



## *Local Programs Procedures*

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**LPP 03-03    Manual Update**  
**Subject:        Local Assistance Procedures Manual, Chapter 14**

Reference: *Local Assistance Procedures Manual* (LAPM), Chapter 14, “Utility Facilities”

Effective Date: December 30, 2003

Approved: **Original Signed By**  
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### **USER-FRIENDLY FEATURES:**

- The procedures incorporated herein are included in the electronic version of the *Local Assistance Procedures Manual* (LAPM), available on the Division of Local Assistance (DLA) website at: <http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm>. You may also purchase a Compact Disc (CD), which acts as a one-stop shop for information and promotes flexible access to helpful information for local project delivery.
- Chapter 14 is hereby reissued in its entirety. The attached pages will replace the entire chapter in the hard copy of the LAPM. Chapter 14 is also available online at: [http://www.dot.ca.gov/hq/LocalPrograms/lam/prog\\_p/p14utfac.pdf](http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_p/p14utfac.pdf)
- Additional user-friendly features were developed to make the manual easier to edit and to access on the DLA website. The added features will allow the user to navigate more quickly through the manual.
- To receive electronic notification when new information is posted on the DLA website, please subscribe to the DLA list server at: <http://www.dot.ca.gov/hq/LocalPrograms/sub.htm>  
Publications

### **WHAT IS AN LPP?**

LPPs are Local Programs Procedures. These documents are used for the rapid deployment of new procedures and policies between updates of the manual and guidelines. They are numbered according to calendar year and the order in which they are released, (i.e., the first LPP issued during the year 2003 is LPP 03-01).

## PURPOSE

The purpose of this LPP is to revise and reissue Chapter 14, “Utility Facilities” of the LAPM. Chapter 14 applies to construction projects *off* the State Highway System which are financed with federal funds. Locally sponsored projects *on* the State Highway System are to be accomplished in accordance with the Caltrans *Right-of-Way Manual* (ROW Manual) and the Caltrans *Encroachment Permits Manual*.

## BACKGROUND

The last revisions to Chapter 14 were published in 1999. The current revision includes new policies and procedures that are now in effect, including revisions to Chapter 13, “Utility Relocations” of the ROW Manual.

## SUMMARY OF CHANGES

LAPM Item	Change
Page 14-3	Section 14.1, Introduction, was revised and clarified the project-specific file.
Page 14-4	Section 14.2, Federal Regulations, was revised to clarify the role of the local agency.
Page 14-5	Section 14.3, Authorization to Proceed, section was clarified.
Page 14-5	Section 14.3, Specific Authorization to Relocate Utilities, was clarified.
Page 14-6	Section 14.3, Approval of Utility Agreement, was clarified.
Page 14-6	Section 14.3, Use of Consultants, emphasizes the pre-award evaluation.
Page 14-6	Section 14.3, Non-Federal Participating Utilities Relocation, emphasizes the relocation plan and describes processing procedures.
Page 14-7	Section 14.4, Special Authorization, clarifies the need for a full explanation of the special circumstances for the request. In addition to the section on Verbal Authorization During Construction, a section was added to <b>include</b> a Written “Preliminary” Authorization.
Page 14-8	Section 14.5, Utility Agreements has been clarified to add more information for the applicant.
Page 14-9	Section 14.6, High and Low Risk Underground Facilities, emphasizes the difference between Caltrans administered projects and local agency administered projects.
Page 14-9	Section 14.7, Audit Requirements, was revised and clarified.

## REFERENCES:

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

- Government Code, Section 53630
- Code of Civil Procedure, Section 1268.350
- Water Code Sections 7034 and 7035

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## CHAPTER 14 UTILITY FACILITIES

### 14.1 INTRODUCTION

These procedures apply to construction projects on the local transportation system financed with federal funds. Some of these procedures are based on Caltrans manuals, which are specifically referenced in such instances. However, all locally sponsored projects on the State Highway System are to be accomplished in accordance with the Caltrans *Right-of-Way Manual* (ROW Manual) and *Encroachment Permits Manual*. These manuals are available online at the following URLs:

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

*Encroachment Permits Manual*:

[http://www.dot.ca.gov/hq/traffops/developserv/permits/encroachment\\_permits\\_manual/](http://www.dot.ca.gov/hq/traffops/developserv/permits/encroachment_permits_manual/)

Hereafter, the terms relocation, adjustment, and removal are used interchangeably.

