

UTILITY AGREEMENT

RW 13-5 (REV 6/2010)

32817

Dist 7	County LA	Rte 47 103	KP (P.M.) 3.5/4.6, 0.0/1.1	EA 07/138 202/9S
Federal Aid No.: ALNH P47 (109)		Owners File Number: Util. Relo. P47-002		
FEDERAL PARTICIPATION: On the Project: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No On the Utilities: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				

Owner Payee Data No. NA or Form STD 204 is attached **UTILITY AGREEMENT NO. ACTA-UA-47 - 002****DATE July 25, 2012**

The Alameda Corridor Transportation Authority acting as Caltrans Local Agency by and through the Department of Transportation pursuant to that certain Cooperative Agreement No. 07-4872 dated July 16, 2009 between State of California and Alameda Corridor Transportation Authority, hereinafter called "**LOCAL AGENCY ACTA**," proposes to facilitate and coordinate the utility relocation of facilities in conflict with the replacement of the existing Schuyler Heim lift bridge spanning the Cerritos Channel with a fixed bridge because of seismic concerns, maintenance costs and substandard lane configurations (Construction will be in two phases; one, build out of the eastern half of the new bridge and two, demolition of the existing bridge and building of the remaining half of the new bridge),

And

City of Long Beach (COLB), through its Oil and Gas Department located at 211 E. Ocean Boulevard, Long Beach, California, 90802 owns and maintains various surface and below ground oil pipelines and appurtenances in separate locations adjacent to and passing under the existing and proposed bridge locations and the proposed right of way for SR-47 and SR-103 northerly of the Cerritos Channel, within the limits of LOCAL AGENCY ACTA's project. COLB is the real property and oil rights owner pursuant to Grant Deed recorded March 19, 1986 as Instrument No. 86-340230 and Grant Deed recorded March 22, 1994 as Instrument No. 94-559636. LOCAL AGENCY ACTA requires relocation of these oil pipelines and appurtenances to accommodate LOCAL AGENCY ACTA's project

It is hereby mutually agreed that:

I WORK TO BE DONE

In accordance with Notice to Owner-Third Notice No. UR47-002 dated August 5, 2010, COLB, or a third-party as agent for COLB, shall determine and prepare a Relocation Plan ("Plan") for and shall relocate, remove and protect the existing underground and above ground oil pipeline systems of various sizes (e.g. 3 inch, 12 inch and 16 inch pipelines) that will resolve the areas of conflict with the proposed south bound off ramp to New Dock Street and the future rail alignment of the existing Long Beach Pier "S" rail tracks.

Any revision to the Plan, after approval by the LOCAL AGENCY ACTA, shall be agreed upon by both parties hereto under a Revised Notice to Owner [13.07-2 REV7/2005]. Such Revised Notice to Owner approved by the LOCAL AGENCY ACTA and agreed to and acknowledged by COLB, will constitute an approved revision of the Plan. No redesign or additional engineering after approval by the LOCAL AGENCY ACTA shall commence prior to written execution by COLB and may require an amendment to this Agreement, in addition to the revised Notice to Owner.

Deviations from the Plan described above initiated by either the LOCAL AGENCY ACTA or COLB, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY ACTA and acknowledged by COLB, 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 receipt by COLB 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. The LOCAL AGENCY ACTA shall have the right to inspect the work by COLB's contractor during construction.

II. LIABILITY FOR WORK

Existing facilities are located in their present position pursuant to rights superior to those of the LOCAL AGENCY ACTA and will be relocated at LOCAL AGENCY ACTA's expense.

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COLB agrees to cause the described work in the Plan to be performed by its own forces, those of its agent, or 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 all 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 COLB'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. COLB 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.

Pursuant to Public Works Case No. 2001-059 determination by the California Department of Industrial Relations dated October 25, 2002, work performed by COLB, its agent or COLB's contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. COLB shall verify compliance with this requirement in the administration of its contracts referenced above.

