STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

MANUAL CHANGE TRANSMITTAL

RW 0001 (REV 10/2007)

XX	R/W MANUAL CHANGE	**RWMC- 240**
	PROCEDURAL HANDBOOK (1984 Edition)	RWPH-___-___-___ TRANSMITTAL#___

TITLE:	APPROVED BY:	DATE ISSUED:
UTILITY RELOCATIONS	BENJAMIN D. MARTIN, Ed.D.	SEP - 9 2014 Page 1 of 2
SUBJECT AREA:	ISSUING UNIT:	
CHAPTER 13 – UTILITY RELOCATIONS	OFFICE OF RAILROADS AND UTILITY RELOCATIONS	

SUMMARY OF CHANGES: Revises and/or updates Sections 13.02.00.00, 13.04.00.00, 13.05.00.00, 13.07.00.00, 13.08.00.00, 13.10.00.00, 13.11.00.00, and 13.14.00.00, as well as Exhibits 13-EX-9, 13-EX-10, 13-EX-12, 13-EX-13, 13-EX-26, and 13-EX-27. Also adds new Section 13.15.00.00 and updates the Section Table of Contents.

PURPOSE

This manual change updates and/or revises specific areas of the Utility Relocations Chapter in the Right of Way Manual.

Where applicable, formatting was updated and general typographical errors were corrected.

PROCEDURES

Sections	
13.02.01.02	Adds phrase regarding Buy America
13.02.04.01	Changes PMCS to PRSM
13.04.03.01	Removes nonworking Web site links
13.04.05.06	Removes "used life" Adds explanation on how salvage and accrued deprecation credit are to be applied
13.05.02.02	Updates Preaward Evaluation requirements
13.07.03.03	Changes Prevailing Wage Requirements for Contracted Work
13.07.03.04	Deletes "5 copies of Owner's itemized bill" Deletes "used life" Minor additions/changes to wording
13.07.03.05	Adds Buy America clauses
13.07.04.00	Deletes Audit procedure
13.08.03.00	Revises Utility Certification requirements
13.10.02.00	Deletes Audit requirements
13.10.02.02	Updates accounting requirements for Owner's Bills
13.10.02.04	Adds sentence to include accounting requirements regarding partial bills
13.10.02.08	Updates Audit procedure
13.10.03.01	Removes nonworking Web site link
13.10.04.00	Adds and deletes audit requirements
13.11.04.00	Adds sign and notarize language
13.14.07.01	Adds new section – Buy America Clauses
13.15.00.00	Adds new section – Buy America

Exhibits	
13-EX-9	Adds a Buy America field and language
13-EX-10	Adds a Buy America field and language
13-EX-12	Adds a Buy America field and language
13-EX-13	Adds a Buy America field
13-EX-26	Adds a "Utility Agreement Date" column on table
13-EX-27	Revises table so "Betterments" are applied correctly

EFFECTIVE DATE

Immediately.

MANUAL IMPACT

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

REVISION SUMMARY

Chapter	Remove Old Pages	Insert New/Revised Pages
	Remove the following in its entirety:	Replace with the following in its entirety:
13 - Sections	Table of Contents (REV 6/2010)	Table of Contents (REV 9/2014)
	13.02.00.00 (REV 3/2009)	13.02.00.00 (REV 9/2014)
	13.04.00.00 (REV 9/2012)	13.04.00.00 (REV 9/2014)
	13.05.00.00 (REV 12/2007)	13.05.00.00 (REV 9/2014)
	13.07.00.00 (REV 6/2010)	13.07.00.00 (REV 9/2014)
	13.08.00.00 (REV 8/2008)	13.08.00.00 (REV 9/2014)
	13.10.00.00 (REV 8/2008)	13.10.00.00 (REV 9/2014)
	13.11.00.00 (REV 1/2009)	13.11.00.00 (REV 9/2014)
	13.14.00.00 (REV 8/2008)	13.14.00.00 (REV 9/2014)
	---	13.15.00.00 (NEW 9/2014)
13 - Exhibits	13-EX-9 (REV 1/2014)	13-EX-9 (REV 9/2014)
	13-EX-10 (REV 1/2014)	13-EX-10 (REV 9/2014)
	13-EX-12 (REV 1/2014)	13-EX-12 (REV 9/2014)
	13-EX-13 (REV 1/2014)	13-EX-13 (REV 9/2014)
	13-EX-26 (REV 1/2014)	13-EX-26 (REV 9/2014)
	13-EX-27 (REV 4/2009)	13-EX-27 (REV 9/2014)

CHAPTER 13

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13.02.00.00 - PLANNING PHASE

13.02.01.00 General

Duties relating to this phase of the project are normally performed prior to Environmental Clearance and Project Report approval. Activities generally consist of:

- Corridor/Route Preservation.
- Route Estimating.
- R/W Data Sheet preparation.
- Draft Project Report review.
- Draft Environmental Document review.

13.02.01.01 Preliminary Engineering in Support of the Environmental Document

Public Resources Code Sections 21102 and 21150 state that environmental clearance must be received prior to any expenditure of capital funds for a project (Phase 9 funds). This does not preclude expenditure of (Phase 9) funds covering Owner performed work critical for inclusion in the environmental document. This work is sometimes referred to as "preliminary engineering" and includes such items as:

- Facility verification effort, including necessary positive location work.
- Owner effort required to determine and identify new utility facility rights of way and resultant environmental impacts.
- Preparation of Plans in Support of the Environmental Document (ED).

FHWA must approve an E-76 prior to authorization of preliminary engineering so that Owner's preliminary engineering costs may be federally reimbursed. The approved E-76 does not provide FHWA Specific Authorization. FHWA Specific Authorization must be obtained separately before the actual relocation work is started. See Section 13.14.00.00 for more discussion on federal-aid procedures.

13.02.01.02 Future Project Coordination

Utility Owners, like the State, require lead time to develop budgets and plan work required for ordered relocations. Additional lead time may be required to order long lead time materials, to schedule work during non-peak demand periods when utility facilities may be removed from service, to comply with PUC General Orders, and to comply with Buy America requirements. Streets and Highways Code (S&H Code) Section 680 requires "the department shall specify in the demand a reasonable time within which the work of relocation shall commence . . ." The district must, therefore, provide timely planning information to ensure that our relocation notices withstand challenge.

It is critical that the District Utility Relocation staff establish early and continuing coordination with all Owners being affected by proposed projects. Many local agencies hold periodic coordination meetings with Owners within their jurisdictions to discuss planned public works projects in general. District Utility Coordinators are encouraged to discuss State projects at these meetings or to conduct their own liaison meetings.

13.02.02.00 Work Before Environmental Approval

California Public Resources Code Sections 21102 and 21150 do not preclude an expenditure of funds for the Owner's preliminary engineering or State's positive location work in support of the environmental document.

If, at any time during the project, an environmental reevaluation is required, no work other than studies, preliminary engineering or positive location work should proceed outside of the "area of potential effect" (APE) evaluated and approved in the original environmental document until the reevaluation is completed.

13.02.02.01 Corridor/Route Preservation

At times and in an area of development, Owners may plan extensions or additions to their utility facilities within State highway right of way under the terms of their franchise agreements. (See Section 13.04.04.08 for additional information on franchises.) Planned or proposed highway construction may affect these new utility facility installations. The District Utility Coordinator, where feasible, may notify the Owner of all planned highway improvement projects within the district to enable the Owner to make an informed decision about placement of utility facilities within the highway right of way.

If an Owner decides to go ahead with new facility construction and the installation is in a local street or road underlying the State's proposed highway project, the additional cost incurred to install their facilities clear of the State's future construction shall be paid by the Owner.

Although there is no requirement for the Owner to install their facilities to clear State's future construction, it will eliminate the possible relocation, at Owner's expense, of these new facilities in the near future, providing less disruption to their services, less cost to their ratepayers and more efficient project delivery for the Department.

If the Owner decides to go ahead with the new facility construction and the installation is in a location where the Owner has a right that is superior to the State's, the additional cost incurred to install their facilities clear of the State's future construction shall be paid by the State. A special Utility Agreement may be entered into with the Owner to cover the extra cost of the installation. (See Section 13.07.00.00 for additional information on Utility Agreement preparation.)

13.02.02.02 Preliminary Engineering Prior to Environmental Approval

In certain circumstances and to ensure R/W's timely project delivery, it may be necessary to begin design activities prior to Environmental Approval. R/W has established this process that allows for Preliminary Engineering Design Work before Environmental Document to proceed in a timely manner. The decision to use this process will be made on a project-by-project basis by the District Utility Coordinator. This process may work well on some projects and not others. In making the decision on whether to use this process, the District Utility Coordinator should consider the following:

- At what point after Project Initiation Document (PID) to initiate this process.
- When to obtain facility mapping and verify existing utilities.
- Determine the route alignment/easement needs for utilities.
- Define the Footprint, that is the "Area of Potential Effect" (APE) for the Environmental Document, as it affects utilities.
- The possibility of wasted work.
- The feasibility of the project actually going forward.
- Federal funding will be lost for any physical relocation work prior to Environmental Document.

The following factors should be considered before initiating Preliminary Engineering prior to the Environmental Document:

- Owner's Preliminary Engineering cannot commence until the preferred alternate route has been selected.
- Evaluate the Environmental Document as follows:
    - If Environmental issues arise, such as an Environmental Sensitive Area (ESA), biological, archeological, or water quality sites, what areas are then available for route alignment and future relocation activities?
    - Obtain a time estimate from the Environmental section as to how long it will take to complete the Environmental Document and mitigate any issues.
- Evaluate schedule milestone dates to determine a reasonable starting time for Engineering to begin.
- Determine when to request facility mapping and start the conflict determination stage.
- Determine when to send conflict mapping to the Utility Owner.
- Positive Location (Potholing) is allowed during Preliminary Engineering.

Process for Implementing Owner's Preliminary Engineering prior to approval of the Environmental Document:

- Prepare the Data Sheet to reflect funding for Utility Owner's Preliminary Engineering so the Project Manager can properly fund at this early phase.
- Prepare the liability package once the final alternative has been selected following all liability determinations shown in 13.04.00.00 of this manual.
- Prepare a Report of Investigation, Notice to Owner, and Utility Agreement for encumbrance of funds. (NOTE: New standard clauses have been developed and approved by Legal for this process - Refer to Section 13.07.00.00.)
- Use Phase 9 Capital funding.

13.02.03.00 Utilities on Donated or Dedicated Future Right of Way

Donated right of way is property for which the owner was entitled to receive just compensation, but for personal reasons waived that right and deeded to a public agency without compensation. If the donated right of way location is satisfactory to the State's needs, the property may be acceptable even though encumbered with utility facilities. This is based on the premise that even if the State had purchased the right of way, the State may have been liable for any necessary adjustment or relocation of the utility facilities occupying private property.

Dedicated right of way is property that the owner is obligated to convey to public ownership as a condition prior to the granting of a permit, license, or zoning variance for a planned property development. The State must not accept dedicated right of way if it is encumbered with existing or planned utility facilities that are in conflict with the State's accommodation policy. Since the property owner is obligated to provide the right of way without compensation, this obligation extends to conveying it free and clear of all conflicting encumbrances that would otherwise have to be removed through payment of public funds. All conflicting utility encumbrances must be cleared by the property owner prior to conveyance to the public agency or prior to acceptance by the State.

13.02.04.00 Utility Estimates

R/W Estimating usually requests the project utility relocation estimate. These estimates are used for the Project Study Report (PSR). The PSR is an engineering report used to document agreement on scope, schedule, and estimated cost of the project so it can be included in a future STIP or other programming document.

Since accurate estimates are crucial to both scheduling and ultimate delivery of any given project, utility estimates must be as accurate as possible. Accuracy of any estimate, however, is subject to the quality of plans received and the lead time given. If the plans or lead time are inadequate, the Utility Coordinator shall inform R/W Estimating and/or P&M of such when submitting the estimate. Significant cost contingencies should be specifically identified in the estimate. For example, a potential conflict with a major facility where the project's impact cannot yet be fully determined.

Estimates should always be based on the most probable "worst case" and "highest cost" assumptions. A frequently overlooked cost is that of relocating a facility currently located within an existing freeway as an exception to the Department's utility accommodation policy. Policy requires all utility facilities located within project limits in violation of current utility accommodation requirements be adjusted to meet current requirements. If the facility is located in the project limits subject to a previous encroachment exception and the Utility Coordinator feels the facility may safely remain, it must be reevaluated and resubmitted to the Division of Design, Encroachment Exceptions Section, for approval. (See Section 13.01.04.00.) Therefore, for estimating purposes, the Utility Coordinator should assume an exception will not be granted and include estimated costs for a relocation.

NOTE: See Section 300, Exceptions to Policy - Encroachment Permit Manual and Chapter 17, Encroachments in Caltrans' Right of Way - Project Development Procedures Manual for exception requirements.

The Utility Coordinator should take the following steps in preparing the utility estimate:

- Field review all proposed project route alternatives.

- Identify each Owner and type of utility and prepare a relocation cost estimate for each. The relocation cost estimate may be based on past experiences with relocation costs, unit costs, broad gauge estimates, consultation with utility owners or other method suitable to the facility to be relocated.

- Prepare a total relocation cost estimate for the project, including updating escalation rates when appropriate. Escalation rates can be measured by identifying industry-wide rates in increases in labor, products, and materials. These increases can be estimated by comparing current labor rates, accessing industry Web sites for information, reviewing current utility owner invoices and consulting with the Utility Owners.

- Identify the Owner's requirement to complete an environmental study for the proposed utility work or to order long lead time materials for the project and estimate additional lead time necessary for completion.

- Consult with the Project Engineer to identify possible modification of right of way lines or early design changes to avoid potential conflicts, when appropriate.

- Provide workload estimates for all utility related WBS codes. The Utility Coordinator can use past experiences, previous support charges for production of utility documents or workload estimating norms created at the district level.

- Prepare data for the R/W Data Sheet(s) for the project discussing the items above and submit to R/W Estimating.

Use of Exhibit 13-EX-6 is recommended for preparing estimates for all route reviews.

13.02.04.01 Right of Way Data Sheet

The R/W Data Sheet is used to provide cost data to be included in the PSR. It is critical that the Utility Coordinator review all proposed projects to ensure any and all possible utility relocation costs are included. This data becomes the basis for R/W project programming in the STIP and SHOPP, which establishes the project's capital and support budgets. Accurate and up-to-date data on project costs and work units are critical.

Workload data from the R/W Data Sheet is entered into PRSM and cost data from the R/W Data Sheet is entered into the COST RW1-10 screens and PRSM. PMCS (Project Management Control System) is the Department's Project Database. PYPSCAN (Person Year, Project Scheduling and Cost ANalysis System) is a computerized project estimating and scheduling system within PMCS. This computerized system shows, among other things, project workload (support), monies needed for project expenditures (capital) and lead times needed for project delivery. PYPSCAN is used as a starting place for the development of the project workplans and as a check of resources that are generated by XPM. XPM is a computerized scheduling tool that uses Project Workplan information to determine the required hours by WBS code to complete a particular project. (See Section 3.03.00.00 for more information about PMCS and XPM calculations.)

The District Utility Coordinator is responsible for ensuring that all utility relocations' capital and support needs are up to date at all times and are input into PRSM (or other resource estimating database) via the R/W Data Sheet. The Estimating Chapter (Chapter 4.00.00.00) requires the R/W Data Sheet be updated whenever there is significant change or at least annually. The Utility Coordinator must be sure the Utility Estimate conforms to this same requirement. If the information is not up to date, the Utility Coordinator shall inform P&M by memorandum or revised by R/W Data Sheet.

For instructions and explanations on filling out the utilities portion of the R/W Data Sheet, see Exhibit 13-EX-6.

On federal-aid projects, the E-76 can be prepared and transmitted to P&M for processing after all known conflicts have been identified. See Section 13.14.00.00 for more discussion on federal-aid procedures.

13.02.04.02 Project Study Report (PSR) Review

The draft PSR incorporates the R/W Data Sheet or includes information from it. The draft is circulated through District R/W for review and concurrence. It is imperative that a thorough review of all aspects of the project-impacted facilities takes place prior to approval of the PSR. The review should ensure that all facilities to remain within the project area either meet the Department's accommodation policy or that estimated relocation costs are included.

If discrepancies are found in the draft PSR, a revised R/W Data Sheet shall be prepared. The revised R/W Data Sheet, along with a thorough explanation of the discrepancies and/or changes, must be sent to P&M for submittal to the preparer of the draft PSR.

The approved PSR should be circulated through District R/W, with a copy included in R/W's project files.

NOTE: Occasionally, if there are no required R/W acquisitions, utilities may be overlooked. The District Utility Coordinator must proactively identify planned projects to ensure that all draft PSRs are reviewed and R/W Data Sheets are prepared for all projects.

13.02.05.00 Environmental Document Review

The District Utility Coordinator must review the draft environmental document to ensure that utility relocation impacts are addressed. These typically occur, for instance, where an underground facility will be relocated across an environmentally sensitive area, such as a wetland, or where new utility rights of way are to be acquired. The Utility Coordinator must ensure the "area of potential effect" identified in the environmental document covers any parcels identified as potential replacement easements for utility relocations.

Potential Hazardous Waste (HW) impacts resulting from the highway project are usually addressed in the environmental document. If HW is a potential problem on the project, the Utility Coordinator must ensure that the requirements of Section 13.01.02.05 are addressed in the document.

It is also critical to ensure the environmental document does not propose utility-related mitigation commitments that may be in conflict with existing laws or current Departmental policies. Conflicting commitments must have Headquarters R/W prior approval. For example, it is incorrect to propose undergrounding for aesthetic purposes or to require underground utility crossings to be placed as part of the highway construction to mitigate future needs since these commitments may constitute "a gift of public funds."

If utility facility relocations are addressed in the document, then the following suggested wording should be used, but not placed in the "Mitigation Section":

> "All public utility facilities impacted by the proposed transportation project will be relocated and/or accommodated in accordance with State law and regulations and the Department's policies concerning utility encroachments within State highway rights of way."

13.02.05.01 Special Environmental Reviews for 50KV Electric Facilities

Major electric facilities involving substations and/or power lines operating in excess of 50KV may require special permits and environmental review per PUC General Order 131-D. Potential relocations of this type require early coordination with PUC regulated electric Utility Owners to determine General Order applicability. If an environmental review is necessary, including the potential utility relocation in the State's environmental document may substantially reduce lead time requirements for the utility relocation. Questions concerning applicability of this Order to a particular relocation must be resolved between the Owner and the PUC.

13.02.05.02 Draft Environmental Document to Owners

The Utility Coordinator must alert all Owners impacted by a proposed highway project when the draft environmental document is circulated for review. This allows Owners to recommend inclusion of utility relocation needs and thus minimize risk for later project delay resulting from unanticipated relocation environmental problems.

13.02.05.03 Hazardous Waste Exceptions

The Department's hazardous waste policy specifies that remediation of project-related contamination should be completed prior to construction activities. In cases where cleanup prior to construction is not feasible and remediation is proposed during project construction, an exception to this policy must be requested. This policy applies to State ordered utility relocation work within highway project limits (see Section 13.01.02.05).

The Project Manager, working in coordination with the District Project Development functional manager and the Utility Coordinator, shall prepare an exception request for the Regional or District Director's approval. The exception request must be reviewed by the Hazardous Waste Management Office, Headquarters Environmental Program, prior to submission for the Regional or District Director's signature.

Exception requests shall, as a minimum, address the following:

1. A summary of the project and how the project will impact the contamination area;

2. The type and extent of hazardous waste (summary of the hazardous waste investigation), including source and responsible party, if known;

3. The estimated cost to the Department for remediation, including an assessment of future liability if the Department assumes responsibility for remediation;

4. Why it is not practical to defer the project or to modify the project to avoid the contaminated property(ies);

5. The type of remediation proposed, including whether the Department has approval from the appropriate regulatory agencies;

6. Why the property owner or other responsible parties have not assumed responsibility for cleanup;

7. The steps that have been or will be taken to recover cleanup costs and an evaluation from the Legal Division regarding the chance of success; and,

8. The draft special provisions for the remediation items of work.

NOTES:

13.04.00.00 - LIABILITY DETERMINATION PHASE

13.04.01.00 General

Liability determination is the process of analyzing the occupancy rights of the owner of utility facilities being impacted by a highway project versus the State's rights. Prior and/or superior rights in the area of the impacted facility form the basis for determining responsibility for payment of relocation costs. The burden of establishing prior and/or superior rights rests with the Owner. If the State has cost liability, the district is responsible for accumulating the data, providing a complete and accurate Report of Investigation, and confirming and approving the liability. In the case of 100% Owner liability, a Report of Investigation is not required if the Utility Coordinator has a written acknowledgment or diary entry to document the Owner's acceptance for 100% liability. Until liability is approved, the district is not to provide any determination to the Owner.

Since an incorrect liability determination may be interpreted by Utility Owners as representing a change in current Department policy, thus adversely impacting statewide relationships, the Region/District will be required to immediately contact the Utility Owner and correct any errors.

13.04.01.01 Determining Superior Rights

The Owner is responsible to prepare, document and submit a claim for their declared right of occupancy. If the Utility Coordinator's investigation confirms the Owner has rights prior and superior to those of the State, and Headquarters R/W or the authorized district person concurs, the Owner is paid for all or a portion of the actual and necessary costs of the required relocation work.

13.04.01.02 Liability Calculation

Liability determination is generally based on occupancy rights. Liability for the relocation cost is the responsibility of the entity that has the subservient right in the area of the existing impacted facility. However, the factors in Table 13.04-1 entitled "Liability Determination Factors" must be taken into consideration. Also, if an Owner has an executed Freeway Master Contract, all liability determinations on freeway projects are governed by the terms in the contract. See Section 13.04.03.00, et seq.

If the entire impacted facility is within an area of a single type of occupancy right, the entry in the subservient position is responsible for 100% of the relocation cost. If the facility area of occupancy consists of more than one type of occupancy right, e.g., part within a utility easement and part under an Encroachment Permit, then a proration between Owner and State of the total cost must be calculated using one of the three methods shown in Table 13.04-2 entitled "Methods of Calculating Proration of Cost."

It is important to remember that only the impacted portion of the existing utility facility that lies within the defined project limits is counted or measured, as applicable, for use in the proration formula. However, the total cost to be prorated includes the cost of relocated facilities both within and outside the right of way. This total cost must not include any betterment or other nonreimbursable items of cost.