The term Public Utility Facilities refers to both publicly and privately owned utility facilities, which serve the public. The cost of adjusting (relocating) such facilities is eligible for federal participation:

1. Only when the adjustment is made necessary by the proposed construction, and
2. Only when the local agency is legally obligated to pay for the adjustment.

A determination must be made that the local agency is legally obligated to pay for the adjustment. Such a finding by the local agency's counsel is acceptable. (See Chapter 13, "Utility Relocation," Section 13.04.00 of ROW Manual for guidance.)

The basis of the local agency's obligation and authority to pay for the relocation must be cited in its Utility Agreement with the utility owner and in the "liability" section of the Notice To Owner (See Form RW 13-4 in Chapter 13 of the *Right-of-Way Manual*) ordering the utility relocation. In some instances, State policy and procedure may make the basis for cost liability determination, even in cases where relocation work takes place outside of the State's right-of-way.

On local agency projects that include a portion of the State Highway System, the local agency must ensure that all utility adjustments and encroachments are accomplished in accordance with Caltrans policies, procedures, standards, practices, and statutes. In addition, any existing agreements or contracts between the Department and a utility owner will also obligate the local agency in such circumstances.

Example: A construction project on the local transportation system

- a) which includes improvement work on the State Highway or Freeway Systems, and
- b) includes any existing public utility facility in conflict with the project construction or violates the State's encroachment policy.

The local agency must make all necessary arrangements with the owners of affected facilities for their protection, relocation or removal. This must be done in accordance with Department policy and procedure for those facilities located within the limits of work that support the improvement of the highway or freeway.

In accordance with Exhibit 14-A (Requirements for Federal Participation in Utility Relocations) of this manual, the local agency must have a project-specific file for each utility owner. This file shall include:

- The Utility Agreement
- The utility owner's relocation plan showing the necessary adjustments
- The Report of Investigation (Form RW 13-3 in the Right-of-Way Manual). This is the document that determines the local agency's obligation to pay all or a portion of relocation costs (cost liability)
- An estimate of the local agency's costs

A copy of the Report of Investigation and proposed Utility Agreement must be submitted to the District Local Assistance Engineer (DLAE) for review and comment by the Caltrans District Utility Coordinator. Such review typically takes three (3) weeks.

## 14.2 FEDERAL REGULATIONS

Federal regulations, as detailed in 23 CFR 645, apply to all utility facilities which must accommodate federal-aid projects, regardless of who bears the cost of installation, adjustment, or relocation. Some of these regulations and requirements are summarized as follows:

- Utility facilities may be accommodated on the right-of-way provided such use does not impair the planned highway improvement or interfere with the free and safe flow of traffic thereon.
- Pursuant to 23 CFR 645.113, when a local agency participates in any portion of the cost of a utility relocation pursuant to law or regulation, and requests federal reimbursement, a written Utility Agreement between the local agency and the utility owner shall be executed by the parties before any claim for federal reimbursement is submitted. (See Section 14.5 "Utility Agreements" of the LAPM, including Exhibits 14B "Utility Agreement Provisions for Federal Participation" and 14C "Utility Agreement Clauses"). In order for such a Utility Agreement to meet these requirements, certain elements must be contained in the Utility Agreement document clauses. Failure to include all of these elements may cause loss of eligibility.
- Where utility facilities are to cross or otherwise occupy the right-of-way, the local agency and the utility owner shall agree in writing as to the terms of such use and occupancy, as well as the manner in which such facilities are to be accommodated thereon. (For a discussion of such conditions, see 23 CFR 645.213, "Use and Occupancy Agreements (Permits)").
- In any instance where utility facilities are to remain within the right-of-way, the local agency shall demonstrate, before the contract is advertised that:
  - a) A written Utility Agreement has been reached with each utility company for the rearrangement and/or accommodation of the utility facility.

