

UTILITY AGREEMENT

RW 13-5 (REV 9/2014)

DISTRICT 06	COUNTY FRE	ROUTE 99	POST MILE PM 23.5/26.6	EA 2HT101
FEDERAL AID NUMBER N/A		OWNER'S FILE NUMBER CITY OF FRESNO PRELIMINARY ENGINEERING FOR THE SEWER AND WATER FACILITIES		
FEDERAL PARTICIPATION On the Project <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No On the Utilities <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				

Owner Payee Data No. VC0000020194 or Form STD 204 is attached **UTILITY AGREEMENT NO. 06-1398.011 DATE _____**

The State of California acting by and through the Department of Transportation, hereinafter called "STATE" proposes to realign State Route 99 from Ashlan to Clinton Avenue to accommodate the High Speed Train (HST) project between the Union Pacific Railroad (UPRR) and State Route (SR) 99. The scope of the project includes reconstruction of the Clinton Avenue interchange and the Ashlan Avenue overhead structure, closure of three partial interchanges and realignment of local and frontage Roads. The project also includes building the infrastructure for the HST project within these limits; and City of Fresno hereinafter called "OWNER", owns and maintains sewer and water facilities that cross Highway 99 within the limits of STATE'S project which requires relocation and/or modification to accommodate STATE'S project.

It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. 06-1398.011 dated 09/12/2014, OWNER shall develop and provide as-built plans, specifications and oversight to Caltrans Design for the purpose of developing final relocation and construction plans. Any revision to the OWNER's plan described above, after approval by the STATE, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the STATE agreed to/acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No redesign or additional engineering, after approval by the STATE, shall commence prior to written execution by the OWNER of the Revised Notice to Owner and may require an amendment to this Agreement in addition to the revised Notice to Owner.

II. LIABILITY FOR WORK

The existing facilities are lawfully maintained in their present location and qualify for relocation at STATE expense under implied secondary easement.

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.

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 permission must be contained in OWNER's estimate of actual and necessary relocation costs. Account 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.

Engineering services for locating, making of surveys, preparation of plans, specifications, estimates, supervision, inspection are to be furnished by the Utility Owner and approved by the STATE. Cost principles for determining the reasonableness and allowability of OWNER's costs shall be determined in accordance with 48 CFR, Chapter 1, Part 31; 23 CFR, Chapter 1, Part 645; and 18 CFR, Chapter 1, Parts 101, 201, as applicable.

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. The OWNER shall maintain records of the actual costs incurred and charged or allocated to the project in accordance with recognized accounting principles.

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 180 days after the completion of the work described in Section I above. If the STATE 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 STATE has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements for OWNER's facilities (if required), STATE will provide written notification to OWNER of its intent to close its file within 30 days. OWNER hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned. If the STATE processes a final bill for payment more than 180 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. Owner agrees to comply with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and/or 18 CFR, Chapter 1, Parts 101, 201, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse STATE upon receipt of STATE billing.

V. GENERAL CONDITIONS

All costs accrued by OWNER as a result of STATE's request of November 21, 2013 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.

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

STATE represents and warrants that this Utility Agreement is not subject to 23 CFR 635.410, the Buy America provisions.

UTILITY AGREEMENT NO. 06-1398.011

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

STATE: DEPARTMENT OF TRANSPORTATION

OWNER: CITY OF FRESNO

By _____ Date _____
Name KENT HAGEN
Title District Utility Coordinator
Right of Way

By _____ Date _____
Name Scott L. Mozier, PE
Title Public Works Director

APPROVAL RECOMMENDED:

By _____ Date _____
Name ROSA RUBALCABA
Title Utility Coordinator
Right of Way

By _____ Date _____
Name Randall Morrison, PE
Title Special Projects Engineer

THIS AGREEMENT SHALL NOT BE EXECUTED BY THE STATE OF CALIFORNIA – DEPARTMENT OF TRANSPORTATION UNTIL FUNDS ARE CERTIFIED.
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DO NOT WRITE BELOW - FOR ACCOUNTING PURPOSES ONLY

PLANNING AND MANAGEMENT COMPLETES EXCEPT SHADED COLUMNS:

UTILITY COMPLETES:

T CODE	DOCUMENT NUMBER	SUF FIX	DIST	UNIT	CHG DIST	EA	SUB JOB	SPECIAL DESIGNATION	FFY	FA	OBJ CODE	DOLLAR AMOUNT

EA FUNDING VERIFIED:
Sign:>
Print> Autumn Zetz R/W Planning and Management
Date

REVIEW/REQUEST FUNDING:
Sign>
Print> Rosa Rubalcaba Utility Coordinator
Date

THE ESTIMATED COST TO STATE FOR ITS SHARE OF THE ABOVE DESCRIBED WORK IS \$270,100.

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.				
HQ Accounting Officer				Date
ITEM	CHAP	STAT	FY	AMOUNT

FUND TYPE	EA	AMOUNT
Design Funds	0612000287	\$0
Construction Funds		\$0
RW Funds	0612000287	\$270,100

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