STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

MANUAL CHANGE TRANSMITTAL

RW 0001 (REV 10/2007)

XX	R/W MANUAL CHANGE	**RWMC- 188**
	PROCEDURAL HANDBOOK (1984 Edition)	RWPH-___-___-___ TRANSMITTAL#___

TITLE:	APPROVED BY:	DATE ISSUED:
UTILITY RELOCATIONS	Lorrie L. Wilson LORRIE L. WILSON	MAR 27 2009 Page 1 of 2
SUBJECT AREA: CHAPTER 13 – UTILITY RELOCATIONS	ISSUING UNIT: OFFICE OF UTILITIES AND ORGANIZATIONAL DEVELOPMENT	

SUMMARY OF CHANGES: Revises and updates Sections 13.01.00.00, 13.02.00.00, 13.03.00.00, 13.07.00.00, 13.12.00.00, and its Table of Contents.

PURPOSE

This manual change revises Sections 13.01.00.00, 13.02.00.00, 13.03.00.00, 13.07.00.00, and 13.12.00.00 pertaining to Preliminary Engineering. Where applicable, it also corrects any general typographical errors and references to section and exhibit numbers.

PROCEDURES

13.01.01.02, 13.01.02.06, 13.01.02.08	Changes "reference material."
13.01.05.00	Deletes "reference material."
13.02.01.01, 13.02.02.00	Minor wording change.
13.02.02.01	Deletes HQ approval for Preliminary Engineering.
13.02.02.02	Major policy revision for Preliminary Engineering which replaces URF 02-1.
13.03.01.00, 13.03.01.01	Minor wording change to conform to new Preliminary Engineering change.
13.03.01.06	Corrected reference to section number 13.14.09.00.
13.03.03.00, 13.03.03.04, 13.03.03.09, 13.03.04.01, 13.03.04.05	Changes "reference material."

Table 13.03-3	Minor wording change.
13.07.03.01 I-5	Adds new paragraph for Preliminary Engineering.
13.07.03.03 III-8	Adds new paragraph for Preliminary Engineering.
13.07.03.04 IV-3a	Adds new paragraph for Preliminary Engineering.
13.07.03.04 IV-9a	Adds new paragraph for Preliminary Engineering.
13.07.03.05 V-5	Adds sentence for "reimbursement costs."
13.12.01.01	Adds new paragraph allowing Local Agencies to use Preliminary Engineering.
13.12.05.00	Changes "reference material."

EFFECTIVE DATE

Immediately.

MANUAL IMPACT

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

REVISION SUMMARY

Chapter	Remove Old Pages	Insert New/Revised Pages
	Remove the following in its entirety:	Replace with the following in its entirety:
13 - Sections	Table of Contents (REV 1/2009) 13.01.00.00 (REV 8/2008) 13.02.00.00 (REV 8/2008) 13.03.00.00 (REV 8/2008) 13.07.00.00 (REV 8/2008) 13.12.00.00 (REV 8/2008)	Table of Contents (REV 3/2009) 13.01.00.00 (REV 3/2009) 13.02.00.00 (REV 3/2009) 13.03.00.00 (REV 3/2009) 13.07.00.00 (REV 3/2009) 13.12.00.00 (REV 3/2009)

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13.01.00.00 - INTRODUCTION

13.01.01.00 General

This chapter prescribes policies, procedures, standards, and practices for the statewide coordination of utility relocations required for construction of transportation projects. The chapter is organized based on the usual sequence of events from project inception (planning) to project completion (construction). Although it is impractical to include all policy interpretations and instructional material, this chapter does contain the information required to do the job.

In general, Departmental Utility policies apply to public utilities. "Public utilities" are defined as those utilities either publicly, cooperatively or privately owned that provide a product or service, either directly or indirectly, to the public for a fee.

Separate "Utility Reference File" memorandums supplement this chapter and provide background or guidance on subjects that occur less frequently. (See Section 13.01.01.03.)

13.01.01.01 District Utility Coordinator Responsibilities

The District Director is responsible for relocation or removal of utility facilities that are either in physical conflict or in violation of the Department's utility accommodation policy for transportation projects. This responsibility shall be delegated to the District Division Chief-R/W, who will authorize the District Utility Coordinator(s) to implement the Department's policies, including the following specific directions:

- Establish files that document actions taken or recommended during the life of a project. (Section 13.01.01.04)

- Prepare route estimates based on possible relocations. Update and revise the estimates, when necessary. These estimates are used for capital and support budgeting needs for current and future fiscal years. (Sections 13.02.04.00, 13.02.04.01, and 13.02.04.02)

- Act as the Department's primary point of contact with Utility Owners for identifying and verifying all utility facilities lying within existing and proposed rights of way of planned construction projects. (Section 13.03.02.00)

- Coordinate positive location requirements for all High/Low Risk Utility Facilities within the project limits. (Section 13.03.03.00)

- Coordinate with P&M on preparing the FHWA Authorization to Proceed (E-76) for projects that will be federally funded. (Section 13.14.03.00)

- Coordinate "avoidance" of utility facilities and/or transmit identified conflicts to Utility Owners. (Sections 13.03.01.03 and 13.03.04.00 through 13.03.04.04)

- Actively participate on Project Development Teams. (Section 02.02.02.00)

- Obtain and analyze data to allocate cost between Owner and State for all required utility adjustment work and to clearly document, support and, in cases where the State has cost liability, set forth the basis of this finding in a Report of Investigation. (Section 13.05.00.00)

- Assist in preparing and/or reviewing (1) encroachment exception requests and (2) High/Low Risk Policy exceptions. (Section 13.01.04.00)

- Review utility consultant design agreements when required for utility relocation. (Section 13.03.01.06)

- Prepare and approve FHWA Specific Authorization and FHWA Approval of Utility Agreement for federally funded utility work in accordance with delegated authority. (Sections 13.14.02.00, 13.14.04.00, and 13.14.08.00)

- Prepare and issue Notices to Owner, Utility Agreements, and Encroachment Permits in accordance with delegated authority. (Sections 13.06.00.00 and 13.07.00.00)

- Coordinate with P&M on preparing a R/W Certification for proposed construction projects. (Section 13.08.00.00)

- Verify Owner's relocation bills and process for payment when acceptable. (Section 13.10.00.00)

- Coordinate preparation of and review necessary property right conveyances for Owners. (Section 13.11.00.00)

- Provide oversight activities to LPAs and consultants on State highway projects funded by others. (Section 13.12.00.00)

- Provide stewardship role to Local Public Agencies on federally funded Local Streets and Roads projects. (Section 13.12.00.00)

- Coordinate billing and refunding of LPA funds relating to utility costs pursuant to Cooperative Agreement provisions. (Sections 13.12.05.02 and 13.12.05.03)

- Coordinate with the Department's offices, divisions, and branches and external organizations, both public and private, to ensure the above directions are implemented.

- Coordinate with the Department's Encroachment Permits Section regarding review of permits for wireless facilities on conventional highways.

13.01.01.02 Definitions

The following definitions are for purposes of the Utility Relocations Chapter and the Department's R/W utility relocations only.

- **FACILITY** - Facility is synonymous with utility facility. A facility is any pole, poleline, pipe, pipeline, conduit, cable, aqueduct, or other structure or appurtenance used for public or privately owned utility services, or used by any mutual organization supplying water or telephone service to its members.

- **OWNER** - Owner is synonymous with Utility Owner. An Owner is any private entity or public body (including city, county, public corporation, or public district) that owns and/or operates a utility facility which directly or indirectly serves the public for a fee.

- **LIABILITY** (COST LIABILITY) - A financial obligation or responsibility to pay for relocation of utility facilities affected by the State's project.

- **POSITIVE LOCATION** (POS-LOC) - Positively determining the existence, location and identification of a utility facility to within 0.5 feet through the use of vacuum excavation, potholing, probing, electronic detection, or a combination thereof as deemed acceptable by the Project Engineer. Refer to the Policy on High and Low Risk Underground Facilities within Highway Rights of Way for specific requirements. For a copy of this policy, refer to Appendix LL of the Project Development Procedures Manual.

13.01.01.03 Utility Relocations Reference Materials

The Reference File System has been established by Right of Way as a tool to supplement the R/W Manual in order to provide guidance on infrequently occurring situations, more extensive background information, policy interpretations, and instructional material impractical to include within the basic Manual. The "Utility Reference File" (URF) memorandum has been established as the vehicle to supplement the Utilities Chapter of the R/W Manual.

The District Utility Coordinator is responsible for maintaining a complete set of the "Utility Reference File" memorandums (URFs). To provide a basis for uniform and equitable service to all Utility Owners (Owners), this file is to be made available to all Utility Coordinators. In addition, URFs can be found on the HQ R/W Utility Relocations Intranet Web site at http://pd.dot.ca.gov/row/offices/utility/.

All Regions/Districts should also assemble and maintain a library of pertinent, supplemental Utility Relocations reference material to assist the Utility Coordinators in doing their jobs. To help the Districts compile a library, a listing of selected manuals, guidelines, and other references is listed in Exhibit 13-EX-1. It is up to the region/district to obtain the materials.

13.01.01.04 Utility File and Diary

The diversity and complexity involved in the relocation of utility facilities and their potential safety impacts make it mandatory that files be established and thoroughly documented. In addition, FHWA regulations [23 CFR 645.119 (c)(1)(iv), Alternate Procedure approval] require documentation of actions taken in compliance with State and Federal policies.

A separate utility file should be established for each involvement on a project. An "involvement" is defined as the issuance of a Notice to Owner for a specific utility facility on one project (EA). For example, if a project has relocations for PG&E-Gas Transmission, PG&E-Gas Distribution, and PG&E-Electric Distribution, it would equal three (3) involvements.

Each District Utility Coordinator should consider the needs and methods of their district and initiate a district procedure for a utility file diary. Each file shall contain all of the mandatory components and shall be organized in a uniform fashion throughout the district.

The utility file shall contain the following items, as applicable:

- Diary notes.
- Copies of the supporting liability documentation.
- Report of Investigation.
- A copy of the Notice to Owner.
- A fully executed wet-ink original of the Utility Agreement.
- A copy of the relocation plans.

- Copies of the E-76.
- Copies of the FHWA Approval of the Utility Agreement and Specific Authorization.
- Any correspondence with Project Engineers, the Resident Engineer, and with other Departmental divisions.
- Any correspondence with Utility Owner.
- Any discussion, meeting, or review of importance that does not generate a document for the file must be recorded in the diary or in a memorandum to the file.

In every instance, the author shall date and sign (or initial) all diary entries and notations in the file. A sample diary is shown in Exhibit 13-EX-2.

13.01.02.00 Applicable Utility Laws and Policies

The following is a selected list of laws, regulations, and policies that shall be uniformly applied.

13.01.02.01 Delegation of Authority

Regions/Districts are authorized to approve all Reports of Investigation (Form RW 13-3), including liability determination, Notices to Owner, FHWA Specific Authorization to Relocate Utilities (Form RW 13-15), Utility Agreements and FHWA Approval of Utility Agreement (also on Form RW 13-15) for all utility relocations and positive locations, in accordance with the policies set forth in this Manual, and appropriate memoranda, with the exception of "liability in dispute." (Section 13.04.09.00 et seq.) See the Delegation Matrix on the HQ R/W Intranet Web site for any changes to the delegations.

The Department's agreement with FHWA requires that a Senior Right of Way Agent fully versed in Utility Relocations must make the Region/District approvals. Further delegation to an Associate Right of Way Agent is not authorized under any circumstances.

Region/District approval shall only be granted when all documentation is complete and in the file. Knowledge that documentation is "pending" is not sufficient to place the Region/District in a position to make an approval.

All Region/District approvals will require compliance with current preaward evaluation criteria. (Section 13.05.02.02 and URF 02-2)

As a condition of the delegation to the Region/District, the Report of Investigation Approval Guide (Form RW 13-16) must be completed by the delegated Senior R/W Agent at the time of approval and retained in the utility file. An approved E-76, meeting the criteria specified in Section 13.14.02.00, must be received prior to the approval of any FHWA Specific Authorization.

Additionally, as part of our agreement with FHWA under the Alternate Procedure, the delegated Senior R/W Agent must complete form FHWA Guide for Review of Utility Agreements (Form RW 13-17) for every relocation where Federal aid funding will be sought.

Delegated Senior R/W Agents are to fully review and familiarize themselves with the FHWA publication Program Guide: Utility Adjustments and Accommodation on Federal-Aid Highway Projects and 23 CFR 645.

If it is discovered that Federal procedure or delegation authorization has not been followed, the Region/District will be responsible for ensuring that Federal reimbursement is not sought. Should the error be discovered after Federal vouchering, the Region/District will be responsible for refunding the incorrectly vouchered funding. The delegated Senior Utility Agent or Utility Coordinator should contact Planning and Management to determine the process for correcting the vouchering errors.

13.01.02.02 Incorporation of City Streets or County Roads Into the State Highway System

City streets or county roads that become part of the State highway right of way shall be considered incorporated into the State highway system on the date of the CTC resolution or, if later, the date specified for taking actual physical possession of the road. (See S&H Code Sections 81, 82, and 83.)

13.01.02.03 Encroachments Within Conventional Highways

All utility encroachments within State highway rights of way shall be installed and maintained so as to minimize traffic disruption and other hazards to highway users. Facilities shall be located as close to the edge of the highway right of way line as reasonably practicable. Facilities shall be installed to minimize interference with highway maintenance and operation and to prevent impairment of the stability of the highway or its appurtenances to the maximum extent practicable.

13.01.02.04 Encroachments Within Freeways and Expressways

The Department's policy is to prohibit all at-surface encroachments within the access control lines of freeways. Utility crossings are permitted where supporting structures or manholes are located outside access control lines. Encroachment exceptions are permitted only where space is available, facilities may be safely installed and maintained, and no other reasonable alternative is available. The Division of Design, Encroachment Exceptions Section, must approve all exceptions to the policy.

NOTE: See Section 300, Exceptions to Policy - Encroachment Permit Manual and Chapter 17, Encroachments in Caltrans' Right of Way - Project Development Procedures Manual for exception requirements.

13.01.02.05 Hazardous Waste Impacted by Facility Relocations

State ordered utility relocation work to be done within the highway project limits is a necessary part of the highway project construction. Any hazardous waste (HW) encountered within the project limits as a result of State ordered utility work is handled in the same manner as HW encountered by any other part of the highway project construction. Immediately inform the Project Engineer of all potential utility adjustments that may affect identified HW sites so the remediation work is identified as part of the project remediation requirements.

HW encountered outside the project limits, such as on the grantor's remaining property, other private property, or on local streets and roads beyond the limits of the State highway project, is not the Department's remediation responsibility. Any extraordinary costs associated with remediation or unusual work requirements due to HW encountered outside the highway right of way are considered part of the Owner's necessary relocation effort. The Department may pay its proportionate share of these costs as part of normal relocation reimbursement in accordance with the usual liability determination process.

See the Freeway Master Contract for details of handling hazardous materials and their associated costs on freeway projects for those Owners who have signed a new Freeway Master Contract.

All exceptions to this policy shall be processed through Headquarters R/W for approval.

See Section 13.02.05.03 for Hazardous Waste Exceptions.