Table 13.04-1

LIABILITY DETERMINATION FACTORS (Section 13.04.01.02)	
Factor	**Discussion**
What is the legal basis, if any, under which the utility facility is occupying the property?	Property rights are the primary determinant of the superior right of occupancy and will be based on one of the following: 1. Fee Ownership 2. Easement (recorded or unrecorded) 3. Implied/Secondary Easement 4. Joint Use and/or Consent To Common Use Agreements 5. Prescriptive Right 6. Lease 7. License 8. Franchise 9. Encroachment Permit 10. Trespass Normally, Items 1 through 5 establish prior rights, and the State is probably liable for relocation costs, unless the documents involved contain clauses that reserved to the original grantor the right to order one or more relocations at the grantee's expense. Occupancy under Items 6 through 10 usually requires that relocations be at the Owner's expense on conventional highways. Item 8 is addressed in S&H Code Section 680 for conventional highways. Item 9 is addressed in S&H Code Section 673. Item 7 is generally like a permit and can be canceled by the fee owner of the property; therefore, the State must be the fee owner of the property to exercise any contractual rights that were originally reserved by the grantors. Item 10 is generally treated as a highway encroachment permit.
Is there a Freeway Master Contract between the Owner and State?	The State has entered into Freeway Master Contracts with several Owners. When the terms of a Freeway Master Contract address any specific S&H Code section or right, the terms of the Contract supersede the requirements of the applicable statute.
When was the route adopted by formal action of the CTC as a State Highway?	This date establishes the order of priority for the State and Owners for superior rights.
When was the adopted route declared by formal action of the CTC to be a freeway or expressway?	After the date of formal action, freeway statutes and Freeway Master Contracts apply.

Table 13.04-2

METHODS OF CALCULATING PRORATION OF COST (Section 13.04.01.02)		
Method	**Usage**	**Explanation**
Pole Count	Pole count is the normal method used for aerial facilities.	The calculation is based exclusively on the number of impacted poles located within the project limits where the Owner has the superior right, divided by the total number of impacted poles within the project limits. This calculation produces the State's share of the total relocation cost. Equal weight is normally given to each impacted pole within the project limits regardless of ancillary equipment or attachments such as guys, transformers, and switches. The impacted poles must be otherwise similar, as wood pole relocation costs are greatly different than special designed steel poles or other supporting structures. If impacted poles are of a mixed type, separate costing may be necessary for the dissimilar poles. See "Dollar Weighted" method below.
Facility Length	Measurement of the length of the impacted facilities is normally used for underground facilities, such as gas, sewer, and water, or for cables either directly buried or within conduits and for facilities on the surface, such as ditches or conduits.	The calculation to prorate liability is similar to the pole count method above and is based on the Owner's superior right length of the impacted facility lying within the project limits divided by the total impacted length within the project limits. The measured lengths must be of the same or similar size and type of facility, irrespective of ancillary equipment or features such as valves, manholes, switches, and transformers.
Dollar Weighted	This method is used where mixed facilities are to be prorated.	This approach requires considerably more effort and documentation, as it is necessary to establish and support an installed replacement cost new for the existing facilities. The simple cost of the materials is not sufficient to establish this proration. The calculation is based on the installed replacement cost new of the existing facilities located within the project limits where the Owner has the superior right, divided by the total of the installed replacement cost new for all of the impacted existing facilities within the project limits. This calculation produces the State's share of the total relocation cost.

13.04.01.03 Report of Investigation (ROI) Plan

The ROI plan is crucial to liability determination. Like an appraisal map, it shows who owns what and shows the before and after location of improvements and property rights. Since relocation liability is generally based on property rights, accurate plotting of the State's and Owners' rights of way is essential to an accurate liability determination. See Section 13.05.03.01 for specific ROI plan requirements.

13.04.02.00 Conventional Highway or Freeway

Liability determination methodology for conventional highway projects and freeway projects is basically the same. However, different S&H Code sections apply and some owners have signed Master Contracts that apply only to freeway projects. In addition, the Department has entered into numerous Positive Location Agreements where the cost of the positive locations, whether on a highway or freeway, will be the liability of the State. (See Section 13.03.03.01 for information about Positive Location Agreements.)

13.04.02.01 Conventional Highway Relocations

Liability for the cost of relocating facilities to provide for conventional highway construction is primarily based on occupancy rights. The Owner is generally obligated to remove, relocate, etc., their facilities at their sole expense unless such facilities are in place pursuant to rights prior and superior to those of the State. In addition, Section 13.04.05.02 [the relocation of a facility for a temporary move of the highway (detour)] and Sections 13.04.06.00-13.04.06.02 (a facility to be relocated pursuant to Water Code Section 7034 or 7035) modify and/or supersede basic occupancy rights.

If an existing conventional State highway route has been declared/designated a freeway, the project is considered a conventional highway project unless both the following conditions are met:

- The current project includes acquisition of access rights from adjoining properties.
- The current project right of way acquisition and roadway improvement are part of the ultimate freeway design.

NOTE: Where access rights are being acquired as part of a conventional highway, the project shall not be considered a freeway project unless the route has been designated as part of the freeway and expressway system (S&H Code Section 250, et seq.). If not so designated, S&H Code Sections 703 through 707.5 are not applicable to liability determination.

13.04.02.02 Freeway Relocations

Liability for the cost of relocating facilities to provide for construction of a State freeway or expressway is determined by a combination of occupancy rights, statutes (S&H Code Sections 700 through 707.5), and applicable Master Contracts.

Extension or reconstruction of city streets or county roads done in accordance with a Freeway Agreement that provides for closure of streets or roads for freeway construction is considered part of the freeway project for the purpose of determining liability.

Facilities installed in a road prior to a CTC resolution adopting the road as a State highway shall be considered as originally installed before the road became a State highway for application of S&H Code Sections 700, et seq. All new facilities, including additional equipment and cables installed in existing facilities, placed within the State freeway after the CTC resolution shall be relocated at the Owner's expense.

13.04.02.03 Bicycle Path Construction

S&H Code Section 156, et seq., provides that the Department may enter into an agreement with another agency for construction of bicycle paths or other nonmotorized transportation facilities along State highway rights of way. The Department's contribution, if any, toward the construction cost shall be based upon a finding that the facility will result in increased traffic safety or highway capacity. If construction of a new freeway will cause the severance or destruction of an existing nonmotorized transportation facility, the Department is to provide a reasonable alternative routing for the facility.

The Department's cost liability for relocation of utility facilities impacted by construction of bicycle paths is dependent on a number of factors and is determined in accordance with the rules in Table 13.04-3 entitled "Liability for Bikeways."

Table 13.04-3

LIABILITY FOR BIKEWAYS (Section 13.04.02.03)	
Situation	**Rule**
Freeway construction where there is no increase in highway safety or capacity due to the bikeway construction.	1. Use of State highway funds for utility relocation is not authorized for a bikeway construction project when there is no increase in traffic safety or capacity. 2. If freeway construction severs or destroys an existing improved nonmotorized transportation route, Department shall pay the cost of utility relocation to provide a reasonable alternate route. 3. In designing freeways, Department shall consider local agencies' master plans for nonmotorized transportation, but the cost of construction other than design cost is the responsibility of the local agency or others.
Freeway construction with a supportable determination of increased highway safety or capacity due to the bikeway construction.	1. If the nonmotorized transportation facility is designed and built within the freeway right of way and in connection with the freeway construction project, liability for utility relocation is pursuant to S&H Code Section 700, et seq., or the Freeway Master Contracts where applicable. 2. If construction of a nonmotorized transportation facility is outside the freeway right of way but within a frontage road, either State-owned or relinquished to a local agency, liability is based on common law priority of rights except when a Freeway Master Contract is involved. In the latter situation, the Contract will control.
Conventional State highway construction where there is no increase in highway safety or capacity due to the bikeway construction.	Use of State highway funds for utility relocation is not authorized for a bikeway construction project when there is no increase in traffic safety or capacity.
Conventional State highway construction with a supportable determination of increased highway safety or capacity due to the bikeway construction.	Cost of facility relocation is based on common law priority of rights. If the Utility Owner has prior and superior rights, payment for utility relocations may be paid from State highway funds.

13.04.03.00 Master Contracts

Following enactment of the Collier-Burns Act in 1947 (which includes most of S&H Code Sections 700-711), the accumulation of disputed claims was of such magnitude as to threaten delay of the newly enacted freeway program. To meet the problem, the Legislature in 1951 enacted S&H Code Section 707.5, which authorizes the Department to enter into contracts with Utility Owners that supersede the provisions of the S&H Code identified in such contracts and govern exclusively the apportionment of relocation costs.

Section 707.5 has been interpreted to allow the Department to apportion liability under these contracts so as to achieve the result that would have been obtained over a period of time in the absence of such contracts. Thus, the determination of the apportionment provisions, as well as other terms, has been based on examination of past experience and evaluation of liability in the future. These contracts, while involving compromise, reflect as nearly as the Department can predict the overall liability that would exist without them.

Freeway Master Contracts govern apportionment of the cost of rearranging facilities in connection with freeway projects in lieu of the provisions of S&H Code Section 700, et seq. In other words, under Master Contracts, the provisions of the S&H Code and other laws have no application to the rearrangement of the facilities on freeway projects and are replaced by the terms of the Master Contracts. The contracts do not affect relocations on conventional highways.

NOTE: Only three original contracts from the 1950s and 1960s remain in effect, which are shown as Exhibits 13-EX-18L, 13-EX-18M, and 13-EX-18N.

13.04.03.01 Interpretation of Master Contracts

Master Contract liability determinations apply to all State freeway projects regardless of who funds the project or does the work; therefore, consistent statewide interpretations are mandatory. (See Section 13.12.02.00 for more information.) However, the Master Contracts do not apply to any private-developer-initiated and privately funded project. In accordance with statutory and judicial law, the developer shall pay for all utility adjustments required to accommodate a private-developer-sponsored project. (See Section 13.12.04.00.)

There are several Master Contracts in place with different utility companies. A list can be found on HQ Right of Way Utility Relocations Web site. Although the current Master Contracts are much simpler than previous Master Agreements, careful interpretation is crucial.

Application of Master Contracts to relocations on adjunct, ancillary or nonhighway use parcels/projects must be carefully considered and the HQ R/W Utility Liaison should be contacted for discussion.

Any question or conflict concerning interpretation of any terms or scope of a Master Contract may be submitted to Headquarters R/W if the district cannot resolve. Master Contracts can be found on the HQ Right of Way Utility Relocations Web site.

13.04.03.02 Application of Master Contracts

Master Contracts apply to freeway projects as defined in the Master Contract on highways that are part of the California Freeway and Expressway system. See S&H Code Section 250, et seq., as a guide for a listing of applicable highway routes. A guide for each highway can be found at http://www.dot.ca.gov/hq/tsip/hseb/products/state_highway_routes_selected_information_1995_revised.pdf.

The project is not considered a freeway project unless access rights to adjoining property have been previously acquired or are being acquired as part of the immediate project.

Master Contracts apply to utility facilities within the freeway rights of way and any other frontage or local road being reconstructed as a direct part of the freeway project. Master Contract terms should not be applied to other ancillary highway improvement projects, such as park-and-ride lots and acquisition of replacement property sites, unless such sites are acquired as part of a freeway project.

13.04.04.00 Property Rights

The Owner may submit one or more superior right claims for a facility. Each prior right claim the Owner submits must be fully documented and supported. The documentation must be referenced in, and attached to, the Report of Investigation (ROI) (see Section 13.05.00.00). The types of property rights in the following sections are applicable to both conventional highways and freeways. They generally indicate how each superior right should be documented and the extent to which the Utility Coordinator should investigate the validity of the Owner's claim. (See also Table 13.03-3, "Acquisition from the Utility Owner.")

NOTE: When reviewing a superior rights claim, the Utility Coordinator must determine if there is a Master Contract with the Owner that may modify or supersede normal occupancy rights or statutes and establish the basis of the Owner's claim.

13.04.04.01 Fee Ownership

The State is liable for relocation costs any time the facility is on property where the Owner has fee title. The Utility Coordinator shall review title reports and right of way maps to verify Ownership.

All fee-owned property must be acquired by R/W Acquisition via R/W Contract and Deed. Relocation or rearrangement of utility facilities shall be handled by the Utility Coordinator via Utility Agreement in coordination with Acquisition. The Utility Coordinator must ensure the R/W Contract and/or Utility Agreement covering relocation does not set up a double payment for property rights.

13.04.04.02 Easement

In most cases, when the facility is located within an easement, recorded or unrecorded, the State is liable for relocation costs. When the Owner claims a superior right pursuant to a prior easement, the Utility Coordinator must verify the location of the easement, that the easement is valid and that the Owner's rights are prior and superior to the State's.

Any Owner's relocation obligation or other limitation clauses within the easement document may be passed to the State upon acquisition of the underlying fee and must be investigated to determine if they are in conflict with the Owner's claim. State's liability for relocation costs under a valid easement extends to subsequent additions to those facilities originally installed as long as the additions are not inconsistent with the terms of the easement.

13.04.04.03 Implied/Secondary Easement

All city-owned facilities located in city streets and county-owned facilities located in county roads that were installed in the street or road within the city or county jurisdictional limits prior to their becoming a State highway are considered to be installed in the Owner's implied easement reservation. All facilities so located are relocated at State expense. The Utility Coordinator should check permits, "as-built" drawings, and the Owner's records to confirm the facilities were installed prior to the date the CTC adopted the route.

After the date the CTC adopted the route, the local agency may maintain or even improve their facilities as long as the improved facility remains in substantially the same location. The local agency may not, however, expand upon their existing system by installing new parallel facilities except under the usual encroachment permit requirement.

Facilities not under the city's or county's direct ownership and control, such as regional sanitation or fire districts, are not subject to the implied/secondary easement liability rule.

13.04.04.04 Joint Use and Consent to Common Use Agreements

In most cases, the State will bear relocation costs for facilities installed within a JUA or CCUA area. The Utility Coordinator must determine that the JUA/CCUA existing facility is, in fact, in the area of the JUA/CCUA by comparing the facility location with the JUA/CCUA description. The document must also be reviewed for any conditions that may change or limit the Owner's rights such as:

- A JUA/CCUA based on prescriptive rights where the existing facility is different than the facility covered in the JUA/CCUA, e.g., rights for a buried 4-inch gas line but the facility to be relocated is a 16-inch gas line.
- A JUA/CCUA has an expiration date for the Owner's rights.

An Owner has the legal right to expand their facilities to the extent allowed by the terms and conditions of an easement deed. This right extends to a JUA and CCUA granted in recognition of existing easement deeds but does not extend to prescriptive right claims. Regardless of Owner's prior rights or existing JUA/CCUA, any expansion of Owner's facilities within the highway right of way must be in accordance with encroachment permit requirements. (See Section 13.11.00.00 for more information on JUA/CCUAs.)

13.04.04.05 Prescriptive Right

Relocation costs for facilities installed under a right of occupancy established by a prescriptive right may become the State's liability if the occupancy condition meets statutory requirements. The occupancy right must have been:

- established by the open and notorious adverse use of another's property, and
- installed on private property with the knowledge of the property owner but without a right of way, permit, lease, or other license, and
- continuously maintained in the same location for the prescriptive period of at least five years.

If underground facilities are involved, the original installation and continuous maintenance of the facility in the prescriptive location must be with the property owner's knowledge. Prescriptive rights cannot be established on publicly owned property. The Owner must submit a claim letter containing the above-mentioned statutory requirements (see Exhibit 13-EX-19 for an example).

The extent of the prescriptive easement is measured by the Owner's use during the preceding five years. Accordingly, the precise extent of the prescriptive easement, e.g., "a single line of poles with one cross-arm and eight telephone wires," should be set out in any instrument in which the State recognizes the superiority of such rights over those of the State.

The Owner has the burden of proof in establishing a valid claim to a prescriptive right. The factual situation where prescriptive rights are claimed shall be carefully investigated. The possibility of entry and occupancy under lease, permit, license, or other permissive use should be explored.

The determination of liability under Prescriptive Right requires the completion of Form RW 13-18.

13.04.04.06 Lease

A lease is similar to an easement; however, it is restricted to a specific time period written into the lease. The Utility Coordinator should investigate the validity of the lease in the same manner as for easements, e.g., the ownership and description. Any Utility Owner's relocation obligations or other limitation clauses contained in the lease may be passed to the State upon acquisition of the underlying fee and must be investigated to determine if they conflict with the Utility Owner's claim. If the Utility Owner has a valid lease and there are no provisions for Owners to pay for the relocation, the cost is usually the burden of the State.

13.04.04.07 License

A license is permission from a property owner for another person to use land. A license differs from an easement or a lease in that it is only between the two parties and cannot be transferred unless it is specifically written into the license. Normally, when an Owner has a license and the State acquires the property on which the facility exists, the license is no longer valid and the State can require the Owner to relocate at their own expense.

The Utility Coordinator must read the license to determine if the above requirements, such as successors or assigns, are mentioned in the license.

When evaluating a license, the Utility Coordinator must take into account the level of title the State has already acquired at the time of issuance of the Notice to Owner because only the fee owner of property can enforce conditions reserved in the license.

NOTE: When the Owner has placed substantial improvements within the license area, a review by Legal is necessary before determining liability.

13.04.04.08 Franchise

Utility facilities that are placed in public rights of way pursuant to a franchise privilege from a city or county, or pursuant to State Law do not convey any property rights and Utility Owners are to relocate at their own expense whenever requested to do so for a legitimate or proper governmental purpose by State or local authorities. Required relocations for construction of maintenance stations, highway drainage, truck inspection facilities, accommodation of other relocated utility facilities, functional replacement acquisition sites, etc., are covered under "proper governmental purpose." However, circumstances of each utility relocation, with respect to provisions of the specific franchise involved, must be carefully reviewed. See also Section 13.04.05.02.

13.04.04.09 Encroachment Permit

An Encroachment Permit is a form of license that provides permission to the Owner to install a facility but does not convey any property rights. The permit also imposes certain restrictions on the Owner. The permit contains a relocation clause that states the Owner must relocate their facilities upon request at the Owner's own expense. See also Section 13.04.05.01.

13.04.04.10 Joint Pole Agreement Cost Liability Determination

The California Public Utilities Commission has authorized the joint sharing of poles by different Utility Owners, through a Joint Pole Agreement (JPA) as a means of providing more cost effective service and to reduce "utility pole blight." The JPA rarely, if ever, will convey property rights to the joint pole user. The Lead Pole Owner's (Owner of the Pole) rights must be reviewed to determine joint pole user's rights. As with any claim of property right, the Owner making such a claim must submit all necessary documents to support that claim.

On joint pole facilities, when multiple Owners are found sharing the pole, each joint pole user must submit all necessary documents to support their claim whether or not the JPA covers such use. The joint pole user may have a valid cost liability claim even though they occupy the pole under a lease, license, or permit with the Lead Pole Owner.

If the Utility Owner has a Freeway Master Contract, liability for the JPA will be determined pursuant to the Freeway Master Contract.

If the Region/District is unclear as to liability at this point, Headquarters' Right of Way and Legal should be consulted.

13.04.05.00 Streets and Highways Code

The provisions of S&H Code Sections 673 and 680 authorize the State to issue a written notice to the Owner to remove, relocate, positively locate, etc., facilities installed under permit or franchise privilege at the Owner's expense (see Sections 13.04.04.08 and 13.04.04.09).

Sections 700 through 711 pertain only to utility facilities in access-controlled freeways or expressways. Where the Owner has a valid superior right and is also entitled to reimbursement under one of the 700 series of the Code, the basis for the State's liability must be the Owner's superior right (unless modified by a Master Contract). This allows the State to perpetuate the Owner's superior right within the freeway right of way.

Liability for the cost of relocating facilities to provide for improvement of State freeways is generally based on the superior occupancy right in the same manner as previously discussed for conventional highways. However, S&H Code Sections 702 through 707.5 modify this basis for freeway projects and must therefore be carefully reviewed and applied. In addition, Master Contracts modify and/or supersede S&H Code Sections 702 through 707.

Below is a description of each section within the S&H Code that applies to the relocation of utility facilities.

NOTE: As used in the following S&H Code Sections, "lawfully maintained" means "A utility facility that has a legal basis/right to be in its present location and, therefore, is not in trespass." An Encroachment Permit satisfies the requirement of "lawfully maintained."

13.04.05.01 Section 673 - Relocation or Removal of Encroachment

This section applies to publicly owned facilities, such as counties, cities, public corporations, or political subdivisions (governmental agencies), where the governmental agency has been issued an Encroachment Permit by the Department to install facilities within a conventional highway. When the facility requires relocation for improvement of the highway, the governmental agency must relocate at their own expense. See also Section 13.04.04.09.

13.04.05.02 Section 680 - Franchises in State Highways; Temporary Relocations

This section applies to Owners who have installed their facilities within a conventional highway by a franchise privilege guarded by a governmental agency. When the facility requires relocation for a highway improvement, the Department can enforce provisions of the franchise and require the facility to be relocated at Owner's expense. An Owner may occasionally claim relocation is at State's expense pursuant to provisions of their franchise. In these situations, the Utility Coordinator must review the franchise to ensure the provisions apply. See also Section 13.04.04.08.

Relocation for temporary purposes has historically been interpreted to mean a utility relocation that results from a temporary move of the highway (a detour). Thus, any utility adjustment resulting from a temporary move of the highway (a detour) is at State's expense.

Utility relocations necessary to permit the safe construction of the highway project, such as utility "shooflies," are not considered to be relocations for temporary purposes under the law. In this situation, the Owner has the option to temporarily relocate to clear construction or to permanently relocate to another location rather than to go back to their original location. In this situation, the Notice must not refer to a temporary relocation as it is entirely the Owner's option as to whether they wish to return to the original location.

Liability for temporary relocations that are requested by the highway contractor as a means of convenience for construction shall be the highway contractor's responsibility. The Project or Resident Engineer, as appropriate, shall determine construction necessity versus contractor's convenience.

13.04.05.03 Section 702 - Relocation Outside Freeway

This section applies in situations where the Owner is required to remove and relocate their existing lawfully maintained facility to a location entirely outside the freeway right of way. The State must pay the reasonable and necessary cost of such removal, relocation, and reinstallation into the new location.

This section does not apply to relocation of the facility from one location within the freeway to another location within the freeway, nor does it apply to relocations into a service road or outer highway because these are considered part of the freeway.

Essentially, this section only applies if a utility easement is required to accomplish the relocation of the Owner's facilities entirely outside the State's or other public road right of way.

13.04.05.04 Section 703 - Relocation Within Freeway

This section applies to situations where the State requires the Owner to relocate their existing facilities from one location within a freeway right of way to another location within the freeway right of way. Several different types of facilities are covered as shown in Table 13.04-4 entitled "S&H Code 703 - Relocations Within Freeways - Types of Facilities."

