discovered to the attention of the local agency. It is the local agency’s responsibility to ensure correction. The selection of projects that will be monitored shall be at the discretion of the district based on staff availability,

familiarity with the local agency, the project and consultants which may be used, as well as the complexity of the right of way issues.

Monitoring will usually use checklists or outlines to guide the review. Both entry and exit conferences will be conducted to advise local agency staff of the scope and findings of the monitoring visit. A written report will usually be provided to the local agency, **THOUGH NOT NECESSARILY AT THE TIME OF THE EXIT CONFERENCE.**

MONITORING FINDINGS

Ideally, the monitoring review will discover compliance with all applicable laws and regulations. Occasionally, however, there may be other results with findings having different levels of seriousness.

Violations of What Caltrans Considers to be Good Business Practice

These are practices of the local agency, which could be improved with the result being a more efficient or effective operation and/or reduced chance that more serious violations will occur subsequently. Local agencies will be advised of these observations, but there is no penalty associated with noncompliance. Local agencies are free to adopt suggested changes or not as their management judgment indicates.

Violations of Practices Where Correction is Mandatory

Local agencies will be expected to change their practices to conform to Caltrans' requirements. For qualified agencies, failure to do so may jeopardize their qualification status for future projects. In addition, serious violations of this nature must be corrected, particularly when it appears that a violation of property owner's rights is involved. Local agencies will be advised in writing of such violations and of the corrective actions to be taken. During the time the local agency is taking the corrective actions, federal reimbursement may be withheld. Failure to complete the corrective actions within reasonable time periods may result in withdrawal of federal funding for the project.

For additional details, refer to Chapter 20, "Deficiencies and Sanctions" of the LAPM.

QUALIFYING LOCAL AGENCIES

Caltrans qualifies local agencies to perform their own right of way functions (see below, "Qualification of Local Agencies").

Caltrans also provides training and guidance to local agencies seeking assistance on federal-aid projects.

LOCAL AGENCY ROLE

CERTIFICATION OF PROJECTS

The local agency will certify that all Uniform Act requirements have been met on federal-aid projects.

QUALIFICATION OF LOCAL AGENCIES

Caltrans has an agreement with FHWA that allows local agencies to be certified in advance to perform all or some right of way activities based on the local agency's qualifications, the size of their staff and their ability to perform the technical work, and subsequent reviews. Caltrans District Right of Way staff conducts a qualification review

be purchased from Caltrans Publication Unit.) On the Right of Way Certification Form, the local agency should use only the portions applicable to the project being certified. The No Right of Way Certification should be completed in its entirety.

PROJECT CERTIFICATION---NO ADDITIONAL RIGHT OF WAY REQUIRED

If it is evident during the early stages that no additional property rights or right of way are required, the local agency can then proceed with the next stage in the project development procedure, which is certifying to Caltrans that no right of way is required. This is accomplished with a “No Right of Way Certification,” Exhibit 13-A in this chapter, which is completed in duplicate, signed by an authorized official or a designated alternate from the local agency and forwarded to the DLAE for acceptance.

It is important to remind local agencies that only authorized officials may execute Certifications. Section 17.08.14.11 of Chapter 17 of the Caltrans *Right of Way Manual*, states in part that the Local Public Agency “...may adopt a resolution giving (a responsible agency official) blanket authority to execute Right of Way Certifications.” This is intended to streamline the process and avoid the necessity to have the execution of each individual Certification authorized by an agency resolution. If the continuing resolution of authority option is chosen, each Certification should be accompanied by a statement from the Local Public Agency that the Certification has been executed by an official or designated alternate pursuant to a resolution authorizing this official to do so. It will be sufficient to have a copy of the original resolution on file in the District Right of Way Office.

Note: All questions on the No Right of Way Certification should be answered “NO.” If any questions are answered “YES,” the use of the form is inappropriate, and the form should be returned to the local agency with instructions to use the longer Right of Way Certification Form which is intended for use in dealing with right of way matters.