13.01.02.06 Work Before Environmental Approval

Pursuant to California Public Resources Code Sections 21102 and 21150, environmental approval shall be received prior to any expenditure of capital funds for detailed design or relocation of utility facilities. This does not preclude an expenditure of funds for the Owner's preliminary engineering or State's positive location work in support of the environmental document.

The Department has established a process to order an Owner to commence design activities prior to the approval of the environmental document but after the selection of the preferred alternative.

If, at any time during the project, an environmental reevaluation is required, no work other than studies or positive location work should proceed outside of the "area of potential effect" (APE) evaluated and approved in the original environmental document until the reevaluation is completed.

13.01.02.07 Verification of Utility Facilities

Pursuant to Government Code Section 4215, governmental agencies shall make every reasonable effort to locate all existing utility facilities within the right of way of a proposed construction project and to identify the facilities on construction contract plans. Failure to identify utility facilities on plans may make the State liable for damages to the facilities resulting from planned construction.

13.01.02.08 Policy on High and Low Risk Underground Facilities Within Highway Rights of Way

The Department is responsible to provide a safe environment for employees of the Department and its contractors, as well as the traveling public. An important element of the safe environment is providing a clear and safe right of way through the proper placement, protection, relocation, or removal of utility facilities that may pose a safety risk to the highway worker or user when the utility is excavated, cut, or penetrated. Toward this end, the Department shall establish and enforce mandatory standards and procedures for the placement and protection of underground utility facilities within highway rights of way and for the safety of highway workers involved in maintenance or construction operations in proximity to underground utility facilities. These mandatory standards and procedures are known as the Policy on High and Low Risk Underground Facilities Within Highway Rights of Way. For a copy of this policy, refer to Appendix LL of the Project Development Procedures Manual.

13.01.02.09 Advancing Cost of Relocation to Owner

Streets and Highways (S&H) Code Section 706 provides criteria for the advancement of funds for utility relocations.

Subject to S&H Code Section 706, the Owner's pro rata share of the relocation costs can only be advanced after it has been conclusively shown that the owner is financially unable to bear the cost of relocation and is unable to secure other financing for the work. To meet this test, the Owner shall provide a signed statement to that effect and provide documentation that they have attempted to secure other financing and have been denied.

When an advancement of the Owner's pro rata share of the relocation costs is made in accordance with Section 706, interest shall be charged at the rate of earnings of the Surplus Money Investment Fund (SMIF) and must be repaid within ten (10) years. See Region/District P&M or the State's Web site at http://www.sco.ca.gov for current SMIF rates.

Funds shall not be advanced to cover any Owner requested betterments to the facility.

13.01.02.10 Advance Deposit for State Contract Performed Work

State administrative rules require that an advance deposit must be made to the State for the estimated cost of work to be done by the State on behalf of another entity (Owner). An exception is authorized for any Owner possessing a Master Agreement or Freeway Master Contract with the State.

13.01.02.11 Inspection of Relocation Work

The Department's Construction Manual, Chapter 3, General Provisions, Section 3-809 Utility and Non-Highway Facilities, provides that whenever work is underway on any relocation being done to clear the right of way for construction, an engineer must be assigned to inspect and accept the work. Depending on the state of development of the project, the engineer may be a Project Engineer (PE) or a Resident Engineer (RE). If no engineer has been assigned, the Utility Coordinator shall contact the Project Manager or Construction Senior to ensure an engineer is assigned. Without an assigned engineer to inspect the work, the utility relocation should not proceed.

The PE or RE, or his/her delegate, shall inspect all utility relocation work. The inspection must be documented in Inspector's diary notes. Copies of these notes should be sent to the Utility Coordinator on a regular basis and placed in the Utility File.

As soon as an RE is formally assigned to a project, the RE assumes primary responsibility for coordinating all construction activities. However, all communications with the Owners, including modification of the scope of work or the need to have utility work performed on premium or overtime shall be the responsibility of the Utility Coordinator and shall be done in writing. All decisions relating to utility relocation work, including additional or supplemental liability determinations, shall be made by the Region/District Utility Coordinator or HQ R/W, as applicable. Under no circumstances is Construction allowed to make liability determinations. Significant changes shall be covered by an amended Notice to Owner and Utility Agreement issued by the Utility Coordinator.

13.01.02.12 Application of Master Agreements/Freeway Master Contracts to Special Funded Projects

The Department has entered into Master Agreements or Freeway Master Contracts with several Owners for the apportionment of relocation costs on freeway projects. (Section 13.04.03.00) These agreements, authorized by S&H Code 707.5, shall be applied in lieu of otherwise applicable S&H Code sections and shall be applicable to all freeway projects on State highways that are part of the California Freeway and Expressway System no matter what the source of project funds or agency responsibility for project design. The only exception is when the freeway or expressway improvement project is the result of a private development mitigation requirement, in which case the private developer is responsible for all utility relocation costs in accordance with applicable law. (Section 13.12.04.00)

13.01.02.13 Utility Facilities Within State Highways

State law allows the use of State highway rights of way for public utility facilities owned by public agencies or by private companies recognized by the California Public Utilities Commission as a provider of a public utility service, when such use does not interfere with the primary purpose of the State highway. (S&H Code 117)

All utility facilities and other encroachments located within State highway rights of way must be covered by an Encroachment Permit and placed in accordance with the Department's standards. All exceptions to applicable requirements as set forth in the Department's "Encroachment Permits Manual" must have Division of Design, Encroachment Exceptions Section, prior approval.

NOTE: See Section 300, Exceptions to Policy - Encroachment Permit Manual and Chapter 17, Encroachments in Caltrans' Right of Way - Project Development Procedures Manual for exception requirements.

13.01.03.00 Private Utility Facility Relocations

Relocation of all private utility facilities shall be by the usual appraisal/acquisition process rather than by the public utility relocation process.

A private utility facility is one that provides a utility service for the exclusive use of a privately owned business, farm operation, etc., or provides an exclusive service to improvements and occupants of an individually owned property. Examples of this type of utility facility are:

- Facilities located on a military base, school grounds, manufacturing complex, etc., owned and maintained by the property owner for their exclusive use.

- A facility interconnecting individually owned but dispersed operating sites providing an exclusive and private service to the site owners.

Separation of the private utility facility from the public utility facility occurs at the point where the privately owned and maintained facility connects to the public facility.

13.01.03.01 Private Facilities in State Highways

Private transverse crossings shall not be unreasonably denied as long as they meet the Department's standards.

However, the longitudinal placement of private utility facilities within the State highway right of way is generally prohibited by law, as the free use of public property by private entities is tantamount to a "gift of public funds." Any exception request must have Division of Design, Encroachment Exceptions Section, prior approval.

Private longitudinal installations within State highways may be allowed only under the following circumstances:

A. The private use is based on a retained property right.

B. Oil company facilities that were placed within the right of way of a city or county road under a local agency issued franchise agreement before the road became a State highway may remain within the State highway for the duration of its useful life or until physically impacted by a highway improvement project, at which time it shall be relocated outside the highway right of way. If the oil company facility is claimed and proven to be a "common carrier," it should be handled in the same manner as a public utility facility.

C. Cogeneration plants' transporting lines that transport electricity to a public utility may be treated as public utilities and their transporting lines allowed as encroachments within the State highway subject to the usual utility accommodation requirements. The electrical generator portion of the operation, if impacted by the highway project, should be treated as any other business operation subject to the acquisition process.

13.01.04.00 Encroachment Exceptions

The Division of Design, Encroachment Exceptions Section, is responsible for review and approval of specific requests for exceptions to established standards and policies governing encroachments within State highway rights of way. Requests for encroachment exceptions must be prepared by the Project Engineer, in writing, and sent to the Division of Design, Encroachment Exceptions Section. A copy of all utility relocation exception requests should be forwarded to Headquarters R/W for concurrent review.

NOTE: See Section 300, Exceptions to Policy - Encroachment Permit Manual and Chapter 17, Encroachments in Caltrans' Right of Way - Project Development Procedures Manual for exception requirements.

13.01.05.00 Right of Way Utility Management System (RUMS)

The RUMS computer system is used to track the progress of projects that involve utilities. This system identifies a project by district and EA. Within a project, utility information is further broken down for each Owner involvement. Each Owner's involvement is identified by a unique file number.

RUMS is an on-line, mainframe (legacy) system, which means you interact directly with the system through your PC using ERICOM software to input and update the data. Owner data for a project and/or utility file number is displayed along with some project data pulled from PMCS.

Relocation milestones for each Owner on the project are viewed and updated directly in the system. Reports can also be produced from RUMS. Always be sure to check for computer messages at the bottom of the screen if problems are encountered.

The District Utility Coordinator is responsible for ensuring the information in the RUMS system is up to date and accurate. Headquarters R/W can provide training and assistance if needed.

13.01.05.01 RUMS Lite

RUMS Lite is a new database run with FileMaker Pro software. The information in RUMS Lite is downloaded from RUMS weekly by HQ R/W. The RUMS Lite database is user friendly and provides for finding and sorting the data to the user's needs. In addition, reports (queries) can be customized by the user, unlike the standard reports provided by RUMS. Queries can then be exported and opened in Excel.

13.01.06.00 Charging Practices

The Department maintains a comprehensive cost accounting system, major segments of which involve accounting for employee time (support) and expenditure of funds (capital) and reporting production. Ensuring support and capital are correctly charged enables the Department to report expenditures and maintain financial control on active budgets and serves as the foundation for justifying and developing future budgets. Accurate time reporting also provides cost data for effective project management, preparation of annual financial statements and legislatively mandated reports, and billing of reimbursable work.

Before any work is performed on any project, the Utility Coordinator will verify with P&M that a valid EA has been established. Actual work performed or costs incurred must always be charged to the correct EA and Work Breakdown Structure (WBS) code. See also the R/W Time Charging Manual, a copy of which must be maintained in the Utility Relocations library.

13.01.06.01 EA Phases

PHASE 0 (PA&ED)

- Charge very early preliminary engineering to Phase 0 (e.g., PID review).

PHASE 1 (Design - PS&E)

- Charge preliminary engineering to Phase 1 (e.g., route adoption studies, data sheet, field review).

PHASE 2 (Right of Way Operations)

- Charge Capital Outlay Support charges to Phase 2 (i.e., staff/time charges for completing all R/W utility work after PA&ED is complete).

- In some cases, where no other R/W work is required and no Notices to Owner will be written, Phase 2 may not be established.

PHASE 4 (Major Construction Contract)

- Charge capital outlay for utility relocation work performed by the State's highway contractor to Phase 4. Only Construction can encumber and charge Phase 4.

- No Right of Way capital support/outlay charges should be made to Phase 4.

PHASE 9 (Right of Way Capital Outlay)

- Charge the actual cost of the relocation work to Phase 9 (i.e., utility company billing for State's share of the relocation costs).

- Charge payment of all positive location billings to Phase 9.

- No Utilities Capital Support charges should be made to Phase 9.

13.01.06.02 EA Splits, Combines and Revisions

Through the duration/life of a project, the EA may change for a variety of reasons. The Project Engineer/Manager may need to split or combine projects for delivery or programming reasons. These changes may occur at any time. If the EA changes during the utility relocation stage, it is a good practice to include the original EA on all documents, along with the current EA. For example, EA 443329 (original EA 443309). That way, the document contains current information for accounting and charging, but still retains the history of the project for tracking purposes.

13.02.00.00 - PLANNING PHASE

13.02.01.00 General

Duties relating to this phase of the project are normally performed prior to Environmental Clearance and Project Report approval. Activities generally consist of:

- Corridor/Route Preservation.
- Route Estimating.
- R/W Data Sheet preparation.
- Draft Project Report review.
- Draft Environmental Document review.

13.02.01.01 Preliminary Engineering in Support of the Environmental Document

Public Resources Code Sections 21102 and 21150 state that environmental clearance must be received prior to any expenditure of capital funds for a project (Phase 9 funds). This does not preclude expenditure of (Phase 9) funds covering Owner performed work critical for inclusion in the environmental document. This work is sometimes referred to as "preliminary engineering" and includes such items as:

- Facility verification effort, including necessary positive location work.
- Owner effort required to determine and identify new utility facility rights of way and resultant environmental impacts.
- Preparation of Plans in Support of the Environmental Document (ED).

FHWA must approve an E-76 prior to authorization of preliminary engineering so that Owner's preliminary engineering costs may be federally reimbursed. The approved E-76 does not provide FHWA Specific Authorization. FHWA Specific Authorization must be obtained separately before the actual relocation work is started. See Section 13.14.00.00 for more discussion on federal-aid procedures.

13.02.01.02 Future Project Coordination

Utility Owners, like the State, require lead time to develop budgets and plan work required for ordered relocations. Additional lead time may be required to order long lead time materials, to schedule work during non-peak demand periods when utility facilities may be removed from service, and to comply with PUC General Orders. Streets and Highways Code (S&H Code) Section 680 requires "the department shall specify in the demand a reasonable time within which the work of relocation shall commence . . ." The district must, therefore, provide timely planning information to ensure that our relocation notices withstand challenge.

It is critical that the District Utility Relocation staff establish early and continuing coordination with all Owners being affected by proposed projects. Many local agencies hold periodic coordination meetings with Owners within their jurisdictions to discuss planned public works projects in general. District Utility Coordinators are encouraged to discuss State projects at these meetings or to conduct their own liaison meetings.

13.02.02.00 Work Before Environmental Approval

California Public Resources Code Sections 21102 and 21150 do not preclude an expenditure of funds for the Owner's preliminary engineering or State's positive location work in support of the environmental document.

If, at any time during the project, an environmental reevaluation is required, no work other than studies, preliminary engineering or positive location work should proceed outside of the "area of potential effect" (APE) evaluated and approved in the original environmental document until the reevaluation is completed.

13.02.02.01 Corridor/Route Preservation

At times and in an area of development, Owners may plan extensions or additions to their utility facilities within State highway right of way under the terms of their franchise agreements. (See Section 13.04.04.08 for additional information on franchises.) Planned or proposed highway construction may affect these new utility facility installations. The District Utility Coordinator, where feasible, may notify the Owner of all planned highway improvement projects within the district to enable the Owner to make an informed decision about placement of utility facilities within the highway right of way.

If an Owner decides to go ahead with new facility construction and the installation is in a local street or road underlying the State's proposed highway project, the additional cost incurred to install their facilities clear of the State's future construction shall be paid by the Owner.

Although there is no requirement for the Owner to install their facilities to clear State's future construction, it will eliminate the possible relocation, at Owner's expense, of these new facilities in the near future, providing less disruption to their services, less cost to their ratepayers and more efficient project delivery for the Department.

If the Owner decides to go ahead with the new facility construction and the installation is in a location where the Owner has a right that is superior to the State's, the additional cost incurred to install their facilities clear of the State's future construction shall be paid by the State. A special Utility Agreement may be entered into with the Owner to cover the extra cost of the installation. (See Section 13.07.00.00 for additional information on Utility Agreement preparation.)

