

**ORANGE COUNTY TRANSPORTATION AUTHORITY  
UTILITY AGREEMENT**

DISTRICT 12	COUNTY Orange	ROUTE I-405	POST MILE 20.81-22.67	EA 12- 0H1000	PROJECT ID 1200000180
FEDERAL AID NUMBER HPLULN-6071(043)			OWNER'S PLAN NUMBER CC 1523		
FEDERAL PARTICIPATION On the project <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO On the Utilities <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					

**UTILITY AGREEMENT NO. UK151087**

**DATE 8/17/17**

The Orange County Transportation Authority (OCTA) in cooperation with the California Department of Transportation ("Caltrans") is proposing to improve Interstate 405 between State Route 73 and Interstate 605 (Project). OCTA and Caltrans have entered into Cooperative Agreement No. 12-697 relating to the Project under which Caltrans will provide Project oversight and upon completion of the Project, Caltrans will continue to own and maintain the Interstate 405.

**West Orange County Water Board**

Hereinafter referred to as "OWNER", owns and maintains the following (the "Utility Facilities")

- 33-inch Waterline in Westminster Blvd crossing I-405 from Willow Lane to Springdale Street

within the limits of the OCTA Project which requires

**relocation**

to accommodate OCTA's Project.

It is hereby mutually agreed between OCTA and OWNER as follows:

**I. WORK TO BE PERFORMED**

In accordance with Notice to Owner No. UK151087 dated 6/21/2017, OWNER shall relocate OWNER's Utility Facilities. All work shall be performed substantially in accordance with OWNER's Plan No. CC 1523 dated 9/21/17 consisting of 44 sheets, a copy of which is on file at OCTA's offices located at 550 S. Main Street, Orange, CA 92868. Deviations from the OWNER's plan described above initiated by either OCTA or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by OCTA 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.

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## II. LIABILITY FOR WORK

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 of the Streets and Highways Code.

## III. PERFORMANCE OF WORK

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.

Engineering services for preparation of plans, specifications, and estimates are to be furnished by a consulting engineering firm of GHD on a fee basis previously approved by OCTA. 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 OMB Circular A-87, as applicable.

Use of out-of-state personnel (or personnel requiring lodging and meal "per diem" expenses) will not be allowed without prior written authorization by OCTA'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 California Department of Human Resources (CalHR) travel expense guidelines.

Work performed directly by OWNER's employees shall comply with Labor Code Section 1771. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above.

## IV. PAYMENT FOR WORK

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 not to exceed sum of \$4,700,000.00. OCTA agrees to advance to OWNER the not to exceed sum of \$4,700,000.00, 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 not to exceed .sum of \$4,700,000.00 will be deposited by the

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OCTA with OWNER within 30 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.

Repayment of the advanced funds by OWNER shall be per the terms specified in the attached REIMBURSEMENT AGREEMENT NO. U-2017-151087 dated .

## **V. GENERAL CONDITIONS**

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

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

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

OWNER understands and acknowledges that this project is subject to the requirements of the Buy America law (23 U.S.C., Section 313) and applicable regulations, including 23 CFR 635.410 and FHWA guidance. 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.

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

OCTA further acknowledges that OWNER, in complying with the Buy America Rule, is expressly relying upon the instructions and guidance (collectively, "Guidance") issued by

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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.

It is expressly understood by the Parties that Owner is not, in executing this Agreement, abandoning any pre-existing right, title or interest it may have in any land or facilities, all such rights, title and interest being expressly reserved.

The terms of this Agreement shall be binding and inure to the benefits of the Parties hereto.

**Signatures on Following Page**

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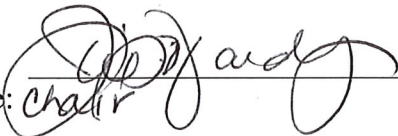
SIGNATURE PAGE  
TO  
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IN WITNESS WHEREOF, the above parties have executed this Agreement on the dates below.

Owner:  
**WEST ORANGE COUNTY WATER  
BOARD**

**ORANGE COUNTY  
TRANSPORTATION AUTHORITY,  
a public entity**

APPROVED


By:   
Title: Chair

Date: 10-18-17

By: Brian A Ryland  
Title: General Manager


Date: 10/18/17

APPROVED

By:   
Jim Beil  
Executive Director,  
Capital Programs

Date: 8/12/17

APPROVED AS TO FORM:

By:   
James M. Donich  
General Counsel

Date: 8/17/17