MASTER CONSTRUCTION RESPONSIBILITY AND REIMBURSEMENT AGREEMENT BETWEEN THE COUNTY OF EL DORADO AND THE EL DORADO IRRIGATION DISTRICT

This Master Construction Responsibility and Reimbursement Agreement (hereinafter "Agreement") is entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter "County"), and the El Dorado Irrigation District, a special district created pursuant to State law (hereinafter "EID") as of _____ ___, 2015 (hereinafter the "Effective Date").

RECITALS

1. EID owns and operates numerous water, wastewater, and/or recycled water facilities that exist within the alignments of County roadways. Occasionally, improvement projects on County roadways require modifying, upgrading, relocating, or otherwise altering EID's water, wastewater, and/or recycled water facilities. Similarly, improvement projects on EID's water, wastewater, and/or recycled water facilities often require altering the County roadways in which EID's facilities exist.

2. In order to simplify the process and avoid delays in construction, it has been the past practice for the County and EID to work together on completing construction of projects that affect both EID's facilities and County roadways. To effectuate this cooperation, the County and EID have included plans and specifications, bid packages and award documents for both entities' improvements within a single construction contract. The County and EID have also entered into agreements with one another setting forth terms for construction, payment, and when appropriate, reimbursement responsibilities.

3. The County and EID recognize that in certain circumstances, when both entities agree, a single master construction responsibility and reimbursement agreement will further effectuate cooperation and efficiency.

4. Thus, the County and EID desire to enter into this Agreement to facilitate the inclusion of improvements either anticipated or non-anticipated, to either entity's roadways or facilities within the scope of work of the other entity's improvement projects and, to that end, the inclusion of plans and specifications for facility improvements in the bid packages, award documents and construction contracts to be generated, issued and administered by the entity conducting the improvement project prior to the commencement of such projects or during their performance. The County and EID also desire to enter into this Agreement to identify payment responsibilities and facilitate, when necessary, the reimbursement of costs for those expenses incurred and agreed upon in conducting the work described herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. SCOPE OF AGREEMENT

This Agreement is intended to apply to projects that both County and EID agree are limited in scope and complexity. Such projects may include but are not limited to:

1. The relocation of EID facilities through the County's construction contract when unanticipated relocations are discovered during the construction phase of a County road improvement project.
2. The construction of County roadway work through EID's construction contract when unanticipated work is to be performed during the construction phase of an EID utility improvement project.
3. Incorporation of work into either an EID or a County construction contract in those situations wherein work can be anticipated prior to the construction phase, but wherein a separate, project-specific agreement may not be warranted.

This Agreement shall not be used for work that is estimated to cost either County or EID more than $100,000 in reimbursement expenses. As set forth below in Sections B(2)-(5), reimbursement expenses shall include administrative costs associated with construction management. Both County and EID acknowledge that while this agreement applies only to work estimated to cost no more than $100,000 in reimbursement expenses, each party shall be responsible for, and shall fully pay all actual reimbursement expenses, whatever they may be. Both County and EID reserve the right to forego use of this Agreement at any time, and use a separate project specific agreement, even for projects that are limited in scope and complexity. Each party shall ensure that this Agreement is not used for the purpose of splitting larger projects that are beyond the scope of this Agreement, or otherwise require a separate project specific agreement. Moreover, each party shall ensure that work performed by contract change order ("CCO") will not be split into multiple CCOs for the purpose of circumventing the aforementioned monetary threshold.

B. PAYMENT

1. County and EID agree that each entity shall be responsible for one hundred percent (100%) of the actual costs associated with construction, improvement, or modification of that entity's roadways or facilities, except when one entity has prior rights to property upon which both entities maintain roadways or facilities and in which the entity with later rights intends to conduct a construction, improvement, or modification project that necessarily requires the modification or improvement of the roadways or facilities of the entity with prior rights. In such cases, except as otherwise provided herein, the entity with prior rights shall not be responsible for payment of the costs associated with the modifications to its roads or facilities necessary to replace or return those roads or facilities to their pre-existing condition. Instead, those costs shall be paid for by the entity with later rights. Replacing or returning facilities to their pre-existing condition requires returning the facilities to a condition that meets modern design standards, but does not require upgrading such facilities. Upgrades are discussed below in Section B(5).