- a) A written Utility Agreement has been reached with each utility company for the rearrangement and/or accommodation of the utility facility.
- b) A legal “Notice to Owner” to relocate or rearrange its facility must be sent to the utility owner (see Chapter 13, “Utility Relocation”, Section 13.06.00 of the ROW Manual).
- c) The interest acquired by, or vested with, the local agency in that portion of the highway right-of-way to be vacated, used, or occupied by the utility facilities is of a nature and extent that it will not interfere with the construction, operation, and maintenance of the highway project.
- d) The utility facilities to be retained, installed, adjusted or relocated on, over, under, or along the highway within the right-of-way limits will be located and accommodated in a manner that will not impair the construction or maintenance of the planned highway, or interfere with its safe operation.
- e) Suitable arrangements have been made between the utility owner and local agency for accomplishing, scheduling, and completing the ordered utility work; for the disposition of any utility facilities to be removed from or abandoned within the highway right-of-way; and for the proper coordination of such activities with the planned highway construction. Such written arrangements should be made at the earliest feasible date in advance of the planned highway construction.

## 14.3 FEDERAL REIMBURSEMENT

Three key documents associated with federal reimbursement of utility adjustments are:

- FHWA Authorization to Proceed (E-76)
- FHWA Specific Authorization to Relocate Utilities (ROW Manual, Chapter 13, Form 13-15)
- FHWA Approval of Utility Agreement (ROW Manual, Chapter 13, Form 13-15)

Caltrans has been assigned approval authority under FHWA’s Alternate Procedure process (23 CFR 645.119) for “Specific Authorization” and “Approved Utility Agreement” (see these sections below).

**NOTE:** RW Form 13-15 is a dual form, containing **both** the “FHWA Specific Authorization to Relocate Utilities” and “FHWA Approval of Utility Agreement.” Each must be completed in its proper sequence *for each utility involvement*, as applicable. A “utility involvement” means a single utility facility type for each utility owner. Example: a PG&E distribution gas line and two electric lines, one underground and one overhead, would be considered three involvements, even though they belong to the same public utility company.

## AUTHORIZATION TO PROCEED

All facets of the right-of-way process (preliminary environmental studies, engineering, appraisal, acquisition, the relocation assistance program, and utility relocation) for which federal reimbursement will be sought, must be formally approved (authorized) in advance by FHWA (see Chapter 3, “Project Authorization” of the LAPM). Costs for any work performed prior to the approved date of the E-76 are not eligible for federal funds.



The E-76 must request the use of the Alternate Procedure (23 CFR 645.119 (e) (2)), and must include a list of every utility facility anticipated to be adjusted along with the utility company name and best available estimate of the total local agency costs involved.

Under the Intermodal Surface Transportation Efficiency Act (ISTEA), Authorization To Proceed for utility relocation work has been delegated to Caltrans on projects exempt from oversight by FHWA (see Figure 2-1 “FHWA Oversight,” Chapter 2 of the LAPM). The E-76 must be submitted to the DLAE, who will forward it to the Caltrans District Utility Coordinator for review and comment. The E-76 will then be processed by the DLAE. On nonexempt projects, the E-76 must be obtained from FHWA.

## SPECIFIC AUTHORIZATION TO RELOCATE UTILITIES

Where federal reimbursement will be sought, in addition to the E-76 above, every utility adjustment must also receive Specific Authorization To Relocate Utilities (RW Manual Chapters 13-15), prior to beginning work (other than preliminary engineering). The items shown in Exhibit 14-A “Submittal Requirements for Federal Participation in Utility Relocations” must be submitted, a minimum of three weeks in advance, to the DLAE with a request for Specific Authorization To Relocate Utilities as delegated by the FHWA. The DLAE will forward the request to the Caltrans District Utility Coordinator for review and approval. Specific Authorization will not be granted without an approved E-76.