Table 13.04-4

S&H CODE 703 - RELOCATIONS WITHIN FREEWAYS - TYPES OF FACILITIES (Section 13.04.05.04)	
Type	**Requirements**
Publicly owned utility facilities other than sewers, fire hydrants, and street lights	Whenever relocation of such facilities is required, the State shall pay the cost of relocation, provided the facility was lawfully maintained and originally installed in its existing location prior to the public roadway becoming part of a State highway. **NOTE:** An important critical control date for determining liability is the CTC freeway adoption date. The State highway alignment, including the local streets and roads within its boundaries, shall be considered a part of the State freeway from the CTC freeway adoption date forward.
Privately owned water facilities	Whenever relocation of such facilities used solely to supply water is required, the State shall pay the cost of relocation, provided the water facility was lawfully maintained and originally installed in its existing location prior to the local street or road becoming a State highway.
Privately owned utility facilities other than water	Whenever relocation of such facilities is required, the State must pay the cost of relocation provided: 1. The facility was lawfully maintained and originally installed in its existing location prior to the local street or road becoming part of a State highway. 2. The facility, as established by the Owner, is not under an express contractual obligation to relocate at the Owner's expense. **NOTE:** The term "express contractual obligation" means a written obligation. Franchises dated after 1937 were generally written to comply with the State Franchise Act, which does spell out the obligation in writing.
Sewers, fire hydrants, and street lights	Publicly owned sewers, publicly or privately owned fire hydrants, and publicly or privately owned street lighting structures that are required to relocate shall be relocated at State expense, regardless of maintenance or original date of installation in the local street or road.

13.04.05.05 Section 704 - Subsequent Relocation

If the State requires an Owner to relocate any of their facilities within the freeway right of way more than once within a period of ten years, the State shall pay the cost of the second relocation and any subsequent relocation within the ten-year period. The ten-year period is interpreted as the date between completion of the original relocation to the beginning of construction on the subsequent relocation. Each time a new relocation is accomplished, the ten-year period starts anew.

13.04.05.06 Section 705 - Allowable Credit on Relocation

In any case in which the State is required under the provisions of the S&H Code to pay the cost of rearranging, removing or relocating any facility, the State shall be entitled to credits as shown in Table 13.04-5 entitled "S&H Code Section 705 - Allowable Credits."

Table 13.04-5

S&H CODE SECTION 705 - ALLOWABLE CREDITS (Section 13.04.05.06)	
Type	**Explanation**
Betterment Credit	The State should only pay for a functional equivalent replacement of the impacted utility facility. Any increase in the size or capacity of the facility that is for the Owner's benefit is considered the Owner's betterment. The State shall receive a credit for the difference between the cost of the functional replacement of the original facility and the cost of the facility as constructed. There are exceptions to the general rule. However, any betterments that result in increased capacity or more desirable placement that the Owner may claim to be at State's expense must be carefully reviewed. In the following instances, betterment may, at the State's discretion, be accepted as part of the State's liability: 1. Required by the highway project. 2. Replacement devices or materials that are of equivalent standards although not identical. 3. Replacement of devices or materials no longer regularly manufactured with next higher grade or size. 4. Required by State or Federal law or regulation. 5. Required by current design practices regularly followed by the Owner in their own work, but only if there is a direct benefit to the highway project. The Utility Coordinator is responsible to determine the overall scope of the betterment, and Audits is responsible to verify accuracy of the Owner's calculation. Usually, betterment issues must be discussed with Headquarters R/W before final resolution. Betterment is normally measured by an increase in size or capacity such as a larger pipe, a greater number of telephone circuits, additional conduits, or a higher capacity power line. A betterment credit is not limited to the cost of materials, but must include all increased costs of engineering and installing the betterment facilities. Examples of some extra costs may be additional engineering, special construction methods, and increased overhead.

Table 13.04-5 (Continued)

S&H CODE SECTION 705 - ALLOWABLE CREDITS (Section 13.04.05.06)	
Type	**Explanation**
Salvage Credit	When relocation is required, the State shall be given credit for the value of any materials from the old facility that the Owner removes and/or retains from the construction project. Generally, such material is either reconditioned and returned to stock or sold as scrap. Under PUC accounting regulations, Utility Owners shall provide a credit based on the original cost. The State is entitled to a credit for each item of material returned to stock at its current inventory price less depreciation and less cost of reconditioning. The State is also entitled to a credit in the amount of the sales price or, if not sold at the time of billing, the estimated value for materials sold or to be sold as scrap or junk. The amount of credit the State is entitled to is directly related to the percentage of liability the State pays on the Utility Agreement. (i.e., If the liability percentage is 100% State, State will receive full salvage credit. If the liability percentage is 50% State, State will receive 50% of the salvage credit.) The Owner must be made aware that the State will not participate in the cost of removing a facility where the cost is greater than its salvage value unless it has to be removed for safety or aesthetic reasons. See Section 13.04.07.09 for additional discussions of removal of hazardous material.
Accrued Depreciation Credit	The State shall receive credit for accrued depreciation on the old facilities whenever the relocation of a facility is required. Where there are no replacement facilities, such as for abandoned facilities, credit for depreciation shall not be taken. Accrued depreciation credit is an allowance for the value of expired service life. Expired service life is that portion of a facility's useful life for which the Owner has received a return on their investment or benefit of service. The credit given shall be based on straight line depreciation computed on original installed cost, age of facility and normal expected life as reflected in the Owner's books or calculated by industry standards. For example: $$\text{Credit} = \frac{\text{Age of Facility}}{\text{Normal Expected Life}} \text{ (Original Cost)}$$ The amount of credit the State is entitled to is directly related to the percentage of liability the State pays on the Utility Agreement. (i.e., If the liability percentage is 100% State, State will receive full accrued depreciation credit. If the liability percentage is 50% State, State will receive 50% of the accrued depreciation credit.) Following are special conditions for handling accrued depreciation credits for publicly owned sewers and private oil company facilities: 1. Publicly owned sewers - The State is not entitled to receive a credit for accrued depreciation on relocations of publicly owned sewers. 2. Private oil companies - The State is to receive a credit for depreciation on noncommon carrier (nonpublic utility) longitudinal facilities owned by oil companies. The State has historically calculated accrued depreciation credit on the following basis: • Straight-line depreciation, as with other Utility Owners, except the normal expected life will always be 40 years, as previously agreed to by the State and the oil companies. In other words, only for the purpose of calculating accrued depreciation credits, the subject oil facility will always have a normal expected life of 40 years. • Credit is not to exceed 70 percent of the original installation cost. • When no accrued depreciation credit is provided, or the credit supplied is zero, the Owner must supply proof of the remaining service life of the facility and a written certificate from the Owner's comptroller or chief accountant stating that no part of the replacement facility will be capitalized or depreciated. (See Section 13.07.06.02.)

13.04.05.07 Section 707.5 - Contracts With Utilities; Freeway Master Contracts

Statutes provide that the State and any Owner, as defined in S&H Code Section 700, may enter into a contract providing for pro rata liability for the costs for affected utility facilities.

(See Section 13.04.03.00 and Exhibit 13-EX-18 for further information on Master Contracts.)

13.04.06.00 Water Codes

Water Code Sections 7034 and 7035 were enacted to cover liability for existing bridges and water conduits lying within the existing right of way for crossings of either freeways or conventional highways. Conduits include canals, ditches, culverts, pipelines, flumes, or other facilities for conducting water. "Bridge" means a structure constructed to allow the conducting of water underneath by canal, ditch, flume or other uncovered facility for conducting water.

If a conduit is relocated or replaced pursuant to Section 7034 or 7035, the State is not entitled to credit for depreciation, but will be entitled to credits for betterments and salvage. The State shall only be responsible for replacement in kind, e.g., same size and type.

Application of Section 7034 or 7035 is not to be considered where the conduit is located longitudinally in the highway. Where the facts of a situation fall within both sections, Section 7034 will be applied. Sections 7034 and 7035 are not to be used if the Owner of the facility has some form of property right, such as fee title or easement.

When the Utility Company cannot provide information showing the facility predated the highway, the Utility Coordinator may have to make some additional verification efforts. The Utility Coordinator should refer to old Departmental as-builts, old subdivision maps, old title reports, or old aerial or other historical photographs. The Utility Coordinator should also discuss the existing facility with District Maintenance to determine if the Department has ever performed maintenance acts that may tie the Department to liability for the relocation.

The determination of liability under the Water Code requires the completion of Form RW 13-19.

13.04.06.01 Section 7034

Section 7034 provides that the bridge or conduit will become the sole responsibility of the county (or the State where the county road has subsequently become a State highway) where it has been or will be placed across county roads, if:

- The facility has been constructed in a permanent manner and constructed or brought up to county standards.
- The facility has been accepted either formally or informally by the county.

Acceptance is defined as:

- **Formal acceptance** - Formal acceptance means the County Board of Supervisors has taken appropriate action, usually in the form of a motion or resolution.

- **Informal acceptance** - While the meaning of informal acceptance (action) is not free from doubt, evidence of the act or acts by the county exercising jurisdiction over the conduit or bridge and indicating an intent on the part of the county to take over the facility, such as periodic acts of maintenance or substantial repairs or replacement, represent informal acceptance of the facility.

If both of the above requirements are fulfilled, the bridge or conduit becomes the sole responsibility of the county or the State if the county road has subsequently become a State highway. The State is obligated to structurally maintain, repair, improve for the benefit of the county or the State, reconstruct, or replace such bridge or conduit. The Owner shall be responsible for keeping the conduit clean and free from obstruction and debris to ensure the free passage of water in the conduit. (See Utility Clause V-10 in Section 13.07.03.05 for specific utility clause language.)

In a relocation under Section 7034, a JUA or CCUA should not be issued to the Owner as this implies the Owner had prior rights. The Utility Owner would remain under an encroachment permit.

13.04.06.02 Section 7035

The effect of Section 7035 is to establish responsibility for relocation costs when an existing conduit (but not a bridge) crosses the highway without evidence of prior rights and the State's records of its right of way do not establish a superior right. Section 7035, where applicable, establishes a conclusive presumption of prior rights in the conduit Owner. Use Section 7035 only if some other form of prior rights cannot be established. This law also requires the replaced or reconstructed conduit resulting from a State-initiated project to become the State's responsibility for future repairs, relocation, replacement and structural maintenance similar to that required by Section 7034. This applies only to the conduit portion of Owner's facilities that lie within the State highway right of way and does not apply if such repair or replacement is necessary by negligent or wrongful acts of the Owner.

In addition, the Owner shall be responsible for keeping the conduit clean and free from obstructions and debris to ensure the free passage of water in the conduit. (See Utility Clause V-10 in Section 13.07.03.05 for specific utility clause language.) In no event is the State to accept responsibility for maintenance of the conduit, such as cleaning out dirt or silt.

The issuance of a JUA or CCUA is appropriate for a relocation under Water Code Section 7035.

Special clauses in the JUA/CCUA may be appropriate (see Sections 13.07.03.05 and 13.11.05.01).

13.04.07.00 Special Liability Issues

There are numerous types of miscellaneous costs for which the Owner may or may not be reimbursed that do not directly relate to a single authorizing statute. Liability for reimbursement of such costs is determined by previous legal interpretation or judicial ruling of existing utility relocation law and from nonutility related statutes. Unique costs must be cleared with Headquarters R/W before entering into an agreement requiring State reimbursement of such unique costs.

13.04.07.01 Interest During Construction

State utility regulations permit Utility Owners to be reimbursed for interest expenses on funds used or borrowed for use during construction as a cost of construction (also known as Allowance on Funds Used During Construction or AFUDC). The California PUC has accepted these regulations as being applicable to State-ordered relocation work. Final reimbursement of interest charges is conditioned on Audit approval. In general, interest is allowed only where unreimbursed completed work is substantial, the facility has not yet been put back into service, and the Owner is using monthly or quarterly progress billing to minimize outstanding reimbursable costs. These interest expenses are not Federal-aid reimbursable. (See also Sections 13.07.03.04 IV-3 and 13.14.10.01.)

13.04.07.02 Contributions in Aid of Construction (CIAC)/Income Tax Component of Contributions and Advances (ITCCA)

Utility billings for reimbursement of relocation expenses pursuant to a Utility Agreement are not subject to CIAC/ITCCA and will not be paid.

After enactment of Section 824 of the Federal Tax Reform Act of 1986, the IRS released Bulletin 1987-51 which provides guidance with respect to the treatment of CIAC. The IRS determined the contributions by customers or potential customers are not contributions to capital and are not excluded from gross income and are, thus, taxable. However, the IRS subsequently determined that many types of relocation fees were not affected by this change. Where the utility is being reimbursed for the costs of relocating utility lines to accommodate the construction or expansion of a highway for the benefit of the public at large and not for the provision of utility services, those reimbursements are not taxable. This should also include Local Public Agency (LPA) projects, but not private developer initiated, privately funded projects.

If the Utility Coordinator receives an estimate or bill including this charge, return it to the Owner and direct them to remove it and resubmit the bill.

13.04.07.03 Clearance of Highway Adjunct Properties

On occasion, the State acquires separate properties for the purpose of fulfilling a highway construction or operational need, such as roadside rests, park-and-ride lots, weigh stations, and mitigation parcels. Relocation of utility facilities on these properties follows the same laws and rules applicable to the highway project for which these adjunct sites were acquired. This means that a park-and-ride lot in support of a freeway follows laws and rules applicable to freeways. See Section 13.04.03.02, Application of Master Contracts.

13.04.07.04 Extraordinary Relocation Costs

The State normally pays its pro rata share of all reasonable and necessary utility relocation costs. The State generally does not accept total responsibility for a unique item of cost merely on the basis that the Owner would not have incurred the extra cost except for the State-ordered relocation. Some of the more frequent examples are discussed below. Other less frequently occurring examples may be found in the Utility Reference File.

- **Clearing and grubbing of new right of way** - Where possible, utility relocations are coordinated with the highway construction project so the utility relocation may take place after the highway contractor has cleared the new right of way. If this delayed relocation is not feasible, the utility work may have to proceed in advance. The State is not liable for the additional cost beyond its usual pro rata share.

- **Owner's overtime costs** - If the State fails to provide a reasonable time frame for the Owner to complete necessary relocation activities without incurring highway construction contractor delay costs, the State may be liable for the additional expense. The District Utility Coordinator may authorize State-paid labor overtime upon approval by the HQ Utility Liaison. The authorization should be made a part of the Notice and clearly state the necessity for such extraordinary costs. Whether or not the State is responsible for a pro rata portion of the relocation costs, the State's specific liability for the cost of overtime is limited to the difference between the premium wage and the regular wage. The District Utility Coordinator should not request HQ's approval for payment of labor overtime simply because of the Owner's lack of planning or scheduling. This additional cost is not Federal-aid reimbursable.

- **Wasted work** - Sometimes as a result of a change in design or construction change order, completed relocation work has to be redone. The State is liable for all such wasted relocation work regardless of the initial liability proration (see Section 13.09.04.00). The cost of such wasted relocation work is not Federal-aid reimbursable.

- **Hazardous waste costs** - Should the Owner incur extra costs due to the removal or disposal of hazardous waste, the State, at a minimum, pays its pro rata share of the extra costs. If hazardous waste is encountered within the project limits, the spoils and associated handling costs are dealt with in the same manner and liability as project construction hazardous waste costs. The extra costs incurred for hazardous waste found outside the project right of way, such as on local streets beyond project construction, are reimbursed in accordance with the State's pro rata liability in the same manner as for any other type of extraordinary construction costs associated with utility relocations. (See Section 13.01.02.05.) (Refer to the Freeway Master Contract for details of handling hazardous materials and their associated costs on freeway projects for those Owners who have a current Freeway Master Contract.) The cost of hazardous waste removal is Federal-aid reimbursable.

13.04.07.05 Delayed or Canceled Projects

Owners are required by law to relocate their facilities in compliance with an issued Notice. If such a required relocation is completed in part or totally at the Owner's expense, and the project is subsequently canceled by the CTC's official action, the Owner shall be entitled to reimbursement of their wasted work costs. If the project is merely delayed, even for what appears to be an indefinite period of time, reimbursement is not required so long as the project remains on the State's program for future construction. Headquarters R/W prior approval shall be obtained before obligating the State to any reimbursement of this type. If HQ R/W approves the State's reimbursement of these costs, the Utility Coordinator must ensure the costs are not billed to FHWA, as they are not Federal-aid reimbursable.

13.04.07.06 Future Maintenance of Water Conduits

The State shall not accept liability to maintain the interior of a water conduit, such as silt removal, on the basis of a claim that the conversion or extension of an existing open ditch to a conduit has increased the Owner's operating costs. Even though the State may have placed the conduit and is thus becoming the owner of it, the water provider shall be responsible for all maintenance associated with the product conveyance.

On the basis of a factual, nonspeculative showing that there are additional real costs arising out of the State-caused relocation, the State may be liable for some of the additional new costs. Compensation must be based on the present worth of the future labor and equipment costs that are shown to substantially exceed current maintenance costs for open ditch maintenance. This same premise may be applied to other similar situations that may cause increased costs associated with a major change to an existing facility, such as the addition of a sewer lift pump. HQ R/W prior approval should be obtained before entering into any Utility Agreement obligating the State to these types of costs.

13.04.07.07 Loss of Plant, Investment, or Business

The State is required by law to physically replace the utility facility in the same functionally equivalent state of operation in the after condition as it was before. Relocation costs, therefore, do not include the cost of abandoned property, loss of income resulting from loss of customers, loss of revenue due to temporary shutdowns, or for any other form of consequential damages.

13.04.07.08 Undergrounding

When a project conflict exists and the State must relocate an existing aerial utility facility, the State cannot pay any portion of the undergrounding costs unless the undergrounding is based on an engineering need for the State's project or is the most cost effective. Undergrounding requirements as established by local government for aesthetic purposes are not binding upon the State. The State is only obligated to pay for replacement of the functional utility that previously existed. If the State determines undergrounding is necessary for engineering reasons or is the most cost effective relocation, only then are these costs Federal-aid reimbursable.

13.04.07.09 Abandonment or Removal Costs

Costs for removal or abandonment of existing utility facilities are reimbursable provided the removal or abandonment is necessitated by the highway project, required for aesthetic or safety reasons, or contains hazardous material that cannot safely remain. In many cases, it may be feasible to abandon the existing utility facilities in place if the existing facilities will not conflict with the proposed highway project. Abandonment of underground facilities containing hazardous material, e.g., asbestos and lead, should be discussed with Region/District Environmental. If removal is required, the State will reimburse Owner for normal pro rata costs for removal effort only.

In cases where there is no need to remove the existing utility facilities but the Owner elects to proceed with the removal, the State shall not pay any removal costs above the salvage value of recovered materials credited to the project.

NOTE: Due to safety problems that may arise during the vacancy or demolition/removal of an improvement with a gas meter, the Owner is usually instructed to remove the meter when the improvement is to remain vacant. The removal date must be coordinated with R/W Property Management. The State will reimburse the Owner for removal costs based on liability of the gas distribution line located in the adjoining street.

Meter removal costs are paid without credit for salvage value. Under Federal-aid reimbursement requirements, these costs must be coded as demolition costs for the project (see Section 13.14.03.02).

13.04.07.10 Additional Spare Ducts for Underground Conversion of Aerial Telephone Facilities

A long-term understanding with telephone Owners provides that the State will reimburse additional duct costs for State-ordered conversion of nonfiber-optic aerial facilities to underground. This was based on the premise that typical aerial installation was constructed to provide for a minimum capability to install four cables even if fewer were initially installed. Therefore, whenever nonfiber-optic aerial facilities are ordered to be converted to a like-form underground installation, the following table is used as a basis for allowed State reimbursement.

Number of Existing Cables	Number of Replacement Ducts
1	4
2	4
3	4
4	6
5	7
6	8
7	9
8	10

If the existing facilities to be placed underground are fiber-optic, the State will only reimburse for duct installations on the basis of the number of ducts needed to replace the existing telephone capability plus one spare duct.

NOTE: FHWA will only reimburse on the basis of providing one spare duct regardless of the type of existing facility.

13.04.07.11 Disruption of Service Facilities

Service facilities that are located on the property being served are usually there by permission of the property owner as a requirement for receiving utility service. The State in acquiring the property being served may, as the new property owner, revoke the owner's permission for occupancy and thus require the service facilities to be removed or abandoned.

If some portion of the impacted property remains in private ownership with a continuing need for utility service or provides current service to other remaining properties, the State is liable for whatever facility adjustments may be necessary. Other than removal of portions of the severed facilities for safety reasons, which is handled by Notice and Agreement, all other utility adjustment costs are treated as cost-to-cure damages in the acquisition of the impacted parcel.

13.04.08.00 Liability Undetermined

The Utility Coordinator shall make every effort to determine liability prior to issuance of a Notice to Owner. However, in situations where the Owner is unable to provide timely documentation that will allow the State to verify the information necessary to determine liability in a reasonable time, and when project schedule delays may occur, a Notice can be issued with liability undetermined. District Utility Coordinator approval is required prior to issuing this type of Notice.

Liability undetermined is not to be used simply because the staff work necessary to determine liability for a relocation has not been done. The liability package for liability undetermined should contain everything that is normally provided for a liability approval with the exception of the proration of liability. The liability statement will simply read: "Liability is undetermined." (For Owners with a Freeway Master Contract, see Section 13.04.08.02 for modified liability statement.)

The Owner must agree to accept the Notice with liability undetermined and perform the relocation. The Owner's acceptance should be in writing. If the Owner does not provide a firm (enforceable) commitment, the certification and project could be in jeopardy. A copy of the Owner's letter or other documentation regarding acceptance of liability undetermined should be included in the liability package.

13.04.08.01 Request for Approval of Liability Undetermined

The request for approval of a liability undetermined transaction must be in writing and must contain all of the elements required by Section 13.05.01.00, with complete and detailed supporting documentation. In addition, the Report of Investigation must cite and support the reasons for the request for liability undetermined.

A preaward evaluation may be necessary before approval can be made where the transaction involves work by Owner's contractor, a substantial dollar amount or an Owner with whom the State has not recently done business. Be sure to check the most recent Utilities Reference File (URF) memorandum for current preaward evaluation criteria, dollar thresholds, and a listing of preapproved utility companies.

Upon approval, a Conceptual FHWA Specific Authorization with liability undetermined is issued authorizing the district to issue only the Notice to Relocate. The Utility Agreement cannot be sent to the Owner until the final Report of Investigation, detailing the liability, is approved and a full FHWA Specific Authorization is issued.

In all instances where a Notice to Owner has been issued under liability undetermined, the Utility Coordinator shall expeditiously settle liability determination with the Owner. The final Report of Investigation package, including the Owner's Claim Letter and the Utility Agreement, should normally be submitted within 30 days of the date of the Notice to Owner unless the District Utility Coordinator approves an extension.

