



Local Programs Procedures

LPP 99-02 Utility Relocation Procedures

Reference: *Local Assistance Procedures Manual*, Chapters 3, 13, and 14

Effective Date: May 1, 1999

Approved: _____
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This LPP provides clarity as to the utility relocation requirements where there is Federal-aid participation.

EXISTING PROCEDURES

The *Local Assistance Procedures Manual* contains instructions on how local agency utility relocation costs are authorized for Federal-aid reimbursement. These instructions are explained in Chapter 14, "Utility Facilities."

Detailed instructions on how to implement the "Alternate Procedure" was lacking in Chapter 3, "Project Authorization," and in Chapter 13, "Right of Way Procedures." Also, the utility agreement provisions in Exhibit 14-B differs from the provisions used for Caltrans' projects as explained in the Caltrans' *Right of Way Manual*.

NEW PROCEDURES

To better explain these procedures, more information is provided in Chapters 3, 13, and 14 of the *Local Assistance Procedures Manual*. Also, there are two new exhibits: 1) Exhibit 3-L is "Request for Authorization to Proceed with Utility Relocation," which will produce a separate authorization to proceed, E-76 (consequently, the utility relocation portion was removed from Exhibit 3-B); and 2) Exhibit 14-C is a new exhibit that contains modified utility agreement provisions from the Caltrans' *Right of Way Manual*.

The following are the revised pages of the *Local Assistance Procedures Manual*.

Before any authorization can be initiated, all projects (except ER) must be in a federally approved FTIP/FSTIP. ER projects must be included in the FTIP/FSTIP only if they involve substantial functional, location or capacity changes.

The following projects must also be included on the eligibility lists noted:

- Grade Crossing Improvement funds - California Public Utilities Commission (CPUC) approved list
- Transportation Enhancement Activity (TEA) funds - California Transportation Commission (CTC) approved list
- Flexible Congestion Relief funds - CTC approved STIP (if over \$300,000)
- Highway Bridge Replacement & Rehabilitation (HBRR) funds - Caltrans' approved list for funding eligibility
- Hazard Elimination Safety (HES) funds - Caltrans' approved list
- Transportation System Management (TSM) - Caltrans' approved list
- Environmental Enhancement and Mitigation (EEM) - CTC approval list

REQUEST FOR AUTHORIZATION

Separate work authorizations and fund obligations are normally made for the preliminary engineering (PE), right of way, utility relocation, and construction phases if Federal funds are to be used in that phase of work. Authorization to proceed and obligation of funds within the phases is sometimes subdivided as well. The authorization and transfer of funds to the Federal Transit Administration (FTA) is also made with a Request for Authorization.

To initiate a Federal project authorization/obligation and add authorization/obligation for additional phases, each local agency must prepare the "Request for Authorization" package that provides the information needed by Caltrans and FHWA to process the request. The package includes the appropriate "Request for Authorization," Exhibits 3-A, B, C or D; the "Request for Authorization - Project Prefix Checklist," Exhibit 3-E; the "Finance Letter," Exhibit F; and the "Request for Authorization - Data Sheets," Exhibit 3-G. Information in this format can be input directly into the FADS computer files by Caltrans. The request package should be submitted directly to the appropriate Caltrans District Local Assistance Engineer (DLAE). If the package is complete, Caltrans will initiate the authorization process. The form will be returned to the local agency if there is missing data that cannot be quickly obtained by FAX, telephone, or other source.

"Authorization to Proceed" must be obtained prior to starting an item of work for which an agency wishes to be federally reimbursed. Emergency Relief work is the exception (for restoration, as part of the emergency relief work, Authorization is required before advertising). In other words, work prior to Authorization is ineligible for reimbursement.

PRELIMINARY ENGINEERING (PE) PHASE

Eligible preliminary engineering (PE) includes all location, design, and related work preparatory to the advancement of a project to physical construction. Preliminary right of way studies related to the environmental process, as described in Chapter 13, are considered part of the eligible preliminary studies and authorized as part of the PE Authorization to Proceed (E-76).

Only eligible work performed after the authorization date for PE may be reimbursed. The preliminary studies portion of PE may be authorized prior to an optional or mandatory field review (see Chapter 7). This will allow reimbursement for consultants or other specialists who may be needed to obtain information required to complete the field review.

The project must have a completed field review form (see Chapter 7) and a federally approved environmental document prior to requesting authorization for the final design and right of way phases of work.

Preliminary engineering must lead to a construction project in a timely manner. If construction is not started in ten years, any funds expended must be returned to the Federal government.

RIGHT OF WAY

Eligible right of way work includes the preparation of right of way plans, making economic studies and other related preliminary work, appraisal for parcel acquisition: review of appraisals; payments for real property acquired; preparation for and trial of condemnation cases; management of properties acquired; furnishing of relocation assistance; and other related labor expenses (see 23 CFR 710.303 for details).