ACCEPTANCE OF THE NO RIGHT OF WAY CERTIFICATION

The DLAE will review the No Right of Way Certification Form. If no additional property rights are required, the local agency has answered “NO” to all the questions, and the form is otherwise correctly completed, the DLAE will accept the Certification on behalf of Caltrans, and one of the signed duplicate originals will be returned to the local agency and a copy of the Certification will be sent to the Right of Way Local Programs Coordinator for District Right of Way files.

UTILITY RELOCATION

Local agency transportation projects often involve utility relocation. For utility relocation details refer to Chapter 14, “Utility Relocations,” of the LAPM.

Note: On projects where the sole right of way involvement is with utility facilities and these utility facilities are owned by the sponsoring local agency, or where a liability determination has been established that the utility facilities are in place under a franchise agreement, the project may be certified using the No Right of Way Certification. In the first case, when the utility facilities are owned by the local agency that agency should be better able to coordinate with its own utility unit to relocate their facilities. In the second case, where the local agency has “prior rights,” and the utility facilities are in place under a franchise agreement, the risk is minimized by the nature of the franchise agreements between the utility company and the local agency.

PROJECT CERTIFICATION—RIGHT OF WAY REQUIRED

When additional property rights are required for a local federal-aid project, it is necessary for the agency to certify that these rights were acquired in conformance with the Uniform Act.

All local agencies will certify their own projects, but it is of crucial importance to adhere to the Code of Federal Regulations and the Caltrans *Right of Way Manual* that incorporate these federal regulations, so that any state or federal funds to be used for the project are not jeopardized. This emphasizes the gravity for non-qualified local agencies in the selection of qualified consultants or in contracting with a qualified local agency to perform the respective right of way functions for them.

LEVELS OF CERTIFICATION

There are four levels of Right of Way Certification, which are discussed below.

Certification No. 1

The certification documents the following:

- All the work is within existing right of way acquired for a previous construction project and all new work will be within that existing right of way,

OR

- Acquisitions are complete (escrow's closed and/or Final Orders of Condemnation recorded),

AND/OR

- There are effective Orders for Possession on all remaining unacquired parcels,

AND

- All occupants have vacated the lands and improvements,
- Relocation Assistance and payment requirements have been met,
- All necessary material and/or disposal sites have been secured,

AND

- All rights of way clearance, utility, and railroad work has been completed, or all necessary arrangements have been made (Utility Notices issued, demolition contracts awarded, railroad contracts executed) for the work to be undertaken and completed as required for proper coordination with the physical construction schedules.

Certification No. 2

This level of Certification documents the following:

- All the requirements for Right of Way Certification No. 2 are the same as for Certification No. 1, except that one or more parcels are in the agency's possession by virtue of effective Rights of Entry or an Agreement for Possession and Use. Similar documents such as a permit, license, or an approved Right of Way Contract with an effective right of possession date, also require the use of a Certification No. 2. (See limitations on use of "Rights of Entry" contained in Section 13.12 in this chapter).

E. Condemnation Deposits and Interest Thereon

The amounts deposited in court in connection with the condemnation of a parcel are reimbursable. Subsequent progress billings must account for differences between the original amount deposited and the amount of the final settlement or award.

When settlements include interest, such interest payments can only be claimed for federal reimbursement in specified situations. Participation is available for a period not to exceed 45 days, if court procedures result in the owner not being able to withdraw a deposit made in support of an Order for Possession. If the deposit is available and the owner declines to withdraw it, any subsequent interest payment is ineligible for reimbursement.

Interest is reimbursable on the amount of an award in excess of the original deposit from the date of the original deposit until date of settlement or award. If court procedures prevent immediate delivery of the excess amount due following settlement or award, participation in interest on the excess amount for a period not to exceed 45 days is available. Participation may be allowed in the required interest payment on the excess until 45 days after final determination when the local agency has appealed an award.

Federal participation is not allowed in interest costs based on appraised fair market value of the property, when a Right of Entry has been secured except in cases of unusual circumstances and with prior approval of the FHWA.