13.04.08.02 Liability Undetermined - Master Contract

On Freeway projects where there is a Master Contract between the Owner and the State and liability is undetermined, the liability statement on the Notice to Owner should state "Liability is pursuant to the Freeway Master Contract dated _____."

The above liability statement is used in lieu of "Liability is undetermined" as liability for Owners with Master Contracts is always based on one or more sections of the Contract.

13.04.09.00 Liability in Dispute

Unlike right of way acquisition, there is no administrative settlement process to resolve disputes in utility relocations because liability issues are largely based on a factual determination of what is required to produce a functional replacement for the impacted facility and who has the superior right.

The preferred method of resolution is to mutually agree on how to handle a particular situation and what the liability should be. As the Owner's areas of operation may encompass other districts or the situation may reoccur with another Owner, a statewide resolution of the problem is essential. This may require Legal, as well as Headquarters R/W, work with the district toward its resolution.

Litigation is normally used where a large cost is involved or a significant legal premise is at stake. The decision to proceed to litigation depends heavily on Legal's input as well as Right of Way functional needs.

A compromise settlement should only be used for a low-cost situation or a very specialized issue that, in the district's opinion with Headquarters R/W concurrence, is not apt to reoccur or set a bad precedent. The Utility Coordinator, with the concurrence of the DDC-R/W, develops a proposed settlement and sends it to Headquarters R/W for approval. HQ R/W will obtain concurrence by Legal, when necessary, and will return the settlement to the District Utility Coordinator with a letter of approval or denial.

13.04.09.01 Agreement to Disagree

The resolution of the dispute may be too time consuming to be accomplished and still meet project dates. The Utility Coordinator should attempt an "agree-to-disagree" understanding with Owner. With the Owner's concurrence, the Notice may be issued using "liability in dispute" as the liability statement in the Notice. All Agreements issued in this manner require HQ R/W approval prior to issuance.

If the Owner does not concur with the issuance of a Notice on this basis, the provision of S&H Code 706 must be enforced. This requires the State to advance a deposit to cover the disputed cost of the work, and, when so advanced, the Owner is obligated to complete the utility relocation as ordered. State's deposit shall not include the cost of any Owner-initiated betterments. A special agreement is required (see Exhibit 13-EX-17) to cover the advanced funds. Advanced funds require specific handling requirements and special accounting coding. See Sections 13.01.02.10, 13.07.03.04 (IV-4), and 13.10.03.00. When funds are advanced, the Utility Coordinator must work proactively to ensure an accurate accounting for work progress and continue to work toward ultimate resolution of the dispute.

13.04.09.02 Liability In Dispute - Master Contract

On Freeway projects where there is a Master Contract between the Owner and the State and liability is in dispute, the liability statement on the Notice to owner should state "Liability per Freeway Master Contract, dated _____, is in dispute."

13.04.10.00 Processing Approved Liability Package

Once liability is approved, either by Headquarters R/W or the authorized district representative, the Utility Coordinator prepares a cover letter to the Owner transmitting the Notice to Owner, Encroachment Permit, and Utility Agreement (if required). See Exhibit 13-EX-13 for elements of the transmittal letter.

13.05.00.00 - REPORT OF INVESTIGATION

13.05.01.00 General

The Report of Investigation (Form RW 13-3) documents facts and circumstances that support the liability determination. All information, documentation, and analysis supporting the liability determination for the required relocation must be included in the Report. The Report of Investigation (ROI) must be prepared and approved before the district obligates the State for the cost of relocation. An ROI is not required for a relocation that is 100% Owner liability if the Utility Coordinator has a claim letter from the Owner acknowledging 100% liability. The Report of Investigation package (sometimes referred to as the "Liability Package") includes the following mandatory items. Additional supporting documentation may be included as deemed necessary by the Utility Reviewer to support the determination.

A. Original, signed Report of Investigation (Form RW 13-3).

B. Owner's estimate of cost of work to be done.

C. Color-coded ROI plan showing work to be done, or a copy of the Approved Relocation Plan.

D. Copy of the Owner's claim letter.

E. Copy of the Owner's documents that support their prior and/or superior rights claim.

F. Copy of the proposed Notice to Owner.

G. Copy of the proposed Utility Agreement.

H. Copy of the E-76, if federal reimbursement will be used.

I. The Request for FHWA Specific Authorization, if federal reimbursement will be used.

J. Proposed special provisions, if applicable.

Instructions for filling out the Report of Investigation are included with Form RW 13-3.

13.05.02.00 Owner's Estimate of Cost

The Owner's estimate of cost serves the following purposes:

- The estimate details, along with the proposed utility relocation plan, allow a preconstruction determination of reasonableness of the planned functional replacement for the impacted utility facility.
- It provides support for FHWA Specific Authorization.
- It provides an amount to be used for encumbering capital dollars for utility work.
- It becomes a contract pay amount for lump-sum agreements.

13.05.02.01 Standard Estimate Format

The standard estimate format (Exhibit 13-EX-21) must contain the following elements:

A. Cost of labor.

B. Cost of materials (include a list of major items).

C. Cost of transportation and equipment.

D. Cost of contracted out work.

E. Cost of overhead (include a list of major components).

F. Cost of new right of way (if required).

G. Credits due the State shown separately for betterment, depreciation, and salvage.

H. Percentage and dollar amount of the State's liability.

Each item above must be shown on the estimate. If an item does not apply, it still must be listed with a zero in the cost column. The same format is used for lump-sum estimates, except all costs must be itemized and detailed by category, e.g., labor by number of hours and dollars, materials by quantity and dollars, etc.

The cost estimate for work to be performed or paid for by the Owner must come from the Owner. If the Owner uses broad-gauge units in their estimates, e.g., a per-pole or per-meter cost factor, the broad-gauge units may be substituted for the cost of labor, material, and transportation and equipment (Items A, B, and C above). The Owner must provide a statement about the methodology used in arriving at the broad-gauge unit cost, e.g., "based on 1992 costs incurred." Right of way costs, credits, and the State's liability must still be listed separately.

If for timing reasons it is not possible to obtain an adequate estimate from the Owner, the Utility Coordinator may prepare an estimate based on the Owner's plan using the Owner's current cost data from similar utility relocation work. Justification for district-prepared estimates must be in the file. District-prepared estimates shall not be used as a basis for lump-sum agreements. The Utility Coordinator should ensure an Owner's prepared estimate is received as soon as possible, normally within 30-45 days of issuing a District-prepared estimate.

13.05.02.02 Preaward Evaluation

Audits no longer requires preaward evaluations. However, the Region/District may request a preaward evaluation if there is a high risk owner.

The Region/District is responsible to carefully review the estimate to ensure it is fully detailed, is reasonable, contains all of the elements required in Section 13.05.02.01, and complies with Departmental policy.

13.05.03.00 ROI Plan

The ROI plan is crucial not only to liability determination, but also to the engineer's ability to determine that the relocation clears project construction. It shows who owns what and shows the before and after location of improvements and property rights. The plan also provides a visual picture of what the estimate is based on, thus allowing a quick check of the reasonableness of various measurements and quantities listed in the estimate.

13.05.03.01 ROI Plan Requirements

A color-coded or an Approved Relocation Plan shall be included with every liability package. The plan must accurately and clearly plot the following elements:

A. Existing and proposed right of way lines.

B. Existing and proposed access control lines (if applicable).

C. Existing and proposed highway centerline.

D. Existing and proposed utility facility features: location, type, size, and length.

E. Owner's easements or other claimed prior right areas.

F. Proposed property rights the State is to supply (if applicable).

G. Highway geometric features, if the relocation is related to them.

H. Legend and title block.

13.05.04.00 Lump-Sum Utility Agreements

To reduce the Owner's administrative and record keeping costs associated with documenting payment for completed work and to reduce postconstruction audits, the Department has adopted a federal provision (23 CFR 645.113) that allows lump-sum (also called flat-sum) payments for utility relocations. This procedure provides for reimbursement of relocation costs based on an Approved Relocation Plan and a detailed preconstruction estimate and should only be used where the utility adjustment can be clearly and accurately defined. If actual costs should vary from the accepted estimate, neither the Owner nor the State can adjust the agreed upon lump-sum payment amount. Savings to either party could be quickly offset by inaccuracies in the cost estimating process.

Lump-sum payments over $100,000 require review and approval by HQ R/W Utilities, and require a preaward audit.

The use of the lump-sum payment process shall only be authorized where:

- A detailed and itemized estimate has been provided by the Owner and the Utility Coordinator has verified the costs are complete, comprehensive, reasonable and in sufficient detail to give a clear picture of the work involved and the cost of individual items. (See Section 13.05.02.00.)

- A utility relocation plan is developed per requirements of Section 13.05.03.00 that clearly correlates with the detailed estimate.

- The lump-sum payment Utility Agreement, not to exceed $100,000, has the District Utility Coordinator's approval before it is transmitted to the Owner for execution.

An additional provision must be added to Clauses IV-8 and IV-9 when the lump-sum payment will exceed $25,000. (See Section 13.07.03.04.) This provision allows the State to perform an informal post audit of the Owner's costs to ascertain the reasonableness of lump-sum payments and thus judge the continued effectiveness of this type of reimbursement.

13.05.04.01 Lump-Sum Payments - AT&T

The State has an understanding with AT&T when entering into a lump-sum agreement, that AT&T will use the specific billing rates shown in Exhibit 13-EX-22 for construction, engineering, estimating, posting, inspector, cutover, and assignment. If AT&T does not use the rates and forms shown in Exhibit 13-EX-22, the Utility Coordinator shall not accept the estimate as the basis for a lump-sum agreement unless Headquarters R/W prior approval is obtained.

13.05.04.02 Lump-Sum Payments for Completing Positive Location Work

Where no positive location agreement exists with the Owner, and as an exception to the general requirement that a preconstruction estimate be obtained and approved before authorizing the work, the district is delegated authority to enter into a lump-sum agreement with an Owner for doing positive relocation work, without a preliminary detailed cost estimate from the Owner when:

- The preconstruction estimate of cost indicates it will not exceed $25,000 for the State's liability as documented in the district's files. (See Section 13.06.03.04 for additional expediting procedures.)

and

- A specific plan, approved by the Project Engineer, is issued with the Notice showing the location of necessary positive location work.

and

- The district performs a review during the positive location operation to document the number of workers and pieces of equipment and the approximate on-the-job time for comparison with the bill when received.

A lump-sum Utility Agreement for positive location work may also be necessary if the Owner has signed a Positive Location Agreement and requests to conduct their own positive location work. If their cost exceeds the per-hole cost of the current Positive Location Contract, the State will pay a lump sum per-hole rate at the Contract rate in effect at the time of issuance of the NTO. (See Section 13.03.03.01 for additional information.)

Owner's positive location work costs anticipated to exceed $25,000 for the State's liability shall be processed as directed in Section 13.05.04.00.

13.07.00.00 - UTILITY AGREEMENTS

13.07.01.00 General

Pursuant to State Administrative Manual 8300, et seq., and S&H Code Division 1, Chapter 1, Article 3, Section 94, the State and the Utility Owner must enter into a Utility Agreement (Form RW 13-5) whenever the State is paying or receiving payment for all or a portion of the cost of relocation of a utility facility, regardless of who performs the work. The number assigned to each Utility Agreement shall be the same number assigned to the corresponding Notice to Owner covering the same facilities. Each Utility Agreement must be submitted with the Report of Investigation package (see Section 13.05.01.00).

13.07.02.00 Circumstances Requiring a Utility Agreement

The State must prepare a Utility Agreement for each facility being relocated or adjusted by the Utility Owner or its contractor with State reimbursement of the cost or being relocated or adjusted by the State's contractor, regardless of who is responsible for the cost. The Utility Coordinator is responsible for preparing the Utility Agreement.

A single Agreement is used for each Owner's involvement on a single construction project to the extent possible. Separate Agreements may be necessary for individual purposes such as design, advance of funds, or physical relocation(s).

Instructions for completing the Utility Agreement are found with Form RW 13-5.

> **NOTE: An "involvement" is defined as the issuance of a Notice to Owner to a Utility Owner for a specific utility type on one project (EA). For example, if a project has relocations for PG&E-Gas Transmission, PG&E-Gas Distribution, and PG&E-Electric Distribution, it would require three (3) Notices to Owner, equaling three (3) involvements. An involvement also includes a Notice for Positive Location (potholing) for each specific utility type.**

13.07.03.00 Standard Clauses

The clauses in the following sections have been standardized and shall be used whenever possible. Use of these standard clauses will reduce errors and omissions as well as save preparation, review, and approval time as the clauses have been reviewed and approved by most major Utility Owners and Department's Headquarters Legal Division. The following standard clauses are numbered for ease of reference. The Utility Coordinator preparing the Utility Agreement selects the appropriate clause(s) to be used.

On projects where Federal reimbursement will be sought, additional information is necessary on the FHWA Specific Authorization (Form RW 13-15). See Section 13.14.04.00 for specific wording requirements.

Before using any nonstandard clauses, the Utility Coordinator must obtain approval of necessity and language from HQ R/W and HQ Legal.

13.07.03.01 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 District office of the Department of Transportation at _____. 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."

NOTE: Significant changes in previously approved plans and estimates require a revised FHWA Specific Authorization (Form RW 13-15).

I-2. Work Performed by State's Contractor per State's Plans:

"In accordance with Notice to Owner No. _____ dated _____, STATE shall relocate OWNER's _____ as shown on STATE's contract plans for the improvement of State Route _____, EA _____ which by this reference are made a part hereof. OWNER hereby acknowledges review of STATE's plans for work and agrees to the construction in the manner proposed. Deviations from the 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 plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to written execution by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner. OWNER shall have the right to inspect the work during construction. Upon completion of the work by STATE, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to STATE ownership of the replaced facilities, except in the case of liability determined pursuant to Water Code 7034 or 7035."

NOTES:

(1) In the event the Owner wants to retain ownership of their old facilities removed by the State's highway construction contractor, a clause stating this fact must be included in the "Special Provisions" portion of the State's highway construction contract. Otherwise, the "Standard Specifications" of the contract will award all salvaged material to the State's contractor. If the Owner wants to retain ownership of the replaced facility, the Clause above must be modified to delete "and relinquishes to STATE ownership of the replaced facility."

(2) Whenever liability is determined pursuant to Water Code Section 7034 or 7035, Standard Clauses V-10a or V-10b shall then be added to the Utility Agreement.

I-3. Work Performed by State's Contractor per Owner's Plan:

"In accordance with Notice to Owner No. _____ dated _____, STATE shall relocate OWNER's _____ as shown on OWNER's Plan No. _____ dated _____, which plans are included in STATE's Contract Plans for the improvement of State Route _____, EA _____ which, by this reference, are made a part hereof. 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. OWNER shall have the right

to inspect the work by STATE's contractor during construction. Upon completion of the work by STATE, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to STATE ownership of the replaced facilities, except in the case of liability determined pursuant to Water Code 7034 or 7035."

NOTE: See NOTES under Clause I-2.

I-4. Work Performed by Both Owner and State'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 District office of the Department of Transportation at _____."

"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."

"It is mutually agreed that the STATE will include the work of _____ as part of the STATE's highway construction contract. OWNER shall have access to all phases of the work to be performed by the STATE 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 STATE, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to STATE ownership of the replaced facilities, except in the case of liability determined pursuant to Water Code 7034 or 7035."

NOTE: See NOTES under Clause I-2.

I-5. Preliminary Engineering by Utility Owner:

"In accordance with Notice to Owner No. _____ dated _____, OWNER shall prepare their relocation plans. Any revision to the OWNER's plan described above, after approval by the STATE, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the STATE and 13.07 - 2 (REV 7/2005) 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."

13.07.03.02 Section II. Liability for Work:

II-1. State's Expense - S&HC Section 702 or 703:

"The existing facilities are lawfully maintained in their present location and qualify for relocation at STATE expense under the provisions of Section (702) (703) of the Streets and Highways Code."

II-2. State'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 STATE expense under the provisions of Section 704 of the Streets and Highways Code."

II-3. State's Expense - Superior Rights:

"Existing facilities are located in their present position pursuant to rights superior to those of the STATE and will be relocated at STATE expense."

II-4. State'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 STATE expense."

II-5. State's Expense - Prescriptive Rights:

"The existing facilities are located in their present position pursuant to prescriptive rights prior and superior to those of the STATE and will be relocated at STATE expense."

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

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

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

"The existing facilities described in Section I above will be relocated (at STATE expense) (at _____% STATE expense and _____% OWNER expense) as set forth in Right of Way Contract No. _____ dated _____."

II-9. State or Prorated Expense - Master Contract:

"The existing facilities described in Section I above will be relocated (at STATE expense) (at _____% STATE expense and _____% OWNER expense) in accordance with (Section _____ of the Master Contract dated _____.) (Sections _____ of the Master Contract dated _____ in accordance with the following proration: _____.)"

NOTE: Where liability for portions of the utility facility to be relocated will be based on different sections of the Master Contract, insert the equation used to develop the overall percentage of liability in the Utility Agreement in the space following the word "proration:".

II-10. Prorated Expense - No Master Contract:

"The existing facilities described in Section I above will be relocated at _____% STATE expense and _____% OWNER expense in accordance with the following proration: _____."

NOTE: Where liability for portions of the utility facility to be relocated will be based on different sections of the S&H Code or other government code, insert the equation used to develop the overall percentage of liability for the relocation in the space following the word "proration:".

II-11. PG&E Master Agreement - Potholing:

This section has been superseded by the Agreement for the Positive Location of Underground Facilities executed by PG&E dated January 3, 2002.

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 Highways Code. That in signing this Agreement neither STATE nor OWNER shall diminish their position nor waive any of their rights nor does either party accept liability for the disputed work. STATE 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 "45 days."

13.07.03.03 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. State's Contractor Performs All or a Portion of Work:

"OWNER shall have access to all phases of the relocation work to be performed by STATE, as described in Section I above, for the purpose of inspection to ensure that the work is in accordance with the specifications contained in the Highway Construction Contract; however, all questions regarding the work being performed will be directed to STATE'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 STATE. Cost principles for determining the reasonableness and allowability of consultant 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 and OMB Circular A-87, as applicable."

NOTE:

(1) If the Utility Owner is not regulated by the Federal Energy Regulatory Commission (FERC), you may delete reference to 18 CFR.

(2) OMB Circular A-87 applies to local agencies and local governments.

III-5. Owner and State's Contractor Performs Work:

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

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

"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."

III-7. Prevailing Wage Requirements for Contracted Work:

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

III-8. Owner to Prepare Preliminary Engineering Plans:

"Engineering services for locating, making of surveys, preparation of plans, specifications, estimates, supervision, inspection, _____ (delete or add services as established with the Utility Owner) are to be furnished by the Utility Owner and approved by the 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 and OMB Circular A-87, as applicable."

13.07.03.04 Section IV. Payment for Work:

IV-1. Owner Operates Under PUC, FERC or FCC Rules:

"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."

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 State's contractor.

(3) Accrued depreciation refers to the period of economic usefulness in a particular owner's operations as distinguished from physical life; it is evidenced by the actual or estimated retirement and replacement practice of the owner or the industry.

(4) See Section 13.07.06.02 for depreciation clause for Oil Companies.

(5) For "Liability in Dispute" Utility Agreements, add the wording "after final liability determination and" immediately following "45 days" on IV-1, 2, 8 or 9. See Note II-12 for cross reference.

IV-2. Owner Does Not Operate Under PUC, FERC or FCC Rules:

"The 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.

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."

NOTES:

(1) Section 705 of the S&H Code states that "A credit allowance for age shall not be applied to publicly owned sewers." In these cases, the following words "... for the accrued depreciation of the replaced facilities and " shall be eliminated from the second paragraph above.

(2) See NOTES under Clause IV-1.

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

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

"The OWNER shall submit a final bill to the 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 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 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. 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., to the extent they are applicable. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse STATE upon receipt of STATE billing."

NOTES:

(1) See NOTES under Clause IV-1.

(2) Contract Cost Principles and Procedures of 48 CFR, Federal Acquisition Regulations Systems, Chapter 1, Part 31 have been accepted as the State's standards for all projects including State-only funded projects.

(3) See Manual Sections 13.04.07.01 and 13.10.02.03 for additional information.

(4) If Utility Owner is not regulated by FERC, modify above clause by deleting reference to "and/or 18 CFR, Chapter 1, Parts 101, 201, et al."

IV-4. Advance of Funds - State 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 $_____. STATE 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 STATE 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 STATE 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 STATE shall be remitted to STATE quarterly, via a separate check, even when the cost of relocation exceeds the advance amount."

"When the work is completed, OWNER shall send the STATE a Final Bill for reconciliation of the advance. In the event actual and necessary relocation costs as established herein are less than the sum of money advanced by STATE to OWNER, OWNER hereby agrees to refund to STATE the difference between said actual and necessary cost and the sum of money that was advanced. The remittance check for the balance of advanced funds will be separate from the remittance check for the earned interest. In the event that the actual and necessary cost of relocation exceeds the amount of money advanced to OWNER, in accordance with the provisions of this Agreement, STATE will reimburse OWNER said excess costs upon receipt of an itemized bill as set forth herein."

NOTE: Advance of funds should not exceed 90% of the Utility Agreement amount due to possible credits for depreciation, salvage, etc. No funds are to be advanced to cover owner initiated betterments. Per 2010 Accounting procedural requirements, two separate checks are required for remittance of: a) advanced funds and b) interest on advanced funds.

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 $_____. STATE 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 STATE 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 Surplus Money Investment Fund and computation shall be in accordance with Section 1268.350 of the Code of Civil Procedure."

NOTE: See State Controller's Office Web site at http://www.sco.ca.gov for the Surplus Money Investment Fund rate chart.

IV-6. Agreement for Identified Betterments:

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

IV-7. State Performs Work - Owner Requested Betterments:

"The STATE 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 Department of Transportation, prior to the time that the subject freeway/highway contract bid is opened by the STATE. The final betterment payment shall be calculated based upon the actual quantities installed as determined by the STATE's engineer, and the current cost data as determined from the records of the OWNER. In addition, the OWNER shall credit the STATE 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."

NOTE: A memorandum must be sent to Accounting requesting the Owner be billed for the amount of betterment.

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

"Upon completion of the work, and within 45 days after receipt of OWNER's bill, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead, STATE will pay OWNER the lump-sum amount of $_____. The above lump-sum amount has been agreed upon between the STATE and the OWNER and includes any credits due the STATE for betterment, depreciation and salvage."

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

"STATE and OWNER further agree that for lump-sum payments in excess of $25,000, that STATE shall have the option of performing an informal audit of OWNER's detailed records from which the billing is compiled. The purpose of STATE'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 STATE review for a period of one year following OWNER's submittal of final bill."

NOTE:

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

(2) See Clause IV-9 for Pac Bell/SBC lump-sum Utility Agreements.