13.02.02.02 Preliminary Engineering Prior to Environmental Approval

In certain circumstances and to ensure R/W's timely project delivery, it may be necessary to begin design activities prior to Environmental Approval. R/W has established this process that allows for Preliminary Engineering Design Work before Environmental Document to proceed in a timely manner. The decision to use this process will be made on a project-by-project basis by the District Utility Coordinator. This process may work well on some projects and not others. In making the decision on whether to use this process, the District Utility Coordinator should consider the following:

- At what point after Project Initiation Document (PID) to initiate this process.
- When to obtain facility mapping and verify existing utilities.
- Determine the route alignment/easement needs for utilities.
- Define the Footprint, that is the "Area of Potential Effect" (APE) for the Environmental Document, as it affects utilities.
- The possibility of wasted work.
- The feasibility of the project actually going forward.
- Federal funding will be lost for any physical relocation work prior to Environmental Document.

The following factors should be considered before initiating Preliminary Engineering prior to the Environmental Document:

- Owner's Preliminary Engineering cannot commence until the preferred alternate route has been selected.
- Evaluate the Environmental Document as follows:
    - If Environmental issues arise, such as an Environmental Sensitive Area (ESA), biological, archeological, or water quality sites, what areas are then available for route alignment and future relocation activities?
    - Obtain a time estimate from the Environmental section as to how long it will take to complete the Environmental Document and mitigate any issues.
- Evaluate schedule milestone dates to determine a reasonable starting time for Engineering to begin.
- Determine when to request facility mapping and start the conflict determination stage.
- Determine when to send conflict mapping to the Utility Owner.
- Positive Location (Potholing) is allowed during Preliminary Engineering.

Process for Implementing Owner's Preliminary Engineering prior to approval of the Environmental Document:

- Prepare the Data Sheet to reflect funding for Utility Owner's Preliminary Engineering so the Project Manager can properly fund at this early phase.
- Prepare the liability package once the final alternative has been selected following all liability determinations shown in 13.04.00.00 of this manual.
- Prepare a Report of Investigation, Notice to Owner, and Utility Agreement for encumbrance of funds. (NOTE: New standard clauses have been developed and approved by Legal for this process - Refer to Section 13.07.00.00.)
- Use Phase 9 Capital funding.

13.02.03.00 Utilities on Donated or Dedicated Future Right of Way

Donated right of way is property for which the owner was entitled to receive just compensation, but for personal reasons waived that right and deeded to a public agency without compensation. If the donated right of way location is satisfactory to the State's needs, the property may be acceptable even though encumbered with utility facilities. This is based on the premise that even if the State had purchased the right of way, the State may have been liable for any necessary adjustment or relocation of the utility facilities occupying private property.

Dedicated right of way is property that the owner is obligated to convey to public ownership as a condition prior to the granting of a permit, license, or zoning variance for a planned property development. The State must not accept dedicated right of way if it is encumbered with existing or planned utility facilities that are in conflict with the State's accommodation policy. Since the property owner is obligated to provide the right of way without compensation, this obligation extends to conveying it free and clear of all conflicting encumbrances that would otherwise have to be removed through payment of public funds. All conflicting utility encumbrances must be cleared by the property owner prior to conveyance to the public agency or prior to acceptance by the State.

13.02.04.00 Utility Estimates

R/W Estimating usually requests the project utility relocation estimate. These estimates are used for the Project Study Report (PSR). The PSR is an engineering report used to document agreement on scope, schedule, and estimated cost of the project so it can be included in a future STIP or other programming document.

Since accurate estimates are crucial to both scheduling and ultimate delivery of any given project, utility estimates must be as accurate as possible. Accuracy of any estimate, however, is subject to the quality of plans received and the lead time given. If the plans or lead time are inadequate, the Utility Coordinator shall inform R/W Estimating and/or P&M of such when submitting the estimate. Significant cost contingencies should be specifically identified in the estimate. For example, a potential conflict with a major facility where the project's impact cannot yet be fully determined.

Estimates should always be based on the most probable "worst case" and "highest cost" assumptions. A frequently overlooked cost is that of relocating a facility currently located within an existing freeway as an exception to the Department's utility accommodation policy. Policy requires all utility facilities located within project limits in violation of current utility accommodation requirements be adjusted to meet current requirements. If the facility is located in the project limits subject to a previous encroachment exception and the Utility Coordinator feels the facility may safely remain, it must be reevaluated and resubmitted to the Division of Design, Encroachment Exceptions Section, for approval. (See Section 13.01.04.00.) Therefore, for estimating purposes, the Utility Coordinator should assume an exception will not be granted and include estimated costs for a relocation.

NOTE: See Section 300, Exceptions to Policy - Encroachment Permit Manual and Chapter 17, Encroachments in Caltrans' Right of Way - Project Development Procedures Manual for exception requirements.

The Utility Coordinator should take the following steps in preparing the utility estimate:

- Field review all proposed project route alternatives.

- Identify each Owner and type of utility and prepare a relocation cost estimate for each. The relocation cost estimate may be based on past experiences with relocation costs, unit costs, broad gauge estimates, consultation with utility owners or other method suitable to the facility to be relocated.

- Prepare a total relocation cost estimate for the project, including updating escalation rates when appropriate. Escalation rates can be measured by identifying industry-wide rates in increases in labor, products, and materials. These increases can be estimated by comparing current labor rates, accessing industry Web sites for information, reviewing current utility owner invoices and consulting with the Utility Owners.

- Identify the Owner's requirement to complete an environmental study for the proposed utility work or to order long lead time materials for the project and estimate additional lead time necessary for completion.

- Consult with the Project Engineer to identify possible modification of right of way lines or early design changes to avoid potential conflicts, when appropriate.

- Provide workload estimates for all utility related WBS codes. The Utility Coordinator can use past experiences, previous support charges for production of utility documents or workload estimating norms created at the district level.

- Prepare data for the R/W Data Sheet(s) for the project discussing the items above and submit to R/W Estimating.

Use of Exhibit 13-EX-6 is recommended for preparing estimates for all route reviews.

13.02.04.01 Right of Way Data Sheet

The R/W Data Sheet is used to provide cost data to be included in the PSR. It is critical that the Utility Coordinator review all proposed projects to ensure any and all possible utility relocation costs are included. This data becomes the basis for R/W project programming in the STIP and SHOPP, which establishes the project's capital and support budgets. Accurate and up-to-date data on project costs and work units are critical.

Workload data from the R/W Data Sheet is entered into PMCS in the EVNT RW screen and cost data from the R/W Data Sheet is entered into the COST RW1-5 screens. PMCS (Project Management Control System) is the Department's Project Database. PYPSCAN (Person Year, Project Scheduling and Cost ANalysis System) is a computerized project estimating and scheduling system within PMCS. This computerized system shows, among other things, project workload (support), monies needed for project expenditures (capital) and lead times needed for project delivery. PYPSCAN is used as a starting place for the development of the project workplans and as a check of resources that are generated by XPM. XPM is a computerized scheduling tool that uses Project Workplan information to determine the required hours by WBS code to complete a particular project. (See Section 3.03.00.00 for more information about PMCS and XPM calculations.)

The District Utility Coordinator is responsible for ensuring that all utility relocations' capital and support needs are up to date at all times and are input into PMCS (or other resource estimating database) via the R/W Data Sheet. The Estimating Chapter (Chapter 4.00.00.00) requires the R/W Data Sheet be updated whenever there is significant change or at least annually. The Utility Coordinator must be sure the Utility Estimate conforms to this same requirement. If the information is not up to date, the Utility Coordinator shall inform P&M by memorandum or revised by R/W Data Sheet.

For instructions and explanations on filling out the utilities portion of the R/W Data Sheet, see Exhibit 13-EX-6.

On federal-aid projects, the E-76 can be prepared and transmitted to P&M for processing after all known conflicts have been identified. See Section 13.14.00.00 for more discussion on federal-aid procedures.

13.02.04.02 Project Study Report (PSR) Review

The draft PSR incorporates the R/W Data Sheet or includes information from it. The draft is circulated through District R/W for review and concurrence. It is imperative that a thorough review of all aspects of the project-impacted facilities takes place prior to approval of the PSR. The review should ensure that all facilities to remain within the project area either meet the Department's accommodation policy or that estimated relocation costs are included.

If discrepancies are found in the draft PSR, a revised R/W Data Sheet shall be prepared. The revised R/W Data Sheet, along with a thorough explanation of the discrepancies and/or changes, must be sent to P&M for submittal to the preparer of the draft PSR.

The approved PSR should be circulated through District R/W, with a copy included in R/W's project files.

NOTE: Occasionally, if there are no required R/W acquisitions, utilities may be overlooked. The District Utility Coordinator must proactively identify planned projects to ensure that all draft PSRs are reviewed and R/W Data Sheets are prepared for all projects.

13.02.05.00 Environmental Document Review

The District Utility Coordinator must review the draft environmental document to ensure that utility relocation impacts are addressed. These typically occur, for instance, where an underground facility will be relocated across an environmentally sensitive area, such as a wetland, or where new utility rights of way are to be acquired. The Utility Coordinator must ensure the "area of potential effect" identified in the environmental document covers any parcels identified as potential replacement easements for utility relocations.

Potential Hazardous Waste (HW) impacts resulting from the highway project are usually addressed in the environmental document. If HW is a potential problem on the project, the Utility Coordinator must ensure that the requirements of Section 13.01.02.05 are addressed in the document.

It is also critical to ensure the environmental document does not propose utility-related mitigation commitments that may be in conflict with existing laws or current Departmental policies. Conflicting commitments must have Headquarters R/W prior approval. For example, it is incorrect to propose undergrounding for aesthetic purposes or to require underground utility crossings to be placed as part of the highway construction to mitigate future needs since these commitments may constitute "a gift of public funds."

If utility facility relocations are addressed in the document, then the following suggested wording should be used, but not placed in the "Mitigation Section:"

> "All public utility facilities impacted by the proposed transportation project will be relocated and/or accommodated in accordance with State law and regulations and the Department's policies concerning utility encroachments within State highway rights of way."

13.02.05.01 Special Environmental Reviews for 50KV Electric Facilities

Major electric facilities involving substations and/or power lines operating in excess of 50KV may require special permits and environmental review per PUC General Order 131-D. Potential relocations of this type require early coordination with PUC regulated electric Utility Owners to determine General Order applicability. If an environmental review is necessary, including the potential utility relocation in the State's environmental document may substantially reduce lead time requirements for the utility relocation. Questions concerning applicability of this Order to a particular relocation must be resolved between the Owner and the PUC.

13.02.05.02 Draft Environmental Document to Owners

The Utility Coordinator must alert all Owners impacted by a proposed highway project when the draft environmental document is circulated for review. This allows Owners to recommend inclusion of utility relocation needs and thus minimize risk for later project delay resulting from unanticipated relocation environmental problems.

13.02.05.03 Hazardous Waste Exceptions

The Department's hazardous waste policy specifies that remediation of project-related contamination should be completed prior to construction activities. In cases where cleanup prior to construction is not feasible and remediation is proposed during project construction, an exception to this policy must be requested. This policy applies to State ordered utility relocation work within highway project limits (see Section 13.01.02.05).

The Project Manager, working in coordination with the District Project Development functional manager and the Utility Coordinator, shall prepare an exception request for the Regional or District Director's approval. The exception request must be reviewed by the Hazardous Waste Management Office, Headquarters Environmental Program, prior to submission for the Regional or District Director's signature.

Exception requests shall, as a minimum, address the following:

1. A summary of the project and how the project will impact the contamination area;

2. The type and extent of hazardous waste (summary of the hazardous waste investigation), including source and responsible party, if known;

3. The estimated cost to the Department for remediation, including an assessment of future liability if the Department assumes responsibility for remediation;

4. Why it is not practical to defer the project or to modify the project to avoid the contaminated property(ies);

5. The type of remediation proposed, including whether the Department has approval from the appropriate regulatory agencies;

6. Why the property owner or other responsible parties have not assumed responsibility for cleanup;

7. The steps that have been or will be taken to recover cleanup costs and an evaluation from the Legal Division regarding the chance of success; and,

8. The draft special provisions for the remediation items of work.

NOTES:

13.03.00.00 - DESIGN PHASE

13.03.01.00 General

Activities allowed in the preliminary engineering portion of a project include:

- Update data sheet, as necessary, after review of the Project Report.
- Coordinate identification and verification of existing utilities.
- Assist in identification of utility facilities in physical conflict or in violation of the Department's utility accommodation policy.
- Assist in identification of all high and low risk utility facilities and coordinate the positive location of these facilities as required.
- Request preparation of an E-76 covering all utility facilities when identified. See Section 13.14.00.00 for additional information regarding Federal-aid procedures.
- Prepare the Notice to Owner, Utility Agreement, and Report of Investigation for Owner-conducted positive location.
- Prepare the Task Order and Notice to Owner for State Contractor-conducted positive location.
- Request and review Owner's relocation plans, claim of liability, and estimate of cost.
- Prepare the Report of Investigation, Notice to Owner, and Utility Agreement for preliminary engineering.

Activities generally performed in the design phase of a project include:

- Coordinate planned placement of utility facilities on structures.
- Identify and submit utility-related "Special Provisions" to Design Engineer.
- Bill the local agency pursuant to a Cooperative Agreement when there is one.
- Coordinate with the Project Engineer to review encroachment exception requests for accommodation policy conflicts.
- Prepare the Report of Investigation, Notice to Owner, and Utility Agreement for relocations.

13.03.01.01 Commencement of Design If Preliminary Engineering Is Used

As a first step, the Utility Coordinator shall arrange a meeting with all impacted Owners, the Project Engineer, and a Structures Representative if a structure (bridge) is involved. The meeting purpose is to:

- Discuss the general project.
- Identify utility impacts.

- Discuss alternative solutions to highway/utility conflicts.
- Identify need for Owner required utility consultants.
- Identify potentially required new utility right of way.
- Determine a schedule for future coordination meetings.

A prime responsibility of the District Utility Coordinator is to take a proactive role to ensure that all projects are proceeding in a timely manner and that verifications are requested for all projects.

NOTE: If at any point during the design stage an Environmental Reevaluation is necessary, no work other than studies, preliminary engineering or positive location work should proceed outside the original environmental "footprint" and/or "area of potential effect" or in the area under reevaluation. Contact HQ RW for additional guidance.

13.03.01.02 Identification and Protection of Utility Facilities

Government Code Section 4215 states that the public agency shall assume responsibility for protecting utility facilities not identified in the plans and specifications for the project. Every reasonable effort, therefore, should be made to locate all existing facilities and delineate their locations on project plans. The law is not restricted to hidden or underground facilities. All aerial facilities located within the project must also be included if the facility will remain within the project.

Government Code Section 4216 states that the State's Highway contractor is required to take reasonable and prudent steps to ascertain the exact location of underground facilities. If the contractor has done so but still damages a facility not shown on the plans, the State may be responsible for damages to the facility and all resulting protection requirements and/or project delays.

13.03.01.03 Utility Facility Avoidance

The Project Engineer should design highway facilities to miss utility facilities whenever possible and be cost effective. A design-to-miss approach will assist in faster project delivery, particularly where impacted utility facilities require complex relocations or special ordered material. As Project Engineers strive to simplify their projects, one of the most effective ways to prevent project failure is to design around existing utilities at every possible opportunity. Just as Design Engineers avoid environmentally sensitive areas, e.g., biological, archeological or water quality sites, so should utilities be avoided whenever possible.