Although utility relocations may be performed at an appropriate time during the right-of-way or construction phases of a project, any work not included by the local agency in the utility relocation plans and cost estimate, submitted in advance to Caltrans for Specific Authorization, becomes ineligible for federal participation. Any additions or major changes found to be necessary must be immediately submitted for authorization in advance of work performance in the same fashion as the original request.

Either the utility owner or the construction contractor may perform all or portions of the utility facility relocation for which Specific Authorization is requested:

- WORK BY UTILITY OWNER OR OWNER’S CONTRACTOR

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

- WORK BY LOCAL AGENCY’S HIGHWAY CONTRACTOR

If the adjustments are to be performed during the construction phase by the local agency’s highway contractor, the work should be included in the plans and specifications like any other work. The local agency must add an explanation to this effect to the “Remarks” section of the Specific Authorization Request (Form RW Manual 13-15) and must attach a copy of the approved Specific Authorization to the Right-of-Way Certification submittal. Utility adjustment costs may be included in the highway contract as a bid item, as supplemental work, or as a contract change order and financed from funds in the construction work authorization.

Minor changes (does not include changes in scope of the work) and deletions may be covered by submitting a letter to Caltrans describing the change, including revised maps and estimate, and requesting that the change be included under the original authorization.

## APPROVAL OF UTILITY AGREEMENT

FHWA approval of the fully executed Utility Agreement must be obtained before charges may be invoiced for federal reimbursement. (See Chapter 13 of the ROW Manual). This approval authority has been delegated to Caltrans Division of Right-of-Way by FHWA. The local agency must immediately provide the executed Utility Agreement and approval request(s) (Form ROW Manual 13-15) to the DLAE. These forms will be processed by the Caltrans District Utility Coordinator. Such review and approval typically takes three (3) weeks.

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

## USE OF CONSULTANTS

When a local agency or utility owner employs a consulting engineer to perform engineering services in connection with a specific utility relocation and federal participation is involved, the procedures in Chapter 10, "Consultant Selection" of this manual shall apply. The consultant agreement must satisfy the criteria specified in Section 13.14.11.00 of the Caltrans ROW Manual including a completed pre-award evaluation, if applicable. These steps must be performed by the local agency early in the process to avoid loss of eligibility.

## NON-FEDERAL PARTICIPATING UTILITY RELOCATION

For some projects, local agencies may not be requesting federal participation for the utility relocation work. In those cases, the local agency may use its own utility procedure, however:

- The local agency must provide the proposed utility relocation plan to the DLAE for forwarding to the Caltrans District Utility Coordinator for review so that proper right-of-way certification on utility relocation matters may be given prior to construction. (See Chapter 13, of the ROW Manual, Section 13.08 or Exhibit 13-EX-26, and
- The local agency must provide Caltrans DLAE with the required Project Engineer's Certification mentioned in Section 14.6, "High and Low Risk Underground Facilities" of this chapter.

## 14.4 SPECIAL AUTHORIZATIONS

Special Authorizations to accomplish unforeseen utility relocation work, both written and oral, must be kept to a minimum. They are reserved for those cases where required work could not be identified in time to secure normal authorization or when the contractor's operations will be delayed by typical processing activities. Special Authorizations are not to be used simply because the work necessary to support approval for a relocation has not been done. These authorization requests require immediate communication and coordination with the DLAE, as soon as the local agency becomes aware of a situation. The local agency must provide a full explanation of the special circumstances for the Special Authorization request. A statement will then be added to the Specific Authorization. Both verbal and written special "preliminary" Specific Authorization must be upgraded by the local agency to full Specific Authorization status before the local agency submits an invoice for reimbursement.