IV-9. Lump-Sum/Flat-Sum Pac Bell/SBC Billing Utility Agreements:

"Upon completion of the potholing and relocation work, and within 45 days after receipt of OWNER's bill, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead, STATE will pay OWNER the lump-sum amount of $_____. The above lump-sum amount, for the physical relocation work, has been agreed upon between the STATE and the OWNER and includes any credits due the STATE for betterment, depreciation and salvage."

NOTE: Although most positive location will be done pursuant to the Positive Location Agreement, if Pac Bell/SBC will be conducting their own potholing, the following clause should be added.

"In addition to the amount specified above, the STATE will pay the OWNER an additional amount of $_____ for each pothole location requested by the STATE 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.

"STATE and OWNER further agree that for lump-sum payments in excess of $25,000, that STATE shall have the option of performing an informal audit of OWNER's detailed records from which the billing is compiled. The purpose of STATE'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 STATE review for a period of one year following OWNER's submittal of final bill."

NOTE:

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

(2) Use of this clause also requires that the fees and form shown in Exhibit 13-EX-22 be used by Pac Bell/SBC.

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

"Upon completion of the Preliminary Engineering, and within 45 days after receipt of OWNER's bill, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead, STATE will pay OWNER the lump-sum amount of $_____. The above lump-sum amount, for the preliminary engineering design work, has been agreed upon between the STATE and the OWNER."

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

NOTE:

(1) Insert the following Clause after Clause IV-1 or IV-2, unless the Owner is liable. As soon as the Utility Agreement is executed, a memorandum shall be sent to Accounting requesting the OWNER be billed.

(2) Use only this Clause if a Phase 4 or Phase 5 Utility Agreement where the Owner is liable.

"The OWNER shall pay its share of the actual cost of said work included in the STATE's highway construction contract within 45 days after receipt of STATE'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 STATE'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 STATE, STATE 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 STATE, in accordance with the provisions of this Agreement, OWNER hereby agrees to reimburse STATE said deficient costs upon receipt of an itemized bill as set forth herein."

13.07.03.05 Section V. General Conditions:

V-1. State Liable for Review and Design Costs, Project Cancellation Procedures and Utility Agreement Subject to State Funding Clauses - FOR ALL OWNERS:

"All costs accrued by OWNER as a result of STATE'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 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."

V-2. Notice of Completion - FOR ALL OWNERS:

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

V-3. Owner to Acquire New Rights of Way with STATE liable for a portion of costs:

"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 STATE. Said property shall be appraised and acquired in accordance with lawful acquisition procedures."

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

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

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

"STATE'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 shall mean a right of way described in the same language as found in the OWNER's document by which it is acquired, or held, in its original right of way.

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

"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."

NOTE: New rights of way shall mean a right of way described in the same language as found in the OWNER's document by which it is acquired, or held, in its original right of way. In those cases where the OWNER requests acquisition be made in their name, it will be permissible to negotiate or condemn in their name, providing the OWNER has the power to condemn and the State has OWNER's consent for condemnation on OWNER's behalf. The above paragraph should be revised accordingly.

V-6. State to Issue a JUA or CCUA:

"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 STATE highway right of way, a Joint Use Agreement or Consent to Common Use Agreement shall be executed by the parties."

V-7. Master Contract Specifies Equal Replacement Rights:

"Upon completion of the work to be done by STATE in accordance with the above-mentioned plans and specifications, the new facilities shall become the property of OWNER, and OWNER shall have the same rights in the new location that it had in the old location."

V-8a. Federal Aid Clause - No Master Contract:

"It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement."

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

"It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement."

"In addition, the provisions of 23 CFR 635.410, 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."

V-9a. Federal Aid Clause - Master Contract:

"It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement by reference; provided, however, that the provisions of any agreements entered into between the STATE and the OWNER pursuant to State law for apportioning the obligations and costs to be borne by each, or the use of accounting procedures prescribed by the applicable Federal or State regulatory body and approved by the 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 Contracts in lieu of otherwise applicable S&H Code sections.

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

"It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement by reference; provided, however, that the provisions of any agreements entered into between the STATE and the OWNER pursuant to State law for apportioning the obligations and costs to be borne by each, or the use of accounting procedures prescribed by the applicable Federal or State regulatory body and approved by the 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."

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

"Inasmuch as Water Code Section 7034 requires STATE 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 _____, STATE will repair or replace the conduit portion of OWNER's facilities which lies within the STATE highway right of way when such becomes necessary. In no event shall STATE be liable for any betterments, changes or alterations in said facility made by or at the request of the OWNER for its benefit."

V-10b. Facilities Replaced per Liability Determination Under Water Code Section 7035:

"Inasmuch as Water Code Section 7035 requires STATE 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 _____, STATE will repair or replace the conduit portion of OWNER's facilities which lies within the STATE 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 STATE be liable for any betterments, changes or alterations in said facility made by or at the request of the OWNER for its benefit."

NOTES:

(1) Use of Clause V-10 is dependent upon the delegated approval of the Water Code Checklist (Form RW 13-19).

(2) See NOTE under Clause I-2.

V-11a. Utility Owner Self Certification Method:

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

NOTE:

i. Utility Owner will source materials that comply with Buy America requirements.

ii. Utility Owner will certify compliance via a contract provision in the Utility Agreement above.

iii. Utility Owner will not be required to provide copies of supplier certifications or other utility owner-signed certifications as part of this Agreement or with the final invoice.

V-11b. Vendor/Manufacturer Certification Method:

"OWNER understands and acknowledges that this project is subject to the requirements of the Buy America law (23 U.S.C., Section 313) and applicable regulations, including 23 CFR 635.410 and FHWA guidance, and will demonstrate Buy America compliance by collecting written certification(s) from the vendor(s) or by collecting written certification(s) from the manufacturer(s) mill test report (MTR)."

"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."

V-12. Utility Agreement not subject to Buy America:

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

V-13. De Minimis:

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

NOTE:

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

$$\frac{\textbf{Combined Cost of Only those Materials that are Subject to Buy America and are Non-Compliant (limited to the individual UA)}}{\textbf{Total Utility Relocation Cost (cited in the individual UA)}}$$

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

V-14a. Acknowledgments:

"If, in connection with OWNER's performance of the Work hereunder, 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)."

V-14b. Acknowledgments:

"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."

13.07.04.00 Processing

All Utility Agreements must be submitted for approval, along with the Report of Investigation, either to Headquarters R/W or to the authorized Region/District representative.

Each Region/District may have its own internal procedures for processing the Utility Agreement for approval. Following are the minimum requirements:

- Prepare four originals of the Utility Agreement. All four originals will become fully executed "wet-ink"originals.

- Process the four original Utility Agreements through P&M for EA setup and funding verification. P&M shall "wet-ink" sign all four original Utility Agreements. P&M shall then forward the four originals to R/W Accounting for certification of funds. R/W Accounting shall "wet-ink" sign all four originals. All Utility Agreements where work is done by the Utility Owner/Owner's contractor will be encumbered with R/W ("Phase 9") funds.

- Construction ("Phase 4") funds will be needed for any utility relocation work done by the State's contractor. Construction funds are normally not encumbered by R/W; therefore, P&M must coordinate with District Construction before encumbrance of "Phase 4" funds can be accomplished.

- The funding block on the last page of the Utility Agreement must reflect all project phases funding the specific Utility Agreement.

- Accounting will "wet-ink" sign all four originals of the Utility Agreement to show funds have been certified (encumbered) and will return all four originals to R/W.

- The Utility Coordinator will transmit all four original Utility Agreements, along with the Notice and Permit as required, to the Owner for execution. See Exhibit 13-EX-13 for elements of the transmittal letter. The letter should instruct the Owner to make a copy of an executed Utility Agreement for the interim for their files.

NOTE: There is no State requirement that the Owner execute the Utility Agreements first. With some Owners, it may be more expedient for the State to execute first and then forward to the Owner for execution.

NOTE: One of the restrictions of Legislative Budgeting is the State can only pay bills the owner presents within four fiscal years following the fiscal year in which funds were encumbered. If payment is necessary after the five fiscal years, the Utility Agreement may need to be encumbered again, or an Amended Utility Agreement may be needed. P&M receives an annual report of Utility Agreements about to expire and will notify Utilities.

NOTE: Utility Agreements encumbered during the fiscal year should be fully executed prior to the end of the same fiscal year, or shortly thereafter. HQ Accounting has been instructed to disencumber any encumbered Utility Agreements not fully executed by the end of the fiscal year. If the Utility Agreement remains partially executed/unexecuted, the Utility Coordinator shall coordinate with P&M and/or Accounting to determine how to proceed.

As soon as the Owner returns the Utility Agreement:

- Check for four "wet-ink" signed originals. Be sure the Owner's signature complies with their bylaws or charter. Check for a copy of their resolution, if one is required. The person or official signing the agreements should have the proper authority delegated to him/her by the Utility Company/Owner to sign the agreements.

- If the Utility Agreements are not dated, date them to match the Owner's transmittal date.

- Obtain State execution of the four original Utility Agreements as required. Make one machine copy of the Utility Agreement.

- Distribute the fully executed original Utility Agreements as follows:

  – Send ONE original document to the Utility Owner with instructions to replace and destroy the interim copy in their files. The transmittal letter must include the elements shown in Exhibit 13-EX-23.

  – Retain ONE original document in the Region/District's file. The fully executed, wet-ink original Utility Agreement shall never be removed from the file, unless required in response to a written request from HQ Legal or in compliance with a court order.

  – Send TWO originals to R/W Accounting. One original is for R/W Accounting's files; One original is for transmittal to the State Controller's Office at the time of the first payment request.

13.07.04.01 Processing a Phase 4 or Phase 5 Utility Agreement where the State's Contractor will be handling all or a portion of the Utility Relocation for the Owner

The primary purpose of a Phase 4 Utility Agreement is to correctly allocate the Liability for the work per relocation plans and estimate the amount of construction funds that the State will need to complete the utility relocation when the State's contractor performs the work. Per Section 13.07.02.00, a Utility Agreement is needed for work completed by the State's Contractor, regardless of the extent of State liability.

The Utility Agreement will be prepared with specific attention to the paragraphs which show the work, part or all, the State's Contractor will perform. The "Funding Type" block (generally on the last page) will use a Phase 4 Expense Authorization under Construction Funds and show the estimated amount. P&M must coordinate with District Construction per 13.07.04.00, processing of Utility Agreements.

If the Liability is 100% State

- The Utility Agreement will be sent to the Owner for signature and then signed by authorized Region/District Representative (13.07.04.00) and retained in the Utility File. The Utility Coordinator will show the estimated amount on the "Funding Type" block and No Routing to Headquarters "Accounts Receivable" is required. The relocation is processed as a bid item in the contract. This agreement is primarily prepared for the purpose of Paragraph I to have the Owner agree to the relocation plans being used, and Paragraph III-3 to specify that the Resident Engineer has the final disposition.

If the Liability is Prorated

- The Department's estimated portion of the liability will be shown on the "Funding Type" block of the Utility Agreement. A fully executed copy of the Utility Agreement will be forwarded to Headquarters "Accounts Receivable" (see 13-EX-29) where an invoice will be prepared and sent to the Owner. Headquarters Accounting will place the Owner's funds in the Construction Contract and the Resident Engineer will handle them in the same manner as other construction funds. The State's portion of liability for the relocation is processed as a bid item in the contract. An actual cost Utility Agreement is preferred when the relocation costs are significant. Headquarters Accounting will reconcile the final cost by creating a refund of excess amounts paid by the Owner or a billing for underestimated amounts.

If the liability is 100% Owner

- A fully executed copy of the Utility Agreement will be forwarded to Headquarters "Accounts Receivable" (see 13-EX-29) where an invoice will be prepared and sent to the Owner for their portion. The remaining procedure is the same as shown in "Prorated" above.

In all circumstances, the Utility Coordinator should prepare an ROI package (13.05.01.00) and verify that the work is listed as a bid item on the utility portion of the Right of Way Certification. A fully executed copy of the Utility Agreement must be sent to the Utility Owner in all circumstances.

On a Minor B Project where the State's Contractor will relocate the Owner's facilities (i.e., adjustment of manhole or value covers to grade), use a Phase 5 Expense Authorization on the Utility Agreement and process as above. Headquarters Accounting and 03.02.02.00 require this.

13.07.04.02 Processing a Phase 4 or Phase 5 Construction Funds and a Phase 9 Capital Right of Way Funds as One Utility Agreement

Section 13.07.02.00 indicates that the Utility Coordinator should process a single agreement to the extent possible for each involvement. Although you can process a single utility agreement for Phase 4 Construction Funds and Phase 9 Capital Right of Way together on one agreement form, there are situations where this may not be practical. Although this issue does not arise frequently, the District Utility Coordinator should evaluate each situation to determine if a single agreement versus two separate agreements for a single involvement is the best choice. In evaluating each situation, the following are some of the factors to be considered:

- The funding for a Phase 4 Construction and a Phase 9 Capital Right of Way Utility Agreement is routed to different Accounting Departments.

- To prevent confusion by third parties, such as Utility Owners, Headquarters Accounting, and Resident Engineers as to Right of Way's internal funding process.

- Whether there is an increased overall efficiency of a single agreement as opposed to two separate agreements.

If the decision is to issue two separate utility agreements, each agreement should have a different Utility File number.

For Minor B Projects

- Use a Phase 5 Expense Authorization and process the same as a Phase 4.

13.07.05.00 Amendments to Utility Agreements

Whenever portions, but not all, of a Utility Agreement must be changed, the change shall be accomplished through an "Amendment to Utility Agreement" following the format shown in Exhibit 13-EX-24.

In most cases, Amended Utility Agreements are processed the same as Utility Agreements. However, Amendments that do not have a change in the dollar amount do not need to go to R/W Accounting.

13.07.05.01 Amendments for Payments in Excess of Original Utility Agreement

Normal State Controller procedures do not allow payments in excess of contractual amounts. The State Controller has granted an exception for Utility Agreements whereby they will process final payment requests for reimbursement of relocation costs not exceeding 125% of the estimated amount as stated in the original Utility Agreement.

The basis for this exception is the State has obligated itself to participate in the actual and necessary cost of State-ordered relocation of the Utility Owner's facilities at an estimated cost to the State. Since the cost amount shown in the Utility Agreement is an estimate and not a fixed contractual amount, the State Controller allows for reasonable adjustments to the estimate.

Amounts in excess of 125% of the original Utility Agreement estimate must be covered by an Amended Utility Agreement before payment is requested. In addition, before an Amended Utility Agreement or a bill exceeding 125% of the estimated amount in the original Utility Agreement can be processed, the Utility Coordinator must receive **and approve** written documentation of the reasons and identification of the basis for the increase. (See Section 13.07.03.04, Clause IV-3.)

Amended Utility Agreements are not required whenever the total billing is less than the original Utility Agreement amount except as described in Section 13.07.05.02.

NOTE: This section does not apply to lump-sum/flat-sum Utility Agreements.

13.07.05.02 Amendments for Change in Scope of Work

Any significant change to the originally planned and agreed-upon work must be covered by an Amended Utility Agreement, a Revised Notice to Owner (RW 13-4R), and a Supplemental FHWA Specific Authorization before work on the proposed changes commences. (See Sections 13.06.03.05 and 13.14.05.00.)

Preparing an Amended Utility Agreement and Revised Notice for a change in scope is necessary to:

- Comply with Federal requirements for preapproval of relocation plans.
- Provide for any needed change in the proration of liability.
- Provide for necessary modification to the previously ordered plan of relocation.

13.07.06.00 Special Utility Agreements

Occasionally, a Special Utility Agreement is needed for a variety of reasons, e.g., liability disputes, engineering or construction reimbursement for a project that has been canceled or delayed, or where a Utility Agreement does not exist. The "WHEREAS AND NOW THEREFORE" type of Utility Agreement is usually adaptable and is acceptable. A sample Special Utility Agreement is shown in Exhibit 13-EX-25.

13.07.06.01 Utility Agreement to Cover Advance Engineering Effort

Occasionally, an Owner will expend considerable engineering effort on a planned relocation long before the usual Utility Agreement is executed. Upon request, a Special Utility Agreement may be completed and used as a basis for reimbursing the Owner's costs. The usual ROI is required to support the State's liability to pay. Upon issuance of the Notice for actual physical relocation, the Special Utility Agreement should be amended to cover the remaining items pertinent to relocation work.

13.07.06.02 Utility Agreements With Oil Companies

The relocation of oil company facilities to accommodate construction has historically been done under the terms of a modified Utility Agreement even though oil companies are privately owned, are not a public utility, and are not under the PUC's purview. Relocation is completed in the normal manner: preliminary letter, Report of Investigation, Notice, Utility Agreement and Joint Use Agreement, as required.

Special depreciation clauses are used in utility agreements with oil companies.

- No depreciation is required for a crossing relocation. The Utility Agreement should so state.

- The depreciation clause for longitudinal relocations is:

"State shall be entitled to a depreciation credit, based on the straight-line method and a total estimated service life of 40 years for the replaced facilities, such credit not to exceed 70% of the original installed cost of such facilities, unless owner shall claim no credit is due because the remaining service life of the replaced facility is as great as the anticipated service life of the replacement facility, and in support of such claim supplies:

(a) proof of the remaining service life of the replaced facility, the sufficiency of which to substantiate such claim shall be determined in the sole discretion of State, and

(b) a written certification by owner's controller or chief accounting officer that it is not Owner's normal accounting procedure to capitalize and depreciate portions of its facilities which are relocated, and that no part of the replacement facility will be capitalized and depreciated."

Invoices for Utility Agreements covering longitudinal relocations that do not reflect a credit for depreciation must be accompanied by written certification of the oil company's controller or chief accounting officer and by a statement signed by a State Engineer, that in the opinion of the Engineer:

- The remaining service life of the replaced facility is as great as the anticipated service life of the replacement facility, and

- The evidence submitted by the oil company (which must be described in the statement) fully supports the oil company's claim to that effect.

NOTES:

13.08.00.00 - CERTIFICATION PHASE

13.08.01.00 General

Activities performed in this phase of the project generally consist of:

- Reviewing the PS&E.
- Ensuring the Owner is billed for work the State's contractor performs.
- Preparing the R/W Utilities Certification.

13.08.02.00 PS&E Review

The Project Engineer's PS&E is to be completed prior to R/W Certification. The Utility Coordinator is responsible for reviewing the PS&E to verify:

- Plans show all underground utility facilities remaining within the right of way limits of the project in accordance with Government Code Section 4215.
- Special provisions have been included concerning coordination requirements for all utility work that will be done in coordination with the State's contractor.
- Construction estimates (Basic Engineering Estimating System - BEES) include "Phase 4" utility relocation costs that will be used for billing purposes when the State's contractor performs work for the Owner and the Owner is responsible for the expense.

13.08.02.01 Work Performed by State Contractor

When the State's contractor performs the work for the Owner and the Owner is liable for all or a portion of the costs, the Utility Coordinator obtains funds from the Owner prior to award of the State's construction contract, using the following procedure:

- Obtain an estimate for the work from the PS&E or request an estimate from the Utility Owner after consulting with the Project Engineer.
- Prepare a Phase 4 Utility Agreement. (Refer to Sections 13.07.04.01 and 13.07.04.02.)

13.08.03.00 Right of Way Utilities Certification

The R/W Utilities Certification is a written statement to P&M summarizing the status of all utility facilities located within the limits of the proposed construction project. The certification identifies all utility facilities found to be within the project area and documents if they are impacted and, if so, whether they have been or will be relocated, removed, or protected as required for the construction, operation, and maintenance of the proposed project. R/W Utilities shall certify all projects where a PS&E is prepared, or federal funds are involved, prior to the district advertising and awarding a construction contract.

In accordance with 23 CFR 635.309(b), utility work should be accomplished during construction only when it is not feasible or practical to complete the work prior to construction due to economic or special coordination features. Utility work that cannot be completed in advance of construction contract award shall have special provisions in the standard specifications portion of the PS&E identifying the utility work and details of the coordination involved. All facilities not cleared from the project limits before construction commences shall be shown in the project plans to provide the necessary coordination. (Refer to Section 13.09.01.00.)

In order for the project to be certified, all Utility Agreements must be signed and executed by the appropriate Utility Owners, and Notice to Owners must also be issued. When the Utility Coordinator satisfies the utility requirements of the R/W Certification, e.g., "Status of Required Utility Relocations," the project can be certified from a R/W Utilities standpoint. (Refer to Section 14.03.07.00.)

When the State will be performing all or a portion of the utility relocation work under the highway contract on the Owner's behalf, this work will need to be listed as a "Bid Item" on the Utilities Certification portion of the Right of Way Certification.

The Utility Coordinator shall update and recertify any certification of a project over one year old where the project has not been listed for advertising and any certified project where there was a subsequent design change.

Refer to Manual Chapter 14, Right of Way Certification, for further discussion on certifications and Exhibit 13-EX-26 for the suggested format of R/W Utilities Certification with instructions.

13.08.03.01 Utility Certification for Design/Build Projects

Until project design is completed, it is impossible to determine possible impact on utility facilities. A Utility Certification must be delayed, therefore, until design is completed, but before construction commences. (Refer to Section 14.01.11.00.)

13.10.00.00 - PAYMENT PHASE

13.10.01.00 General

Activities performed during this phase generally consist of:

- Obtaining bills from Owners.
- Checking and verifying bills.
- Processing bills for payment.
- Verifying transactions entered into TRAMS.
- Billing or refunding local agencies pursuant to Cooperative Agreements.

13.10.02.00 Processing Bills From Owners

It is essential to the efficient operation of the State's transportation program that funds encumbered for Utility Agreements be paid as soon as possible. The Utility Agreement billing clause requires Owners to bill the State at least quarterly but not more than monthly, during relocation of their facilities. Immediately after completion of the Owner's work, for which reimbursement is due and a bill has not been received, the Utility Coordinator should make a written request to the Owner requesting submittal of the final bill within 90 days of the date of the letter.

The Utility Coordinator should follow up with a letter to the Owner every 60 days if the bill has not been received. The Utility Coordinator must give the Owner a 30-day notice before closing the file.

13.10.02.01 Prompt Payment of Bills

The State's Prompt Payment Act requires that bills be paid within 45 days after the date specified in the contract; and if not specified, the date the invoice is stamped received by the Department. This includes the time for the invoice to be reviewed against inspector's diaries, preparation of the payment request package, transmittal to HQ Accounting, submission to State Controller's Office and processing of the check. If invoices are not paid within the required time frame, SCO will also pay late payment penalty funds to the Owner, which could be substantial. These penalty funds are not Federally reimbursable.