As noted above, some preliminary right of way activities may be performed in advance of approval of the environmental document and are authorized as part of PE. This is not true for the majority of right of way activities, e.g., negotiating with property owners, acquisition and relocation assistance (see Chapter 13, "Right of Way" of this manual). This work is included in the local agency's "Request of Authorization to Proceed with Right of Way."

Only eligible work performed after the authorization date for right of way may be reimbursed. A request for right of way must include the field review form and the FHWA-approved environmental document. If reimbursement for utility relocation will be requested, a separate "Request for Authorization to Proceed with Utility Relocation" for utility relocation under the Alternate Procedure must also be included (see Chapter 14, "Utility Facilities" of this manual).

If Federal-aid reimbursement is sought for any phase of the project, all right of way activities must conform to Federal requirements. Failure to conform will jeopardize the Federal funding.

CONSTRUCTION

Eligible construction costs include construction engineering; the actual cost to construct the highway itself including its appurtenant facilities and any removal, adjustment or demolition of buildings or major obstruction, and utility or railroad work that is a part of the physical construction of the project; and administrative settlement cost-contract claims. Construction engineering includes the supervision and inspection of construction activities; additional staking functions considered necessary for effective control of the construction operations; testing materials incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates. Construction engineering costs shall be itemized on the finance letter to be eligible for reimbursement.

**REQUEST FOR AUTHORIZATION
TO PROCEED WITH RIGHT OF WAY**

Local Agency Letterhead

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

Date: _____
(Federal Number)
(Project Description)

Dear (DLAE Name):

In order to proceed with the right of way work for the above project, we request that you secure Federal authorization and obligate funds for this work. The amounts requested do not exceed the Federal funds provided to this agency in the approved Federal TIP/Federal Statewide TIP(FSTIP).

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

Request for Authorization Package

- Completed Project Prefix Checklist, (Exhibit 3-E) or
- The Project Prefix Checklist was previously submitted and the funding types have not changed.
- Completed Finance Letter (Exhibit 3-F)
- Completed Data Sheets (Exhibit 3-G)

Field Review Form (Exhibit 7-B)

- Completed Field Review form, or
- The Field Review form was previously submitted on _____.

Environmental Document

- Approved Environmental Document
Type of Document _____
Approval Date _____
- The Environmental Document was previously submitted and approved.

I understand that invoice requests for payment will not be processed until a Program Supplement Agreement and Federal-aid Project Agreement (PR-2) have been prepared and executed.

(Check which of the following applies)

- I plan to request reimbursement and invoicing for right of way costs as incurred. As indicated above, I have included a completed Field Review Form. I am also including the "Agreements Checklist" (Exhibit 4-A) request form with this transmittal and request that the agreements be prepared now.
- I do not plan to invoice for right of way costs until this phase of the work is completed. I will transmit the "Agreements Checklist" at a later date.

I will not submit any invoice requests until I receive notification that the Program Supplement Agreement and PR-2 have been executed.

- 24) RR X'ING #S - Enter PUC and Federal Railroad crossing numbers if this is a crossing improvement project. Normally, these are initiated in OLP.
- 25) CMAQ AIR BASIN - For any project using Congestion Mitigation and Air Quality funds (CMAQ) identify the air basin where the project will be implemented. Enter Air basin name & code from locode list in Exhibit 3-I of this manual.
- 26) LOCAL AGENCY/STATE COMMENTS - For State or local agency use. In this space add justification or clarification information and a description of any reports submitted with request. If this is being submitted to update data but there is no funding change, clearly indicate here. This may not be processed until a funding update, depending on the significance of the change. Changes or additions in appropriation codes must be processed.

If using the Utility Alternate Procedure, separately list the name of each utility and its relocation cost estimate; this will be submitted with the Authorization to Proceed with Utility Relocation. This information will then be listed on the E-76.

27) - 29) reserved - no entries at this time

Detail Record: Cost Estimate and related details

Detail record information must be completed to accurately reflect the funding breakdowns for the project. A new record must be prepared for each appropriation used and for each phase change (work class) and each work type change within that appropriation. Construction and construction engineering each require their own detail record. Add as many detail record sheets as needed. Generally, work type groups would be limited to major items of work, e.g. 5% roadway approach work for a project with 95% Bridge work would include all costs in the bridge work type detail record. See Chapter 15, "Advertise and Award Project" (Exhibit 15-M, "Detail Estimate") of this manual for work groupings which require a specific detail breakout. Bridge work is a major type needing its own detail estimate and authorization detail record.

PREFIX - PROJECT NO. -AGREEMENT NO. - Repeat the number or project location to tie to first page as needed.

DETAIL RECORD #: Indicate which detail record and how many, e.g. 1/3.

