

**UTILITY AGREEMENT**

RW 13-05 (REV 12/2016)

UTILITY AGREEMENT NO. PW00669-1

DISTRICT	COUNTY	ROUTE	POST MILE	PROJECT ID
06	Fresno	99	FRE 28.803- 28.977	PW00669 EA 06-0H360
FEDERAL AID NUMBER		OWNER'S FILE NUMBER		
5060(242)		35190181		
FEDERAL PARTICIPATION/FEDERALLY ELIGIBLE/NEPA DOCUMENT				
On the Project <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No      On the Utilities <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
Owner Payee Data No. <u>VC:0000004332</u> or Form STD 204 is attached. <input type="checkbox"/>				
<b>UTILITY AGREEMENT NO.</b> <u>PW00669-1</u>		<b>DATE</b> <u>10/30/2020</u>		

The City of Fresno, in cooperation with the State of California, acting by and through the Department of Transportation, hereinafter called "CITY" and "STATE", respectively, proposes to Construct the Veterans Boulevard Interchange Project

and

NAME Pacific Gas and Electric (PG&amp;E)

ADDRESS 650 "O" Street, Mail Bag No.  
Fresno, CA 93721-2708**hereinafter called "OWNER," owns and maintains**

Aerial electrical distribution facilities and associated appurtenances

**within the limits of STATE/CITY's project which requires**

relocation of aerial facilities as identified by STATE/CITY'S Utility Conflict Plans sheet 1 of 1 dated 10/28/2020

**to accommodate the STATE/CITY's project.****It is hereby mutually agreed that:****I. WORK TO BE DONE**

In accordance with Notice to Owner No. PW00669-1 dated 10/30/2020, OWNER shall relocate their electric facilities and attached appurtenances to clear conflict construction as proposed. All work shall be performed substantially in accordance with OWNER's Plan No. 35190181 dated 09/07/2020 consisting of 2 sheets, a copy of which is on file in the District office of the Department of Transportation at 855 "M" Street, Fresno, CA 93712. Deviations from the OWNER's plan described above initiated by either the STATE/CITY 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/CITY 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 will be relocated at 80.00% STATE/CITY expense and 20.00% OWNER expense in accordance with Sections 5(c) of the State Freeway Master Contract dated 11/01/2004 in accordance with the following proration

3 poles at 100%	$3/5, (3 \text{ of } 5 \text{ pole}) = .600 \times 100 = 60.00\%$
2 poles at 50%	$2/5, (2 \text{ of } 5 \text{ poles}) = (.400 \times 100)/2 = 20.00\%$
Total 5 of 5 poles	$60\% + 20\% = 80\% \text{ total State/City liability}$

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**III. PERFORMANCE OF WORK**

OWNER agrees to cause the herein described work to be performed by the OWNER or the OWNER's continuing contractor to furnish or cause to be furnished all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion.

Work performed by OWNER's contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements.

Work performed directly by Owner's employees falls within the exception of Labor Code Section 1720(a)(1) and does not constitute a public work under Section 1720(a)(2) and is not subject to prevailing wages. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above.

Use of personnel requiring lodging and meal 'per diem' expenses shall not exceed the per diem expense amounts allowed under the California Department of Human Resources travel expense guidelines. Accounting Form FA-1301 is to be completed and submitted for all non-State personnel travel per diem. OWNER shall also include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed.

**IV. PAYMENT FOR WORK**

The STATE/CITY 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/CITY 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/CITY 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/CITY 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/CITY within 360 days after the completion of the work described in Section I above. If the STATE/CITY 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/CITY has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements, if required for OWNER's facilities, STATE/CITY 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/CITY 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/CITY 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/CITY. 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/CITY.

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 48CFR, 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.

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**V. GENERAL CONDITIONS**

All costs accrued by OWNER as a result of STATE/CITY's request of February 14, 2020 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/CITY's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, CITY will notify OWNER in writing and STATE/CITY 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/CITY and/or LPA under the terms of this Agreement are subject to the acceptance of the Agreement by LPA Board of Directors or the Delegated Authority (as applicable), the passage of the annual Budget Act by the State Legislature, and the allocation of those funds by the California Transportation Commission.

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

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

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

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

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

STATE/CITY 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.

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

STATE/CITY:

OWNER:

By \_\_\_\_\_  
Date \_\_\_\_\_  
Name RANDALL MORRISON  
Title ASSISTANT DIRECTOR

By \_\_\_\_\_  
Date \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

APPROVAL RECOMMENDED:

By \_\_\_\_\_  
Date \_\_\_\_\_  
Name AUSTIN BAIN  
Title ENGINEER I

By \_\_\_\_\_  
Date \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

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

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

**PROJECT ID FUNDING VERIFIED:**

Sign: \_\_\_\_\_

Print: \_\_\_\_\_  
 R/W Planning and Management Date

**REVIEW / REQUEST FUNDING**

Sign: \_\_\_\_\_

Print: \_\_\_\_\_  
 Utility Coordinator Date

THE ESTIMATED COST TO THE STATE/CITY FOR ITS SHARE OF THE ABOVE-DESCRIBED WORK IS \$88,752

CERTIFICATION OF FUNDS				
I hereby certify upon my personal knowledge that budget 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	PW00669	\$ \$88,752

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