13.03.01.04 Design of Utility Facility Relocations

The facility owner shall be responsible for design of their own utility facility relocations. The only exception occurs when the Owner has requested the State to perform the design of the relocation and physical relocation will be included as a bid item in the highway construction contract. The design and construction of the relocation require execution of a Utility Agreement, and the Utility Coordinator shall remain the primary point of contact for liability and coordination of work activities between Owner and State. Liability is determined using the same methodology as if the Owner were conducting the relocation. (See Section 13.04.00.00.)

13.03.01.05 Replacement Right of Way for Utility Facilities

Acquisition of a replacement right of way for relocated utility facilities may become a major obstacle to timely relocation. Utilities, like highways, are an essential service for users and cannot be severed for lack of an alternate replacement location. Either the State or the Owner can acquire the replacement right of way. If acquired by the State, needs must be identified early for inclusion in the State's R/W acquisition program.

When the District Utility Coordinator determines that State acquired replacement right of way is needed, the Owner's plans are forwarded to the Project Engineer for inclusion in the State's highway design. The Project Engineer will prepare plans and forward them to District R/W for acquisition. The Utility Coordinator must work closely with the Project Engineer to ensure the proposed replacement right of way has been included in the Environmental document.

For more discussion on right of way acquisition for Owners, see Section 13.03.06.00.

13.03.01.06 Utility Consultant Design Requirements

Normally, the Owner designs their own utility relocations. If the Owner is unable to perform their own design or elects to have design work done by a consultant, and the design costs are to be reimbursed by the State, the Utility Coordinator must discuss with the Owner the State's need to review the Owner's consultant selection process to ensure reasonable consultant costs. This requirement must be discussed with the Owner early in the process to ensure no action is taken prior to our review. In addition, any Third Party Consultant Agreement over $250,000 must be submitted to Audits for preaward evaluation. For a detailed discussion on consultant agreements, see Section 13.14.09.00.

13.03.02.00 Utility Verifications

The Project Engineer is responsible for determining the identification and location of all utility facilities that lie within the right of way boundaries of the planned construction project. This is accomplished by: 1) a joint field review of the project area by the Project Engineer and the Utility Coordinator, 2) reviewing Departmental as-builts, permit records and geographic information systems, 3) asking the Utility Coordinator to verify facilities from each Owner that may have facilities within the project area, and 4) requesting field surveys to verify utility facilities. The need for this identification and verification is twofold:

- To identify all potential utility/project conflicts so they may be cleared before project construction commences, either through avoidance or relocation.

- To meet the requirements of California Government Code Section 4215, which states in part that all utility facilities shall be identified on the State's project plans and if not so identified, the State may be liable for all resulting damages to the facilities. The cost of such damages to the facilities is not Federal-aid reimbursable.

13.03.02.01 Preparation of Verification Maps

The Project Engineer is responsible for ordering preparation of mapping to be used for the delineation and verification of utility facilities within the project limits. Identification is necessary even if proposed construction is entirely within existing rights of way. The Project Engineer obtains this utility information from the following sources:

- State's as-built construction drawings for prior projects.
- Ground and aerial surveys.
- Encroachment Permit files.
- Field review of the project.

These maps will also show existing and proposed right of way lines, as well as existing and proposed access control lines, where applicable. A sufficient number of verification maps, as needed, will be prepared.

13.03.02.02 Utility Verification Request to Owner

The Utility Coordinator must send the verification maps to each Owner with existing or potentially existing facilities within the project area. The request letter should include the elements shown in Exhibit 13-EX-10. The Owner should be encouraged to add to the maps any facilities not already located or depicted on the verification maps and show any abandoned facility. Normally, the Owner is allowed 30 days to respond. The Utility Coordinator is responsible for follow-up to ensure timely completion of verification. (See also CPUC General Order 128, Rule 17.7 for legal requirements for regulated Owners to provide facility location information.)

13.03.02.03 Owner's Verification of Facilities

Once the Owner returns the verification maps, if the Owner's verification indicates facilities within the project limits, the Utility Coordinator must:

- Transmit Owner's verified facility locations to the Project Engineer for review and inclusion on project plans.
- Assist the Project Engineer in identifying utility facilities in conflict with the State's accommodation policy.
- Assist the Project Engineer in identifying high and low risk facilities.

If no physical or utility accommodation policy conflicts are identified, the Utility Coordinator notifies the Owner(s) involved in the verification process of the finding(s). The letter advising them must include the elements shown in Exhibit 13-EX-11.

13.03.03.00 Positive Location of Underground Facilities

To accurately determine the type and location of all potentially impacted utility facilities, it is frequently in the State's and Owner's mutual interest to provide positive location of underground facilities. The process of obtaining this information may require that an excavation be made to expose the facility and allow the precise location to be surveyed to the State's datum. The excavation to expose the facility is frequently referred to as "potholing." Other methods of determining the positive location of an underground facility include probing, electronic detection, etc. Refer to the Department's Policy on High and Low Risk Underground Facilities Within Highway Rights of Way for policy specifics. For a copy of this policy, refer to Appendix LL of the Project Development Procedures Manual.

The Project Engineer is responsible for determining when positive location is required, usually whenever facilities are known to exist within the project construction area but cannot be precisely located, particularly as to depth. Without precise location information, physical conflicts within the project cannot be determined nor safe construction assured.

The Utility Coordinator shall provide reasonable notice to the Owner regarding positive location of underground utility facilities and is responsible for determining liability for costs in accordance with Positive Location Agreements (Section 13.03.03.01) or usual liability requirements.

If the Owner is conducting the positive location, the Utility Coordinator shall provide the required Encroachment Permit with the Notice or assist Owner in obtaining it.

If the State's Positive Location Contractor is conducting the positive location, the Utility Coordinator shall submit a Task Order to the contractor. The Utility Coordinator must still provide notice to the Owner so that they are aware of the work and may have an inspector present during the positive location process.

13.03.03.01 Positive Location Agreements (PLAs)

The Department has created and executed a Positive Location Agreement (PLA) with numerous utility owners throughout the State. PLAs were created in 2003 as a tool to improve the efficiency of R/W Utility Relocations project delivery. The agreements provide for the State to assume 100% of the liability for ordered positive locations and provide Owner's consent for the State's positive location contractor to conduct the positive locations. If the Owner requests to conduct the positive location with their own staff, the State will pay only the going contract rate in effect at the time. If, however, the State requests the Owner to conduct the positive location because of a lack of an ongoing contract or insufficient contractor staff, the State will pay 100% of the Owner's actual and necessary costs.

A list of current PLAs may be obtained at the HQ Utility Relocation Web site.

A PLA should be offered to any Owner not on the list that requires positive location as a means of streamlining project delivery. The Utility Coordinator prepares two originals of the standard PLA and sends both to the Owner with a cover letter describing the PLA. Once the Owner executes the PLAs and returns them to the Department, the Utility Coordinator sends them to the Utility Relocations Chief in HQ for signature. Once signed, a scanned "PDF" copy is added to the Web site. One original is kept on file in HQ and one is returned to the District. The Utility Coordinator then sends the original to the Owner.

When positive location is ordered for an Owner, the Utility Coordinator sends either a Notice to Owner or a notification letter advising the Owner of the scheduled positive location of their facilities so they may have an inspector present.

The PLA, under paragraph 8, gives the Department permission to enter upon the private right of way (usually an easement) of the Utility Company. The Utility Company should notify the underlying fee owner as a courtesy and confirm the landowner does not have any activities planned.

13.03.03.02 Positive Location (Pos-Loc) Contracts

The Pos-Loc Contract is an on-call service contract to provide positive location services to the Department. Each District independently advertises for bids for the contract. To begin the process of obtaining a Pos-Loc Contractor, the District Utility Coordinator must complete a Service Contract Request (ADM 360).

As the Contract Manager, the District Utility Coordinator works closely with the assigned Contract Analyst through the entire bid process. They determine the timing of the new contract, the length, and ultimate award of the contract. The contract may involve multiple fiscal years. (Most contracts can be amended once to extend the contract life or contract amount, if circumstances warrant.) Once a contract is awarded, the executed contract is then encumbered at the "program level." (See P&M for specifics.) The on-call service is then accomplished through the use of Task Orders.

13.03.03.03 Positive Location Task Orders

The Task Order must provide for a minimum payment of four "holes" for vacuum excavations. The Contract Manager shall send the appropriate number of maps along with the Task Order.

When an invoice is received from the Pos-Loc Contractor, a Request for Utility Payment (Form RW 13-6) is prepared and sent to HQ R/W Accounting. The request for payment is charged to the specific project Phase 9 EA(s). (P&M will instruct R/W Accounting to disencumber the same amount of the program level encumbrance.) Vendor information is required for all payments and the Contract Manager may have to send the Pos-Loc Contractor a STD 204 to complete prior to payment of the initial invoice.

13.03.03.04 Positive Location Requirements for High Risk Utility Facilities

All underground high risk facilities lying within the construction area of a project shall be positively located in accordance with the Department's Policy on High and Low Risk Underground Utility Facilities Within Highway Rights of Way. For a copy of this policy, refer to Appendix LL of the Project Development Procedures Manual. The Project Engineer is responsible to ensure the policy requirements have been met and to provide a certification to that effect as part of the PS&E.

The Project Engineer makes a written request to the Utility Coordinator to obtain positive location information for all utility owned high risk facilities that may be in physical conflict with planned construction or that may be exposed to risk of damage during construction. The request must identify the location where the high risk facilities are to be positively located and include three sets of maps for each utility involvement (two sets for the Owner and one set for the Utility Coordinator's files).

For Owners who have a current PLA on file, the Utility Coordinator prepares a task order for the State's Pos-Loc Contractor and a written notification to the Owner.

For Owners who do not have a current PLA on file, the Utility Coordinator arranges a meeting between the Owner and the Project Engineer to go over the plan for determining positive location requirements.

The Project Engineer is also responsible for obtaining the necessary positive location information on Department owned high risk facilities and for including this information on project plans; the Utility Coordinator is not involved.

13.03.03.05 Liability for Ordered Positive Locations

If the Owner has a current PLA, the Department ordered positive location conducted by our contractor or by the Owner is 100% State liability. If the Owner does not have a current PLA, liability is determined using the same rules that are applied to normal relocations. The liability is based on the occupancy rights possessed by the State and Owner as to each positive location site. Exhibits 13-EX-12 and 13-EX-13 provide sample letters for requesting liability information and issuance of the Notice.

NOTE: See Section 13.06.03.04 for expedited procedures for issuance of the Notice and Section 13.05.04.02 for lump-sum payments.

13.03.03.06 Prevailing Wage Requirements for Positive Location Contracts

Contract Managers share in the Department's responsibility to comply with federal and state prevailing wage laws when they request, write, award or manage any publicly funded contract.

When a new Positive Location contract is awarded, the Contract Manager should brief the contractor on all prevailing wage requirements, among other expectations, at a contract "kickoff" or prejob conference. A record of the conference and an attendance sheet signed by the contractor, Contract Manager, and all attendees are retained with the contract.

California Law requires the Department to have an orderly system of auditing contractor payrolls. The Positive Location contract requires the contractor submit a certified copy of all payroll records for verification by the Department's Contract Manager and/or Designee with each invoice. When progress payments are called for, the Contractor shall submit a certified copy of all payroll records for verification for the work completed to date with each invoice. Delinquent or inadequate certified payrolls or other required documents will result in the withholding of payment until such documents are submitted by the Contractor. If payment is withheld, Invoice Dispute Notification, Form STD. 209, must be filled out in order to suspend the Prompt Payment Act. The Contract Manager will review and maintain the certified copy of the payroll.

The Contract Manager, or their Designee, will conduct interviews with employees of the Pos-Loc Contractor to verify compliance with prevailing wage laws.

13.03.03.07 Contract Manager's Working File

The Contract Manager is required to maintain a "working" contract file for each separate contract. The file should contain all the information or documentation:

- Copy of Service Contract Request Form (ADM 360) with all the supporting documentation
- Copy of the executed contract
- Copy of all Certificates of Insurance, if applicable

- Copies of Payment and Performance Bonds, if applicable
- Copy of each executed contract amendment, if applicable
- Log or diary of all contract activity
- Correspondence to Contractor or other correspondence relating to the contract, including the "kickoff" meeting or prejob conference documentation
- Copy of each invoice, backup documentation and approval documentation
- Spreadsheet of contract funds and expenses
- Spreadsheet indicating DVBE/DBE usage, if applicable
- Evaluation of the Contractor/Consultant, if applicable
- Copy of CMIST certification - (see Section 13.03.03.08)

Additional information can be found in the Contract Manager's Handbook located at the Department of Procurements and Contracts (DPAC) Intranet Web site.

13.03.03.08 Contract Manager Certification under CMIST (Contract Management Information and Specialized Training)

Contract Managers are required to register as a certified Contract Manager. The training and certification is online at DPAC's Intranet Web site under Contracts Management Information and Specialized Training (CMIST).

13.03.03.09 Utility Coordinator Responsibilities

The Utility Coordinator is responsible to coordinate all positive location requirements specified in the Notice to Owner (NTO) and in the Task Order. Duties performed generally consist of:

- Request/prepare Positive Location Task Orders and NTO based on the maps.
- Follow up to ensure the positive location work will be done by the date specified in the Notice to Owner and/or in the Positive Location Task Order.
- Confirm necessary inspections with the applicable office/branch.
- Coordinate with Surveys to obtain required horizontal and vertical location data for utility facilities. See high and low risk positive location requirements. For a copy of this policy, refer to Appendix LL of the Project Development Procedures Manual.
- Ensure that survey information is transmitted to the Project Engineer for inclusion in the contract plans.
- Assist in identifying longitudinal utility facilities not meeting the utility accommodations and high risk facilities policies.
- Process Pos-Loc Contractor's invoices for payment, subject to the Prompt Payment Act.

13.03.03.10 Project Engineer Responsibilities

Pursuant to the Plans Preparation Manual Section 2-2.13, the Project Development Procedures Manual, and this manual, the Project Engineer is responsible to:

- Plot survey information on the contract plans.
- Identify "physical" and "policy" conflicts.
- Prepare utility conflict maps and/or a conflict matrix for the Owner to prepare relocation plans.
- Recommend all existing or new utility accommodation policy exceptions to Division of Design, Encroachment Exceptions Section, for approval.

NOTE: See Section 300, Exceptions to Policy - Encroachment Permit Manual and Chapter 17, Encroachments in Caltrans' Right of Way - Project Development Procedures Manual for exception requirements.

13.03.04.00 Utility Conflicts Identified

The Project Engineer (PE) is responsible to review all existing utility locations for conflicts, determine which facilities need to be relocated, and make a written request to the Utility Coordinator to obtain affected Owner's relocation plans. The Project Engineer will provide the Utility Coordinator with conflict maps (see Section 13.03.04.03) the Utility Coordinator sends to the Owner to accompany a request for relocation plans, the Owner's claim of liability, and estimate of cost. (See Section 13.03.04.04.)

Some conflicts may not be immediately evident on the plans, such as staged construction requirements, detours, pile-driving operations, signal and lighting facilities, longitudinal encroachments, and encasement exception requirements. The Utility Coordinator shall review all plans with the Project Engineer for possible conflicts with all facilities within the project.