- 30) APPROPRIATION CODE - Enter the Federal appropriation code. A list of common ISTEA programs and codes is provided. If uncertain, your MPO/RTPA or DLAE may provide this for you.
- 31) LINE NUMBER - All data on this sheet is recorded by the appropriation code then the line number. See Exhibit 3-I of this manual for choices. For each appropriation code, line numbers for the remaining work breakdowns must be unique. Start with the lowest number in a sequence and sequence upward, e.g. 30, 31, 32. When changing to a new appropriation code, start again at the lowest number in a sequence.
- 32) URBAN/RURAL AREA - Code U or R. Note: Urban areas are >5,000 while Urbanized areas previously used in item (13) start at 50,000.
- 33) FEDERAL COUNTY CODE - From the list enter the code (see Exhibit 3-I of this manual).
- 34) CONGRESSIONAL DISTRICT - From the coding list enter the code **only if there are multiple_districts** within a county. Coding between this and the county must correspond.
- 35) APPROPRIATION COUNT - Indicate the number of Federal appropriation codes used to fund the project. On each detail sheet, put the total number.
- 36) NUMBER OF RELOCATION PAYMENTS - Enter number of payments for relocation of families or businesses.

**REQUEST FOR AUTHORIZATION
TO PROCEED WITH UTILITY RELOCATION**

Local Agency Letterhead

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

Date: _____
(Federal Number)
(Project Description)

Dear (DLAE Name):

In order to proceed with the right of way work for the above project, we request that you secure Federal authorization and obligate funds for this work. The amounts requested do not exceed the Federal funds provided to this agency in the approved Federal TIP/Federal Statewide TIP(FSTIP).

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

Request for Authorization Package

- Completed Project Prefix Checklist, (Exhibit 3-E) or
- The Project Prefix Checklist was previously submitted and the funding types have not changed.
- Completed Finance Letter (Exhibit 3-F)
- Completed Data Sheets (Exhibit 3-G)

Field Review Form (Exhibit 7-B)

- Completed Field Review form, or
- The Field Review form was previously submitted on _____.

Environmental Document

- Approved Environmental Document
Type of Document _____
Approval Date _____
- The Environmental Document was previously submitted and approved.

Utility Relocation

- The Alternate Procedure (Section 14.3) for utility relocation will be followed. The utility owners of utilities to be relocated are listed in the attached Data Sheets together with an estimate of the cost of relocation. If the utility relocation work is part of the construction contract, the Specific Authorization and Utility Agreement (if applicable) for each utility being relocated will be attached to the Right of Way Certification, which will be submitted along with the Request for Authorization to Proceed with Construction. If the utility relocation is not part of the construction contract, the Specific Authorization and Utility Agreement (if applicable) will be submitted and approved prior to beginning work (other than PE).

I understand that invoice requests for payment will not be processed until a Program Supplement Agreement and Federal-aid Project Agreement (PR-2) have been prepared and executed.

(Check which of the following applies)

- I plan to request reimbursement and invoicing for utility relocation costs as incurred. As indicated above, I have included a completed Field Review Form. I am also including the "Agreements Checklist" (Exhibit 4-A) request form with this transmittal and request that the agreements be prepared now.
- I do not plan to invoice for utility relocation costs until this phase of the work is completed. I will transmit the "Agreements Checklist" at a later date.

I will not submit any invoice requests until I receive notification that the Program Supplement Agreement and PR-2 have been executed.

CTC ALLOCATION

Check which of the following applies:

- A CTC allocation vote is not required, or
- The required CTC allocation has been scheduled for the _____ meeting, or
- The required CTC allocation was voted at the _____ meeting.

CERTIFICATION

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

I understand that this Agency is responsible for costs in excess of the Federal funds obligated and all costs incurred before it has received FHWA "Authorization to Proceed" with this phase of the project.

Please advise us as soon as the authorization has been received. You may direct any questions to (Name) at (phone number).

Signed _____
Title _____
Agency _____

Attachments

On November 28, 1995, the President signed the legislation defining the NHS. The system includes all Interstate routes, a selection of urban and rural principal arterials, the defense strategic highway network and strategic highway connectors.

In California, about 180 miles of local agency principal arterials were selected to be a part of the NHS. Some procedures in this manual for projects on the NHS are different from those for projects not on the NHS (non-NHS). One of the early local agency determinations should be whether the project is on the NHS.

FHWA ROLE

For all Federal-aid projects FHWA is responsible for the following project activities:

- Obligation of Federal funds
- Approval of the National Environmental Protection Act (NEPA) and other federally required environmental documents except for projects that qualify for the Programmatic Categorical Exclusion
- Approval of E-76s for Right of Way activities and utilities under the Alternate Procedure
- Execution of Project Agreements
- Acceptance of Right of Way Certification for projects on the NHS where the cost exceed \$1 million

The intent of this chapter is to provide local agencies with the basic understanding of Right of Way procedures for locally-sponsored Federal-aid transportation projects. Local agencies which will be actively involved in right of way acquisition and relocation must comply with the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended in 1987 (the Uniform Act). This law can be found in the Caltrans *Right of Way Manual*, the FHWA *Project Development Guide* (see Appendices A and B) and at Section 49 of the Code of Federal Regulations (CFR) Part 24.

