

## Exhibit 14-G: 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 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.**

#### 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 route \_\_\_\_\_, 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 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 LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities, and relinquishes to LOCAL AGENCY ownership of the replaced facilities except in the case of liability determined pursuant to Water Code 7034 or 7035."

**NOTE:**

- 1. In the event the Owner wants to retain ownership of their old facilities removed by the construction contractor, a clause stating this fact must be included in the**

**“Special Provisions” portion of the construction contract. Otherwise, the “Standard Specifications” of the contract will award all salvaged material to the contractor. If the Owner wants to retain ownership of the replaced facility, the Clause above must be modified to delete “and relinquishes to LOCAL AGENCY ownership of the replaced facility.”**

**Whenever liability is determined pursuant to Water Code Sections 7034 or 7035, Standard Clauses V-10a or V-10b shall then 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 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 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, except in the case of liability determined pursuant to Water Code 7034 or 7035.”

**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 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 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, except in the case of liability determined pursuant to Water Code 7034 or 7035.”

**NOTE: See NOTE 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 LOCAL AGENCY, 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 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 LOCAL AGENCY, 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.”

**Section II. Liability for Work**

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

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

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

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

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

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

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

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

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

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

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

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

II-7. Owner's Expense - Trespass:

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

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

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

II-9. Local Agency or Prorated Expense – Preexisting Master Contract:

"The existing facilities described in Section I above will be relocated (at LOCAL AGENCY's expense) (at \_\_\_\_\_% LOCAL AGENCY's expense and \_\_\_\_\_% OWNER's expense) in accordance with (Section \_\_\_\_\_ of the Master 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 \_\_\_\_\_% LOCAL AGENCY's expense and \_\_\_\_\_% OWNER's 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. 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 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."**

II-12. LPA Requests Undergrounding - Engineering or Cost Effective Option:

“The LOCAL AGENCY has determined the best engineering and/or most cost-effective solution is to underground the existing utility facilities. Since undergrounding is at LOCAL AGENCY’s request, LOCAL AGENCY will pay 100% of underground relocation cost less the percentage Owner would be responsible for under an aerial relocation in accordance with the liability determination.”

II-13. Local Agency Requests Undergrounding:

“LOCAL AGENCY chooses to have the utility company relocate their facilities underground at the cost of the Local Agency funds only. This relocation work is not federally eligible for reimbursement and does not meet the criteria to be mitigated any other way.”

**NOTE: When a Local Agency chooses to pay for undergrounding not necessary for the project, this clause must be used.**

### **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, 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 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 allow ability of consultant costs shall be determined in accordance with 48 CFR, Chapter 1, Subpart E, 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 Local Agency's Contractor Performs Work:

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

III-6. Travel Expenses Per Diem: (Has been made as part of the mandatory language of the agreement)

"Use of personnel requiring lodging and meal "per diem" expenses will not be allowed without prior written authorization by LOCAL AGENCY's representative. Requests for such authorization 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 California Department of Human Resources travel expense guidelines."

III-7. Prevailing Wages Requirements for Contracted Work:

"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; but, work performed directly by Owner's employees falls within the exception of Labor Code Section 1720(a)(1) and does not constitute a public work under Section 1720(a)(2) and is not subject to prevailing wages. 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 LOCAL AGENCY. Cost principles for determining the reasonableness and allowability of OWNER's costs shall be determined in accordance with 48 CFR, Chapter 1, Subpart E, Part 31; 23 CFR, Chapter 1, Part 645; and 18 CFR, Chapter 1, Parts 101, 201 and OMB Circular A-87, as applicable."

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

"The LOCAL AGENCY shall pay its share of the actual and necessary cost of the herein described work within 45 days after receipt 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 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 the 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 Local Agency's contractor.
- (3) Accrued depreciation 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 LOCAL AGENCY shall pay its share of the actual and necessary cost of the herein described work within 45 days after receipt 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 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 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 "A credit allowance for age shall not be applied to publicly owned sewer." In these cases the following words "... for the accrued depreciation of the replaced facilities and ..." shall be eliminated from the second paragraph above.
- (2) See Clause IV-1 for work being done by Local Agency's contractor.

IV-3. For All Owners - Progress/Final Bills: (has been made as part of the mandatory language of the agreement)

"Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit detailed itemized 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 LOCAL AGENCY within 180/360 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 LOCAL AGENCY has delivered to OWNER fully executed Director's Deeds,

Consents to Common Use or Joint Use Agreements for OWNER's facilities (if required), LOCAL AGENCY will provide written notification to OWNER of its intent to close its file within 30 days. OWNER hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned. If the LOCAL AGENCY 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 LOCAL AGENCY shall not pay final bills, which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the OWNER and approval of documentation by LOCAL AGENCY. 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 any event if the final bill exceeds 125% of the estimated cost of this Agreement, an amended Agreement shall be executed by the parties to this Agreement prior to the payment of the OWNERS final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section I of this Agreement shall have the prior concurrence of LOCAL AGENCY."

"Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final payment and will be available for audit in accordance with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Subpart E, Part 31 by LOCAL AGENCY and/or Federal Auditors. In performing work under this Agreement, OWNER agrees to comply with the Uniform System of Accounts for Public Utilities found at 18 CFR, Parts 101, 201, et al., to the extent they are applicable to OWNER doing work on the project that is the subject of this agreement, the contract cost principles and procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and 2 CFR, Part 200, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse AGENCY upon receipt of AGENCY billing. If OWNER is subject to repayment due to failure by Local Public Agency (LPA) to comply with applicable laws, regulations, and ordinances, then LPA will ensure that OWNER is compensated for actual cost in performing work under this agreement."

**NOTES:**

- (1) See NOTE under Clause IV-1.
- (2) Contract Cost Principles and Procedures of 48 CFR, Federal Acquisition Regulations Systems, Chapter 1, Subpart E, Part 31 have been accepted as the standards for all projects.
- (3) See Manual Sections 13.04.07.01 and 13.10.02.03 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-4. Advance of Funds - Local Agency Liability:**

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

"It is further agreed that upon receipt of the monies agreed upon to be advanced by LOCAL AGENCY herein, OWNER will deposit said monies in a separate interest-bearing account or



trust fund in State or National Banks in California having the legal custody of said monies in accordance with and subject to the applicable provisions of Section 53630, et seq., of the Government Code, and all interest earned by said monies advanced by LOCAL AGENCY and deposited as provided for above shall be credited to LOCAL AGENCY.”

“In the event actual relocation and necessary 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 and necessary cost and the sum of money that was advanced. The remittance check for the balance of advanced funds will be separate from the remittance check for the earned interest. 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, LOCAL AGENCY will reimburse OWNER said excess costs upon receipt of an itemized bill as set forth herein.”

**NOTE: Advance of funds should not exceed 90% of the 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 \$\_\_\_\_\_ LOCAL AGENCY agrees to advance to OWNER the sum of \$\_\_\_\_\_, in accordance with Section 706 of the Streets and Highways Code, to apply to the cost of the work to be undertaken as provided hereinabove. Said sum of \$\_\_\_\_\_ will be deposited by the LOCAL AGENCY with OWNER within 45 days after execution of the Agreement by the parties hereto and upon receipt of an OWNER's bill for the advance. It is understood that OWNER shall pay interest upon receipt of said advance. The rate of interest shall be the rate of earnings of the California Surplus Money Investment Fund and computation shall be in accordance with Section 1268.350 of the Code of Civil Procedure.”

**NOTE: See State Controller's Office website 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 LOCAL AGENCY 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. 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 billing for all the accrued depreciation and the salvage value of any material or parts salvaged and retained by the OWNER."

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

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

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

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

**NOTES:**

- (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 SBC Billing Agreements:

"Upon completion of the potholing and relocation work, and within 90 days after receipt of OWNER's bill, 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."

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

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

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

OWNER shall keep supporting detailed records available for LOCAL AGENCY review for a period of one year following OWNER's submittal of final bill.”

**NOTE:**

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

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

“Upon completion of the Preliminary Engineering, and within 45 days after receipt of OWNER's bill, 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 preliminary engineering design work, has been agreed upon between the LOCAL AGENCY and the OWNER.”

IV-10. Local Agency'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.**

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

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

**Section V. General Conditions**

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

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

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

“All obligations of LPA under the terms of this Agreement are subject to the acceptance of the Agreement by LPA Board of Directors or the Delegated Authority (as applicable), the passage of the annual Budget Act by the State Legislature, and the allocation of those funds by the California Transportation Commission.”

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 is acquired, or held, in 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. OWNER shall reimburse the LOCAL AGENCY 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 is acquired, or held, in its original right of way. In those cases where the OWNER requests acquisition be made in their name, it will be permissible to negotiate or condemn in their name; provided the OWNER has the power to condemn and the Local Agency has OWNER's consent for condemnation on OWNER's behalf. The above paragraph should be revised accordingly.**

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

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

V-7. Master Contract 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-8a. 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-8b. Federal Aid Clause - No Master Contract and NEPA document on project:

“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.”

“In addition, the provisions of 23 CFR 635.410, BA, are also incorporated into this agreement. The BA requirements are further specified in Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21), section 1518; 23 CFR 635.410 requires that all manufacturing processes have occurred in the United States for steel and iron products (including the application of coatings) installed on a project receiving funding from the FHWA.”

V-9a. 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 FHWA, shall govern in lieu of the requirements of said 23 CFR Part 645.”

