

**ORANGE COUNTY TRANSPORTATION AUTHORITY
UTILITY AGREEMENT**

35120

DISTRICT 12	COUNTY Orange	ROUTE I-405	POST MILE 9.3-24.2	EA 12-OH1000	PROJECT ID 1200000180
FEDERAL AID NUMBER HPLULN-6071(043)			OWNER'S PLAN NUMBER LBGO1119		
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. UK051119			DATE 11/26/18		

RECITALS

WHEREAS, the Orange County Transportation Authority, hereinafter called OCTA, in cooperation with the California Department of Transportation ("Caltrans") is proposing to improve Interstate 405 between State Route 73 and Interstate 605 ("OCTA Project"). OCTA and Caltrans have entered into Cooperative Agreement Number 12-697 relating to the OCTA Project under which Caltrans will provide OCTA Project oversight and upon completion of the OCTA Project, Caltrans will continue to own and maintain the I-405, and;

WHEREAS, the reconstruction of the OCTA Project necessitates the relocation or removal of the City of Long Beach Gas and Oil ("OWNER") utility facilities and OWNER has elected to remove OWNER's existing 14" welded steel oil and gas pipeline along the south side of Interstate 405 in the City of Seal Beach, hereinafter called "Facilities", and;

WHEREAS, OCTA, has issued Notice to Owner No. UK051119, dated 09/05/2018, attached hereto, to OWNER, which Notice to Owner sets forth the terms and conditions pursuant to which OWNER has been ordered to remove, in their entirety, OWNER's Facilities to clear OCTA's Project on Interstate 405 between State Route 73 and Interstate 605, and;

WHEREAS, OCTA, in order to clear the right of way for the freeway construction, has ordered OWNER to remove the portions of its Facilities within said Notice to Owner, and;

WHEREAS, OWNER claims it has rights that are prior and superior to those of OCTA and claims that OCTA must pay the removal costs for those Facilities covered by the prior right hereafter "Prior Right" Facilities, said right described in attached Notice to Owner, and;

WHEREAS, OCTA and OWNER disagree on the issue of which is liable for some portions of the required removal work known as the Prior Right Facilities. OCTA and OWNER agree that, in order to resolve the dispute and expedite the OCTA Project, OCTA shall reimburse OWNER, in accordance with this Agreement, and OWNER agrees to complete the removal work as set forth below.

NOW THEREFORE, it is agreed between OCTA and OWNER as follows:

I. WORK TO BE PERFORMED

In accordance with Notice to Owner No. UK051119 dated 09/05/2018, OWNER shall prepare removal plans by internal staff, prepare bid package, select a contractor by low bid to perform removal, and perform construction management and inspection. All work shall be performed

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substantially in accordance with OWNER's Plan No. T.14369 dated 09/04/2018 consisting of one sheet, 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.

II. LIABILITY FOR WORK

OWNER has certain existing Facilities described in Section I above which will be removed in accordance with the following for the locations shown on Exhibit A attached:

- a. Location 2, Between Seal Beach Blvd and Old SR 179 (I-405) Ramps:
This is a second or subsequent relocation of existing Facilities within a period of ten years; therefore, removal is at OCTA expense under the provisions of Section 704 of the Streets and Highways Code.
- b. Location 1, Old SR 179 (I-405) and Location 3, West of Seal Beach Blvd:
Liability is in dispute.

OCTA's position is that the existing Facilities are located within the STATE's right of way under permit and should be removed at OWNER's expense under the provisions of Section 680 of the Streets and Highways Code. OWNER disagrees.

1. In executing this Agreement, OCTA agrees to reimburse OWNER 100% of its actual and necessary costs, in an amount not to exceed the estimated cost of \$2.8 Million in accordance with Section V of this Agreement and the attached Pipeline Removal Agreement entered into by and between OCTA and OWNER with the effective date of November 28, 2017.
2. OWNER shall remove the OWNER's Facilities in accordance with Notice to Owner No. UK051119, dated 06/13/2018.
3. Except as provided in this Agreement and the Pipeline Removal Agreement, neither OCTA nor OWNER shall diminish their position nor waive any of their rights nor does either party accept liability for the disputed work. OCTA and OWNER reserve the right to have liability over the estimated cost determined in accordance with Section 3 of the Pipeline Removal Agreement.

III. PERFORMANCE OF WORK

OWNER agrees to perform the herein described work with its own forces or to cause the herein described work to be performed by the OWNER's contractor, employed by written contract

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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.

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.

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 removal 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 removal 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 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.

IV. PAYMENT FOR WORK

OCTA 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 OCTA 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 OCTA for the salvage value of any material or parts salvaged and retained or sold by OWNER.

OWNER will prepare and submit itemized final bill for costs incurred not to exceed OWNER's recorded costs as of the billing date less estimated credits applicable to completed work.

The OWNER shall submit a final bill to OCTA within 360 days after the completion of the work described in Section I above. If OCTA has not received a final bill within 360 days after notification of completion of OWNER's work described in Section I of this Agreement, OCTA will provide written notification to OWNER of its intent to close its file within 30

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days. OWNER hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned. If OCTA 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 OCTA Board of Directors.

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.

In any event if the final bill exceeds 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 OCTA.

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 OCTA, State and/or Federal auditors. In performing work under this Agreement, OWNER agrees to comply, to the extent they are applicable to OWNER doing work on the project that is the subject of this agreement, with 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 OCTA, State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse OCTA upon receipt of OCTA billing.

V. GENERAL CONDITIONS

All costs accrued by OWNER as a result of OCTA's request of March 10, 2015 to review, study and/or prepare removal plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement.

If OCTA's Project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, OCTA will notify OWNER in writing and OCTA reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

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

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(including the application of coatings) installed on a project receiving funding from the FHWA.

OWNER understands and acknowledges that OCTA's 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 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.

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

THE ESTIMATED COSTS TO OCTA FOR THE ABOVE DESCRIBED WORK IS \$2,800,000.

Signatures on Following Page

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UK051119

SIGNATURE PAGE
TO
UTILITY AGREEMENT NO.

UK051119

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

Owner:
CITY OF LONG BEACH

ORANGE COUNTY
TRANSPORTATION AUTHORITY,
a public entity

APPROVED

By: _____
Title: _____



Tom Modica
Assistant City Manager

Date: _____

11/2/18

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

APPROVED

By: _____

Jim Bell
Executive Director,
Capital Programs

Date: _____

11/26/18

APPROVED AS TO FORM:

By: _____
Title: _____

By: _____

Cassie Temperone, for
James M. Donich
General Counsel

Date: _____

Date: _____

11/19/18

APPROVED AS TO FORM

10-22, 2018
CHARLES PARKIN, City Attorney

By: _____

RICHARD ANTHONY
DEPUTY CITY ATTORNEY

ORANGE COUNTY TRANSPORTATION AUTHORITY
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5/11/2018

EXHIBIT A: LBGO PRELIMINARY REMOVAL PLAN