Note: The Uniform Act must be followed on all local agency projects even if no Federal funds are used for the acquisition of right of way for the project. Although substantial responsibility for the administration of local agency projects has been delegated to Caltrans (see below, "Caltrans Role"), FHWA has retained the overall responsibility for compliance with the Uniform Act. Towards this end, FHWA periodically performs Process Reviews of local agency projects to ensure that the Uniform Act requirements are being met.

In addition, local agencies must also comply with all requirements of Title VI of the 1964 Civil Rights Act on Federal-aid projects. This is to ensure that all services and/or benefits derived from any right of way activity will be administered without regard to race, color, gender, or national origin (see FHWA *Project Development Guide*, Appendix C-12 and 23 CFR Part 710.401, Subpart D). For additional details on the FHWA/Caltrans relationship, refer to Chapter 2, "Roles and Responsibilities," of this manual.

CALTRANS ROLE

When Federal funding is used in any phase of a local assistance project, the Federal Highway Administration (FHWA) places overall responsibility for the acquisition of right of way and the relocation of individuals, businesses, and utilities with Caltrans. Caltrans, in turn, has delegated substantial authority to local agencies. On these Federal-aid projects, all right of way activities must be conducted in accordance with the Caltrans *Right of Way Manual* and this manual unless the local agency has adopted its own procedures which

Caltrans has approved.

When the project requires the relocation of utility facilities, Caltrans is responsible for approval of the “FHWA Specific Authorization to Relocate Utilities” and “FHWA Approval of Utility Agreement,” which are both part of form RW 13-15.

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

CALTRANS DISTRICT ROLES

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

As part of the overall responsibility assigned to Caltrans by FHWA, Caltrans Right of Way is required to monitor local agency right of way appraisal, acquisition, relocation activities, and utilities relocation on all local assistance projects for compliance with applicable laws and regulations.

THE MONITORING PROCESS

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

The reviewer shall bring these violations to the attention of the agency, and it is the agency’s responsibility to ensure correction. The selection of projects to monitor shall be at the discretion of the district, based on staff availability, familiarity with the local agency, the project and the consultants which may be used, as well as the complexity of the right of way issues.

Monitoring will usually use check lists or outlines to guide the review. Both entry and exit conferences will be conducted to advise agency staff of the scope and findings of the monitoring visit. A written report will usually be provided to the local agency, though not necessarily at the time of the exit conference.

MONITORING FINDINGS

Monitoring Reviews may result in findings with different levels of seriousness.

Real property rights that are acquired for a local agency project must be sufficient for all activities necessary for the construction of the project and for the ongoing operation and maintenance of the facility when completed. It is the responsibility of the local agency to determine the property rights that will be necessary for each project and that these rights are sufficient for the project.

Procedures to program projects can be found in Chapter 1, "Introduction and Overview," and Chapter 2, "Financing the Federal-aid Highway Program," in the *Local Assistance Program Guidelines*. Questions concerning project programming should be referred to the DLAE.

REQUEST FOR AUTHORIZATION TO PROCEED

After a project is selected and programmed in an FHWA-approved statewide Transportation Improvement Program (FSTIP), the local agency should then contact the Caltrans DLAE to obtain authorization to receive Federal funds. The authorization must precede any activities for which reimbursement will be requested. When the project requires the relocation of utility facilities, the request must include a listing of each affected utility company together with an estimate of the cost of relocation for each company and a request for approval of the use of the Alternate Procedure. The local agency is responsible for initiating the Request for Authorization (Preliminary Engineering) through Caltrans to FHWA. For additional details, please refer to Chapter 3, "Project Authorization," of this manual.

The project authorization obligates FHWA to reimburse allowable project costs and confirms that Federal funds are available in the amount requested for that project. However, this is subject to the condition that acquisition of right of way may only commence after the necessary requirements have been met, including environmental clearance.

The local agency must prepare a "**Request for Authorization**" package (see Chapter 3, Exhibits 3-A through 3-D of this manual) and certify to the accuracy of all the data on the forms. Separate work authorizations and fund obligations are normally made for preliminary engineering, right of way, and construction if Federal funds are to be used for these phases of the project. The authorization to proceed must be obtained prior to starting an item of work for which the agency will seek reimbursement.

The Request for Authorization is submitted electronically to FHWA through the "Federal-Aid Data System" (FADS). When the DLAE determines that the project has been authorized and obligated, an "Authorization to Proceed" is printed which shows the authorization and obligation dates. This form is then sent to the local agency as verification that they may begin with that phase of the project and subsequently be eligible for reimbursement. If the project cannot be authorized, the local agency is informed and advised what corrective actions are necessary.

AUTHORIZATION TO BEGIN RIGHT OF WAY WORK (E-76)

Each phase (capital/support) or function (appraisals, acquisition, utility relocation, etc.) of right of way claimed for reimbursement must be programmed and authorized by an E-76 prior to beginning that phase or function. An E-76 may program multiple phases.