If, after review of the invoice, the Utility Coordinator has concerns or questions about the validity of any part of the invoice, the Utility Coordinator must send an official invoice dispute form back to the Owner (Form STD. 209). This has the effect of "resetting" the Prompt Payment Act "clock." The Utility Coordinator should monitor payment of received bills to ensure the applicable payment date is met.

13.10.02.02 Review of Owner's Bill

When the bill is received, the Utility Coordinator shall check to see if it is a partial or final bill. Since consistent format will facilitate review, the bill should be in a format similar to that used for the original estimate of cost (Exhibit 13-EX-27). The Utility Coordinator is responsible to check the bill for consistency with the Utility Agreement and the Owner's previously submitted and approved relocation plan and estimate of cost and to ensure credit for previously identified betterments has been received. The bill must be on the Owner's letterhead with the vendor's full address and contain the date of service, the invoice date, and an itemized description of the services. If the bill is not the original invoice, it must be signed by the appropriate Owner representative. All bills must be addressed to the Department of Transportation, or the Controller will not pay the bill, and must contain the Utility Agreement number. If the Owner's invoice does not contain the Utility Agreement number, the Coordinator must imprint the Utility Agreement number on the invoice or bill. When the Coordinator completes the Utility Payment Request (Form RW 13-6), the number(s) of the Owner's invoice(s) to be paid must be listed on the form. Coordination between Right of Way, Construction, and Accounting is essential to adequately verify the bill.

IRS requires that all payments to vendors be recorded under the recipient's Tax Identification Number (TIN). Accounting maintains a TIN file for all Owners with whom the State normally does business. If the TIN is not on file, Accounting will advise the Utility Coordinator. The Utility Coordinator then sends the Owner Form STD. 204, "Payee Data Record," for them to complete and sign, and forwards the completed form to Accounting.

13.10.02.03 Bill Discrepancies

If discrepancies are discovered in the Owner's bill, the Utility Coordinator must return the bill to the Owner within 15 days of receipt with a request for correction. The Utility Coordinator completes Form STD. 209 identifying the type of discrepancy or deficiency in the bill and sends the original bill with the completed form back to the Owner. The Utility Coordinator must keep a copy of the bill and the form in the Utility File for documentation.

If the Owner's response is not acceptable, the Utility Coordinator should forward the bill to HQ R/W with a request for Audits' assistance. However, it is important for the Utility Coordinator to make every effort to resolve discrepancies before requesting Audits' help.

Some of the more usual discrepancies include:

- Failure to provide credits for betterments, salvage, or depreciation associated with the relocated facilities (see Section 13.04.05.06).
- Interest beyond the date the utility facility is put back into service (Section 13.04.07.01).
- Partial/progress billings that exceed the Agreement amount (see following sections).

13.10.02.04 Partial Billings

Partial bills are usually paid routinely, if the total of the partial bills does not exceed the amount encumbered under the Utility Agreement. All partial bills must show an itemization of the charges. A review of partial bills is essential where the State is due an unusually large credit, e.g., large betterments, or where billing exceeds work actually completed. The procedure for payment is the same as for final bills as described in Steps 5-10 in Table 13.10-1, "Processing Final Bills."

13.10.02.05 Payment for Engineering Effort

Occasionally, an Owner will expend considerable engineering effort for a required relocation in advance of executing the Utility Agreement. If the Owner requests to be paid for these efforts as they progress, a separate Utility Agreement must be entered into to cover this portion of the overall relocation. This payment is sometimes referred to as a progress payment and is processed the same as for a partial billing.

13.10.02.06 Final Bills

The process for paying final bills is shown on Table 13.10-1, "Processing Final Bills." Final bills must contain detailed charges in a format similar to that in the original estimate and must contain all information listed in Section 13.10.02.02. (If partial bills contained detailed charges, the details in the final bill could cover only the final portion of work.) The final bill must also contain the "start date" of the physical relocation work. The Utility Coordinator must check the start date against the FHWA Specific Authorization date, if applicable, to ensure proper Federal reimbursement. Based on an agreement with the State Controller's Office, payment of a final bill may be made up to 125% of the Utility Agreement amount without an amendment.

13.10.02.07 Payment Request Form

Payments for both partial and final bills are requested on the Utility Payment Request, Form RW 13-6. The form is fairly self-explanatory. However, the Utility Coordinator must take special care when more complex relocations are being handled. If there are costs that are not Federally reimbursable, these costs must be separated out and coded appropriately. Costs of this type most often include wasted work, discovered work, spare duct charges, costs incurred prior to Federal authorization and interest during construction.

In the case of an advance of funds to the Owner, the advance payment request is originally coded with an "FAE" code of "8" to suspend the funds. As invoices are received for actual work completed, even though no actual "payment" occurs, the Utility Coordinator must process the RW 13-6 and note in the "Other" category that the request is to "transfer" funds from FAE 8 to FAE 6 (federally reimbursable) or FAE 7 (State only funds).

13.10.02.08 Audit of Owner's Bill

Audits will no longer be performing audits on every Utility Agreement. However, Audits reserves the right to audit any Utility Agreement at their discretion. Once all payments have been made, the Utility Coordinator must send a copy of the final Utility Payment Request (Form RW 13-6) with Planning and Management coding, and a copy of the final RUMS screen, to HQ R/W. At the end of each fiscal year, Audits will determine which Utility Agreements are to be audited. Audits will issue an Audit Report identifying any discrepancies discovered during the audit. For money due the State on final bills, Audits sends the Audit Report to the Utility Coordinator with instructions to initiate billing the Owner for reimbursement of the discrepancy amount cited. Usually, the auditor will have reached an agreement with the Owner on any identified discrepancies. If the auditor cannot resolve the discrepancy with the Owner, the auditor notifies the District Utility Coordinator, who shall take necessary steps to resolve it.

13.10.03.00 Advance Payments to Owners

If the Owner does not have sufficient funds available to proceed with the relocation of their facilities, the State may choose to advance the State's portion of the relocation costs. The Utility Coordinator may advance up to 90% of the State's total portion (to allow for credits for salvage, depreciation, etc.). Once the Utility Coordinator receives an executed Utility Agreement and the Owner's bill for the advance, the Utility Coordinator shall process a Request for Payment (Form RW 13-6) within 45 days. The funds advanced by the State must be deposited into a separate interest-bearing account or trust fund in a California state or national bank. (See California Government Code Section 53630, et seq.) Any interest earned on the funds must be credited to the State. [See Section 13.07.03.04 (IV-4) for specific clauses relating to advance payments to Owner.]

If the actual and necessary relocation costs are less than the amount advanced, the Owner must refund the overpayment. If the actual and necessary relocation costs are more than the amount advanced, the Owner must process a final bill and the payment will be processed as in Table 13.10-1.

NOTE: No funds are to be advanced to cover Owner betterments.

13.10.03.01 Loan to Owner

If the Owner recognizes their obligation to relocate their facility at the Owner's cost, but does not have sufficient funds available to proceed with the relocation, the State may agree to advance the funds to the Owner in accordance with S&H Code Section 706. Once the Utility Coordinator receives an executed Utility Agreement and the Owner's bill for the advance, the Utility Coordinator shall process the payment within 45 days. The Owner must pay interest on the funds advanced by the State at the rate of earnings of the Surplus Money Investment Fund and the funds must be repaid within 10 years. (See Section 13.07.03.04 IV-4 for specific Utility Agreement clause.)

NOTE: See State Controller's Web site for the Surplus Money Investment Fund rate chart.

13.10.04.00 Verification of Transactions

The Utility Coordinator is responsible to review the R/W Accounting 1A Report to ensure all codes and amounts for each transaction were correctly entered into TRAMS. The 1A Report lists all transactions entered into TRAMS for the previous week. R/W Accounting sends the 1A report electronically to P&M every Monday, and P&M shall make a copy of the pertinent page of the weekly 1A report to the Utility Coordinator for review.

Table 13.10-1

PROCESSING FINAL BILLS (Section 13.10.02.06)		
Step	**Responsible Party**	**Action**
1	Utility Coordinator	Review the bill against the Utility Agreement (UA), the Owner's approved relocation plans, and the Owner's estimate of cost. Ensure that the Owner has submitted the required notice of completion.
2		Check total cost billed to State against amount encumbered by the UA. If final bill exceeds encumbrance by more than 25%, an amended UA must be processed before payment is requested (see Section 13.07.05.00).
3		Send a copy of the bill to Construction requesting them to review the bill and return it with a copy of the utility inspector's daily diary pursuant to the Construction Manual, Chapter 3, Section 3-809, General Provisions.
4		Review the bill against the inspector's diary, paying particular attention to items of credit to which the State is entitled. Credits for betterment, salvage, and depreciation are to be checked to ensure that they appear reasonable in the bill (see Section 13.04.05.06).
5		Prepare the Utility Payment Request (RW 13-6). Refer to Section 13.14.00.00 for federal aid procedures.
6		Prepare the Checklist for Final Utility Invoice (RW 13-7).
7		Send the original invoice, the Utility Payment Request (RW 13-6), and a copy of the UA signature page to HQ Accounting.
8	Region/District P&M	Complete unshaded coding boxes on the Utility Payment Request (RW 13-6). Route package to R/W Accounting for payment.
9	R/W Accounting	Schedule the bill for payment through the State Controller. (Check is mailed directly to Owner.)
10	Utility Coordinator	Verify the transaction against the following week's 1A report, electronically issued by R/W Accounting and forwarded by Region/District P&M.
11	Utility Coordinator	Send the following package to Audits for review. Copies of: • Final billing invoice and RW 13-6. (Include partial billings and related RW 13-6s if they contain details of the charges.) • Executed Utility Agreement, with amendments if applicable. • Notice to Owner, with Revised Notices to Owner if applicable. • Approved E-76, if applicable. • R/W Accounting's weekly 1A report(s). • Identification of specific concerns in need of Audit review.
12	Audits	At their discretion, Audits will perform an audit of the Owner's bill and prepare the Audit Report, requesting that District R/W initiate the process to collect funds from the owner.
13	Utility Coordinator	If funds are to be collected from the Owner, prepare an Accounts Receivable memorandum requesting preparation of a bill. A copy of the Audit Report must be included with the memorandum for forwarding to the Owner with the bill. Forward both documents to Accounting - Accounts Receivable.
14		If a Cooperative Agreement with an LPA involves cost sharing, ensure the LPA is billed (or refunded) for their share of relocation costs for all owners. See Section 13.12.00.00 for procedures in dealing with Cooperative Agreement projects.

NOTES:

13.11.00.00 - PROPERTY RIGHTS CONVEYANCES

13.11.01.00 General

This section explains usage, preparation, and processing of Joint Use Agreements (JUA), Consent to Common Use Agreements (CCUA), and easement (replacement right of way) conveyances to the utility owner.

The Utility Coordinator is responsible for preparing JUA and CCUA on Form RW 13-1 and Form RW 13-2 respectively, except for Southern California Edison Company's JUA and CCUA, which are prepared on Form RW 13-8 and Form RW 13-9 respectively.

13.11.02.00 Requirements for JUA/CCUA

JUA and CCUA are documents that perpetuate the Owner's rights of way that are within the State's highway right of way. Both documents place limiting restrictions on the Owner's use to ensure the Owner's utility use is compatible with highway traffic safety. The Owner otherwise retains all their original easement use rights. The fact that the State is obligated to pay the cost of relocating the utility facility does not, in itself, entitle the Owner to such an agreement. The documents may be entered into only where the Owner's original easement:

- Possessed prior rights in the right of way acquired by the State.
- Did not contain termination or relocation clauses that were enforceable by the State.

These documents are used only for the portion of the Owner's utility easement that is within the State's highway right of way. The State may own the right of way either in fee (JUA or CCUA) or in easement (CCUA only).

In the case of an easement, the Owner's prior rights must be carefully checked for unusual conditions. For example:

- The Owner may have an easement that requires relocation at the Owner's expense but obligates the landowner (State) to issue a new easement (JUA or CCUA) for the newly relocated facilities.
- The Owner's easement may have been granted for a specific time period, in which case the JUA or CCUA must be written to terminate on the specified date. Following termination, the utility facility is considered as being under an Encroachment Permit.

NOTE: A JUA cannot be used where the State only possesses an easement right of way. The State as an easement holder has no legal right to grant a utility easement in a new location.

13.11.02.01 Joint Use Agreements

A JUA (Form RW 13-1 or RW 13-8) is used when the Owner's facility will remain on lands used for highway purposes but will be relocated to a position outside, or partly outside, the Owner's existing right of way where the Owner had prior rights. It is also used where the Owner's right of way is not occupied by any existing utility facilities but the Owner will not quitclaim the easement because of an unknown future use.

When existing facilities have been relocated to a new location both within the highway right of way and outside the right of way on a newly acquired utility easement, the JUA describes only the new location of the facilities within the highway right of way. The easement area outside the highway is covered by acquisition on the Owner's easement form or conveyed by State Director's Easement Deed (DED) if acquired in the State's name.

13.11.02.02 Consent to Common Use Agreements

A CCUA (Form RW 13-2 or RW 13-9) is used when all of the Owner's facilities, whether rearranged or not, will remain within the highway area covered by the Owner's existing easement area.

13.11.02.03 Water Code 7034 and 7035

Water Code Sections 7034 and 7035 specify the rights and obligations of each party regarding water facilities that fall under these statutes. A JUA or CCUA will be issued only for Section 7035. No JUA/CCUA shall be issued for Section 7034.

13.11.02.04 Local Agency Owned Facilities Within Highways and Frontage Roads

A JUA/CCUA is not required for facilities relocated to frontage roads to be relinquished to the local agency, as the local agency will be vested with all the title the State previously held.

In those cases where the local agency's facilities remain within the highway right of way and not in a frontage road and the facilities were installed in local agency streets prior to inclusion in the highway system, the practice is to enter into a JUA/CCUA only if the local agency so demands.

If the local agency's facilities exist upon a recorded easement, a JUA/CCUA with the local agency covering these facilities is in order.

13.11.02.05 Prescriptive Rights

It is appropriate to perpetuate the Owner's rights established under prescription with a JUA/CCUA. The extent of a prescriptive right, however, must be measured by the Owner's use during the period the Owner occupied the site under prescriptive right (not less than 5 years). Granting any rights greater, or specifying a dimension to the easement where none is documented, is a betterment and constitutes a gift of public funds. Accordingly, the precise extent of the prescriptive right, e.g., "a single line of poles with one crossarm and three 200 pair telephone cables," should be set out in any JUA/CCUA.

A prescriptive right cannot be established over land owned by any governmental entity.

13.11.03.00 JUA/CCUA Preparation

Following are guidelines for preparing JUA/CCUAs:

- The State normally prepares JUA/CCUA, and coordination between the Utility Coordinator and R/W Engineering is essential.

- To the extent practicable, a single JUA/CCUA document is used covering each location or related series of the Owner's easements for either a conventional highway or freeway transaction.

- Since the document must be returned to the State to allow for documenting the recording information on State Record Maps, the State's return address must be shown in the upper left-hand corner of the document.

- The document shall have the same number as the Utility Agreement with another numerical digit after the Utility Agreement number, e.g., Utility Agreement No. 01-UT-1234 corresponds to JUA/CCUA Document No. 1234-1.

13.11.03.01 Description of Owner's Rights

The "Owner's easement" portion of the JUA/CCUA document is described by reference to the document and recording information, if any, by which the Owner acquired the utility easement. If the document is unrecorded, language shall be inserted in the JUA/CCUA description stating that a copy of the unrecorded document is attached and made a part of the JUA/CCUA. (The unrecorded document is then attached.) In the case of Pacific Gas and Electric Company, a copy of the unrecorded document should not be attached to the JUA/CCUA to be recorded. A copy is retained and attached to the R/W Utilities file copy only.

When the Owner's easement rights have been acquired by prescription, or in any other manner that does not exactly describe the specific location or rights acquired, the "Owner's easement" must be described in precise terms using one of the following clauses as appropriate:

A. "The easement for a (voltage) electric distribution line consisting of a single line of poles with (number) conductors suspended therefrom and appurtenant thereto, together with a right of way along said pole line, acquired by (occupancy, etc., as appropriate to the circumstances)."

   NOTE: If a telephone facility is involved, this clause should be modified to describe the number of circuits instead of voltage. It should also include the number of poles erected within the area being described.

B. "The easement for a (size) inches or feet (gas, water, steam, oil, etc.) pipeline with valves and other appurtenances, fittings and connections thereto, together with a right of way along said pipeline acquired by (occupancy, etc., as appropriate to the circumstances)."

C. "The easement for a canal or ditch and pertinent structures within a strip of land (number) feet in width, together with a right of way along said strip acquired by (occupancy, etc., as appropriate to the circumstances)."

13.11.03.02 Vicinity Description

The "highway right of way" portion of the JUA/CCUA document is described by reference to the vicinity of a city, town, or other commonly recognized locality, the county, and the State Route.

13.11.03.03 Location Description

R/W Engineering prepares the description of the "new location" or "area of common use." The description is included in the JUA/CCUA in accordance with the following requirements:

A. In some instances, the Owner's existing facility will be located partially within an easement and partially under permit or other lesser right. In those cases, the "new location" or "area of common use" must be apportioned so the Owner has the same ratio of ownership and rights in the new location as were held in the old location. The Owner must not receive a betterment by a grant of an easement for the portion that was previously held under permit or lesser right.

B. The foregoing rule applies notwithstanding the fact that the existing facilities may leave the highway right of way for a portion of their length, so there is in effect more than one crossing of the highway or right of way line.

C. The description preferably should be by attached map, provided the map can be reduced to the size of a recordable document without being illegible.

D. For the purpose of the referenced apportionments, distances are determined by measurement on a scaled map that is an accurate horizontal plan of the affected easements. To the extent possible, the new easement location is described as a continuous strip even though the original easement locations may not have been continuous and abutting. The description for a new longitudinal location generally commences opposite the lowest highway engineer's station and is measured in the direction of increasing stations. In the case of perpendicular crossings, it commences at the right of way line, right or left of the highway station.

E. If two or more of the Owner's original easements are being combined into a single JUA, the following statement is added to the end of the description of the "new location":

> "For the purpose of determining the position and length of each of Owner's easements in the new location, said easements shall be deemed to be located in the same sequence as is set forth above, and the length of each easement in the new location shall bear the same proportion to the entire length of the new location as the length of such easement in the old location within the right of way of the highway bore to the entire said length, all lengths to be measured on a scaled map which is an accurate horizontal plan of the affected easements."

F. Where practical, more than one crossing of the highway right of way may be covered in a single JUA/CCUA.

G. When the Owner's rights have been acquired by prescription, or in any other manner that does not exactly describe the specific location or rights acquired, "Owner's easement" must be described in precise terms in the form as shown in Section 13.11.03.01.

13.11.03.04 Access Control Clauses

The JUA or CCUA specifies any limitations on the Owner's right to cross access control lines or fences erected across the new location of the Owner's easement or the area of common use. If the highway is not a freeway, the words "conventional highway, not applicable" are inserted as Paragraph 4 of the JUA or Paragraph 3 of the CCUA. If the Owner's facilities in the new location or area of common use do not cross a freeway access control line or fence, the following provision is inserted:

> "State's access control line does not intersect Owner's easement; not applicable."

If the State highway involved is a freeway and the Owner's facilities in the new location or area of common use will cross the freeway access control line or fence, the parties must enter into a specific understanding on how the Owner will access their right of way along the easement portions at each crossing of the freeway fence. Usually, the JUA/CCUA uses one of the clauses in Table 13.11-1, "Clauses - Access Control Across Freeway Fence," for the situations presented. If none of the clauses fits the situation, the parties will agree upon the manner in which the Owner is to exercise their rights. The clause negotiated shall be subject to Headquarters R/W and Legal review and approval.

Table 13.11-1

CLAUSES - ACCESS CONTROL ACROSS FREEWAY FENCE (Section 13.11.03.04)	
Situation	**Clause**
The Owner needs (a) gate(s) in the freeway fence, and the State accepts the need.	"Owner shall exercise its rights of way solely by use of the gate installed in the freeway fence (right or left) of Engineer's Stations _____ (Insert as necessary: "together with the road approach thereto constructed within the freeway"). The said gate (and road approach) shall not be used for any purpose other than construction, reconstruction, operation, inspection, repair or maintenance of Owner's facilities now or hereafter installed pursuant to Owner's easement. Owner shall close and lock said gate after each use thereof by Owner."
The Owner agrees that it can adequately maintain the facilities installed on their easement by traveling over city streets, county roads, or State highways that are not planned to be closed, or a private easement owned by the utility.	"Owner shall not, in the exercise of its rights under its easement, pass through or over the freeway fence(s) constructed by State across Owner's easement (right or left) of Engineer's Station _____ except in emergencies or when necessary to permit the construction, reconstruction or replacement of Owner's facilities."
If neither clause above is applicable, the State shall provide a substitute route (or means) for the Owner's use for accessing the easement areas at each crossing of a freeway fence or access control line. In each case, the substitute route (or means) shall be fully described in the document.	"So long as Owner shall have a right to exercise its right of way along its easement by the means hereinafter described, or a reasonable substitute therefore, provided by State, Owner shall not pass through or over the freeway fence constructed by State across Owner's easement except in emergencies or when necessary to permit the construction, reconstruction or replacement of Owner's facilities. Said route (or means) is described as follows: (Provide description of route or means.)"
The Owner's easement does not cross the freeway access control line, or the Owner can only adequately reach their facilities from the freeway. **NOTE:** This situation also requires Division of Design encroachment exception approval.	"Owner shall enter and leave said (new location or area of common use) only by way of said freeway."
The Owner's facilities in the new location are entirely outside of the freeway fence and the Owner can adequately reach their facilities without crossing the fence.	"Owner's facilities in the new location are located entirely outside the freeway fence. This paragraph is therefore not applicable." or Clauses in the four sections above, as applicable, plus: "The foregoing is not applicable to that portion of the new location within a frontage road outside of the freeway in which the Owner's rights can be exercised by entry from such frontage road."

13.11.04.00 JUA/CCUA Processing

The Utility Coordinator processes the JUA/CCUA as shown in Table 13.11-2, "JUA/CCUA Process."