If after reviewing all utility information, including positive location data, the Project Engineer determines certain utility owners have no conflict with the State's proposed construction project, the PE notifies the Utility Coordinator who must then notify those Owners of the finding. The letter advising them must include the elements shown in Exhibit 13-EX-11.

If the PE identifies conflicts with the State's proposed construction project, the Utility Coordinator must arrange a meeting with all affected Owners, the Project Engineer, and a Structures representative if a structure (bridge) is involved. The purpose of the meeting is to discuss the project, identify needed relocations, and work out the most economical and practical solutions consistent with highway and utility design standards. The Utility Coordinator should document the meeting in the Utility File and should include a list of attendees, items of discussion, and any agreed upon solutions.

If a Local Public Agency (LPA) Cooperative Agreement with cost sharing is involved, the Utility Coordinator must ensure the LPA is billed for their share of the estimated total relocation costs for all Owners in advance of the work being completed and prior to R/W certification. See Section 13.12.00.00 for procedures in dealing with Cooperative Agreement projects.

Ensure that the E-76 (if a federal aid project) has been prepared and transmitted to P&M for processing. See Section 13.14.00.00 for more discussion on federal aid procedures.

The District Utility Coordinator is responsible to ensure that all budgeting information (specifically the R/W Data Sheet) is up to date. If the information has changed as a result of conflict identification, the Utility Coordinator shall update the data sheet. A sample memorandum to P&M for updating capital and support budget information is shown in Exhibit 13-EX-14.

13.03.04.01 Utility Accommodation Policy for Freeways and Exceptions to the Policy

The Department's basic accommodation policy for utilities within freeways allows subsurface or aerial transverse crossing after approval of an encroachment permit. The policy prohibits at-surface encroachment within the access control lines. Utility facilities within the project limits of planned freeway projects that are in violation of this policy must be relocated to clear the project. Division of Design, Encroachment Exceptions Section, must approve exceptions to this clearance requirement prior to R/W Certification.

NOTE: See Section 300, Exceptions to Policy - Encroachment Permit Manual and Chapter 17, Encroachments in Caltrans' Right of Way - Project Development Procedures Manual for exception requirements.

Selected projects exempt from a review of utility facilities in violation of this accommodation policy are:

A. Planting or planting restoration projects.

B. Resurfacing, drainage, safety, etc., that do not result in the edge of the traveled way being moved closer to the encroaching utility facility.

C. Any improvement project to an existing highway that is part of the State's Freeway and Express System but functions as a conventional highway and does not include acquisition of access rights from adjoining properties.

Longitudinal installations or crossing support facilities may be allowed to remain within the access-controlled area in extreme cases, after Division of Design, Encroachment Exceptions Section approval, with the following restrictions:

A. The facility must be a public utility facility.

B. The facility must not adversely affect highway safety, maintenance, and traffic operations.

C. The facility should be installed outside the desired clear recovery zone where reasonable. (See Section 13.03.04.02 for a description of "clear recovery zones.")

D. Relocation of the facility would be inordinately difficult or unreasonably costly.

E. Access for construction and maintenance of a facility located within the access-controlled area must be from other than the traveled way of the freeway, such as from adjoining frontage roads or nearby streets or trails.

F. Utility service connections to adjacent properties shall not be permitted.

G. All underground high/low risk facilities shall meet the Department's established policy and procedures as set forth in the "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way." For a copy of this policy, refer to Appendix LL of the Project Development Procedures Manual.

13.03.04.02 Identify CURE/CRZ Conflicts

"Clean Up the Roadside Environment" (CURE) is a State program for removing fixed objects from within the clear recovery zone (CRZ) adjacent to the traveled way of State highways. The objective of CURE is to remove fixed objects such as signs, trees, culvert heads, and utility poles from within the CRZ, thus improving the recovery opportunity for errant vehicles leaving the traveled way and reducing accidents. CURE is to be part of every new project undertaken on rural high speed highways. Policies and procedures for handling CURE projects can be found in Appendix 2.0 of the Department's Highway Safety Improvement Program (HSIP) Manual, Division of Traffic Operations, Traffic Safety Program.

13.03.04.03 Conflict Maps/Conflict Matrix

Utility conflict maps are essentially the State's preliminary layout sheets for the PS&E. They should show any construction feature that may affect the Owner's facilities including, but not limited to, the following:

- Utility location
- Right of Way lines
- Cross Sections
- Profile
- Drainage
- Stage Construction
- Bridge Structure

13.03.04.04 Request for Relocation Plans, Claim of Liability, and Estimate of Cost

Prior to issuing the Notice to Owner, Utility Agreement, and Encroachment Permit, the Utility Coordinator must obtain the Owner's claim of liability, estimate of cost, and relocation plan. An exception can be made for expedited positive location. See Section 13.06.03.04.

The letter to the Owner must include the elements shown in Exhibit 13-EX-9 and normally allows the Owner 60 to 120 days to respond. Since this is a crucial element in the utility relocation process, the Utility Coordinator must actively follow up with the Owner to ensure they maintain a schedule that will allow successful project delivery.

13.03.04.05 Receipt of Relocation Plans, Claim of Liability, and Estimate of Cost

Upon receiving the Owner's relocation plans, the Utility Coordinator routes the plans to the Project Engineer for review and approval, comparison with other Owners' plans for compatibility, and review for compliance with the Department's "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way" (for a copy of this policy, refer to Appendix LL of the Project Development Procedures Manual) and the Department's Utility Accommodation Policy.

NOTE: See Section 300, Exceptions to Policy - Encroachment Permit Manual and Chapter 17, Encroachments in Caltrans' Right of Way - Project Development Procedures Manual for exception requirements.

The district's Environmental Branch should review the Utility Relocation Plans whenever there is a possible relocation of 50KV and higher power lines and/or electrical substations, to ensure inclusion in and/or changes to the Department's environmental document.

NOTE: If changes to the environmental document are required at this stage, there may be a delay in project delivery as no relocation work can take place in any location not previously included in the "area of potential effect" (APE) described in the approved document unless the area of utility relocation has a blanket ND or CatX by the CPUC.

The District Utilities Coordinator has basic responsibility for reviewing all relocation plans to determine that they provide a cost effective functional restoration of the utility facility. Betterments are to be identified on the plans and all other elements of the planned relocation must be supportable as necessary and appropriate. The Utility Coordinator may solicit technical engineering support, but cannot shift this responsibility to the Project Engineer. The Coordinator shall make the final call.

Where any portion of the utility work claimed by the Owner is to be at State expense, the Utility Coordinator must review the Owner's claim letter that sets forth the basis for the State's liability and the estimated cost of relocation. (See Section 13.04.00.00 for liability determinations.) When the claim of liability and estimate of cost are found acceptable, the Utility Coordinator prepares the Report of Investigation (ROI) package for transmittal to Headquarters R/W or the authorized district person. The ROI package should consist of the Report of Investigation, the Owner's claim letter, the estimate of cost, the Notice to Owner, and a draft Utility Agreement along with any supporting documentation and mapping.

13.03.04.06 Special Provisions

All utility facilities to be relocated, abandoned, or protected in place during construction, whether done by the State's contractor or Owner, are to be addressed in the construction contract's "Special Provisions." The Utility Coordinator is responsible to provide the Project Engineer with the information necessary to prepare these clauses for inclusion in the "Special Provisions." Failure to do so may result in claims by the State's contractor for right of way delays.

All Utility facilities remaining within the project limits at start of construction shall be delineated on the state's plans.

The following table lists the most commonly used Standard Special Provisions for utility relocations. Any nonstandard Special Provision language must be approved through the Project Engineer.

Table 13.03-1 Standard Special Provisions (Section 13.03.04.06)

99 SSP No. Old SSP No.	Owner Code	Description	Instructions for Use
08-020 08-020 M	DE (Design)	Obstruction	Use when there are underground utilities on the project.
	SSP 08-020		
08-025 08-025 M	DE (Design)	Miscellaneous Clause for High Risk Facilities	Use for high risk facilities on special projects and trenching for the installation of electrical conduit is NOT required. Special projects are defined in Section 4-3 of the "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way." Add to SSP 08-020.
	SSP 08-025		
08-026 08-026 M	DE (Design)	Miscellaneous Clause for High Risk Facilities	Use for high risk facilities on special projects and trenching for the installation of electrical conduit is required. Special projects are defined in Section 4-3 of the "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way." Add to SSP 08-020.
	SSP 08-026		
08-027 08-027 M	RW	Miscellaneous Clauses for Utilities To Be Relocated During Construction	Use when utilities are to be relocated during construction. Add to SSP 08-020.
	SSP 08-027		
08-027 08-027 M	RW	Miscellaneous Clauses for Utilities To Be Relocated During Construction	Use when utilities are to be relocated during construction. Add to SSP 08-020.
	SSP 08-027		
08-030 08-030 M	RW	Miscellaneous Clause for Utility Right of Way Delay	Use when a right of way delay clause is required. Add to SSP 08-020.
	SSP 08-030		

13.03.05.00 Utilities on Structures

Occasionally, utility facilities that are located on an existing bridge must be relocated to a new structure as a result of a rebuild. Additionally, utilities currently in an underground or aerial position may be relocated into a structure as part of the relocation plan. In these situations, special conditions that require early coordination with Structures must be met so Owner needs can be included in both the plans and project specials. Structures must be advised as early as possible of any Owner's desire to install facilities on a structure.

13.03.05.01 Coordination Requirements

The placement of utility facilities on structures requires special coordination between the Owner, the Department, and the highway contractor as to who provides what material, who installs it, Owner's time frame for required installations, who pays for what and when, etc.

Structures has produced a form (Exhibit 13-EX-7) to obtain needed information. The Utility Coordinator is responsible for forwarding the form to the Owner for timely completion and subsequent return to Structures through the Project Engineer. See Exhibit 13-EX-8 for a sample transmittal letter to the Owner.

If Structures finds the preliminary information acceptable, they advise the Utility Coordinator through the Project Engineer. The Owner should then submit detailed installation plans by the date Structures specifies. The Utility Coordinator then requests the Owner's estimate of cost and claim of liability (see Section 13.03.04.04). The Owner should normally be given a minimum of 60 days to prepare plans (see Exhibit 13-EX-9).

If Structures does not find the preliminary plans acceptable, they inform the Project Engineer. The Utility Coordinator conveys this decision to the Owner and advises them to redesign or to develop plans not using the structure.

As an alternative procedure, the Utility Coordinator may, by a focus meeting or series of focus meetings, coordinate the relocation with Design, Structures, the utility company, and other personnel the Coordinator deems necessary to complete the design.

13.03.05.02 Guidelines for Utilities on Structures

The Division of Structures has established guidelines that define size limitations and special design requirements for utility installations on bridge structures. These guidelines, shown in Table 13.03-2 entitled "Guidelines for Utilities on Structures," apply to normal installations where utilities are installed in a box girder cell, suspended between girders (I- or T-girder structure types), or in sidewalk slab. Unusual utilities must be analyzed on a case-by-case basis. The Project Engineer should make preliminary decisions on possible utility placement on the bridge before design of the structure has begun.

Table 13.03-2

GUIDELINES FOR UTILITIES ON STRUCTURES (Section 13.03.05.02)	
Description	**Explanation**
Size	The maximum allowable utility size depends on structural constraints. When the utility depth, including its casing, exceeds one-third the bridge structure depth, accommodating the utility is difficult. Any utility or its casing over 20 inches may not be acceptable, and Structures Design or Structures Maintenance must be consulted. The maximum diameter conduit allowed in sidewalks is 4 inches.
Type	1. Electrical - The maximum voltage allowed in an electrical line is 69kv. High voltage installations in the sidewalk portions of the structure are strongly discouraged. Installing high voltage lines in box girder cells or between girders is preferable. Exceptions to this policy should be directed to Structures Design or Structures Maintenance. 2. High-Pressure Water and Sewer - The maximum diameter carrier pipe or casing allowed is 20 inches. The maximum operating pressure of a 20-inch carrier line is 100 psi. Full-length casing is required for all installations, but exceptions may be allowed for facilities in box girder bridges. 3. Volatile Gas - Installation must conform to Structures "Guidelines For Natural Gas Pipelines On Caltrans Bridges."
Combinations of Utilities	Volatile fluids, gases, or high voltage lines shall not occupy the same cell or area between girders with any other utility or with each other.
Seismic Design Requirements	Owners of facilities carrying volatile fluids, gases, or high-pressure fluids must be provided with the following options to be used when designing their facilities for expected seismic movement within the structure. 1. For existing structures, design for an expected minimum horizontal and/or vertical displacement of 2.5 inches. For new structures, design the facilities for an expected movement of 2.5 inches. 2. Provide an event-actuated device that will automatically shut off the utility line. 3. Provide a device that will detect a break in the utility line (and casing) and automatically shut off the utility line. 4. Locate the utility line off the bridge.

13.03.06.00 Utility Acquisitions

Public utility facilities impacted by highway construction normally have a functional replacement constructed and are seldom acquired. Exceptions are where the facilities are for administrative or other nonutility service uses.

The distinction between a public utility service use versus a nonutility use may be based on whether severance of the particular improvement directly affects utility service to one or more customers. An improvement that is determined to be a nonutility, e.g., corporate office, is appraised and acquired in the usual fashion.

The distinction between a public utility service and similar facilities that may only provide service to the Owner is frequently confusing (see Section 13.01.01.03). The latter improvements are appraised and acquired in the usual manner.

An exception to the purchased acquisition of private facilities is permissible for major oil companies where the Owner has agreed to application of standard rules on the functional replacement of facilities.

13.03.06.01 Uniform Acquisition Act Requirements

When the State or LPA acquires replacement right of way, the requirements of the Uniform Relocation Assistance And Real Property Acquisition Policies Act of 1970 (Uniform Act) and the Surface Transportation and Uniform Relocation Assistance Act of 1987 and its amendments to the Uniform Act apply.

When a privately owned utility acquires their own replacement right of way, the requirements of the Uniform Act do not apply.

13.03.06.02 Acquisition From the Utility Owner

Properties that lie in the path of transportation projects and are held in fee by Utility Owners must be purchased outright or exchanged.

Generally, most fee-owned property is for substations or pumping plants, although some Owners have fee-owned corridors for transmission purposes. (See Table 13.03-3 entitled “Acquisition from the Utility Owner.”