IV. PAYMENT FOR WORK

The LOCAL AGENCY ACTA shall pay its share as indicated herein (100%) of the actual and necessary cost of the described work in the Plan within 45 days after receipt of five (5) copies of COLB's itemized bill for work performed, signed by a responsible official of COLB's organization and prepared on COLB'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 by the California Public Utilities Commission, Federal Regulatory Commission or Federal Communications Commission, whichever is applicable. COLB's first invoice may be submitted together with a fully signed copy of this Agreement and will include all "historical costs" incurred prior to the actual signing on the Agreement, including, but not limited to, preparation of a relocation plan and a scope of work for the project.

It is understood and agreed that the LOCAL AGENCY ACTA will not pay for any betterment or increase in capacity of COLB's facilities in the new location and that COLB shall give credit to the LOCAL AGENCY ACTA for the "used life" or accrued depreciation of the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by COLB. No depreciation is required for crossing relocations.

COLB will prepare and submit progress bills not more frequently than once a month, but at least quarterly, for costs incurred not to exceed COLB's recorded costs as of the billing date less estimated credits applicable to completed work. Payment of progress bills that do not 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 the LOCAL AGENCY ACTA of documentation supporting the cost increase and after a written Amendment to this Agreement has been executed by the parties to this Agreement.

COLB shall submit a final bill to the LOCAL AGENCY ACTA within 360 days after the completion of the work described in Section I above. If the LOCAL AGENCY ACTA has not received a final bill within 360 days after notification of completion of COLB's work described in Section I of this Agreement and LOCAL AGENCY ACTA has delivered to COLB fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements, if required for COLB's facilities, the LOCAL AGENCY ACTA will provide written notification to COLB of its intent to close its file within 30 days and OWNER hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned. If the LOCAL AGENCY ACTA processes a final bill for payment more than 360 days after notification of completion of COLB's work, payment of the late bill may be subject to allocation and/or approval by the California Transportation Commission.

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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, if any, and less any amounts covered by progress billings. However, the LOCAL AGENCY ACTA 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 COLB, approval of said documentation by the LOCAL AGENCY ACTA and after a written Amendment to this Agreement has been executed by the parties to this Agreement. Except, if the final bill exceeds COLB'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.

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 the LOCAL AGENCY ACTA through execution of a Revised Notice to Owner.

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 COLB'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 the LOCAL AGENCY ACTA."

Detailed records from which the billing is compiled shall be retained by COLB 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. COLB agrees to comply with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and/or 18 CFR, Chapter 1, Parts 101, 201, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, COLB agrees to reimburse the LOCAL AGENCY ACTA upon receipt of the LOCAL AGENCY ACTA billing.

V. GENERAL CONDITIONS

All costs accrued by COLB as a result of the LOCAL AGENCY ACTA's requested RELOCATION CLAIM LETTER TO OWNER, dated March 2, 2010 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 the LOCAL AGENCY ACTA's project which precipitated this Agreement is cancelled or modified so as to eliminate the necessity of work by COLB, the LOCAL AGENCY ACTA will notify COLB in writing and the LOCAL AGENCY ACTA reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for payment of work performed prior to termination of the Agreement and any other related terms as may be deemed necessary by the parties.

All obligations of the LOCAL AGENCY ACTA 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.

It is understood that said Schuyler Heim Lift Bridge Project is a part of a Federal Aid Highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement.

COLB shall submit a Notice of Completion to the LOCAL AGENCY ACTA within 30 days of completion of the work described herein.

THE ESTIMATED COST TO LOCAL AGENCY ACTA FOR THE ABOVE DESCRIBED WORK IS \$3,000,000.

FUND TYPE: Design Funds = \$ 378,000 Construction Funds = \$2,622,000 R/W Funds = \$ na

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

Alameda Corridor Transportation Authority:

City of Long Beach:

By [Signature]
John T. Doherty, Chief Executive Officer

Date 7/26/12

By [Signature] Assistant City Manager
EXCITED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

Name Patrick H. West

Title City Manager

Date 9.6.12

Approved As To Form

CARMEN A. TRUTANICH, Los Angeles City Attorney

By [Signature]

Name Heather M. McCloskey

Title Deputy City Attorney

Date July 26, 2012

Approved As To Form

BOB SHANNON, Long Beach City Attorney

By [Signature]

Name Rich Anthony

Title Deputy City Attorney

Date August 16, 2012