Before obtaining authorization for appraisal activities, the project should have environmental clearance. However, authorization can be obtained without environmental clearance if the following are completed:

- The draft EIS has been circulated
- The public hearing process is complete
- The project is non-controversial
- A preferred alternative was selected

Only under exceptional circumstances will the agency be allowed to acquire property prior to environmental clearance. For example, the agency may acquire property in advance of the normal schedule if the owner claims hardship or the property must be protected from future development. Appropriate documentation must accompany the request to FHWA for approval of advance acquisition. When making advance acquisitions, ensure that the intent of the Uniform Act and the environmental process are not circumvented.

13.5 PRELIMINARY RIGHT OF WAY ACTIVITIES

REQUEST AUTHORIZATION TO PROCEED (PE)

Separate work authorizations and fund obligations are normally made for preliminary engineering (PE), right of way (including utilities) and construction phases if Federal funds are to be used in each of these phases. For preliminary and construction engineering, only eligible work performed after the authorization date may be reimbursed. Preliminary engineering work may be authorized prior to the Field Review. (For additional details see Chapter 7 of this manual). This will allow reimbursement for consultants or other specialists who may be needed to complete the Field Review. Preliminary engineering must lead to a construction project in a timely manner. If construction is not started within 20 years, any funds expended must be returned to FHWA.

PRELIMINARY STUDIES

At this early stage in the development process, it is crucial to correctly evaluate the project requirements, i.e., the limits, location (including existing utilities), scope, costs, and whether any additional right of way will be required. Each agency should establish a process for accumulating this data which will play an integral part in successfully completing the Field Review, environmental documents and the Plans, Specifications and Estimates (PS&E) for the project.

PROJECT AGREEMENT (PR-2)

After a project receives Federal authorization, the next step is to execute the Federal-aid Project Agreement (PR-2) which evidences the FHWA obligation to reimburse the State on behalf of the local agency for eligible project costs. Federal-aid Project Agreements contain standard clauses which provide for the participation of Federal funds for the project.

FIELD REVIEWS

Formal field reviews, which may include FHWA and Caltrans representatives, are not required on local agency transportation projects **off** of the National Highway System (NHS) (for additional details, see Chapter 2, "Roles and Responsibilities," of this manual). However, field reviews are a suggested practice for all complex projects. A representative from FHWA should be consulted for all projects that are not exempt from FHWA oversight. All requests for FHWA participation should be coordinated through the DLAE.

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

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

F. Klopping

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

G. Goodwill

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

H. Personal Property

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

I. Defendant's Costs in Connection with Condemnation Action

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

J. Utility Relocations

The following conditions must exist for utility relocation costs to be eligible for reimbursement:

- An FNM 76 for "preliminary engineering – utility" must be approved before any preliminary utility design work is commenced.
- An FNM 76 for "utility alternate procedure" together with a listing of each affected utility company and an estimate of the cost of relocation for each company must be approved before any relocation work can commence for any of the affected utilities. See 23 CFR 645.119 (e)(2). AND
- An FHWA Specific Authorization (form RW 13-15) must be approved by Caltrans for each relocation before any relocation construction work can commence for each specific utility company listed on the FNM 76. The Specific Authorization must be supported by a Report of Investigation, Utility Agreement, Notice to Owner and other documentation as outlined in Chapter 13 of the *Right of Way Manual*. See 23 CFR 645.119 (a) & (b) and 23 CFR 645.113 (g).
- The FHWA Approval of Utility Agreement (also form RW 13-15) must be approved by Caltrans before reimbursement is requested from the FHWA. See 23 CFR 645.119 (a) & (b) and 23 CFR 645.117 (i)(1).
- See Chapter 14 of this manual and Chapter 13 of the *Right of Way Manual* for details. Everyone involved with the relocation of utility facilities should be thoroughly familiar with the provisions of 23 CFR 645, Subpart A.

- Immediately after Caltrans approves the utility agreement, authorized expenditures by the utility company can be reimbursed. No audit is necessary and receipts for payments are not required by the FHWA before progress payments are made.
- Final payments can be reimbursed only when costs for the utility work covered by the agreement are supported by evidence of payment by the local agency with fully itemized billings.
- Cost must be identified to each agreement.

K. Demolition and Clearance

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

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

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

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

L. Relocation Assistance Program (RAP)

Federal and State laws require that relocation assistance be provided to any person, business, or farm operation displaced because of the acquisition of real property by a public entity for public use. Basically there are two programs:

- The Relocation Advisory Assistance Program which aids in locating suitable replacement properties.
- The Relocation Payments Program which provides payments for certain costs in relocating.

Local agencies must comply where Federal funds are to be used for the acquisition or construction for the proposed project. RAP is a complex program and will not be covered here. Caltrans *Right of Way Manual* provides detailed instructions on eligibility.