Table 13.03-3

ACQUISITION FROM THE UTILITY OWNER (Section 13.03.06.02)	
Type	**Requirement**
Fee-owned	All fee-owned property is acquired by R/W Acquisition via R/W Contract and Deed. Terms of the R/W Contract depend on whether the property in question is vacant or improved, and whether it is a site or a corridor. In all cases, the Utility Coordinator should consult with Acquisition to reach a full understanding about what the property is and how it may be used, now and in the future. Things to look for include: 1. Vacant Site - The Owner may be holding the site for future use in conjunction with an existing facility, such as a substation expansion. 2. Vacant Corridor - Although treatment is similar to a vacant site, the possibility of easement acquisition on the Owner's behalf or JUA/CCUA should be explored. 3. Utility Facility Improved Site - Replacement of the site is usually necessary. If done, Acquisition may handle via a R/W Contract. Relocation or rearrangement of utility facilities shall be handled by the Utility Coordinator via Utility Agreement in coordination with Acquisition. 4. Utility Facility Improved Corridor - Same as for an improved site; however, the possibility of replacing fee with easement or JUA/CCUA should be explored. Access to the replacement corridor must be considered. 5. Nonutility Occupied - Acquire via normal appraisal/acquisition procedures.
Easement-owned	1. Utility Occupied - Occupied easements are usually for transmission or distribution of the Owner's product. Where a replacement right of way is needed, the State or the Owner may acquire an easement. Usually the Owner's existing easement interest is quitclaimed to the State in exchange for the new location by executing a JUA/CCUA as a part of the utility relocation. 2. Nonutility Occupied - Acquisition is responsible for clearance of vacant easements.
Franchise/Permit Privileges	Except as noted below, the State is not obligated to provide a replacement right of way for utility facilities installed under a franchise or permit. In some cases, the State may need to make the method of installation for safety or other good reason a requirement for occupancy under an Encroachment Permit. For instance, the most common requirement is that the facility cannot continue to be installed within the right of way as an aerial facility. If the Owner does not meet our requirements for relocation within the new right of way, the Owner is responsible to provide any needed easement at their own expense. The exception is for facilities located within a freeway that will be relocated under S&H Code Section 702. Under Section 702, the State is obligated to provide a replacement easement if one is needed. Section 702 does not apply to Owners with master contracts that contain language superseding Section 702.

13.03.06.03 Acquisition for the Utility Owner (Replacement Right of Way)

If the Utility Owner has superior occupancy rights, the State can acquire the needed replacement right of way. The Owner normally selects the replacement right of way location, subject to the normal constraint of providing for necessary functional replacement only. Either the State or the Owner may accomplish the acquisition. If the replacement location crosses a parcel where the State is to make a highway acquisition, the preferred acquisition method is to include it in the State's acquisition program. The State may acquire the replacement right of way by one of the following methods (in order of preference):

- Acquired in the name of the Owner, preferably on the Owner's own deed form.
- Acquired in the name of the State by deed and subsequently conveyed to the Owner by Director's Deed.
- Use of State-owned (or to be acquired) excess land. Care must be exercised in making any commitments regarding acquisition of excess land. Liaison with Excess Land should be maintained so easements are reserved in excess land conveyances.

If the utility facility being displaced is not in a superior right status, the State may acquire the replacement utility easement as a convenience to and at the expense of the Owner, but cannot condemn for it. Where the facility was in an encroachment permit status only (non-prior rights), replacement utility easements must never be acquired at State expense as this would constitute a gift of public funds.

13.03.06.04 Consent to Condemnation for Exchange Purposes From the Owner

Condemnation may be necessary if the State is unable to acquire the replacement right of way through normal negotiations. A "Consent of Owner to Condemnation for Exchange Purposes" must be obtained from the Owner pursuant to Code of Civil Procedure Section 1240.320 to support a "Resolution of Necessity" from the CTC.

Individual consent forms need not be secured on each condemnation for the Owners listed below that have a basic form of consent on file with the State.

- **Pacific Gas and Electric Company** (Exhibit 13-EX-15A) - The State can condemn for PG&E without additional authorization, except that easement needs and location must have PG&E's prior acceptance.
- **Southern California Edison Company** (Exhibit 13-EX-15B) - SCE requires the Company's written approval of both the complaint form and easement location.
- **AT&T California** (formerly SBC, Pacific Bell Telephone Company and Pacific Telephone and Telegraph Company) (Exhibit 13-EX-15C) - AT&T California requires the Company's written approval of the easement location.
- **Southern California Gas Company** (Exhibit 13-EX-15D)
- **General Telephone Company** (Exhibit 13-EX-15E)

For Owners that do not have a consent form on file, the Utility Coordinator shall prepare a consent form using one of the accepted filed forms (13-EX-15A-E) as a guide and forward it to the Owner for execution on an individual parcel basis. Upon return of the executed consent form, it should be filed in the parcel file.

13.03.06.05 Utility Easements on Federal Lands

On Federal Lands, the State acquires a DOT Highway Easement, a Right of Way Easement, a License or a Permit, not fee title, for the project. Therefore, the State does not have the authority to allow a utility company to relocate within our right of way. The utility company's Real Estate Department will be required to deal directly with the involved Federal agency. Depending on the authority at the time the existing utility easement was issued, the Federal agency may amend or require a new right of way. The time frame is typically six months to a year from the date the requested easement package is given to the Federal agency. Utility relocation cannot begin until the issuance by the Federal agency of the new right of way to the utility company.

The Utility Coordinator's responsibilities include:

- Contact the Regional/District FHWA Coordinator as soon as possible to establish a plan.
- Provide early identification of required utility easements at field review.
- Coordinate between Federal Lands Specialists, Utility Owner staff, and our environmental department.
- Ensure the potential easement rights are considered during the environmental document stage. If covered in the State's environmental document, the Federal agency will require a copy of the final environmental document. (This could save the utility company time in obtaining the new right of way.)
- Provide the Utility Owner with necessary mapping and forms.
- Follow the progress of the negotiations between the Utility Owner and the Federal agency to ensure timely delivery.

NOTES:

13.07.00.00 - UTILITY AGREEMENTS

13.07.01.00 General

Pursuant to State Administrative Manual 8300, et seq., and S&H Code Division 1, Chapter 1, Article 3, Section 94, the State and the Utility Owner must enter into a Utility Agreement (Form RW 13-5) whenever the State is paying or receiving payment for all or a portion of the cost of relocation of a utility facility, regardless of who performs the work. The number assigned to each Utility Agreement shall be the same number assigned to the corresponding Notice to Owner covering the same facilities. Each Utility Agreement must be submitted with the Report of Investigation package (see Section 13.05.01.00).

13.07.02.00 Circumstances Requiring a Utility Agreement

The State must prepare a Utility Agreement for each facility being relocated or adjusted by the Utility Owner or its contractor with State reimbursement of the cost or being relocated or adjusted by the State's contractor, regardless of who is responsible for the cost. The Utility Coordinator is responsible for preparing the Utility Agreement.

A single Agreement is used for each Owner's involvement on a single construction project to the extent possible.

Instructions for completing the Utility Agreement are found with Form RW 13-5.

NOTE: An "involvement" is defined as the issuance of a Notice to Owner to a Utility Owner for a specific utility type on one project (EA). For example, if a project has relocations for PG&E-Gas Transmission, PG&E-Gas Distribution, and PG&E-Electric Distribution, it would require three (3) Notices to Owner, equaling three (3) involvements. An involvement also includes a Notice for Positive Location (potholing) for each specific utility type.

13.07.03.00 Standard Clauses

The clauses in the following sections have been standardized and shall be used whenever possible. Use of these standard clauses will reduce errors and omissions as well as save preparation, review, and approval time as the clauses have been reviewed and approved by most major Utility Owners and Department's Headquarters Legal Division. The following standard clauses are numbered for ease of reference. The Utility Coordinator preparing the Utility Agreement selects the appropriate clause(s) to be used.

Before using any nonstandard clauses, the Utility Coordinator must obtain approval of necessity and language from HQ R/W and HQ Legal.

13.07.03.01 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 District office of the Department of Transportation at _____. Deviations from the OWNER's plan described above initiated by either the STATE 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 STATE and

agreed to/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 written execution 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 estimates require a revised FHWA Specific Authorization (Form RW 13-15).

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

"In accordance with Notice to Owner No. _____ dated _____, STATE shall relocate OWNER's _____ as shown on STATE's contract plans for the improvement of State Route _____, EA _____ which by this reference are made a part hereof. OWNER hereby acknowledges review of STATE's plans for work and agrees to the construction in the manner proposed. Deviations from the plan described above initiated by either the STATE 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 STATE and agreed to/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 written execution 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 STATE, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to STATE ownership of the replaced facilities."

NOTES:

(1) On projects where Federal reimbursement will be sought, additional information is necessary on the FHWA Specific Authorization (Form RW 13-15). See Section 13.14.04.00 for specific wording requirements.

(2) In the event the Owner wants to retain ownership of their old facilities removed by the State's highway construction contractor, a clause stating this fact must be included in the "Special Provisions" portion of the State's highway construction contract. Otherwise, the "Standard Specifications" of the contract will award all salvaged material to the State's contractor. If the Owner wants to retain ownership of the replaced facility, the Clause above must be modified to delete "and relinquishes to STATE ownership of the replaced facility."

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

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

"In accordance with Notice to Owner No. _____ dated _____, STATE shall relocate OWNER's _____ as shown on OWNER's Plan No. _____ dated _____, which plans are included in STATE's Contract Plans for the improvement of State Route _____, EA _____ which, by this reference, are made a part hereof. Deviations from the OWNER's plan described above initiated by either the STATE 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 STATE and agreed to/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 written execution 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 STATE's contractor during construction. Upon completion of the work by STATE, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to STATE ownership of the replaced facilities."

NOTE: See NOTES under Clause I-2.

I-4. Work Performed by Both Owner and State'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 District office of the Department of Transportation at _____."

"Deviations from the OWNER's plan described above initiated by either the STATE 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 STATE and agreed to/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 written execution 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 STATE will include the work of _____ as part of the STATE's highway construction contract. OWNER shall have access to all phases of the work to be performed by the STATE 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 STATE, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to STATE ownership of the replaced facilities."

NOTE: See NOTES under Clause I-2.

I-5. Preliminary Engineering by Utility Owner:

"In accordance with Notice to Owner No. _____ dated _____, OWNER shall prepare their relocation plans. Any revision to the OWNER's plan described above, after approval by the STATE, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the STATE and 13.07 - 2 (REV 7/2005) agreed to/acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No redesign or additional engineering, after approval by the STATE, shall commence prior to written execution by the OWNER of the Revised Notice to Owner and may require an amendment to this Agreement in addition to the revised Notice to Owner."

13.07.03.02 Section II. Liability for Work:

II-1. State's Expense - S&HC Section 702 or 703:

"The existing facilities are lawfully maintained in their present location and qualify for relocation at STATE expense under the provisions of Section (702) (703) of the Streets and Highways Code."

II-2. State'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 STATE expense under the provisions of Section 704 of the Streets and Highways Code."

II-3. State's Expense - Superior Rights:

"Existing facilities are located in their present position pursuant to rights superior to those of the STATE and will be relocated at STATE expense."

II-4. State'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 STATE expense."

II-5. State's Expense - Prescriptive Rights:

"The existing facilities are located in their present position pursuant to prescriptive rights prior and superior to those of the STATE and will be relocated at STATE expense."

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

"The existing facilities are located within the STATE's right of way under permit and will be relocated at OWNER's expense under the provisions of Section (673) (680) of the Streets and Highways Code."

II-7. Owner's Expense - Trespass:

"The existing facilities are located within the STATE's right of way in trespass and will be relocated at OWNER's expense."

II-8. State or Prorated Expense - Right of Way Contract:

"The existing facilities described in Section I above will be relocated (at STATE expense) (at _____% STATE expense and _____% OWNER expense) as set forth in Right of Way Contract No. _____ dated _____."

II-9. State or Prorated Expense - Master Contract:

"The existing facilities described in Section I above will be relocated (at STATE expense) (at _____% STATE expense and _____% OWNER expense) in accordance with (Section _____ of the Master Contract dated _____.) (Sections _____ of the Master Contract 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 Contract, insert the equation used to develop the overall percentage of liability in the Utility Agreement in the space following the word "proration:".

II-10. Prorated Expense - No Master Contract:

"The existing facilities described in Section I above will be relocated at _____% STATE expense and _____% OWNER expense 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 S&H Code or other government code, insert the equation used to develop the overall percentage of liability for the relocation in the space following the word "proration:".

II-11. PG&E Master Agreement - Potholing:

This section has been superseded by the Agreement for the Positive Location of Underground Facilities executed by PG&E dated January 3, 2002.

II-12 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. That in signing this Agreement neither STATE nor OWNER shall diminish their position nor waive any of their rights nor does either party accept liability for the disputed work. STATE 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 "45 days."

13.07.03.03 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. State's Contractor Performs All or a Portion of Work:

"OWNER shall have access to all phases of the relocation work to be performed by STATE, as described in Section I above, for the purpose of inspection to ensure that the work is in accordance with the specifications contained in the Highway Construction Contract; however, all questions regarding the work being performed will be directed to STATE'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 STATE. Cost principles for determining the reasonableness and allowability of consultant costs shall be determined in accordance with 48 CFR, Chapter 1, Part 31; 23 CFR, Chapter 1, Part 645; and 18 CFR, Chapter 1, Parts 101, 201 and OMB Circular A-87, as applicable."

NOTE:

(1) If the Utility Owner is not regulated by the Federal Energy Regulatory Commission (FERC), you may delete reference to 18 CFR.

(2) OMB Circular A-87 applies to local agencies and local governments.

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

"OWNER agrees to perform the herein described work, excepting that work being performed by the STATE'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. Out-of-State Travel Expenses and Per Diem:

"Use of out-of-state personnel, or personnel requiring lodging and meal ("per diem") expenses will not be allowed without prior written authorization by State's representative. Requests for such permission must be contained in OWNER's estimate of actual and necessary relocation costs. OWNER shall include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed. Per diem expenses shall not exceed the per diem expense amounts allowed under the State's Department of Personnel Administration travel expense guidelines."

III-7. Prevailing Wage 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."

III-8. Owner to Prepare Preliminary Engineering Plans:

"Engineering services for locating, making of surveys, preparation of plans, specifications, estimates, supervision, inspection, _____ (delete or add services as established with the Utility Owner) are to be furnished by the Utility Owner and approved by the STATE. Cost principles for determining the reasonableness and allowability of OWNER's costs shall be determined in accordance with 48 CFR, Chapter 1, Part 31; 23 CFR, Chapter 1, Part 645; and 18 CFR, Chapter 1, Parts 101, 201 and OMB Circular A-87, as applicable."

13.07.03.04 Section IV. Payment for Work:

IV-1. Owner Operates Under PUC, FERC or FCC Rules:

"The STATE shall pay its share of the actual and necessary cost of the herein described work within 45 days after receipt of five (5) copies of OWNER's itemized bill, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual and necessary 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, Federal Energy Regulatory Commission or Federal Communications Commission, whichever is applicable.

"It is understood and agreed that the STATE will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the STATE for the "used life" or accrued depreciation of 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 State's contractor.

(3) "Used life" refers to the period of economic usefulness in a particular owner's operations as distinguished from physical life; it is evidenced by the actual or estimated retirement and replacement practice of the owner or the industry.

(4) See Section 13.07.06.02 for depreciation clause for Oil Companies.

(5) For "Liability in Dispute" Utility Agreements, add the wording "after final liability determination and" immediately following "45 days" on IV-1, 2, 8 or 9. See Note II-12 for cross reference.

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

"The STATE shall pay its share of the actual and necessary cost of the herein described work within 45 days after receipt of five (5) copies of OWNER's itemized bill, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual and necessary 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 STATE will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the STATE for the accrued depreciation or "used life" of 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 "A credit allowance for age shall not be applied to publicly owned sewers." In these cases, the following words "... for the accrued depreciation or "used life" of the replaced facilities and " shall be eliminated from the second paragraph above.