Interest on amount of award over the deposit is an eligible expense with certain limits. Interest is not eligible for federal reimbursement for nonparticipating costs such as acquired excess land, goodwill awards, or awarded defendant court costs.

F. Klopping

Klopping Damages (frustrated development rights) are always ineligible costs. The only damages that are eligible are those created by the before and after values to the remaining property.

G. Goodwill

Awards or settlements involving loss of goodwill, interest on goodwill, and defendant's costs in a goodwill action are all now eligible for federal reimbursement. Costs to appraise goodwill and/or try a goodwill action are also eligible for reimbursement.

H. Personal Property

As a general rule, costs for the purchase of personal property are ineligible for federal reimbursement. An exception would be where it is necessary to acquire the furniture of a furnished apartment.

I. Defendant's Costs in Connection with Condemnation Action

Federal participation is not allowed when the local agency is ordered to pay for the costs of a property owner's attorney fees, appraiser fees, expert witness fees or similar costs which are incurred by the property owner in connection with acquisition of right of way, through condemnation proceedings or awarded as court costs in litigated cases.

J. Utility Relocations

The following must exist for reimbursement of utility relocation costs and /or to be eligible for reimbursement:

- An E-76 for “Preliminary Engineering – Utility” must be approved before any preliminary utility design work is commenced.
- An E-76 for “Utility Alternate Procedure” together with a list of every utility company’s facility to be adjusted and the best available estimate of the cost involved must be approved before any relocation work can commence for any of the affected utility facilities. See 23 CFR 645.119 (e)(2).
- An FHWA Specific Authorization (form RW 13-15) must be approved by Caltrans for each utility relocation listed on the E-76 before any relocation construction work can commence. The Specific Authorization must be supported by a Report of Investigation, Utility Agreement, Notice to Owner and other documentation as outlined in Chapter 13 “Utility Relocation,” of the *Right of Way Manual* and Chapter 14 “Utility Relocations,” of the LAPM.
- The FHWA Approval of Utility Agreement (also form RW 13-15) must be approved by Caltrans before reimbursement is requested from FHWA.
- Immediately after Caltrans approves the Utility Agreement, authorized expenditures by the utility company can be reimbursed. No audit is necessary and receipts for payments are not required by FHWA before progress payments are made.
- Final payments can be reimbursed only when costs for the utility work covered by the agreement are supported by evidence of payment by the local agency with fully itemized billings.
- Costs must be identified in each Utility Agreement.

K. Demolition and Clearance

The federal government will participate in demolition costs of improvements on or within the right of way lines, provided the improvements involved are demolished subsequent to the authorization date of the project. This can occur regardless of whether or not the federal government participated in the cost of acquisition of the improvements. But, if federal funds did not participate in acquisition, then demolition must be separately authorized. The federal government may also participate in clearance and demolition costs on improvements on a parcel outside the right of way lines as long as the parcel was acquired solely for an exchange and is eligible for federal participation.

When a demolition contract includes improvements not eligible for participation, a separate bid item should be established in the bid proposal for the ineligible improvements so that the costs may be segregated.

When improvements purchased with federal participation are sold for salvage, federal funds are to be credited with the proceeds of the sale.

It should be stressed that whenever possible, improvements should be sold with the excess land rather than demolished to provide an income rather than incur an expense.

L. Relocation Assistance Program (RAP)

Federal and state laws require that relocation assistance be provided to any person,

CHAPTER 20 DEFICIENCIES AND SANCTIONS

20.1 INTRODUCTION

As outlined in earlier chapters, Caltrans will no longer be involved in most project level reviews and approval activities. The Process Review is now Caltrans primary method of ensuring that federal and state requirements are met, (see Chapter 19, *Process Reviews*, of the *Local Assistance Procedures Manual* [LAPM]). During a Process Review of a local agencies project files or project site, errors and/or deficiencies could be found. If that happens, federal and/or state funds may be withdrawn from a project depending on the severity and circumstance of the deficiency.

It is important to note that the formal process review is not the only method of discovering project deficiencies. Errors or deficiencies are discovered occasionally as part of the normal routine of processing of project submittals by the District Local Assistance Engineers (DLAEs) or Division of Local Assistance Area Engineers.