## WRITTEN “PRELIMINARY” AUTHORIZATION

If an unanticipated physical relocation must begin before the information required to process a normal Request for Specific Authorization can be obtained, a request for special written “preliminary” Specific Authorization and the necessary supporting documents must be submitted to the DLAE for the Caltrans District Utility Coordinator’s review and approval. Requests for “preliminary” Specific Authorization must be based on substantial reasons and should be held to a minimum. It is incumbent upon the local agency to make a timely request since it may take several days for the Caltrans District Utility Coordinator to respond. No utility work may begin before Specific Authorization is obtained. The submittal shall contain:

- Reason for special “preliminary” Specific Authorization
- Best available cost liability information, including documentation
- Best available cost estimate
- Breakdown of time, material, and equipment costs
- Relocation plan showing the highway right-of-way, access control, existing and proposed utility
- The name of the entity who will perform the work (if the utility owner’s contractor, explain how the contractor was selected)

The approval should contain a statement that the Caltrans District Utility Coordinator has reviewed the relocation plans and is familiar with the circumstances requiring “preliminary” Specific Authorization.

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

## VERBAL AUTHORIZATION DURING CONSTRUCTION

Verbal authorization to proceed may be requested if, during construction, a previously unknown utility conflict is discovered that will delay the construction contractor. Verbal authorization may be obtained from the Caltrans District Utility Coordinator (via the DLAE) by telephone or fax. The request should include a complete explanation of the need for the verbal authorization, along with the information required for written “preliminary” Specific Authorization shown above (with the exception of the relocation plan).

The Caltrans District Utility Coordinator will confirm each verbal authorization via letter to the Local Agency’s Project Engineer. Such confirmation letters shall be issued within one day to one week, depending on the complexity of the relocation and the circumstances, which necessitate it. A copy of each confirmation letter will be sent to the DLAE.

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

## 14.5 UTILITY AGREEMENTS

If federal participation in utility relocations is desired, each Utility Agreement shall include the provisions in Exhibits 14-B, “Utility Agreement Provisions for Federal Participation” and 14-C, “Utility Agreement Clauses”. It is strongly recommended that the standard Utility Agreement clauses found in Exhibit 14-C be used in every circumstance. Use of nonstandard clauses requires Caltrans Headquarters Legal review and recommendation before the Utility Agreement is allowed to be signed.

The local agency must submit each executed Utility Agreement and a request for FHWA approval of the Utility Agreement to the DLAE for processing. Upon approval, Caltrans will provide the local agency with the “FHWA Approval of Utility Agreement” form (RW Manual 13-15) for each Utility Agreement. Any exceptions to the approval will be noted in writing on the “Remarks” section of the form and the local agency will be requested to concur with the exceptions or to prepare a rebuttal. It is anticipated that concurrence will be reached on all such items prior to the invoice stage so that citations or loss of eligibility will be avoided.

State law (Section 705 of the California Streets and Highways Code) requires that an invoice for costs include a credit for the used life of an existing utility facility being replaced in connection with improvement to a freeway. Where these credits are received by the local agency, they must be properly reflected in the submittal or invoice determining the eligible costs for federal-aid participation.

FHWA regulations (23 CFR 645.117 (h)) require salvage credit to any highway or freeway project for the value of facilities removed as part of the relocation for future use or resale.

FHWA regulations (23 CFR 645.117 (h)) also require betterment credit for the cost of any betterment to the facility being replaced or adjusted.

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

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

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

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

Whenever the estimated local agency cost of a utility relocation has been included in the data submitted to Caltrans in support of a right-of-way project agreement between Caltrans and the local agency, and it is later determined that all or a portion of the work will be done by the local agency's highway contractor (paid for by construction funds and not right-of-way funds), steps should be taken to remove the estimated cost of such work from the right-of-way estimate.

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

All engineering decisions affecting the utility relocation, from the beginning of planning to the completion of relocation and billing, should be documented by written notation in the local agency utility file diary, together with the reasons therefore.

## 14.6 HIGH AND LOW RISK UNDERGROUND FACILITIES

All **Caltrans administered** local agency projects shall conform to the State's "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way." See Caltrans *Project Development Procedures Manual* (PDPM), Appendix LL, Utilities. A copy of the policy may be obtained from Caltrans Division of Design. It is also available online at: [http://www.dot.ca.gov/hq/oppd/pdpm/apdx\\_htm/apdx\\_ll/apdx\\_ll.htm](http://www.dot.ca.gov/hq/oppd/pdpm/apdx_htm/apdx_ll/apdx_ll.htm)

The local agency's Project Engineer must complete the Project Engineer's Certification and submit it as an attachment to the project certification, as required by the policy.