(2) See NOTES under Clause IV-1.

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 STATE 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 STATE within 360 days after the completion of the work described in Section I above. If the STATE has not received a final bill within 360 days after notification of completion of OWNER's work described in Section I of this Agreement, and STATE has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements as required for OWNER's facilities, STATE 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. If the STATE processes a final bill for payment more than 360 days after notification of completion of OWNER's work, payment of the late bill may be subject to allocation and/or approval by the California Transportation Commission."

"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 STATE 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 and approval of documentation by STATE. Except, 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 either case, payment of the amount over the estimated cost of this Agreement may be subject to allocation and/or approval by the California Transportation Commission."

"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 OWNER'S 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 STATE."

"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 by State and/or Federal auditors. Owner agrees to comply with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and/or 18 CFR, Chapter 1, Parts 101, 201, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse STATE upon receipt of STATE billing."

NOTES:

(1) See NOTES under Clause IV-1.

(2) Contract Cost Principles and Procedures of 48 CFR, Federal Acquisition Regulations Systems, Chapter 1, Part 31 have been accepted as the State's standards for all projects including State-only funded projects.

(3) See Manual Sections 13.04.07.01, 13.10.02.03, and 13.14.10.01 for additional information.

(4) If Utility Owner is not regulated by FERC, modify above clause by deleting reference to "and/or 18 CFR, Chapter 1, Parts 101, 201, et al."

IV-3a. 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 STATE 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 STATE within 360 days after the completion of the work described in Section I above. If the STATE has not received a final bill within 360 days after notification of completion of OWNER's work described in Section I of this Agreement, and STATE 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. If the STATE processes a final bill for payment more than 360 days after notification of completion of OWNER's work, payment of the late bill may be subject to allocation and/or approval by the California Transportation Commission."

"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 STATE 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 and approval of documentation by STATE. Except, 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 either case, payment of the amount over the estimated cost of this Agreement may be subject to allocation and/or approval by the California Transportation Commission."

"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 OWNER's 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 STATE."

"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 by State and/or Federal auditors. Owner agrees to comply with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and/or 18 CFR, Chapter 1, Parts 101, 201, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse STATE upon receipt of STATE billing."

NOTE: For lump-sum amounts for Preliminary Engineering, the following clause should be added.

IV-4. Advance of Funds - State 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 $_____. STATE 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 STATE 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 STATE 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 STATE and deposited as provided for above shall be credited to STATE."

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

NOTE: Advance of funds should not exceed 90% of the Utility Agreement amount due to possible credits for depreciation, salvage, etc. No funds are to 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 $_____. STATE 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 STATE 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 Surplus Money Investment Fund and computation shall be in accordance with Section 1268.350 of the Code of Civil Procedure."

NOTE: See State Controller's Office Web site at http://www.sco.ca.gov for the Surplus Money Investment Fund rate chart.

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 and necessary cost of work done), and OWNER shall credit the STATE for the actual and necessary 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. State Performs Work - Owner Requested Betterments:

"The STATE 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 Department of Transportation, prior to the time that the subject freeway/highway contract bid is opened by the STATE. The final betterment payment shall be calculated based upon the actual quantities installed as determined by the STATE's engineer, and the current cost data as determined from the records of the OWNER. In addition, the

OWNER shall credit the STATE at the time of the final billing for all the accrued depreciation and the salvage value of any material or parts salvaged and retained by the OWNER."

NOTE: A memorandum must be sent to Accounting requesting the Owner be billed for the amount of betterment.

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

"Upon completion of the work, and within 45 days after receipt of five (5) copies of OWNER's bill, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead, STATE will pay OWNER the lump-sum amount of $_____. The above lump-sum amount has been agreed upon between the STATE and the OWNER and includes any credits due the STATE for betterment, depreciation and salvage."

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

"STATE and OWNER further agree that for lump-sum payments in excess of $25,000, that STATE shall have the option of performing an informal audit of OWNER's detailed records from which the billing is compiled. The purpose of STATE'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 STATE review for a period of one year following OWNER's submittal of final bill."

NOTE:

(1) Lump-sum Utility Agreements should be used for all utility involvements where the STATE's cost is estimated to be $100,000 or less, and the conditions of Section 13.05.04.00 can be met.

(2) See Clause IV-9 for Pac Bell/SBC lump-sum Utility Agreements.

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

"Upon completion of the potholing and relocation work, and within 45 days after receipt of five (5) copies of OWNER's bill, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead, STATE will pay OWNER the lump-sum amount of $_____. The above lump-sum amount, for the physical relocation work, has been agreed upon between the STATE and the OWNER and includes any credits due the STATE for betterment, depreciation and salvage."

NOTE: Although most positive location will be done pursuant to the Positive Location Agreement, if Pac Bell/SBC will be conducting their own potholing, the following clause should be added.

"In addition to the amount specified above, the STATE will pay the OWNER an additional amount of $_____ for each pothole location requested by the STATE 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.

"STATE and OWNER further agree that for lump-sum payments in excess of $25,000, that STATE shall have the option of performing an informal audit of OWNER's detailed records from which the billing is compiled. The purpose of STATE'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 STATE review for a period of one year following OWNER's submittal of final bill."

NOTE:

(1) Lump-sum Utility Agreements should be used for all utility involvements where the STATE's cost is estimated to be $100,000 or less and the conditions of Section 13.05.04.00 can be met.

(2) Use of this clause also requires that the fees and form shown in Exhibit 13-EX-22 be used by Pac Bell/SBC.

IV-9a. Lump-Sum/Flat-Sum AT&T Billing Utility Agreements:

"Upon completion of the Preliminary Engineering, and within 45 days after receipt of five (5) copies of OWNER's bill, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead, STATE will pay OWNER the lump-sum amount of $_____. The above lump-sum amount, for the preliminary engineering design work, has been agreed upon between the STATE and the OWNER."

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

NOTE:

(1) Insert the following Clause after Clause IV-1 or IV-2, unless the Owner is liable. As soon as the Utility Agreement is executed, a memorandum shall be sent to Accounting requesting the OWNER be billed.

(2) Use only this Clause if a Phase 4 or Phase 5 Utility Agreement where the Owner is liable.

"The OWNER shall pay its share of the actual cost of said work included in the STATE's highway construction contract within 45 days after receipt of STATE'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 STATE'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 STATE, STATE 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 STATE, in accordance with the provisions of this Agreement, OWNER hereby agrees to reimburse STATE said deficient costs upon receipt of an itemized bill as set forth herein."

NOTE: See Section 13.08.02.01 regarding advance of funds process for Master Contract Owners.

13.07.03.05 Section V. General Conditions:

V-1. State Liable for Review and Design Costs, Project Cancellation Procedures and Utility Agreement Subject to State Funding Clauses - FOR ALL OWNERS:

"All costs accrued by OWNER as a result of STATE'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 STATE's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, STATE will notify OWNER in writing and STATE reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement."

"All obligations of STATE under the terms of this Agreement are subject to the passage of the annual Budget Act by the State Legislature and the allocation of those funds by the California Transportation Commission."

V-2. Notice of Completion - FOR ALL OWNERS:

"OWNER shall submit a Notice of Completion to the STATE within 30 days of the completion of the work described herein."

V-3. Owner to Acquire New Rights of Way with STATE liable for a portion of costs:

"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 STATE. Said property shall be appraised and acquired in accordance with lawful acquisition procedures."

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

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

"Such Director's Easement Deeds as deemed necessary by the STATE will be delivered to OWNER, conveying new rights of way for portions of the facilities relocated under this Agreement, over available STATE owned property outside the limits of the highway right of way."

"STATE'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 shall mean 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. State to Provide New Rights of Way Over Private Lands:

"STATE will acquire new rights of way in the name of either the STATE or OWNER through negotiation or condemnation and when acquired in STATE's name, shall convey same to OWNER by Director's Easement Deed. STATE's liability for such rights of way will be at the proration shown for relocation work involved under this Agreement. OWNER shall reimburse the STATE all costs for the easement. "

NOTE: New rights of way shall mean 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, providing the OWNER has the power to condemn and the State has OWNER's consent for condemnation on OWNER's behalf. The above paragraph should be revised accordingly.

V-6. State to Issue a JUA or CCUA:

"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 STATE highway right of way, a Joint Use Agreement or Consent to Common Use Agreement shall be executed by the parties."

V-7. Master Contract Specifies Equal Replacement Rights:

"Upon completion of the work to be done by STATE 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 Contract:

"It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement."

V-9. Federal Aid Clause - Master Contract:

"It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement by reference; provided, however, that the provisions of any agreements entered into between the STATE 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, shall govern in lieu of the requirements of said 23 CFR 645."

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

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

"Inasmuch as Water Code Section (7034) (7035) requires STATE 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 _____, STATE will repair or replace the conduit portion of OWNER's facilities which lies within the STATE 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 STATE be liable for any betterments, changes or alterations in said facility made by or at the request of the OWNER for its benefit."

NOTES:

(1) Use of Clause V-10 is dependent upon prior Legal approval that the applicable Water Code Section applies to the situation.

(2) See NOTE under Clause I-2 and Section 13.11.05.01.

13.07.04.00 Processing

All Utility Agreements must be submitted for approval, along with the Report of Investigation, either to Headquarters R/W or to the authorized Region/District representative.

Each Region/District may have its own internal procedures for processing the Utility Agreement for approval. Following are the minimum requirements:

- Prepare four originals of the Utility Agreement. All four originals will become fully executed "wet-ink"originals.

- Process the four original Utility Agreements through P&M for EA setup and funding verification. P&M shall "wet-ink" sign all four original Utility Agreements. P&M shall then forward the four originals to R/W Accounting for certification of funds. R/W Accounting shall "wet-ink" sign all four originals. All Utility Agreements where work is done by the Utility Owner/Owner's contractor will be encumbered with R/W ("Phase 9") funds.

- Construction ("Phase 4") funds will be needed for any utility relocation work done by the State's contractor. Construction funds are normally not encumbered by R/W; therefore, P&M must coordinate with District Construction before encumbrance of "Phase 4" funds can be accomplished.

- The funding block on the last page of the Utility Agreement must reflect all project phases funding the specific Utility Agreement.

- Accounting will "wet-ink" sign all four originals of the Utility Agreement to show funds have been certified (encumbered) and will return all four originals to R/W.

- The Utility Coordinator will transmit all four original Utility Agreements, along with the Notice and Permit as required, to the Owner for execution. See Exhibit 13-EX-13 for elements of the transmittal letter. The letter should instruct the Owner to make a copy of an executed Utility Agreement for the interim for their files.

NOTE: There is no State requirement that the Owner execute the Utility Agreements first. With some Owners, it may be more expedient for the State to execute first and then forward to the Owner for execution.

NOTE: One of the restrictions of Legislative Budgeting is the State can only pay bills the owner presents within four fiscal years following the fiscal year in which funds were encumbered. If payment is necessary after the five fiscal years, the Utility Agreement may need to be re-encumbered, or an Amended Utility Agreement may be needed. P&M receives an annual report of Utility Agreements about to expire and will notify Utilities.

NOTE: Utility Agreements encumbered during the fiscal year should be fully executed prior to the end of the same fiscal year, or shortly thereafter. HQ Accounting has been instructed to disencumber any encumbered Utility Agreements not fully executed by the end of the fiscal year. If the Utility Agreement remains partially executed/unexecuted, the Utility Coordinator shall coordinate with P&M and/or Accounting to determine how to proceed.

As soon as the Owner returns the Utility Agreement:

- Check for four "wet-ink" signed originals. Be sure the Owner's signature complies with their bylaws or charter. Check for a copy of their resolution, if one is required. The person or official signing the agreements should have the proper authority delegated to him/her by the Utility Company/Owner to sign the agreements.

- If the Utility Agreements are not dated, date them to match the Owner's transmittal date.

- Obtain State execution of the four original Utility Agreements as required. Make one machine copy of the Utility Agreement.

- Distribute the fully executed original Utility Agreements and machine copy as follows:

  – Send ONE original document to the Utility Owner with instructions to replace and destroy the interim copy in their files. The transmittal letter must include the elements shown in Exhibit 13-EX-23.

  – Retain ONE original document in the Region/District's file. The fully executed, wet-ink original Utility Agreement shall never be removed from the file, unless required in response to a written request from HQ Legal or in compliance with a court order.

  – Send TWO originals to R/W Accounting. One original is for R/W Accounting's files; One original is for transmittal to the State Controller's Office at the time of the first payment request.

  – Send the machine copy to HQ Audits along with a copy of the E-76, if required, and a copy of the Utility Owner's estimate.

13.07.04.01 Processing a Phase 4 or Phase 5 Utility Agreement where the State's Contractor will be handling all or a portion of the Utility Relocation for the Owner

The primary purpose of a Phase 4 Utility Agreement is to correctly allocate the Liability for the work per relocation plans and estimate the amount of construction funds that the State will need to complete the utility relocation when the State's contractor performs the work. Per Section 13.07.02.00, a Utility Agreement is needed for work completed by the State's Contractor, regardless of the extent of State liability.

The Utility Agreement will be prepared with specific attention to the paragraphs which show the work, part or all, the State's Contractor will perform. The "Funding Type" block (generally on the last page) will use a Phase 4 Expense Authorization under Construction Funds and show the estimated amount. P&M must coordinate with District Construction per 13.07.04.00, processing of Utility Agreements.

If the Liability is 100% State

- The Utility Agreement will be sent to the Owner for signature and then signed by authorized Region/District Representative (13.07.04.00) and retained in the Utility File. The Utility Coordinator will show the estimated amount on the "Funding Type" block and No Routing to Headquarters "Accounts Receivable" is required. The relocation is processed as a bid item in the contract. This agreement is primarily prepared for the purpose of Paragraph I to have the Owner agree to the relocation plans being used, and Paragraph III-3 to specify that the Resident Engineer has the final disposition.

If the Liability is Prorated

- The Department's estimated portion of the liability will be shown on the "Funding Type" block of the Utility Agreement. A fully executed copy of the Utility Agreement will be forwarded to Headquarters "Accounts Receivable" (see 13-EX-29) where an invoice will be prepared and sent to the Owner. Headquarters Accounting will place the Owner's funds in the Construction Contract and the Resident Engineer will handle them in the same manner as other construction funds. The State's portion of liability for the relocation is processed as a bid item in the contract. An actual cost Utility Agreement is preferred when the relocation costs are significant. Headquarters Accounting will reconcile the final cost by creating a refund of excess amounts paid by the Owner or a billing for underestimated amounts.

If the liability is 100% Owner

- A fully executed copy of the Utility Agreement will be forwarded to Headquarters "Accounts Receivable" (see 13-EX-29) where an invoice will be prepared and sent to the Owner for their portion. The remaining procedure is the same as shown in "Prorated" above.

In all circumstances, the Utility Coordinator should prepare an ROI package (13.05.01.00) and verify that the work is listed as a bid item on the utility portion of the Right of Way Certification. A fully executed copy of the Utility Agreement must be sent to the Utility Owner in all circumstances.