M. Disposition of Excess Lands

For accounting purposes, excess land is defined as that portion of any acquisition of right of way that lies outside the established right of way line and is not needed for the construction or maintenance of the highway facility. The only exceptions are the acquisition of property for replacement housing purposes, and the acquisition of property specifically for the purpose of exchange with another governmental agency or utility company.

The disposition of excess land is accomplished in a number of ways--competitive bid sales, fair market value exchanges, or inclusion into the right of way in a new project. Each method can produce variations in eligibility for reimbursement where a Federal-Aid project is involved.

N. Sales of Excess--Damages

FHWA regulations set forth criteria concerning transactions involving the sale of excess property for more or less than the original cost.

Generally, local public agencies will not request Federal moneys on the acquisition of excess parcels but where Federal participation is involved in excess acquisition, the subsequent sale or disposal of the parcel will require the local agency to return a portion of the proceeds to FHWA.

On Federal-aid right of way projects, damages may be claimed under the following conditions:

- The excess must have been acquired in connection with the project and with Federal participation in right of way costs authorized for the parcel.
- The excess exchange or sale transaction must occur within two years after opening the highway to traffic, or within two years after submitting the final voucher to the FHWA--whichever is earlier.
- The excess exchange or sale transaction must involve the complete disposal of the entire parcel. Interim transactions, such as sale of improvements, sale or exchange of a portion of the parcel, should be noted for ultimate determination of total gain or loss.
- The local agency receives less than the value of the excess when the excess is sold or exchanged. Damages may be claimed for reimbursement under the conditions detailed above.

O. Exchange Transactions

When local agency-owned land is exchanged for other land to be incorporated into the right of way of a Federal-Aid project, Federal funds may participate in the current fair market value of the excess land being exchanged. However, Federal participation will not exceed the fair market value of the land being acquired.

Note: FHWA is likely to be involved in two transactions--the initial acquisition and the subsequent exchange or disposal.

The accounting requirements to record the exchange transaction involve consideration of the following:

- The Phase 9 or right of way expenditure authorization is charged for the market value of the right of way acquired.
- Damages on the excess' exchange may be claimed if the local agency receives less than the exchanged land's fair market value.
- Federal reimbursement for the market value of exchanged, cash, and construction features may not exceed the total market value of the right of way parcel being purchased.

Excess need not have been acquired on a Federal-Aid project to allow reimbursement of market value; but for severance damages (including selling costs), the excess parcel must have been originally purchased on a project with Federal participation.

P. Right of Way Sales Credits

Sales credits are due to FHWA funds when a right of way bought with Federal funds is sold then subsequently declared to be excess because of an alignment change, modification or termination action. The following time limits apply.

If excess right of way results from an alignment change:

- Excess should be disposed before final vouchering the project or no later than two years from the time the highway is opened to traffic--whichever is earlier.
- An extension of time limits can be granted by the FHWA.
- If property is not sold within the approved time limit, the cost of the excess acquisition must be credited to the project.

If excess results because the property is no longer needed for the purposes of the highway project:

- If within ten years of the modification or termination action the resulting excess property is neither sold nor reused on another Federal projects, then the FHWA must receive credit for the market value of the property at the end of ten years. If the parcel is on a terminated project, prior Federal approval is required for disposal (23 CFR 480).
- When crediting Federal funds is required, the cost of the disposition may be offset against the sales price.
- Except for parcels on the Interstate program, the disposal of excess resulting from a project's termination is treated the same as any other disposal. Then the parcel can be used for another highway project without giving a credit to FHWA.

The net proceeds of the sales credit should be shown on the Progress Payment requests as credit to the project's capital costs. This procedure reduces acquisition costs and payment due to the local agency.

Q. Rental Income and Expense and Disposition of Improvements

Vacated or improved land, acquired prior to actual need for highway construction must be available for rent. The FHWA participates in rental income and property management expenses if the property was acquired with Federal funds.

Rental account records must be maintained to record income and direct expenses identifiable to a parcel. Eligible property management costs include costs such as repairs to a rental unit, activities of a rental agent, advertising, etc. Any rental income or expense apportioned to a property's excess portion is ineligible for Federal participation. The Federal share of net rental income should be shown on the Progress Payment Requests as a credit to the project, or a deduction from any payment due to the local agency.

The local agency should separate costs incurred to collect rent on a parcel by parcel basis, then offset the costs against the actual rent collected.

Accounting records must be maintained for the disposition of improvements. Net income from the sale of improvements, except those on excess land, is shown as a credit to the project. Cost of the sale of improvements within the right of way is considered an expense that is a debit item and may be applied to gross sales proceeds. These credits must be given to the acquisition phase and not the rental phase.

13.14 DEFINITIONS

Access rights - The right of ingress and/or egress to and from a property which abuts on an existing street or highway. Access rights cannot be denied or unreasonably be restricted unless other access is available. If it is not, compensation is paid for this restriction of access.

CHAPTER 14 UTILITY FACILITIES

14.1 INTRODUCTION

These procedures apply to construction projects on the local transportation system 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*.

