STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

# MANUAL CHANGE TRANSMITTAL

RW 0001 (REV 10/2007)

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| XX | R/W MANUAL CHANGE | **RWMC- 260** |
| | PROCEDURAL HANDBOOK (1984 Edition) | RWPH-___-__-__ TRANSMITTAL#__ |

| TITLE: | APPROVED BY: | DATE ISSUED: |
|---|---|---|
| UTILITY RELOCATIONS | Rene Fletcher for BENJAMIN D. MARTIN, Ed.D. | AUG 12 2016 Page 1 of 1 |
| SUBJECT AREA: | ISSUING UNIT: | |
| CHAPTER 13 – UTILITY RELOCATIONS | OFFICE OF RAILROADS AND UTILITY RELOCATIONS | |

SUMMARY OF CHANGES: Revises Section 13.07.03.04, Section IV. Payment for Work.

## PURPOSE

This manual change revises the last paragraph of IV-3. For All Owners – Progress/Final Bills. Language has been added to amend the claw back terms.

## BACKGROUND

Utility Companies were uncomfortable with the claw back language in the last paragraph of this section. HQ R/W Utility Relocations began discussions and negotiated a change in the language that benefits the Department and Utility Companies.

## PROCEDURES

13.07.03.04 Revises language in paragraph IV-3. For All Owners – Progress/Final Bills.

## 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- Remove the superseded pages and insert the attached pages in the Manual.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 | 13.07.00.00 (REV 9/2014) | 13.07.00.00 (REV 8/2016) |

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

**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:**

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

**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:**