Table 13.11-2

JUA/CCUA PROCESS (Section 13.11.04.00)	
Step	**Description**
1	Request R/W Engineering to prepare the necessary maps and legal descriptions for the JUA/CCUA.
2	Review the JUA/CCUA for accuracy and compliance with policy.
3	Transmit the original, one counterpart, and one copy of the JUA/CCUA to Owner with the following instructions: • Request Owner to sign, notarize, and return the original and the counterpart. The copy is for the Owner's records. • Request Owner to provide full organizational names and titles of the signing officers with their signatures acknowledged on the JUA/CCUA. • Advise that a fully executed and recorded original will be returned to Owner following State's processing.
4	Upon receipt from the Owner, review the documents to ensure they have been properly executed and acknowledged and sign both the original and the counterpart under "Recommended for Approval."
5	Forward the documents to the district person who is appointed as the Department's Attorney in Fact to sign and notarize both the original and the counterpart of the JUA/CCUA on the State's behalf.
6	Record the executed original JUA/CCUA. The State's return address must be shown in the upper left-hand corner of the document.
7	Upon return of the recorded JUA/CCUA, the district will: • Send the original recorded JUA/CCUA to the Owner with reference to County, Route, Post, EA, Utility Agreement No., Owner's file reference, and any other information pertinent to the project and file. • Send a copy of the recorded JUA/CCUA to R/W Engineering for entering on the District's Record Maps. • Retain the original, counterpart, and the copy of the recorded JUA/CCUA in the Utility File.

13.11.04.01 Recording JUA/CCUA Prior to Relinquishment of Frontage Roads

Occasionally, an Owner's prior rights easement will impact both a State freeway and a frontage road that will be relinquished to a local agency. To protect the Owner's prior rights, the JUA/CCUA must be recorded in advance of the relinquishment resolution.

13.11.05.00 Special Clauses

Where the Owner is in a prior right status to the State highway and is requesting a special clause in the JUA/CCUA, one of the following standard clauses may be used as appropriate to cover the Owner's needs. Use of these clauses requires written approval from Headquarters R/W. The circumstances warranting use of these clauses shall be included in the transmittal memo to HQ R/W. Under no circumstances are these clauses to be modified without Legal's prior approval.

13.11.05.01 Conversion of Open Ditch to Conduit When Owner Has Prior Rights

Where an open ditch exists under a granted easement, the highway is on a new alignment, and the State is changing the facility to a closed conduit within the highway right of way, the following clause may be added to the JUA/CCUA:

> "Inasmuch as Water Code Section (7034) (7035) requires STATE 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 _____, STATE will repair or replace the conduit portion of OWNER's facilities which lies within the STATE 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 STATE be liable for any betterments, changes or alterations in said facility made by or at the request of the OWNER for its benefit."

13.11.05.02 Special Clause for Public Agencies

Sometimes the standard form of JUA/CCUA cannot be used when dealing with another public agency, such as the federal government. To establish equal and concurrent rights to a common use area to be jointly used with the State, conveyances to another public agency may include the following clause with Headquarters R/W prior approval:

> "This grant is subject to all valid and existing encumbrances of record, and is subject to the continuing right of the grantor and its successor to use the said land hereof, in common with the grantee and its successors, with the understanding that after completion of the highway construction work presently contemplated, whenever either party alters or improves its facilities within such common area, such party shall assume the actual and necessary costs, exclusive of betterments, of accommodating the other's facilities located in such common use area and necessarily affected by the proposed alteration or improvement, and that neither party will undertake any such alterations or improvements without first submitting to and obtaining the written approval by the other of the plans and specifications thereof, which approval shall not be unreasonably withheld."

This clause is readily adaptable where the State is either the grantor or the grantee. Inasmuch as the party initiating the work of altering their own facility within the common use area is liable for the cost of reconstruction and relocation of the other public facility, it is important to carefully consider respective rights of the parties before consenting to use of this clause, and then only after Headquarters R/W review and approval.

13.11.06.00 Agreements With Public Agencies

The Bureau of Reclamation and the Department of Water Resources have special agreements with the Department that provide instructions for preparation of a JUA/CCUA going to them.

13.11.06.01 Bureau of Reclamation Agreements

The State and the Bureau of Reclamation have entered into master contracts as shown in Table 13.11-3 below.

Table 13.11-3

BUREAU OF RECLAMATION AGREEMENTS (Section 13.11.06.01)		
CONTRACT	**COVERAGE**	**EXPLANATION**
Bureau of Reclamation Contract No. 14-06-200-6020 (CVP) dated October 12, 1956	Joint use areas of State highways and facilities of the Central Valley Project.	Provides for perpetual joint use in common areas by either party on lands of the other party by means of a one-page form labeled "Exhibit 'C'" of the contract (Form RW 13-10). Each joint use is subject to the terms and conditions in the master contract.
Bureau of Reclamation Contract No. 14-06-200-503-A (Non-CVP) dated October 9, 1963	Joint use of State highways and Bureau of Reclamation facilities, other than those of the Central Valley Project (Contract No. 14-06-200-6020).	Provides for the form of "JUA" to be used when the State or the Bureau proposes construction on the other's property. The forms of "JUA" are: 1. "Exhibit 'B'" (Form RW 13-11) of the master contract provides for the form of JUA to be issued by the State when the Bureau proposes transverse construction on the State's property. 2. "Exhibit 'C'" (Form RW 13-12) of the master contract provides for the form of JUA to be issued by the Bureau when the State proposes construction on the Bureau's property.

13.11.06.02 Department of Water Resources Agreement

The Department and the Department of Water Resources entered into an agreement dated December 13, 1961 covering, among other things, the form of "Certificate of Common Use" to be used when the Department or the Department of Water Resources proposes construction on the other's property. The forms of "Certificate of Common Uses" are:

- Exhibit 'A' (Form RW 13-13) of the master contract is used when the Department proposes construction on the Department of Water Resources' property.

- Exhibit 'B' (Form RW 13-14) of the master contract is used when the Department of Water Resources proposes construction on the Department's property. Transverse crossings by the Department of Water Resources are the only permitted crossings under this agreement.

13.11.07.00 Easement Conveyance Processing

Conveyance of easements to Owners is by deed. To initiate this procedure, the Utility Coordinator must include a clause/clauses in the Utility Agreement for property rights to be conveyed and the form of conveyance. Clause(s) should also include credit to the State for the Owner's share of the cost or market value of easements conveyed, as applicable. The cost of State acquired utility easements is part of the cost of relocation and must be apportioned between the State and the Owner in accordance with the Utility Agreement. See Section 13.07.00.00 for standard Utility Agreement clauses.

NOTE: Easements to be conveyed across excess lands or developable airspace parcels must be located so as to minimize possible adverse conflicts to site development. Requests for easements across airspace or excess lands not originating as a result of a Utility Agreement obligation should be handled in accordance with usual excess or airspace procedures.

13.11.07.01 Easement Billing Process with R/W Contract (No Utility Agreement)

This process is used when there is no Utility Agreement because liability is 100% Owner expense, easements have been purchased for the Utility Owner with State funds through a R/W Contract, and the deed has been recorded. The Utility Owner must reimburse the State for this cost.

When Acquisition has acquired the easement(s), the Utility Coordinator is responsible to:

- Document the Owner's request for the State to purchase easements in the Utility Diary.
- Obtain a copy of the R/W Contract and Memorandum of Settlement (RW 8-12 or RW 8-13) from Acquisition.
- Highlight the easement description and settlement cost in Paragraph 8 of the Memorandum of Settlement.
- Verify with Planning and Management (P&M) that the payment has been made to the grantor of the property and the project EA is open. *
- Use Exhibit 13-EX-31 to request an abatement invoice from HQ Accounts Receivable. Transmit the original and a copy of this exhibit with a copy of the R/W Contract and Memorandum of Settlement to Accounts Receivable. Retain a copy in the Region/District's Utility File.

* If the project EA is not open, request P&M to supplement the EA for the purpose of processing the invoice for the easement.

13.11.07.02 Acquired in Owner's Name

Acquisition of easements in the Owner's name using their deed form is the preferred method since the procedure for transferring this easement deed is the simplest. When Acquisition has acquired the easement in the Owner's name, the Utility Coordinator is responsible to:

- Obtain the Owner's approval of the description in advance of execution.
- Collect money due the State from the Owner for their share of the easement costs, if applicable.
- Ensure the easement deed is recorded.
- Retain a copy of the easement deed along with a copy of the recording request to the County Recorder.

13.11.07.03 Acquired in State's Name

The process for conveying an easement acquired in the State's name is slightly more difficult than conveying an easement in the Owner's name. When Acquisition has acquired the easement in the State's name, the Utility Coordinator is responsible to:

- Transmit necessary maps and/or legal descriptions (taken from the State's Grant Deed) to Excess Lands with a request for Director's Easement Deed (DED) preparation.

- Review the prepared DED for accuracy and transmit a copy of the DED to the Owner for review and approval. Any money due the State should be requested pursuant to the Utility Agreement.

- Upon Owner approval and receipt of money due State, request Excess Land to process the DED as provided for in Section 16.07.02.00.

- Ensure receipt of a copy of the DED for the District's Utility files and follow up to make sure the DED was recorded and sent to the Owner.

13.14.00.00 - FEDERAL AID PROCEDURES

13.14.01.00 General

Utility relocations on projects with federal participation are generally processed in the same manner and with the same forms as State-only financed projects. The only difference is that FHWA Authorization to Proceed (E-76) and FHWA Specific Authorization (Form RW 13-15) must both be obtained before commencement of any work to qualify for FHWA reimbursement of relocation costs.

It is not intended that this section cover all the detailed requirements for Federal-aid reimbursement of State costs. The Utility Coordinator should review the Code of Federal Regulations (CFR), in particular 23 CFR 645 and the additional instructions contained in FHWA's "Program Guide Utility Relocation and Accommodation on Federal-Aid Highway Projects" at: http://www.fhwa.dot.gov/reports/utilguid/index.htm.

13.14.02.00 FHWA Alternate Procedure

In accordance with 23 CFR 645.119, the State has been granted authority under the Alternate Procedure process to act in the relative position of FHWA for reviewing and approving arrangements, fees, estimates, plans, agreements, and other related matters required by the CFR as prerequisites for authorizing a utility to proceed with and complete the work.

The State must obtain Federal Authorization to Proceed (E-76) for the project authorizing the use of the Alternate Procedure and listing every utility company for which Federal-aid reimbursement will be sought, with an estimate of the cost of the relocation, before the State may issue a Specific Authorization under the Alternate Procedure process.

Issuance of FHWA Specific Authorization has been delegated to the Regions/Districts except those listed in the following manual section (refer to Section 13.01.02.01).

13.14.02.01 Nondelegated Relocations

In accordance with 23 CFR 645(b), the FHWA retains approval of relocations under the following four circumstances:

- Utility relocations and adjustments of major transfer, production, and storage facilities such as generating plants, power feed stations, pumping stations, and reservoirs.
- Advance installation of new utility facilities, within the proposed right of way prior to the right of way being purchased or under the State's control to provide for installation of the new facilities in a manner that will meet requirements of the planned project.
- Utility relocations entirely or partly on right of way FHWA has authorized for acquisition under the hardship and protection provisions of 23 CFR 712.
- Utility relocations when the State and the Owner cannot reach agreement on their separate responsibilities.

Approval of these items must be requested directly from the FHWA through HQ R/W. See Section 13.14.07.00 below.

13.14.03.00 Federal Authorization to Proceed (E-76)

FHWA authorization to proceed with utility relocation work must be obtained prior to requesting the Owner to prepare a relocation plan and estimate for all projects proposed for Federal-aid reimbursement. Authorization is obtained by submittal and approval of Form E-76. P&M normally processes all E-76s, but the Utility Coordinator is responsible to provide accurate utility information and ensure the Alternate Procedure is requested.

FHWA must authorize the State to proceed with utility relocations on a project-by-project/owner-by-owner basis before a Specific Authorization to relocate any Owner's facilities may be issued. Any facility relocation or acquisition of replacement right of way the Owner does prior to approval is not Federal-aid reimbursable.

13.14.04.00 FHWA Specific Authorization to Proceed

The Specific Authorization must be issued before any physical relocation work is commenced or Owner-contracted engineering services are authorized. The Specific Authorization (Form RW 13-15) affirms the need for relocation is justified, liability for the cost is proper, and the Owner's plans and estimate are reasonable for accomplishing the necessary relocation.

When the utility relocation work is to be performed by our highway contractor, and is part of the PS&E, the "RELOCATION COST ESTIMATE" item in the FHWA Specific Authorization (Form RW 13-15) must include a line for Phase 4 (Construction Funding) and show the amount authorized.

The following statement must be added to the "Remarks" section of the Specific Authorization:

> "The proposed adjustment of utility facilities to be performed by the highway contractor is approved. Payment for the utility adjustment will be vouchered through the construction program, therefore, the authorization date for this work will be the date that FHWA approves the construction project.
>
> "This memorandum must be attached to the District Certification."

13.14.05.00 Changes After FHWA Specific Authorization Is Issued

Major changes, such as changing from Owner-accomplished work to Owner-contracted-out work, or additional work not shown on the original authorization, will require a supplemental authorization in the same form as the original request (Form RW 13-15). Major changes or additions are not eligible for Federal-aid reimbursement unless authorized.

Minor changes, additions, and deletions do not need supplemental approval; however, to be included under the original authorization, they must be documented by memorandum in the Utility File. The documentation must include a description of the change and revised maps and estimates. Refer to Section 13.06.03.05 - Revised Notices.

See Section 13.09.03.00 for discovered work and emergencies.

13.14.06.00 FHWA Approval of Nondelegated Relocations

Headquarters R/W obtains FHWA approval of nondelegated relocations (see Section 13.14.02.00) via transmittal of the ROI package, with attachments, to FHWA. The district is advised of approval of the nondelegated relocations by an endorsement on the FHWA Specific Authorization. Any exception to approval is noted in the Specific Authorization, and the district is required to adhere to all exceptions.

13.14.07.00 FHWA Approval of Utility Agreements

Utility Agreements on Federal-aid projects also require FHWA's approval. Upon execution of the Agreement by the Owner and the Region/District, the Utility Reviewer prepares and approves the FHWA Approval of Utility Agreement (Form RW 13-15) on FHWA's behalf.

13.14.07.01 Buy America Clauses

Buy America Clauses must be included on any Utility Agreement, in which the project is eligible for Federal Funds. Regardless if there is Federal Aid on the project or not, if the project at some point could receive Federal Funds (NEPA document on the project), Buy America Clauses must be used in the Utility Agreement. (See 13.07.03.05 for Buy America Clauses.) See Section 13.15.00.00 for Buy America information.

13.14.08.00 Special Federal Reimbursement Procedures

Department procedures have been designed to provide a uniform approach to all transactions regardless of whether or not there is federal funding in the project. This reduces procedural complexity and ensures a more consistent process with Owners. Special rules affect Federal-aid reimbursement and approval requirements and the Utility Coordinator must be aware of these to minimize loss of federal funds where applicable.

13.14.08.01 Nonreimbursable Costs

Federal reimbursement of State costs is limited to the more restrictive requirement of either State law or Federal regulation. If State law, e.g., payment of interest, is more liberal, reimbursement is limited to the Federal standard. If State law, e.g., required depreciation credits (see 13.04.05.06), is stricter, State rules must be followed. Each element of cost or credit must be individually reviewed and decided. Fortunately, there are only a couple of items, as discussed below, where the Federal rule is more restrictive and therefore controlling for reimbursement.

- **Interest During Construction** - FHWA regulations prohibit payment of interest on funds used during construction or borrowed by the Owner (a.k.a. AFUDC). State law recognizes interest during construction as a valid charge to the job, with some restrictions. Interest during construction shall be deleted from the voucher for FHWA reimbursement (coded as nonreimbursable). Audits will make the final determination of acceptability on the audit certificate.

- **Additional Ducts** - There is a Statewide understanding with telephone Owners to allow spare ducts under certain conditions (see Section 13.04.07.09). FHWA will reimburse only for the number of ducts required to convert existing aerial facilities to underground facilities, plus one spare duct. The cost of nonparticipating ducts must be set out in the billing, with final cost determination identified during the audit process and excluded in the Federal voucher.

13.14.08.02 Nonreimbursable Costs - Work Completed Prior to Authorization

The following are ineligible for Federal-aid reimbursement:

- All costs incurred prior to FHWA Authorization to Proceed (approved E-76).

- Utility relocation engineering done by a consulting engineer completed in advance of FHWA Specific Authorization.

- Relocation work done by newly identified Owners covered by Notices issued subsequent to the R/W Certification date.

13.14.08.03 Service Disconnects and Removals

Ordered utility service disconnects and removal of meters and meter set assemblies should be handled as right of way clearance items as this qualifies the associated costs for Federal-aid reimbursement. Payments to Owners should be coded with the appropriate object code for a federal-aid reimbursable demolition or clearance cost.

Federal regulations prohibit reimbursement for the cost of removing facilities under normal utility relocations unless salvage credits are received by FHWA for the removed facilities (see Section 13.04.07.09).

13.14.08.04 Owner Retention of Records

Section 23 CFR 645.117(i)(3) requires that the Owner retain all records and accounts relating to reimbursed relocation costs for a period of three years from date of final payment to Owner. This requirement exists for State-only funded projects as well.

13.14.09.00 Owner's Consulting Engineer Agreements

The Owner's employees normally do utility relocation engineering. When a Utility Owner is not adequately staffed to pursue the necessary preliminary engineering work for the utility relocation, a consultant may perform the required engineering if the Owner and the consultant agree in writing on the services to be provided and the fees and arrangements for the services, and if the fees charged are not based on a percentage of the cost of relocation.

When a consultant is used to provide relocation engineering services, the district ensures the Owner's consultant contract is administered in accordance with 23 CFR 172 and 48 CFR 31. The consultant selection process should closely follow the State's own consulting engineer selection process.

The Owner's continuing contractor may be used where the district has determined it is cost effective to do so and verified that the contract between the Owner and the contractor is in writing and that similar work is regularly performed for the Owner under the contract at reasonable costs.

If the amount to be paid under the consultant agreement exceeds $100,000, the agreement must be submitted to Audits for preaward evaluation.

All consultant agreements should:

- identify the maximum fee to be paid under the agreement,
- include a fee schedule,
- provide for inspection by the State of all books and records,
- require the three-year retention of those books and records,
- contain a description of the work to be performed, and
- include the following clause:

> "The Contractor agrees that the Contract Cost Principles and Procedures, 48 Code of Federal Regulations, Chapter 1, Part 31 shall be used to determine the allowability of individual items of cost. Any costs for which payment has been made to Contractor that are determined by subsequent Caltrans audit to be unallowable under these regulations, are subject to repayment by Contractor to State."

13.14.09.01 Nonapplicability of Federal EEO and Wage Rate Laws

FHWA has advised the State that federal laws relating to equal employment opportunities, wage rate requirements, and other similar requirements for recipients of federal aid do not apply to Owner-let contracts. This exception does not relieve the Owner of meeting federal laws that would apply irrespective of whether federal assistance is involved.

13.15.00.00 – BUY AMERICA

13.15.01.00 General

Implementation of Moving Ahead for Progress in the 21st Century (MAP-21) has broadened how Buy America is applied to federally funded highway construction projects. MAP-21, section 1518, amended 23 U.S.C. 313, is to apply to all contracts eligible for Federal Assistance carried out under a NEPA document regardless of funding, if at least one contract has Federal Funds.

13.15.02.00 Buy America Requirements

The Buy America requirements stated in 23 U.S.C. 313 and 23 CFR 635.410 apply to all iron and steel materials, 90% by weight that is permanently incorporated in a project. The provision requires that all manufacturing processes be done domestically. Manufacturing begins with mixing and melting and continues through the coating stages. "Coatings" include epoxy coatings, galvanizing, painting or any other coating that protects or enhances the value of the material.

13.15.02.01 Materials Subject to Buy America

For utility relocations, the following materials are subject to the Buy America requirements:

- Poles and cross arms
- Pipe and valves
- High-strength bolts, anchor bolts, and anchor rods
- Girders used to comprise transmission towers and stand-alone structures
- Rebar and other reinforcing iron/steel from all cast-in-place installations
- Conduit and ducting
- Fire hydrants
- Manhole covers and rims, and drop-inlet grates

13.15.02.02 Definitions of Materials Subject to Buy America

- Anchor and High-Strength Bolts - Anchor and high-strength bolts will be distinguished in one of three methods to be selected, and consistently applied, by the utility owner: 1) the utility owner may identify anchor and high-strength bolts in the specifications or plans as necessary for the safe and functional design of the utility relocation. If a bolt is not called out as anchor or high-strength, it stands that the design did not require that level of performance and the supplied bolt is not subject to Buy America; 2) the utility owner may identify anchor and high-strength bolts through the application of a strength rating. Any bolt possessing a yield strength of fifty-thousand pounds per square inch (50-ksi) or greater will be considered an anchor or high-strength; 3) the utility owner may identify anchor and high-strength bolts through the application of a weight measurement. Any bolt possessing a weight of 15 pounds or greater will be considered an anchor or high-strength.

- Girders - A load bearing beam or strut commonly taking the cross-sectional shape of a circle, square, rectangle, or an I, C, L, or Z, and assembled for the purpose of creating lattice towers, stand-alone platforms, or transmission towers.

- Lattice Towers - A structure that is compiled of girders and is typically used in series to support conductor cables.

- Permanent Installation - Is the final location and final installation of the materials as defined on the plans or in the specifications. No further adjustments or relocations are necessary to accommodate the final transportation project improvements.

- Stand-alone Platforms - A structure that is compiled of girders and is used to permanently hold or support large equipment.

13.15.02.03 Materials Not Subject to Buy America

The following is a list of materials that are **NOT** subject to the Buy America requirements:

- Assembly Materials (miscellaneous steel) - The collection of miscellaneous materials used to fasten, hold, attach, secure and/or assemble materials including, but not limited to, nuts, bolts, U-bolts, screws, washers, clips, fittings, sleeves, lifting hooks, mounting brackets, pole steps, clamps, brackets, mountings, straps, fasteners, hooks, pins, braces, disks, clevises, couplers, swivels, snaps, crimps, trunnions, dead-ends, compression swages, and other miscellaneous materials used to assemble.

- Attachment Materials - An item or material that is not an integral part or permanently attached to the pole, pipe or valve. **Cross arms are an exception to this rule and do not qualify as attachment materials.** Attachment materials include, but are not limited to, cross arm bracing, insulators, avian equipment, miscellaneous hardware (defined below), fittings, racks, ladders, encasements, guy wire, strand, conductors and tubing 0.75-inch diameter or less.

- Betterments - An improvement that occurs to the utility during the relocation process that increases capacity **and** is not otherwise required in order to successfully relocate the utility as a result of the roadway improvement project. (Betterments must be excluded from the utility agreement or contact that includes work eligible for Federal funds.)

- Conductor - A material (specifically wires and cables) that allows the flow of energy including electricity, heat, data, audio/video transmission, etc.

- Encasements - Include cabinets, housings, boxes, vaults, covers, shelves, and other items used to protect or house equipment or miscellaneous electronics.

- Fittings - Individual parts used to join, adjust or adapt a system of pipes including, but not limited to, elbows, tees, wyes, crosses, nipples, reducers, end caps, couplers, o-lets, transitions, connectors (steady state, seismic and flexible), unions, mechanical flanges (not permanently affixed to the pipe), bushings, ferrules, gaskets, O-rings, plugs or taps.