The cost of adjusting (relocating) publicly and privately owned utilities is eligible for Federal participation **only** when the adjustment is made necessary by the proposed construction and 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. The basis of the local agency's authority to pay for the relocation must be cited in its agreement with the utility owner.

The local agency must have a project specific agreement with each utility owner which includes plans showing the adjustments and which contains an estimate of cost. A copy of this agreement must be submitted to the District Local Assistance Engineer (DLAE).

14.2 FEDERAL POLICY

Federal policies, as detailed in 23 CFR 645, apply to all utility facilities which will occupy the rights of way on Federal-aid projects regardless of who bears the cost of installation, adjustment, or relocation. These policy 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.
- 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, and the manner in which such facilities are to be accommodated thereon (For a discussion of the Utility Agreement, see Chapter 13 of the Caltrans *Right of Way Manual*).
- In any instance where utility facilities are to remain within the right of way, the local agency shall demonstrate the following before the contract is advertised:
 - a) A satisfactory agreement has been reached with the utility company for the rearrangement and/or accommodation of the utility facility.
 - b) 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.
 - c) The utilities 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.

- d) Suitable arrangements have been made between the utility owner and local agency for accomplishing, scheduling, and completing the utility work; for the disposition of any 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 arrangements should be made at the earliest feasible date in advance of the planned highway construction.

14.3 FEDERAL REIMBURSEMENT

There are three key documents associated with Federal reimbursement of utility adjustments:

- Authorization to Proceed (E-76)
- Specific Authorization to relocate utilities
- Approval of Utility Agreement

Caltrans has approval authority under the Alternate Procedure process (23 CFR 645.119) for “Specific Authorization” and “Approval of Utility Agreement” (see these sections below).

AUTHORIZATION TO PROCEED

All facets of the right of way process (preliminary environmental studies, engineering, appraisal, acquisition, relocation, **and** utility relocation) for which Federal reimbursement will be sought, must be formally approved (authorized) by the FHWA (see Chapter 3, “Project Authorization” of this manual). The cost for work performed prior to the date of authorization (approval of the E-76) is not eligible for Federal funds.

Under the Intermodal Surface Transportation Efficiency Act (ISTEA), the authorization of utility relocation work has been delegated to Caltrans on projects exempt from oversight by the FHWA (see Figure 2-1). On nonexempt projects, the Authorization to Proceed must be obtained from the FHWA.

Utility relocations may be performed during the right of way or construction phases of work. The E-76 document must include a list of every utility to be adjusted, along with the best available estimate of the total costs involved, and request the use of the Alternate Procedure (23 CFR 645.119 (e)(2)).

SPECIFIC AUTHORIZATION

Every utility adjustment where Federal reimbursement will be sought, also must receive Specific Authorization prior to beginning work (other than preliminary engineering). The items shown in Exhibit 14-A must be submitted to the Caltrans District Utility Coordinator with a request for Specific Authorization on behalf of the FHWA. Specific Authorization will not be granted without an Authorization to Proceed (E-76).

Any work not included in the plans and estimate submitted to Caltrans for Specific Authorization is ineligible for Federal participation. Any additions or major changes found to be necessary must be submitted for authorization in the same fashion as an original request.

Federal regulations require that everything be done in sequence; first, the E-76 listing utility companies and estimates, second, specific authorization, third, commence relocation work. The local agency may not go back after the fact and do the paperwork.

The adjustments to the facility for which approval is requested may be made either by the utility owner or the construction contractor:

- If the adjustments are to be made by the utility owner and Federal participation is requested, the field review form should include the item, with sufficient detail to allow programming the work in the right of way phase for approval by the FHWA under a utility agreement.
- If the adjustments are to be made 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. A special clause will be added to the FHWA Specific Authorization and said Authorization must be attached to the Certification. Utility adjustment costs may be included in the 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 vouchered for Federal reimbursement. This approval authority has been delegated to the Caltrans Right of Way Program by the FHWA.

It is essential that there be field verification by the local agency of all reimbursable utility work which has been accomplished.

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 *Right of Way Manual*.

NON-FEDERAL PARTICIPATING UTILITY RELOCATION

When Federal participation will not be requested for utility relocation, the local agency may use their own utility relocation procedures, however;

- The local agency must provide Caltrans with the required utility certifications mentioned in Section 14.6, "High and Low Risk Underground Facilities" of this chapter and in Chapter 13, "Right of Way," of this manual.
- The certifications should be reviewed and verified in accordance with the State's policy, and

14.5 UTILITY AGREEMENTS

If Federal participation in the utility relocations is desired, the Utility Agreements shall include the provisions in Exhibits 14-B and 14-C.

Caltrans will provide the local agency with written approval for each utility agreement. Any exceptions to approval will be noted in writing and the local agency will be requested to concur with the exceptions or to prepare a rebuttal. It is anticipated that agreement will be reached on all such items prior to the voucher stage so that citations will be avoided.