For **local agency administered** projects (off the State Highway System) compliance with the local agency's policy is acceptable.

## 14.7 AUDIT REQUIREMENTS

Caltrans pre-award evaluation is required for Utility Agreements, contracts and subcontracts involving federal funds. The District Utility Coordinator makes a written request for a pre-award evaluation to Caltrans Audits on Utility Agreements, which exceed \$250,000 or where a consultant will perform preliminary engineering exceeding \$250,000. These requirements are subject to change. Please contact the Caltrans District Utility Coordinator (via the DLAE) for information on current authorization limits and details. Refer to the LAPM, Chapter 10, "Consultant Selection", Section 10.1, "Pre-Award" for more information.

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

Utility owners, contractors, and subcontractors are required to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred; and to make such materials available for inspection for State and/or federal audit at their respective offices at all reasonable times during the contract period and for three years from the date of final payment.

In order to provide complete information for an audit, the billings must show separate detailed and itemized line items of work performed by each consultant, utility owner, or any other party to the contract. Complete detailed and itemized documentation including copies of subcontracts and invoice support on all cost items must be attached to the progress and/or final billings being forwarded to the State for reimbursement. Utility owners may only “include actual and detailed overhead charges” on their own cost of labor, not on contracted costs.

The Caltrans District Utility Coordinator shall ensure that all necessary requests, information and documentation are submitted to the Caltrans Audits Office. Prior Specific Authorization for the utility relocation must have been obtained from the Caltrans District Utility Coordinator if the local agency is requesting federal participation.

## 14.8 REFERENCES

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

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## EXHIBIT 14-A SUBMITTAL REQUIREMENTS FOR FEDERAL PARTICIPATION IN UTILITY RELOCATIONS

**LOCAL AGENCY SUBMITTAL REQUIREMENTS  
FOR FEDERAL PARTICIPATION IN UTILITY RELOCATIONS**

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

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

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

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

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

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

- Direct labor by class, rate and time
- Labor surcharges
- Overhead and indirect construction charges
- Materials and supplies, by item, quantity and price



- Handling charges
- Transportation
- Equipment by size, type, rate and time
- Preliminary engineering
- Construction engineering
- Salvage and depreciation credits
- Betterment credit
- Other items as required by 23 CFR 645

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

3.  Copies of the proposed Utility Agreement, and Notice to Owner
4.  Documentation supporting owner's claim of prior rights
5.  A letter of transmittal in triplicate requesting Specific Authorization containing:
  - The file data including county, route, notice number, Utility Agreement number (if different), federal project number, and name of the utility owner. If both right-of-way and construction funds are involved, the right-of-way and construction federal project numbers must be shown (the Utility Agreement must also contain both numbers). If all of the work is to be performed by the highway contractor, only the construction federal project number need be shown.
  - Location of the work by geographical limits
  - General description of what is to be done including a list of the major facilities involved
  - A statement describing who will perform the work. In order to comply with federal requirements, the transmittal must contain one or more of the following statements as applicable:

**THE WORK WILL BE PERFORMED BY:**

**The utility owner's forces:** The local agency has determined this is cost-effective and has verified the owner is qualified to perform the work in a satisfactory manner with its own personnel and equipment.

**The utility owner's continuing contractor:** The local agency has determined this is cost-effective and verified the contract between the owner and the contractor is in writing and that similar work is regularly performed for the owner under the contract at reasonable costs.

**Competitive bid contract:** The owner is not adequately staffed or equipped to perform the work with its own forces. The local agency will verify that the utility owner will award the contract for the work to the lowest, qualified, responsible bidder based on an appropriate solicitation.

**The local agency's highway contractor:** The utility work is to be included in the local agency's highway construction contract. The local agency has determined this is the most cost-effective method.

