

UTILITY AGREEMENT

RW 13-05 (REV 12/2016)

DISTRICT 08	COUNTY SBD	ROUTE 215	POST MILE 2.4/3.0	PROJECT ID 0815000034
FEDERAL AID NUMBER		OWNER'S FILE NUMBER 24533		

FEDERAL PARTICIPATION/FEDERALLY ELIGIBLE/NEPA DOCUMENT

On the Project ☐ Yes ☒ No On the Utilities ☐ Yes ☒ No

Owner Payee Data No. TBD or Form STD 204 is attached. ☐

UTILITY AGREEMENT NO. 24533 DATE 04/14/2021

The State of California, acting by and through the Department of Transportation, hereinafter called "STATE," proposes to reconstruct the Washington Street Over-crossing on Interstate 215 in SBD County to increase the bridge vertical clearance.

and

NAME City of Riverside, a California Charter City and Municipal Corporation

ADDRESS 3750 University Ave., 3rd Floor, Riverside, CA 92501

hereinafter called "OWNER," owns and maintains above and underground facilities.

within the limits of STATE's project which requires City of Riverside to relocate a 4" Air Valve, approximately 135 feet.

to accommodate STATE's project.

It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. 24533 dated 10/31/2019, OWNER shall relocate their 4" Air Valve, approximately 135 feet.. All work shall be performed substantially in accordance with OWNER's Plan dated November 5, 2019 consisting of 2 sheets, a copy of which is on file in the District office of the Department of Transportation at 464 W. 4th Street, San Bernardino, CA 92401. Deviations from the OWNER's plan described above initiated by either the STATE or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the STATE and agreed to/acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to written execution by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner.

II. LIABILITY FOR WORK

The existing facilities described in Section I above are within easement dated August 1885 and will be relocated (at 100% STATE expense and 0% OWNER expense). The estimated cost of the relocation is \$29,986.66

III. PERFORMANCE OF 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.

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Use of out-of-state personnel, (or personnel requiring lodging and meal per diem expenses) will not be allowed without prior written authorization by state's representative. Requests for such authorization must be contained in OWNER's estimate of actual and necessary relocation costs. Accounting Form FA 1301 is to be completed and submitted for all non-State personnel travel per diem. OWNER shall include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed. Per diem expenses shall not exceed the per diem expense amounts allowed under the State's Department of Personnel Administration travel expense guidelines.

IV. PAYMENT FOR WORK

The STATE shall pay its share of the actual and necessary cost of the herein described work within 45 days after receipt of OWNER's itemized bill, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual and necessary cost and expense incurred and charged or allocated to said work in accordance with the uniform system of accounts prescribed for OWNER by the California Public Utilities Commission, Federal Energy Regulatory Commission or Federal Communications Commission, whichever is applicable. It is understood and agreed that the STATE will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the STATE for the accrued depreciation of the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER.

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

The OWNER shall submit a final bill to the STATE within 360 days after the completion of the work described in Section I above. If the STATE has not received a final bill within 360 days after notification of completion of Owner's work described in Section I of this Agreement, and STATE has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements, if required for OWNER's facilities, STATE will provide written notification to OWNER of its intent to close its file within 30 days and OWNER hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned. If the STATE processes a final bill for payment more than 360 days after notification of completion of OWNER's work, payment of the late bill may be subject to allocation and/or approval by the California Transportation Commission.

The final billing shall be in the form of an itemized statement of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, the STATE shall not pay final bills which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the OWNER and approval of documentation by STATE. Except, if the final bill exceeds the OWNER's estimated costs solely as the result of a revised Notice to Owner as provided for in Section I, a copy of said revised Notice to Owner shall suffice as documentation. In either case, payment of the amount over the estimated cost of this Agreement may be subject to allocation and/or approval by the California Transportation Commission.

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

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

V. GENERAL CONDITIONS

All costs accrued by OWNER as a result of STATE's request of 3/12/2019 to review, study and/or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement.

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

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

OWNER shall submit a Notice of Completion to the STATE within 30 days of the completion of the work described herein. OWNER understands and acknowledges that this project is subject to the requirements of the Buy America law (23 U.S.C., Section 313) and applicable regulations, including 23 CFR 635.410 and FHWA guidance, and will demonstrate Buy America compliance by collecting written certification(s) from the vendor(s) or by collecting written certification(s) from the manufacturer(s) mill test report (MTR).

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

One set of copies of all documents obtained to demonstrate Buy America compliance will be attached to, and submitted with, the final invoice. This does not include products for which waivers have been granted under 23 CFR 635.410 or other applicable provisions or excluded material cited in the Department's guidelines for the implementation of Buy America requirements for utility relocations issued on December 3, 2013.