State law (Section 705 of the Streets and Highway Code) requires that credit to a highway project will be required for the accrued depreciation of a utility facility being replaced. Where these credits are received by the local agency they must be properly reflected in determining the costs eligible for Federal-aid participation.

FHWA regulations (23 CFR 645.117(h)) prohibit reimbursement for the costs of removing utility facilities under a utility transaction unless salvage credits are received for the removed facilities. This includes facilities replaced as a part of a relocation.

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 vouchering for Federal reimbursement in that fashion. If this is done, the following conditions apply:

- The utility owner must have a property right in the existing location, which is compensable in eminent domain.
- Enter into an agreement with the owner providing for the removal of the facility. In support of the voucher 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's 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, the charges may be vouchered for Federal reimbursement when they are reduced by the amount of salvage attributable to the subject facilities, as shown by the utility owner's records and available for audit.

FHWA regulations generally prohibit payment of interest during construction, or interest on funds borrowed by the owner.

Whenever the estimated cost of a utility relocation has been included in the data submitted to Caltrans in support of a right of way project agreement, 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) 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 right of way clearance contract a conformed copy of the executed contract must be forwarded to the State.

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:
 - a) Location
 - b) Type
 - c) Size
 - d) 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 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.

Federal regulations prohibit this type of agreement on amounts in excess of \$100,000.

3. Copies of the proposed utilities 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, utilities agreement number (if different), Federal project number, and name of 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 utilities 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 the 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 that 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: The local agency, with the approval of the district, may develop and use a standard transmittal form based on the “Report of Investigation,” Form 13-3 in the Caltrans *Right of Way Manual*. This form was substantially modified in 1996.

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 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 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 for more utility clauses. Section 13.07.00.00 of the Caltrans *Right of Way Manual* may be used as a guide for the preparation of Utility Agreements.

3. Where the actual cost of the utility relocation exceeds by 25% of the estimated cost included in the utilities agreement, an amendment to the utilities agreement must be prepared and executed.
4. The Caltrans District Utility Coordinator must approve each utilities agreement. If an executed copy of the agreement was not submitted to the State with the request for Specific Authorization, a complete, conformed copy must be forwarded to the State immediately after execution and approval, but not later than the date of the first schedule under said agreement (also applies to amendments).

The following must be included with the transmittal:

- Two copies of the transmittal memorandum
- One copy of a detailed estimate of cost (not needed if a satisfactory estimate was included with the request for authorization and there is no significant change)
- One set of “as built” plans, if complete or a statement that there is no significant change from the plan previously submitted

UTILITY AGREEMENTS 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 most major Utility Owners. The clauses are numbered numerically, in no particular order, for each section of the Utility Agreement. The Utility Coordinator preparing the 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 for the appropriate clauses.

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 requires 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 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 - 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) (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 Section (673) (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. PG&E Master Agreement - Potholing:

"The cost of potholing for purposes of locating OWNER's utility facilities as described in Section I. above shall be at fifty (50) percent LOCAL AGENCY expense and fifty (50) percent OWNER expense in accordance with Section 9 (G) of the Master Contract dated April 16, 1952. Should LOCAL AGENCY subsequently require OWNER to undertake the rearrangement of OWNER's underground facility as a result of it being in conflict with LOCAL AGENCY's project, then the parties hereto agree that the potholing cost shall be borne by LOCAL AGENCY and OWNER in like manner as for the ordered rearrangement."

II-12 Liability in Dispute - Deposit is not a Waiver of Rights

"Ordered work described as _____ is in dispute under Section _____ of the Streets and Highway 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 Bills:

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

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

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

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

"Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final bill 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 bill for the advance."

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

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

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

IV-5. Loan of Funds - Owner Liability:

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

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

IV-6. Agreement for Identified Betterments:

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

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

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

"It is understood that the relocation as herein contemplated includes betterment to OWNER's facilities by reason of increased capacity in the estimated amount of \$_____, said amount to be deposited upon demand in the _____ Office of the LOCAL AGENCY, prior to the time that the subject freeway/highway contract bid is opened by the LOCAL AGENCY. The final betterment payment shall be calculated based upon the actual quantities installed as determined by the LOCAL AGENCY's engineer, and the current cost data as determined from the records of the OWNER. In addition, the OWNER shall credit the LOCAL AGENCY at the time of the final 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 Pac Bell):

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

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

"LOCAL AGENCY and OWNER further agree that for lump sum payments in excess of \$25,000, 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 OWNERS' submittal of final bill".

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

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

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

"LOCAL AGENCY and OWNER further agree that for lump sum payments in excess of \$25,000, 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 bill."

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

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

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

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

Section V. General Conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTE: New rights of way means a right of way described in the same language as found in the OWNER's document by which it acquired, or held, its original right of way. In those cases where the OWNER requests acquisition be made in their name, it will be permissible to negotiate or condemn in their name, 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. JUA or 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 Section (7034) (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.