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

- The dates between which it is anticipated the work will be performed
- A determination as to whether the local agency's payment standards or 23 CFR 645 payment standards are more restrictive and the reasons supporting said determination
- An explanation of any significant difference between the existing facility and the proposed rearrangement as shown on the plans and the estimate of cost. For example: If an increase in size or capacity is shown on the plans, and betterment credits are not reflected in the estimate, an explanation and justification must be included.
- If prior rights of the owner are involved and a Joint Use Agreement or Consent to Common Use Agreement is required, include the following statement:  
  
"Joint Use Agreement(s) or Consent to Common Use Agreement(s) will be executed by both parties, and an original copy will be retained by the local agency."
- If the utility will occupy any portion of the new highway right-of-way and does not have prior rights in the old location, include a statement that the relocation plan does not contain encroachments contrary to the policy of the authority having jurisdiction over the right-of-way and that the appropriate standard encroachment permit will be issued.

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

**Distribution:** Local Agency submits to DLAE.

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## EXHIBIT 14-B UTILITY AGREEMENT PROVISIONS FOR FEDERAL PARTICIPATION

**LOCAL AGENCY UTILITY AGREEMENT PROVISIONS  
FOR FEDERAL PARTICIPATION**

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

1. The federal project number identification (right-of-way or construction, whichever is appropriate) must be stamped or typed on each copy of the Utility Agreement.
2. The Utility Agreement must contain the following:
  - The basis for liability
  - A description of the work
  - The location of the work
  - A schedule for accomplishing the work
  - The method of performing the work
  - Provision for an acceptable method of developing relocation costs
  - The Utility Agreement must incorporate 23 CFR 645 by reference using one of the following:

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

Where the owner protests the inclusion of 23 CFR 645:

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

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

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

3. Where the actual cost of the utility relocation exceeds by 25% the estimated cost included in the Utility Agreement, an amendment to the Utility Agreement must be prepared and executed.
4. The Local Agency must promptly submit a conformed copy of the fully executed Utility Agreement, along with the Request for FHWA Approval of Utility Agreement (Form RW 13-15), to the DLAE for processing by the Caltrans District Utility Coordinator. No utility owner or consultant invoices will be processed until the Utility Agreement has been granted written FHWA Approval of Utility Agreement by Caltrans.

The following must be included with the transmittal:

- Two copies of the transmittal memorandum
- One copy of the local agency’s detailed estimate of relocation cost. This is not needed if a satisfactory estimate was included with the Local Agency’s request for Specific Authorization (Form RW 13-15) and there is no significant change.
- One set of “as built” plans, if complete, or a statement that there is no significant change anticipated from the relocation plan previously submitted in the Specific Authorization request package.

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## EXHIBIT 14-C UTILITY AGREEMENT CLAUSES

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

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

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

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

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

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

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

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

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

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

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

**NOTE:** See NOTE under Clause I-2.

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

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

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

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

**NOTE:** See NOTE under Clause I-2.

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

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

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

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

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

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

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

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

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

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

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

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

II-7. Owner's Expense - Trespass:

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

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

"The existing facilities described in Section I, above, will be relocated (at LOCAL AGENCY expense) (at \_\_\_\_\_% LOCAL AGENCY expense and \_\_\_\_\_% OWNER expense) as set forth in Right-Of-Way Contract No. \_\_\_\_\_ dated \_\_\_\_\_."

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

"The existing facilities described in Section I, above, will be relocated (at LOCAL AGENCY expense) (at \_\_\_\_\_% LOCAL AGENCY expense and \_\_\_\_\_% OWNER expense) in accordance with (Section \_\_\_\_\_ of the Master Agreement dated \_\_\_\_\_) (Sections \_\_\_\_\_ of the Master Agreement dated \_\_\_\_\_ in accordance with the following proration: \_\_\_\_\_.)"



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

II-10. Prorated Expense - No Master Agreement:

"The existing facilities described in Section I. above will be relocated at \_\_\_\_\_% LOCAL AGENCY expense and \_\_\_\_\_% OWNER expense in accordance with the following proration: \_\_\_\_\_."