This chapter is intended to assist local agencies that are involved in developing local assistance projects by providing examples of the deficiencies that have been found in the past and the possible ramifications for those errors or deficiencies. It should be understood that the examples given are by no means all inclusive. The key to avoiding possible sanctions is to follow the procedures outlined in this manual, the *Local Assistance Program Guidelines* (LAPG), and the *Standard Environmental Reference* (SER), and if you have any questions to consult your DLAE.

Section 20.4, *Local Assistance Dispute Resolution Process*, of this chapter also provides means for local agency to appeal a sanction that they feel has been imposed upon them unfairly or they feel the penalty is too harsh for the error or deficiency. This appeal process is not limited to just the appeal of sanctions; it can be used by local agencies when they are not satisfied with the decision they receive from a district office.

20.2 DEFICIENCIES

PROCEDURAL DEFICIENCIES

A Procedural Deficiency is defined as a finding that a local agency's practices and procedures fail to demonstrate sufficient familiarity for acceptable levels of conformance with procedures and required certifications defined in the LAPM. In addition to jeopardizing federal and/or state funding on completed or ongoing projects, certifications for future projects may be conditioned, or not accepted until the deficiencies are corrected.

Examples of some of the most common procedural deficiencies (found by Caltrans) are:

- Continued submission of Request for Authorization that contains errors and omissions (see Chapter 3, "Project Authorization," of the LAPM).
- Continued submission of Preliminary Environmental Studies form that contains errors and omissions (see Chapter 6, "Environmental Procedures," of the LAPM).

- Continued submission of Plans, Specifications & Estimate Certifications that contains errors and omissions (see Chapter 12, “Plans, Specifications & Estimate,” of the LAPM).
- Continued submission of Right of Way Certifications that contains errors and omissions (see Chapter 13, “Right of Way,” and Chapter 14, “Utility Relocations,” of the LAPM).
- Continued submission of Local Agency Contract Award Checklist that contains errors and omissions (see Chapter 15, “Advertise and Award Project,” of the LAPM).
- Failure of the local agency to comply with the Caltrans Disadvantaged Business Enterprise (DBE) program, particularly with regard to policy, utilization of DBEs, monitoring, and reporting (see Chapter 9, “Civil Rights and Disadvantaged Business Enterprises,” of the LAPM).

MAJOR PROJECT DEFICIENCY

A Major Project Deficiency is defined as an error of commission or omission, which violates federal or state law or regulation, and if uncorrected, would prevent federal or state participation in all or a portion of the project.

Examples of some of the most common (found by Caltrans and FHWA) of Major Project Deficiencies (federal) are:

- Failure to initiate an environmental reevaluation after environmental clearance when changes in the scope of the project are proposed, or when new project environmental impacts surface due to changes in law or investigations, shall result in loss of all or part of the federal funding for the project (see Chapter 6, “Environmental Procedures,” of the LAPM).
- Failure to fulfill mitigation commitments and adherence to restrictions in the environmental document shall result in a loss of all or part of federal funding for the project (see Chapter 6, “Environmental Procedures,” of the LAPM).
- Right of Way activities in violation of the Uniform Relocation Assistance and Real Properties Policy Act, as amended, can result in all or partial loss of project funding. Project funding losses can result even if there are not federal funds in Right of Way but only in other phases (see Chapter 13, “Right of Way,” of the LAPM).
- Force Account/Day Labor work, without proper justification, is not reimbursable (see Chapter 12, “Plans, Specifications & Estimate,” of the LAPM).
- For Emergency Relief (ER) projects, billing for emergency opening but actually doing permanent restoration work can result in a loss of all or part of the federal funding for the project (see Chapter 11, “Disaster Assistance,” of the LAPG).

6.5 GENERAL RULES AND POLICIES

The following rules and policies apply to all projects funded under this Chapter.