- Maintenance - An action or application of materials necessary to keep a system functioning safely and at optimal capacity; general upkeep.

- Miscellaneous Electronics - Manufactured products or assemblies consisting of many components such as electronic equipment, routers, switches, radios, processors, power supplies, batteries, antennas, splice cases, pre-connectorized hubs and terminals, and cross-boxes.

- Miscellaneous Hardware - An assembly of small parts that are compiled to form a finished product that is often used independently or as an attachment material, including, but not limited to, locks, switches, cutouts, regulators, gauges, meters, barometers, strainers, filters, pilots, arrestors, insulators, ball bearings, dampeners, needle valves, braces, pipe supports, actuators, motors and pumps.

- Temporary Utility Relocation - A temporary utility relocation is generally subject to the schedule necessary to accomplish the scope as defined by the NEPA document. A temporary utility relocation is one that is needed to allow the roadway construction to proceed, but is not required to remain in its relocation as a result of the ultimate roadway improvement. For example, if the scope requires the sequential completion of six separate construction contracts, theoretically, a temporary utility relocation could remain in place prior to commencement of the first construction contract and extend beyond completion of the sixth construction contract prior to its final placement. A temporary utility relocation can also be established if the contract specification or plans require that the steel or iron material used on the project either must be removed at the end of the project or may be removed at the contractor's convenience.

13.15.03.00 Buy America Certification

The State requires that the Utility Owners provide reasonable assurance that utility materials subject to the Buy America requirements are compliant prior to permanent installation. The State will accept either the Utility Owner's Self Certification, or the Vendor/Manufacturer's Certification.

13.15.03.01 Utility Owner Self Certification Method

The Utility Owner may self certify that materials used in the relocation are Buy America Compliant. See Section 13.07.03.05 (V-11a) for specific Utility Agreement clause. The following provisions must be met by the Utility Owner:

1) Utility Owner will source materials that comply with Buy America requirements.

2) Utility Owner will certify compliance via a contract provision in the Utility Agreement.

3) Utility Owner will not be required to provide copies of supplier certifications or other utility owner-signed certifications as part of this Agreement or with the final invoice.

13.15.03.02 Vendor/Manufacturer Certification Method

The Department or Local Agency will enter into a legally binding Utility Agreement (UA) with each Utility Owner on a project by project basis. See Section 13.07.03.05 (V-11b) for specific Utility Agreement clause. The following provisions must be met by the Utility Owner:

1) Utility Owner will source materials that comply with Buy America requirements.

2) Utility Owner will demonstrate Buy America compliance by one of the two (2) following methods (or a combination of both):

   a) Utility Owner will collect written certification from the vendor(s);

      i. The written certification will be signed by the vendor on company letterhead, or other acceptable documentation, signed by an authorized representative of the vendor and will declare that all supplied materials subject to the Buy America provisions are fully compliant.

b) Utility Owner will collect written certification from the factory(ies);

i. The mill test report (MTR) issued and signed by the initial fabricator stating that the materials subject to Buy America were melted and manufactured in the United States.

ii. Other written statements on company letterhead, or other acceptable documentation, signed by an authorized representative from the manufacturers providing any additional treatment to the fabricated material (such as blasting, galvanizing or painting) will state that all treatment processes occurred in the United States in accordance with FHWA guidelines.

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

4) One (1) set of copies of all documents obtained to demonstrate Buy America compliance will be attached to, and submitted with, the final invoice.

5) If no materials were subject to Buy America, the Utility Owner will indicate that as part of the final invoice submittal (i.e., with a separate memo, rubber stamp on the invoice or other reasonable method).

13.15.03.03 Additional Provisions Common to both Certification Methods

1) No certification (demonstration of Buy America compliance) is required for any materials or parts that are not subject to Buy America requirements for any reason, including, but not limited to, application, material composition, and the minimal use threshold exclusion.

2) Utility Owners will bear responsibility to ensure all materials permanently incorporated into their utility relocations are either compliant or not required to be compliant.

3) Where a Utility Owner purchases manufactured products from a vendor for use by the owner in its relocation activities, a certification from the vendor to owner that the materials meet Buy America requirements shall be deemed to constitute compliance by the Utility Owner.

4) Where a Utility Owner obtains construction services in connection with utility relocation work and the provider of construction services is also responsible for provision of manufactured products used in connection with that project, a certification from the provider of construction services that the materials provided by that construction services provider meet Buy America requirements shall be deemed to constitute compliance by the Utility Owner.

13.15.04.00 Exclusions to the Buy America Requirements

The Buy America requirements will **not** apply in the following cases:

- Existing materials that are relocated from one location to another within the project limits
- Any associated materials (including spare materials) required for maintenance
- Any materials necessary to repair equipment that was discovered or damaged during construction and requires immediate action to restore to safe conditions or to minimize adverse public impact (i.e.: discovered work)

- Any necessary materials associated with a temporary utility relocation

- If the utility relocation effort is not eligible for reimbursement with federal funds. (i.e., If the Utility Owner is required to pay for 100% of the entire relocation effort, then the materials associated with that relocation are not subject to Buy America. However, all work must remain separate and cannot be accomplished under a utility agreement or contract that includes work that is eligible for Federal funds.)

13.15.04.01 De Minimis

It is up to the Utility Owner to declare compliance with the minimal use threshold exclusion. Non-domestic iron and steel materials may be used if the cost of such materials do not exceed one-tenth of one percent (<0.1%) of the individual Utility Agreement (UA) amount, or $2,500, whichever is greater. The De Minimis equation is calculated according to the following formula:

$$\frac{\text{Combined Cost of Only those Materials that are Subject to Buy America } \textbf{and} \text{ are Non-Compliant (limited to the individual UA)}}{\text{Total Utility Relocation Cost (cited in the individual UA)}}$$

See Section 13.07.03.05 (V-13) for specific Utility Agreement clause.

13.15.04.02 Buy America Compliant Materials Increase Cost by at least 25%

Per 23 CFR 635.410, the work to be performed under the utility agreement may include foreign iron and steel products if the cost of Buy America compliant materials will cause the cost of the work to increase by at least 25%. To determine applicability of this provision, one of the following two procedures shall be used:

1) If the Utility Owner will use a contractor to perform the work included in the utility agreement, the following procedures apply: Demonstration of meeting the 25% excess cost requirement must be accomplished by receiving two separate bids each from at least two qualified contractors for the work. Requests for bids from the qualified contractors must conform to 23 CFR 635.410(b)(3). One bid from each contractor will include a cost of performing the work described in the utility agreement using Buy America compliant material and the other bid will include a cost for the same work assuming foreign materials. If the bid with the Buy America compliant materials is at least 25% greater than the bid that includes foreign material, then the contract can be awarded to the lowest bid based on materials that are not compliant with Buy America.

2) If the Utility Owner will perform work in the utility agreement with its own forces, the following procedures apply: Demonstration of meeting the 25% excess cost requirement must be accomplished by receiving two separate bids from vendors or manufacturers listing the cost of the Buy America compliant materials on one bid document and listing the cost of non-compliant materials on a separate bid document. The Utility Owner will take the cost of the Buy America compliant materials and use it to create the total estimated cost of the work included in the utility agreement. The Utility Owner will do the same with the cost of the non-compliant materials. If the cost of the work included in the utility agreement with Buy America compliant materials is at least 25% greater than the cost using the materials that are not compliant with Buy America, than the non-compliant materials may be used.

13.15.05.00 Waivers to the Buy America Provisions

The Utility Company, through the STATE may request a waiver if, the Buy America provisions are inconsistent with the public interest or iron and steel are not produced domestically in sufficient quantities and at a satisfactory quality. Waivers are allowed for specific materials on a project by project basis. There are nationwide waivers, but these are extremely rare and not advisable. A Waiver is a tool of last resort when all other avenues have failed.

13.15.05.01 Requirements

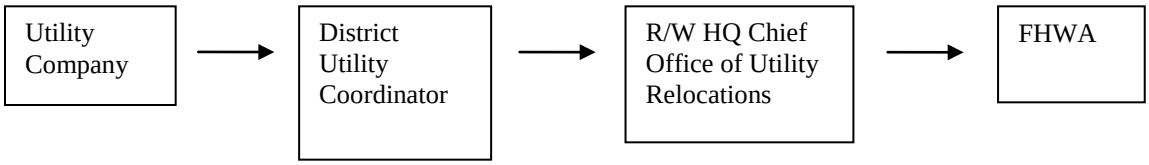
A Waiver request shall include:

1) Federal-Aid/ARRA Project Number
2) Project Description
3) Project Cost
4) Waiver item cost
5) Brief description of the item's function
6) Country of origin for the product
7) Reason for the Waiver

The reason for the Waiver must give sufficient detail and analysis on why the specific material cannot be produced domestically, in sufficient quantities, and at satisfactory quality.

13.15.05.02 Process

The following flowchart outlines the sequence of steps that involves a Waiver request from inception to approval.



The Waiver request shall be developed and written by the Utility Company, and submitted to the District Utility Coordinator. The District Utility Coordinator will forward the request to R/W HQ Chief, Office of Utility Relocations. HQ will review the request for completeness and forward to FHWA. The process can take anywhere from six (6) to twenty-four (24) months depending on the complexity of the project, thoroughness of the request, and review by FHWA.

For more detailed information on waivers, please see the FHWA Web site at:
http://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm

RELOCATION CLAIM LETTER TO OWNER

(Form #)

County Route _____
Utility Number _____
Post Mile _____
Project ID No. _____
EA _____
Subject to Buy America Yes _____ No _____

Date

Address

Dear _____:

Enclosed are two sets of the State's preliminary plans covering the proposed [freeway] [conventional highway] construction project on Route _____. Proposed construction will include [DESCRIBE THE PROJECT]
_____
_____
_____.

Your [Company's] [City's] [County's] [District's] [Authority's] _____ facilities are within the project and may be affected by planned construction. These plans are for your use in (1) verifying your existing facilities as shown on the plans, (2) completing your relocation plans, (3) identifying related easement requirements, (4) developing your claim of liability, and (5) preparing your estimate of cost for the project.

[This is a freeway and all rights of access will be restricted. If the State is liable for any portion of your relocation costs, and if any of your plans will be prepared by a consulting engineer, a copy of the proposed agreement with your consultant must be forwarded to this office as soon as possible. Employment of a consultant for a fee based on a percentage of the relocation cost is not acceptable. If desired, an example of a typical consultant agreement, along with the Certification of Consultant, will be furnished upon your request.]

If easements are required to relocate your facilities, please delineate your needs on the plans. This information is needed as soon as possible so your replacement easements can be acquired by the State along with other lands required for this project. You may submit your easement requirements ahead of your overall relocation plans.

Please submit the following information for review prior to _____ so a Notice to Owner, Encroachment Permit, and if necessary, a Utility Agreement can be prepared:

1. Six sets of your relocation plans with related easement requirements, and any changes to the existing facilities as shown on the State's preliminary plans.

2. The approximate number of working days you need to complete your relocation work per your plans, including any construction windows you may need.

3. The date your existing facilities were installed.

4. Your occupancy rights for installation:

A. Fee-owned land	F. Franchise
B. Easement (recorded)	G. State Permit
C. Easement (unrecorded)	H. County Permit
D. Prescriptive right	I. City Permit
E. JUA or CCUA	J. Other (Explain)

Please provide a copy of your documentation to support your occupancy rights claim for A, B, C, D, or E above.

RELOCATION CLAIM LETTER TO OWNER (Cont.)
(Form #)

5. An itemized estimate of cost which includes a breakout for labor, material, transportation, equipment, and administrative overhead. If you will be requesting a lump-sum Utility Agreement, provide an itemized estimate which includes a detailed breakdown of the above-mentioned items.

6. Your work will be performed by:

   A. Own forces
   B. Continuing contractor
   C. Competitive bid contract

7. Your liability claim:

   State _____% Owner _____%

This project is currently scheduled for construction _____. Based on the same schedule, the Notice to Owner to relocate your facilities will be issued on or before _____. [This project will be subject to Buy America. All relocations will need to be Buy America compliant.]

If technical design information is needed, you may call our Project Engineer, _____, telephone ( ) _____. Should you have any other questions, please call me at ( ) _____. Your cooperation is appreciated.

Sincerely,

Utility Coordinator
Right of Way Utilities

c: _____, Project Development

Enclosures

VERIFICATION LETTER TO OWNER

(Form #)

Date _____
Utility Number _____
Post Mile _____
Project ID No. _____
EA _____
Subject to Buy America Yes _____ No _____

The State is developing plans for [constructing a] [improving the existing] [freeway] [conventional highway] on Route _____. Proposed construction will include [DESCRIBE THE PROJECT]
_____
_____
_____.

Our Project Development staff needs information regarding your existing utility facilities. The facilities will be considered in design and will be brought to the attention of our contractor through inclusion in the construction contract plans.

[Attached] [Enclosed] are two sets of the State's geometric base maps (base maps) showing the limits of the project. Please verify your existing facilities, deleting any that have been removed or abandoned and delineating any not shown. Please list what is carried by the facility (gas, electricity, water, etc.) and give ties, depth of cover, size, [voltage] [pressure], and any other information that might affect the design of the [freeway] [conventional highway]. Return a set of base maps to me prior to _____. A print of your construction plans, if available for the area, will be satisfactory in lieu of plotting facilities on our base maps. If necessary, at a later date plans will be sent to you for preparing your relocation plans.

[This is a freeway and rights of ingress and egress will be restricted. If any of your plans will be prepared by a consulting engineer, a copy of the proposed Agreement with the consultant must be forwarded to this office as soon as possible for transmittal to the Federal Highway Administration (FHWA) for approval. Employment of a consultant for a fee based on a percentage of the relocation cost will not be approved by the FHWA. If desired, an example of a typical Agreement, along with the Certification of Consultant, can be furnished upon request.]

If easements are required to relocate your facilities, please delineate on your base maps. This information is needed as soon as possible so your easements can be acquired by the State along with other lands required for this project. If possible, provide us with your easement requirements prior to submitting your plans to us.

[Since there is a bridge structure involved, we need to know if you plan to go through the structure. If you do, please fill out the attached Structure Information Sheet and delineate on the State's preliminary plan your desired location of your facilities and return to me, along with the above-mentioned information, prior to _____.]

The following guidelines limit utility placement in or on our bridges. These guidelines apply to normal installations whereby utilities are installed in a box girder cell, suspended between girders (I- or T-girder structure types), or in the sidewalk slab.

1. The maximum allowable utility size depends on structural constraints of the bridge. Any utility or its casing with a diameter exceeding 19.69 inches may not be acceptable. Utilities of this size must be analyzed by Structures on a case-by-case basis.

2. The maximum diameter conduit allowed in sidewalks is 3.94 inches.

3. The maximum voltage allowed in an electrical line is 69 kV.

4. The maximum operating water pressure of a 19.69-inch diameter carrier line is 690 kPa.

VERIFICATION LETTER TO OWNER (Cont.)
(Form #)

5. The maximum volatile gas carrier line allowed is 15.75 inches.

6. Volatile fluids, gases, and high voltage lines shall not occupy the same cell or area between girders with any other utilities or with each other.

Please keep in mind that the following options are available when designing your facilities for expected seismic movement through the structure:

1. For existing structures, design for an expected minimum horizontal or vertical displacement of 2.4 inches. For new structures, design the facilities for an expected movement of 23.62 inches.

2. Provide an event-actuated device that will automatically shut off the utility line.

3. Provide a device that will detect a break in the utility line (and casing) and automatically shut off the utility line.

4. Locate the utility line off the bridge.

This project is currently scheduled for construction about _____. [This project will be subject to Buy America. All relocations will need to be Buy America compliant.] If you have any questions, please call me at ( ) _____. Your cooperation is appreciated.

Sincerely,

Utility Coordinator
Right of Way Utilities

c: _____, Project Development

[Attachments] [Enclosures]

LETTER TO OWNER REQUESTING POSITIVE LOCATION

(Form #)

Date _____
Utility Number _____
Post Mile _____
Project ID No. _____
EA _____
Subject to Buy America Yes _____ No _____

Enclosed are two sets of the State's preliminary plans covering the proposed [freeway] [conventional highway] construction project on State Route _____. The State's planned construction will include [DESCRIBE THE PROJECT]
_____
_____
_____.

Your [Company's] [City's] [County's] [District's] [Authority's] _____ facilities are within the project's area and may be affected by planned construction. These plans are for your use in determining your claim of liability and estimate of cost for positive location of your facilities, at the location(s) shown highlighted on the plans.

Please submit the following information to me prior to _____ so a Notice to Owner, Encroachment Permit, and if necessary, a Utility Agreement can be prepared:

1. The date your existing facilities were installed.

2. Your occupancy rights for installation:

   A. Fee-owned land
   B. Easement (recorded)
   C. Easement (unrecorded)
   D. Prescriptive right
   E. JUA or CCUA
   F. Franchise
   G. State Permit
   H. County Permit
   I. City Permit
   J. Other (Explain)

   Provide a copy of your documentation to support your occupancy rights claim for A., B., C., D., or E. above.

3. Your itemized estimate of cost which should include a breakout for labor, material, transportation, equipment, and administrative overhead. If you will be requesting a lump-sum Utility Agreement, provide an itemized estimate which includes a detailed breakdown of the above-mentioned items.

4. Your work will be performed by:

   A. Own forces
   B. Continuing contractor
   C. Competitive bid contract

5. Your liability claim:

   State _____% Owner _____%

This project is currently scheduled for construction _____. [This project will be subject to Buy America. All relocations will need to be Buy America compliant.] If you have any questions, please call me at ( ) _____. Your cooperation is appreciated.

Sincerely,

Utility Coordinator
Right of Way Utilities

c: _____, Project Development

Enclosures

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

EXHIBIT
13-EX-13 (REV 9/2014)

NOTICE TO OWNER TRANSMITTAL LETTER

(Form #)

Date _____
Utility Number _____
Post Mile _____
Project ID No. _____
EA _____
Subject to Buy America Yes _____ No _____

The enclosed Notice to Owner No. _____ dated _____ covers the [positive location] [relocation] [removal] [abandonment] of your facilities in order to accommodate the State's [freeway] [conventional highway] construction project on State Route _____. The State's proposed construction will include [DESCRIBE THE PROJECT]
_____
_____
_____.

The requirements of this Notice to Owner are based on [State's] [your] Plan No. _____ dated _____ (attached as revised in red by this office), which have been previously discussed with you. (Also enclosed are three originals of a Utility Agreement covering the work to be done at State's expense. If the Agreement is satisfactory, please date and have the originals signed by the proper officials and return two to this office for execution. Keep the third copy for your file. A jointly executed Agreement will be returned to you.)

The State's Encroachment Permit is also attached, allowing your [Company] [County] [City] [District] [Authority] to work within the State's project limits.

This project is currently scheduled for construction _____. Please schedule your work to have it completed as specified in the Notice to Owner. Please advise _____, telephone ( ) _____, two days in advance of your commencement of work within the State Highway rights of way.

If you have any questions, please call me at ( ) _____. Your cooperation is appreciated.

Sincerely,

District Utility Coordinator
Right of Way Utilities

Enclosures

c: _____, Project Development
_____, Construction

R/W UTILITY CERTIFICATION

(Form #)

Date _____
County _____
Route _____
Post Mile _____
Project ID No. _____
EA _____
Federal Aid No. _____

Subject: R/W Utilities Certification

Project Description:

_____
_____
_____
_____
_____
_____
_____.

SECTION I - STATUS OF REQUIRED UTILITY RELOCATION(S):

A. None Required

(or)

B. All utility work has been completed. Arrangements have been made with the owners of facilities listed in Section II (on next page) that will remain within the right of way of the project, so that adequate control of the right of way will be achieved.

(or)

C. All utility work will be completed by a stated date prior to award of the contract. Arrangements have been made with the owners of facilities as listed in Section II (on next page) that remain within the right of way of the project, so that adequate control of the right of way will be achieved.

(or)

D. All necessary arrangements have been made for the completion of remaining utility work required to be coordinated with project construction as listed in Section II (on next page). Arrangements have also been made with the owners of facilities shown in Section II (on next page), which are not impacted by the project and which will remain within the right of way of the project, so that adequate control of the right of way will be achieved. Our contract special provisions provide for their coordination.

(or)

E. Utility facilities which are not in physical conflict with the proposed project construction, but have been determined to be a fixed object in conflict with CURE requirements, are identified by an asterisk in “CURE Conflict” column in Section II (on next page). (See Section 13.03.04.02.)

R/W UTILITY CERTIFICATION (Cont.)

(Form #)

SECTION II - LISTING OF ALL UTILITY OWNERS (This section must be completed for every certification.):

A. The following is a listing of utility owners and type of facility located within the project right of way. Those in conflict with the project are identified by Notice Number, etc.

Utility Owner	Type Facility	Notice Number/Date	Utility Agreement Date	Liability (Owner / State)	CURE Conflict	Relocation Schedule
						Actual Date (or) Concurrent with Construction (or) Bid Item

B. For utility work to be done as a bid item, provide the following information. Include a copy of the FHWA Specific Authorization for each bid item (if applicable).

Bid Item Number	Type Facility	Liability (Owner / State)	Federal Aid (Yes / No)

_____

District Utility Coordinator
Right of Way Utilities

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

EXHIBIT
13-EX-27 (REV 9/2014)

TYPICAL UTILITY OWNER INVOICE FORMAT

(Form #)

(A typical bill)
BILLING COMPANY NAME
Address

To: State of California
Department of Transportation
District _____

Invoice No. _____
Invoice Date _____
Contact _____
Telephone _____

Under UTILITY AGREEMENT No. _____, the following are the construction costs to remove and relocate utilities at _____.

Work Order No. _____
Date Work Began _____
Date Work Completed _____

Itemized Statement of Costs

Cost Description	Quantity	Unit	Amount	Total
Materials:				
Poles				
Cables				
Etc.				
Miscellaneous materials costs				
Supply expense				
Total: Materials Cost				
Labor:				
Straight time				
Overtime				
Payroll tax				
Total: Labor Cost				
Other Costs:				
Vehicle expense				
Equipment rental				
Employee expense				
Miscellaneous expense				
Total: Other Costs				
Other Direct Costs:				
Joint Pole Costs				
Contract Work				
Total: Other Direct Costs				
Subtotal: All Direct Costs				
Indirect Overhead				
Credits:				
Salvage value				
Allowance for depreciation				
Joint pole				
Less: Total Credits				-
Total Costs				
State Share (%)				
Betterments				-
TOTAL OWED BY STATE				

* Note: The cost descriptions are not limited to those shown and will vary according to actual work performed.