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

V-9b. Federal Aid Clause - Master Contract and NEPA document on project:

“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 FHWA, shall govern in lieu of the requirements of said 23 CFR 645.”

“In addition, the provisions of 23 CFR 635.410, Buy America, are also incorporated into this agreement. The Buy America requirements are further specified in Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21), section 1518; 23 CFR 635.410 requires that all manufacturing processes have occurred in the United States for steel and iron products (including the application of coatings) installed on a project receiving funding from the FHWA.”

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

“In as much as Water Code Sections (7034) 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. In no event shall LOCAL AGENCY be liable for any betterment, change, or alteration in said facility made by or at the request of the OWNER for its benefit.”

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

“In as much as Water Code Section 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 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:**

- (1) **Use of Clause V-10 is dependent upon the delegated approval of the Water Code Checklist (form RW 13-19).**
- (2) **See NOTE under Clause I-2.**

V- 11a. Utility Owner Self Certification Method:

“Owner understands and acknowledges that this project is subject to the requirements of the BA law (23 U.S.C., Section 313) and applicable regulations, including 23 CFR 635.410 and FHWA guidance. OWNER hereby certifies that in the performance of this Agreement, for products where BA requirements apply, it shall use only such products for which it has received a certification from its supplier, or provider of construction services that procures the product certifying BA compliance. This does not include products for which waivers have been granted under 23 CFR 635.410 or other applicable provisions or excluded material cited in the Department's guidelines for the implementation of BA requirements for utility relocations issued on December 3, 2013.”

**NOTE:**

- i. **Utility Owner will source materials that comply with BA requirements.**
- ii. **Utility Owner will certify compliance via a contract provision in the Utility Agreement above.**
- iii. **Utility Owner will not be required to provide copies of supplier certifications or other utility owner-signed certifications as part of this Agreement or with the final invoice.**

V-11b. Vendor/Manufacturer Certification Method:

“OWNER understands and acknowledges that this project is subject to the requirements of the Buy America law (23 U.S.C., Section 313) and applicable regulations, including 23 CFR 635.410 and FHWA guidance, and will demonstrate Buy America compliance by collecting written certification(s) from the vendor(s) or by collecting written certification(s) from the manufacturer(s) mill test report (MTR). Certification(s) should state, “All manufacturing processes for these steel and iron materials, including the application of coatings have occurred in the United States. All manufacturing processes means melting of the steel through final manufacturing of steel components.”

“All documents obtained to demonstrate Buy America compliance will be held by the OWNER for a period of three (3) years from the date of final payment to the OWNER and will be made available to STATE or FHWA upon request.”

“One set of copies of all documents obtained to demonstrate Buy America compliance will be attached to, and submitted with, the final invoice.”

“This does not include products for which waivers have been granted under 23 CFR 635.410 or other applicable provisions or excluded material cited in the Department’s guidelines for the implementation of Buy America requirements for utility relocations issued on December 3, 2013.”

**NOTE:**

- i. Supplier Certification will be maintained in project files and made available to CT/FHWA upon request.**

V-12. Utility Agreement not subject to BA:

“LOCAL AGENCY represents and warrants that this Utility Agreement is not subject to 23 CFR 635.410, the BA provisions.”

V-13. De Minimis:

“It is understood that said right of way is a Federal aid highway and, accordingly, 23 CFR 645 and 23 U.S.C.313, as applicable, is hereby incorporated into this Agreement by reference. However, OWNER represents and warrants that the non-domestic iron and steel materials used on this relocation do not exceed one-tenth of one percent (<0.1%) of this Utility Agreement amount, or \$2,500, whichever is greater.”

**NOTE:**

- i. The De Minimis equation is calculated according to the following formula:**

**Combined Cost of Only those Materials that are Subject to Buy America and are Non-Compliant (limited to the individual UA)**

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**Total Utility Relocation Cost (cited in the individual UA)**

- ii. Applies only to non-domestic iron and steel materials used in this relocation.**

V-14a. Acknowledgments:

“If, in connection with OWNER’s performance of the Work hereunder, LOCAL AGENCY provides to OWNER any materials that are subject to the Buy America Rule, LOCAL AGENCY acknowledges and agrees that LOCAL AGENCY shall be solely responsible for satisfying any and all requirements relative to the Buy America Rule concerning the materials thus provided (including, but not limited to, ensuring and certifying that said materials comply with the requirements of the Buy America Rule).”

V-14b. Acknowledgments:

“LOCAL AGENCY further acknowledges that OWNER, in complying with the Buy America Rule, is expressly relying upon the instructions and guidance (collectively, “Guidance”) issued by LOCAL AGENCY and its representatives concerning the Buy America Rule requirements for utility relocations within the State of California. Notwithstanding any provision herein to the contrary, OWNER shall not be deemed in breach of this Agreement for any violations of the Buy America Rule if OWNER’s actions are in compliance with the Guidance.”