6.5.1 INACTIVE PROJECTS - 3 YEAR RULE

The purpose of this section is to ensure that all programmed projects are delivered in a timely manner. Inactive projects tie up limited resources that can be used by other local agencies that are in need of funds. The following rules shall be followed:

1. Caltrans will not accept new project applications from any local agency that has any programmed HBRRP or “Mandatory” Seismic Safety projects with no financial (invoice or federal fund authorization) activity in 3 years. Exceptions will be on a case-by-case basis approved by the Office of Program Management (contact the DLAE for help). A list of inactive projects can be downloaded from the HBRRP website:

www.dot.ca.gov/hq/LocalPrograms/

2. Construction authorization for current active projects will be withheld until the local agency either develops a workplan acceptable to Caltrans to deliver their inactive projects or cancels the inactive projects in compliance with Section 6.7.6 on page 6-30.
3. A grace period of six months from the date these guidelines are published will be allowed prior to implementation of this Section.

6.5.2 BIENNIAL REPORTING REQUIREMENT

Caltrans, on a minimum two-year interval, will ask local agencies for updated cost/schedule information for all projects in the HBRRP multi-year plan. Local agencies that fail to respond to Caltrans requests for project status may have their projects canceled at Caltrans’ discretion.

Local agencies that become aware of schedule, cost, and scope changes should notify the DLAE immediately upon discovery to ensure that that the new scope is participating and that adequate funding will be available when the local agency requests the funding. Use Exhibit 6-D, “HBRRP Scope/Cost/Schedule Change Request,” page 6-56 to request scope/cost/schedule changes.

6.5.3 TEN YEAR RULE #1 (YEAR OF CONSTRUCTION/RECONSTRUCTION)

Bridges in the NBI with a date of construction or date of major reconstruction (NBI Data Items 27 & 106) within the past 10 years will not be considered deficient bridges and will not be eligible to receive any funds under this Chapter. For example, if a geometrically deficient bridge was built in 1996, the bridge will not be considered deficient until the end of 2005. This rule applies regardless of the funding source (State, federal or local) of the project triggering the date of construction or date of major reconstruction.

Major reconstruction is work that improves either the structural load carrying capacity of the bridge or substantially alters the roadway geometry of the bridge.

Unforeseen phenomena may be grounds for exemption from Ten Year Rule #1. The Office of Program Management is responsible for approving exemptions. Local agencies must contact the DLAE for assistance. The intent of the policy is to encourage local agencies to properly scope their projects to anticipate future geometric needs and to properly design bridges to carry standard design loads.

6.5.4 TEN YEAR RULE #2 (YEAR OF PE AUTHORIZATION)

Federal law establishes a ten year rule to help ensure the timely use of funds:

“23USC102(c) ENGINEERING COST REIMBURSEMENT. If on-site construction of, or acquisition of right-of-way for, a highway project is not commenced within 10 years (or such longer period as the State requests and the Secretary determines to be reasonable) after the date on which Federal funds are first made available, out of the Highway Trust Fund (other than Mass Transit Account), for preliminary engineering of such project, the State shall pay an amount equal to the amount of Federal funds made available for such engineering.”

This means construction or Right of Way (R/W) acquisition must commence within ten years of PE authorization or funds may be taken from the local agency and returned to the State and FHWA. This applies to all federal projects, including HBRRP funded projects.

Time extensions are usually granted based on difficult environmental or R/W issues or where local agencies are forced to redirect staff to other projects in time of emergencies. The Office of Program Management (contact the DLAE for help) will only approve time extensions if the local agency can provide a plan to deliver the project.

Local agencies are responsible for notifying the DLAE that their project requires a time extension to ensure that federal funding will be available when a local agency requests funding.

6.5.5 UTILITY RELOCATION REIMBURSEMENT

Chapter 14, “Utility Relocations,” of the LAPM shall be followed.

1. Costs are only participating when the relocation is made necessary by the proposed construction and the local agency is legally obligated to pay for the work.
2. The estimated credits for salvage and depreciation shall be deducted from the participating project cost.
3. The estimated costs of utility “betterments” shall be deducted from the participating project cost. A “betterment” is the incremental improvement from what is currently installed.