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

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

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

STATE:

OWNER:

By _____
 Name Rebecca Guirado Date _____
 Title Deputy District Director Right of Way

By _____
 Name _____ Date _____
 Title _____

APPROVAL RECOMMENDED:

By _____
 Name Vincent Lundblad Date _____
 Title Senior Right of Way Agent Utilities

By Jake O'Neal 4/22/2021
 Name Jake O'Neal Date _____
 Title Right of Way Agent Utilities

THIS AGREEMENT SHALL NOT BE EXECUTED BY THE STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION UNTIL FUNDS ARE CERTIFIED.

Approved as to Form:

By: Susan Wilson

Assistant City Attorney

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CT DOCUMENT	EVENT TYPE	DEPT	UNIT	PROJECT ID	PHASE	REPORTING	OBJ CODE (N)		BFY	AMOUNT	
	C401	2660		815000034		9					
	C401	2660				9					
	C401	2660				9					

PROJECT ID FUNDING VERIFIED:

Sign:

Print:

R/W Planning and Management

Date

REVIEW / REQUEST FUNDING:

Sign:

Print: Jake O'Neal

Utility Coordinator

Date

THE ESTIMATED COST TO THE STATE FOR ITS SHARE OF THE ABOVE-DESCRIBED WORK IS _____

CERTIFICATION OF FUNDS

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure shown here.

R/W Planning and Management

Date

ITEM	CHAP	STAT	FY	AMOUNT

FUND TYPE	PROJECT ID	AMOUNT
Design Funds		\$
Construction Funds		\$
R/W Funds		\$

Distribution: 2 originals to R/W Accounting
1 original to Utility Owner
1 original to Utility File

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**INSTRUCTIONS FOR PREPARING THE
UTILITY AGREEMENT**

THE UTILITY AGREEMENT NO. _____ :

1. The UTILITY AGREEMENT NO. _____ is the same number assigned to the corresponding Notice to Owner, except the State Controller requires that the Utility Agreement number be preceded by the two-digit District number, a dash, the prefix "UT," and another dash, e.g.,

UTILITY AGREEMENT NO. 01-UT-12345

The number assigned must never be duplicated on another Utility Agreement.

2. THE DATE:

The DATE is hand written in by the utility coordinator after the Agreement is executed. This date is the same date as the last signature of the person who has the authority to bind the agreement.

3. THE REFERENCE BLOCK:

- A. The "District" for which the project is being built;
- B. The "County" in which the project is being built;
- C. The "Route" on which the project is being built;
- D. The "Post Mile" will be the post mile limits of the project;
- E. The "Project ID" of the project;
- F. The "Federal Aid Number," taken from the E-76, for the Right of Way Utilities portion of the project.
If there is no Federal Aid, then N/A should be inserted;
- G. The "Owner's File" number should be shown (usually the owner's plan number);
- H. "Federal Participation" - Check "Yes" or "No";
- I. "Owner Payee Data Number" - Add existing number or add form STD. 204 and check the box.

4. THE OPENING PARAGRAPH:

- A. Describes briefly the work to be done and the proposed project's limits;
- B. Identifies the owner. This area requires both the name and the address of owner;
- C. Identifies which of the owner's facilities are affected by the Utility Agreement; and
- D. Indicates what must be done to the owner's facilities to accommodate the State's project.

5. STANDARD CLAUSES:

See Section 13.07.00.00 of the Right of Way Manual.

Several standard clauses are made mandatory in sections III and IV.

6. THE ESTIMATED COST:

The estimated cost to the State for its share of the work (on the back page) is normally taken from the owner's estimate as supplied by them.

Occasionally, the State performs work for the owner, even though the owner is liable for the costs. The estimated cost to the State can be reworded to the estimated cost to the Owner when necessary.

There are basically only three Project IDs that can be charged to on Utility Agreements. They are:

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7. FUND TYPE BLOCK:

A. Design Funds Project ID _____ \$ _____:

The design funds Project ID (Phase 1) is used primarily for design purposes. Phase 1 funds are paid for by Project Development.

B. Construction Funds Project ID _____ \$ _____:

The construction funds Project ID (Phase 4 or 5) is used primarily for work being performed by the State's highway contractor and paid by Construction.

C. R/W Funds Project ID _____ \$ _____:

The Right of Way capital funds Project ID (Phase 9) is used primarily for positive location (potholing), relocation, removal, abandonment, etc., of the owner's facilities for work performed by them or their contractor. Environmental clearance and project report approval shall be obtained prior to encumbering any Phase 9 funds.

8. THE SIGNATURE BLOCK:

The signature block is to be filled out and signed by the appropriate authorized and/or delegated persons. It is the District Utility Coordinator's responsibility to know what duties have been delegated.

9. THE CERTIFICATION OF FUNDS BLOCK:

Planning & Management fills out the certification of funds block, certifying that funds are available for expenditure.

10. NONSTANDARD CLAUSES:

In the preparation of Utility Agreements, it may be necessary to prepare clauses other than the standard clauses listed. Prior approval from the HQ R/W shall be obtained any time a nonstandard clause is used.