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

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

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

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

**Section III. Performance of Work:**

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

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

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

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

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

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

III-4. Owner to Hire Consulting Engineer:

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

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

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

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

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

"It is understood and agreed that the LOCAL AGENCY will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the LOCAL AGENCY for all accrued depreciation on the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER."

**NOTES:**

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

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

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

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

"It is understood and agreed that the LOCAL AGENCY will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the LOCAL AGENCY for all accrued depreciation on the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER."

**NOTES:**

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

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

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

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

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

"The final invoice 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 invoices. However, the LOCAL AGENCY shall not pay final invoices, which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the OWNER. If the final invoice exceeds the OWNER's estimated costs solely as the result of a revised Notice to Owner as provided for in Section I, a copy of said revised Notice to Owner shall suffice as documentation."

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

"Detailed records from which the invoices are compiled shall be retained by the OWNER for a period of three years from the date of the final invoice, and will be available for audit in accordance with audit principles and standards as set forth in 48 CFR, Chapter 1, Part 31 by LOCAL AGENCY and/or Federal auditors."

**NOTES:**

(1) See NOTE under Clause IV-1.

(2) Audit standards of 48 CFR, Part 31 have been accepted as Caltrans standard for all projects.

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

"OWNER, at the present time, does not have sufficient funds available to proceed with the relocation of OWNER's facilities provided for herein. It is estimated that the cost of the work provided for by this Agreement and, as hereinafter set forth, is the sum of \$ \_\_\_\_\_. LOCAL AGENCY agrees to advance to OWNER the sum of \$ \_\_\_\_\_ to apply to the cost of the work to be undertaken as

provided hereinabove. Said sum of \$\_\_\_\_\_ will be deposited by the LOCAL AGENCY with OWNER within 45 days after execution of the Agreement by the parties hereto and upon receipt of an OWNER's invoice for the advance."

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

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

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

IV-5. Loan of Funds - Owner Liability:

"OWNER recognizes its legal obligation to relocate its facility at its own cost, but, at the present time does not have sufficient funds available to proceed with the relocation of OWNER's facilities provided for herein. It is estimated that the cost of the work provided for by this Agreement and, as hereinafter set forth, is the sum of \$\_\_\_\_\_. LOCAL AGENCY agrees to advance to OWNER the sum of \$\_\_\_\_\_, in accordance with Section 706 of the Streets and Highways code, to apply to the cost of the work to be undertaken as provided hereinabove. Said sum of \$\_\_\_\_\_ will be deposited by the LOCAL AGENCY with OWNER within 45 days after execution of the Agreement by the parties hereto and upon receipt of an OWNER's invoice for the advance."

"It is understood that OWNER shall pay interest upon receipt of said advance. The rate of interest shall be the rate of earnings of the California Surplus Money Investment Fund and computation shall be in accordance with Section 1268.350 of the Code Of Civil Procedure."

IV-6. Agreement for Identified Betterments:

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

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

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

"It is understood that the relocation as herein contemplated includes betterment to OWNER's facilities by reason of increased capacity in the estimated amount of \$\_\_\_\_\_, said amount to be deposited upon demand in the \_\_\_\_\_ Office of the LOCAL AGENCY, prior to the time that the

subject freeway/highway contract bid is opened by the LOCAL AGENCY. The final betterment payment shall be calculated based upon the actual quantities installed as determined by the LOCAL AGENCY's engineer, and the current cost data as determined from the records of the OWNER. In addition, the OWNER shall credit the LOCAL AGENCY at the time of the final invoice for all the accrued depreciation and the salvage value of any material or parts salvaged and retained by the OWNER."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V-7. Master Agreement Specifies Equal Replacement Rights:

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

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

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

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

"It is understood that said highway is a federal-aid highway and accordingly, 23 CFR 645, is hereby incorporated into this Agreement by reference; provided, however, that the provisions of any agreements entered into between the LOCAL AGENCY and the OWNER pursuant to State law for apportioning the obligations and costs to be borne by each, or the use of accounting procedures prescribed by the applicable Federal or State regulatory body and approved by the Federal Highway Administration, 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 Agreements in lieu of otherwise applicable S&H Code sections.

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

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

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



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