On a Minor B Project where the State's Contractor will relocate the Owner's facilities (i.e., adjustment of manhole or value covers to grade), use a Phase 5 Expense Authorization on the Utility Agreement and process as above. Headquarters Accounting and 03.02.02.00 require this.

13.07.04.02 Processing a Phase 4 or Phase 5 Construction Funds and a Phase 9 Capital Right of Way Funds as One Utility Agreement

Section 13.07.02.00 indicates that the Utility Coordinator should process a single agreement to the extent possible for each involvement. Although you can process a single utility agreement for Phase 4 Construction Funds and Phase 9 Capital Right of Way together on one agreement form, there are situations where this may not be practical. Although this issue does not arise frequently, the District Utility Coordinator should evaluate each situation to determine if a single agreement versus two separate agreements for a single involvement is the best choice. In evaluating each situation, the following are some of the factors to be considered:

- The funding for a Phase 4 Construction and a Phase 9 Capital Right of Way Utility Agreement is routed to different Accounting Departments.

- To prevent confusion by third parties, such as Utility Owners, Headquarters Accounting, and Resident Engineers as to Right of Way's internal funding process.

- Whether there is an increased overall efficiency of a single agreement as opposed to two separate agreements.

If the decision is to issue two separate utility agreements, each agreement should have a different Utility File number.

For Minor B Projects

- Use a Phase 5 Expense Authorization and process the same as a Phase 4.

13.07.05.00 Amendments to Utility Agreements

Whenever portions, but not all, of a Utility Agreement must be changed, the change shall be accomplished through an "Amendment to Utility Agreement" following the format shown in Exhibit 13-EX-24.

In most cases, Amended Utility Agreements are processed the same as Utility Agreements. However, Amendments that do not have a change in the dollar amount do not need to go to R/W Accounting.

13.07.05.01 Amendments for Payments in Excess of Original Utility Agreement

Normal State Controller procedures do not allow payments in excess of contractual amounts. The State Controller has granted an exception for Utility Agreements whereby they will process final payment requests for reimbursement of relocation costs not exceeding 125% of the estimated amount as stated in the original Utility Agreement.

The basis for this exception is the State has obligated itself to participate in the actual and necessary cost of State-ordered relocation of the Utility Owner's facilities at an estimated cost to the State. Since the cost amount shown in the Utility Agreement is an estimate and not a fixed contractual amount, the State Controller allows for reasonable adjustments to the estimate.

Amounts in excess of 125% of the original Utility Agreement estimate must be covered by an Amended Utility Agreement before payment is requested. In addition, before an Amended Utility Agreement or a bill exceeding 125% of the estimated amount in the original Utility Agreement can be processed, the Utility Coordinator must receive **and approve** written documentation of the reasons and identification of the basis for the increase. (See Section 13.07.03.04, Clause IV-3.)

Amended Utility Agreements are not required whenever the total billing is less than the original Utility Agreement amount except as described in Section 13.07.05.02.

NOTE: This section does not apply to lump-sum/flat-sum Utility Agreements.

13.07.05.02 Amendments for Change in Scope of Work

Any significant change to the originally planned and agreed-upon work must be covered by an Amended Utility Agreement, a Revised Notice to Owner (RW 13-4R), and a Supplemental FHWA Specific Authorization before work on the proposed changes commences. (See Sections 13.06.03.05 and 13.14.05.00.)

Preparing an Amended Utility Agreement and Revised Notice for a change in scope is necessary to:

- Comply with Federal requirements for preapproval of relocation plans.
- Provide for any needed change in the proration of liability.
- Provide for necessary modification to the previously ordered plan of relocation.

13.07.06.00 Special Utility Agreements

Occasionally, a Special Utility Agreement is needed for a variety of reasons, e.g., liability disputes, engineering or construction reimbursement for a project that has been canceled or delayed, or where a Utility Agreement does not exist. The "WHEREAS AND NOW THEREFORE" type of Utility Agreement is usually adaptable and is acceptable. A sample Special Utility Agreement is shown in Exhibit 13-EX-25.

13.07.06.01 Utility Agreement to Cover Advance Engineering Effort

Occasionally, an Owner will expend considerable engineering effort on a planned relocation long before the usual Utility Agreement is executed. Upon request, a Special Utility Agreement may be completed and used as a basis for reimbursing the Owner's costs. The usual ROI is required to support the State's liability to pay. Upon issuance of the Notice for actual physical relocation, the Special Utility Agreement should be amended to cover the remaining items pertinent to relocation work.

13.07.06.02 Utility Agreements With Oil Companies

The relocation of oil company facilities to accommodate construction has historically been done under the terms of a modified Utility Agreement even though oil companies are privately owned, are not a public utility, and are not under the PUC's purview. Relocation is completed in the normal manner: preliminary letter, Report of Investigation, Notice, Utility Agreement and Joint Use Agreement, as required.

Special depreciation clauses are used in utility agreements with oil companies.

- No depreciation is required for a crossing relocation. The Utility Agreement should so state.

- The depreciation clause for longitudinal relocations is:

"State shall be entitled to a depreciation credit, based on the straight-line method and a total estimated service life of 40 years for the replaced facilities, such credit not to exceed 70% of the original installed cost of such facilities, unless owner shall claim no credit is due because the remaining service life of the replaced facility is as great as the anticipated service life of the replacement facility, and in support of such claim supplies:

(a) proof of the remaining service life of the replaced facility, the sufficiency of which to substantiate such claim shall be determined in the sole discretion of State, and

(b) a written certification by owner's controller or chief accounting officer that it is not Owner's normal accounting procedure to capitalize and depreciate portions of its facilities which are relocated, and that no part of the replacement facility will be capitalized and depreciated."

Invoices for Utility Agreements covering longitudinal relocations that do not reflect a credit for depreciation must be accompanied by written certification of the oil company's controller or chief accounting officer and by a statement signed by a State Engineer, that in the opinion of the Engineer:

- The remaining service life of the replaced facility is as great as the anticipated service life of the replacement facility, and

- The evidence submitted by the oil company (which must be described in the statement) fully supports the oil company's claim to that effect.

NOTES:

13.12.00.00 - LOCAL PUBLIC AGENCY PROJECTS

13.12.01.00 General

This section covers oversight requirements for utility involvements on the following three types of projects:

- Local Public Agency (LPA) Funded State Highway Projects.
- Federal Aid Local Streets and Roads Projects.
- Private Developer Funded State Highway Improvement Projects.

This section also covers review of Cooperative Agreements.

13.12.01.01 Preliminary Engineering Allowed for Local Programs

The use of Preliminary Engineering by Local Agencies is allowed prior to and in support of the Environmental Document. The Local Agencies are to follow the procedures outlined in 13.02.02.02 and other sections of this Manual.

13.12.02.00 Locally Funded State Highway Projects

Locally funded State highway projects are those projects on the State highway system that are locally sponsored through use of LPA and/or private funding. They typically are not CTC initiated STIP projects, but are included in the STIP for project identification and approval. These projects do not include federal aided local projects that are included in the Local Streets and Roads Program. The more common types of Special Funded projects are:

- Tax Measure Projects
- "$1" Projects
- Interchange Cost Sharing Projects
- Cooperative State/Local Projects
- Toll Road Projects

13.12.02.01 Oversight of Locally Funded State Highway Projects

The Utility Coordinator provides oversight on locally funded State Highway projects. Oversight includes the activity of monitoring as well as the effort of assisting, guiding, and advising the LPA to ensure that all utility adjustments and encroachments are accomplished in accordance with the Department's policies, procedures, standards, practices, statutes, contracts, and agreements. Within this context, use of State mandated forms shall be required of all LPAs and/or their consultants.

Where protection, relocation, or removal of facilities is required, the work shall be performed and liability determined in accordance with:

- State law, policy, procedure, contracts, and agreements for those facilities located within the project limits providing improvements to the State highway.

- Local agency policy and procedures for those facilities located outside the project limits of the State highway.

This requires the local agency to adhere to all requirements of the State's Master Contracts for work related to the State freeway portion of the locally funded project.

The S&H Code authorizes the State to issue Notices for ordered relocations on the State highway system. This authorization can be specifically delegated to an LPA. If the impacted Owner of facilities refuses to accept an LPA issued Notice, the Utility Coordinator may issue the Notice after appropriate review.

13.12.02.02 Use of Scopes of Work

To ensure the State's policies and practices are followed whenever work is performed by consultants on State highways, work products and services should be performed as described in Exhibit 13-EX-28, Utilities Scope of Work (SOW). The recommended SOW establishes requirements necessary for consultants to complete the required service or product and establishes minimum acceptable standards. To ensure minimum standards are followed, districts shall monitor LPAs in accordance with procedures outlined in the Local Programs Chapter of this manual. As stated therein, district functional units have responsibility to provide input, review, supervision, and contract administration.

13.12.02.03 Use of State Forms

The Department's standard forms shall be used as a consistent approach with all Owners in the utility relocation process. In addition, Owners have become familiar with the forms and understand and accept their usage. It is mandatory, therefore, that all outside entities performing work on State highways use these standard forms.

For local streets and roads projects, the Forms and Exhibits are intended to be guides and may be used by the LPA as desired. Approved local forms are available in Chapter 14 of the Local Assistance Procedures Manual.

13.12.02.04 Project Completion

The LPA shall transfer all project and utility files to the Utility Coordinator upon completion of their work or their consultant's work and not later than overall completion of the construction project. The information in the files should include at a minimum:

- Completed Utility Diary.
- All correspondence between the LPA, Owners, design engineers, consultants, and the State.
- All documents executed between the LPA, Owners, design engineers, consultants, and the State.
- All project design plans and survey data.
- Utility facility As-Builts, where available.

All files are to be in a neat and orderly condition upon the Utility Coordinator's acceptance.

13.12.03.00 Federal Aid Local Streets and Roads Projects

FHWA places overall responsibility on the State for all right of way work performed on federal aid projects. Federal regulations allow the State to use an LPA for R/W work performed. The State must monitor the LPA's activity for compliance with State and federal laws and regulations. In addition, the State is responsible to fully inform LPAs of their responsibilities in connection with federal aid projects. The State must ensure every LPA receives all current regulations and procedural instructions affecting R/W activity and must provide guidance and advice on R/W matters. Each district should have a R/W LPA Coordinator or a Utility Coordinator who is responsible for liaison and consultation with the LPA and for providing the FHWA Specific Authorization on R/W Utility matters on behalf of FHWA. See the Local Programs Chapter of this Manual for procedures on dealing with local streets and roads projects.

13.12.03.01 Review Procedures

Most utility facilities within local streets and roads are located under a franchise agreement that requires all facility adjustments caused by the project to be accomplished at the Owner's expense. As a result, there are limited utility relocation costs to be reimbursed, and FHWA's primary concern lies with ensuring that required utility adjustments are properly planned and coordinated with construction. This requires timely issuance of a Notice that clearly states how the utilities will be adjusted to allow conflict-free construction.

If the Owner possesses a right superior or prior to that of the LPA, the normal rules of liability determination with appropriate agreements and audits shall apply. (See Section 13.04.00.00.)

The Utility Coordinator is responsible to perform a full review of the LPA utility reimbursement in the same manner as the District Utility Reviewer now uses on district federal-aid projects.

13.12.04.00 Private Developer Funded State Highway Improvement Projects

The Utility Coordinator's responsibility for private developer funded State Highway Improvement Projects is to ensure standard clauses are used in the Highway Improvement Agreement and to review and recommend approval of the developer's Encroachment Permit application.

This type of project uses the State's Encroachment Permit for projects under $1 million and the Highway Improvement Agreement on permit projects of $1 million or more that are funded entirely from private sources. These Highway Improvement Agreements are similar to Cooperative Agreements in form, context, and legal commitment. District Encroachment Permits initiates the Agreements with input from R/W. For standard clauses to be used in the Highway Improvement Agreement, see the Local Programs Chapter of this Manual.

Often, these projects require the developer to acquire additional right of way that is subsequently conveyed to the State to become part of the State highway system. For this reason, it is important that the Utility Coordinator ensures that all utility adjustments meet the State's requirements.

Since no governmental funding is involved in these projects, the Federal Uniform Act and the State Eminent Domain Law do not apply to any private-developer-initiated and privately funded project. In accordance with statutory and judicial law, the developer shall pay for all utility adjustments required to accommodate a private-developer-sponsored project.

13.12.05.00 Cooperative Agreement Reviews

Project Development, Traffic, etc., may enter into Cooperative Agreements with LPAs for a variety of projects, and these Cooperative Agreements must circulate through R/W Utilities for review and comment. Cooperative projects often involve cost sharing that benefits both parties. The Utility Coordinator must review each Cooperative Agreement for disposition of utility relocations. Some critical items to be covered are:

- The terms of the Cooperative Agreement shall establish the LPA's responsibility for the cost of protection, relocation, or removal of utility facilities located within the State highway right of way. Only those facilities that meet State's encroachment policy shall be allowed to remain.

- The LPA responsible for project design shall assume responsibility for identification and location of all utility facilities within the area of project construction and shall assume responsibility for payment of identification and location costs pursuant to applicable Positive Location Agreements with Utility Owners. All utility facilities not relocated or removed in advance of construction shall be identified on the project plans and specifications.

- All underground high and low risk utility facilities shall be handled in accordance with the State's "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way." (For a copy of this policy, refer to Appendix LL of the Project Development Procedures Manual.)

- HQ Legal has determined that a specific delegation must be made to the LPA in order to authorize them to execute the Notice to Owner. In the absence of the delegation, the Utility Coordinator must execute it. The benefit to the district of retaining execution authority is that this facilitates the oversight process.

For standard clauses to be used for Cooperative Agreements, see the Local Programs Chapter of this Manual.

13.12.05.01 Work Under Cooperative Agreement

When reviewing the Cooperative Agreement for right of way activities, regardless if the LPA or the State performs the work, all Federal and State laws and regulations, policies, practices, agreements, and procedures shall be followed. If the State performs the work, the LPA shall be advised immediately of any cost changes that may be significantly higher than earlier project estimates or result from amended Utility Agreements.

13.12.05.02 Cooperative Agreement Billings

When utility relocation cost sharing is involved, the Utility Coordinator shall take steps necessary to ensure the LPA is billed for their share of the estimated costs, as stipulated in the Cooperative Agreement. The LPA shall be billed when all known relocations have been determined, but prior to R/W Certification. The State must receive all funds for the LPA's share of the estimated relocation costs prior to award of the State's construction contract.

Procedures for billing LPAs are as follows:

- Determine the estimate of cost for utility relocation work.
- Send a memorandum to Accounting requesting billing of the LPA. (13-EX-30)
- Retain a copy of the memorandum in the R/W Utility File.

13.12.05.03 Cooperative Agreement Final Bills

The Utility Coordinator is responsible to ensure that LPAs are billed for their share of utility relocation costs pursuant to the Cooperative Agreement. A final accounting should take place as soon as all relocations are complete and all costs have been determined. The LPA's share shall be calculated from the final billings obtained from the Owners. If the LPA owes more than the amount previously billed, the LPA shall be billed the difference. If the LPA was overbilled, the LPA shall be refunded the difference immediately.

The Utility Coordinator shall send a memorandum to Accounting requesting billing or refund. The memorandum to Accounting must show previous amounts billed and collected.