2. In addition to said actual costs of construction, the entity with later rights conducting an improvement project that necessarily requires the modification or improvement of the roadways or facilities of the entity with prior rights shall pay the entity with prior rights for all the actual, documented engineering, design, and administrative costs associated with performance of its portion of the project, which administrative costs, as detailed in Section F(2), shall in no event exceed 15% of the total actual costs associated with construction of that entity's component of the project. Should the non-contracting entity with prior rights provide the design for its portion of the work, the contracting entity shall reimburse non-contracting entity for these costs in the same manner set forth in Sections C(1)-(3).

3. In those circumstances where the County conducts a construction, improvement, or modification project that necessarily requires the modification or improvement of EID's facilities and EID's rights are subordinate to County's rights, both entities shall be responsible for the actual costs associated with construction, improvement or modification of their respective roadways or facilities. In such cases, and in all cases in which both entities bear payment responsibilities, the entity conducting the initial project may, as provided by the terms of this Agreement, incorporate the modification of the other entity's roadways or facilities into its project contract, and seek reimbursement for the expenses associated therewith from the other entity.

4. In addition to said actual costs of construction, for each such improvement project that includes the improvement of EID's facilities by exercise of the rights provided under this Agreement and in B(3) above, EID shall pay the County for all of the actual, documented engineering, design, and administrative costs associated with performance of EID's portion of the project, which said administrative costs, as detailed in Section F(2), shall in no event exceed 15% of the total actual costs associated with construction of EID's component of the project.

5. Regardless of which entity has prior rights, the non-contracting entity may request that modifications to its roadways or facilities include upgrades or improvements, beyond those necessary to return the roadways or facilities to the condition in which they existed prior to the contracting entity's project. In such cases, the non-contracting entity shall be responsible for the actual documented construction engineering, design, and administrative costs, over and above that necessary to merely replace or return its roadways or facilities to its pre-existing condition. Administrative costs, as detailed in Section F(2), shall in no event exceed 15% of the total actual costs associated with construction on the non-contracting entity's component of the project.

6. County and EID acknowledge and recognize that under certain circumstances, either the contracting entity or the non-contracting entity might have prior rights to

some, but not all of the property affected by the contracting entity's improvement or construction project. In such circumstances, payment responsibility shall conform to the principles set forth in Sections B(1)-B(5) of this Agreement.

C. REIMBURSEMENT

For projects requiring reimbursement under this Agreement:

1. Within thirty (30) calendar days of final completion of the non-contracting entity's portion of the project, the contracting entity shall submit an invoice to the non-contracting entity for one lump-sum payment, with supporting documentation indicating the amount of costs then due and owing. The non-contracting entity shall make payment of the amount indicated on the invoice within thirty (30) calendar days of receiving the invoice, subject to the provisions of Section D-3 of this Agreement regarding submittal by the contracting entity to the non-contracting entity of as-built drawings, unless the invoice is disputed in accordance with subsection (2) herein below, in which case the non-contracting entity shall make payment of that portion of the invoice which is not in dispute within thirty (30) calendar days of receiving the invoice.

2. In the event that the non-contracting entity disputes any portion of, or any line item shown on, the invoice from the contracting entity, then the non-contracting entity shall notify the contracting entity of such dispute, the basis therefore, and provide adequate justification for the dispute, within ten (10) calendar days of receiving said invoice. If the payment of, or adjustment to, any amount disputed by the non-contracting entity cannot be resolved by the parties within thirty (30) calendar days of notification to the contracting entity of the disputed amount, then both parties mutually agree to resolve the dispute in accordance with the dispute resolution provisions set forth in the contracting entity's construction contract for the project at issue.

3. If the construction contract for the project at issue requires the contractor to provide the contracting entity with monthly updates, the contracting entity will supply the non-contracting entity with a copy of these monthly updated schedules.

D. WORK INCORPORATED HEREBY

1. In order for the contracting entity to include the non-contracting entity work in the contracting entity's bid package, the non-contracting entity shall provide material specifications to the contracting entity for the work of each project. The non-contracting entity shall include design drawings, specifications and estimates to the contracting entity for review and incorporation into the contracting entity's construction contract documents. Except as provided in Section D(6) below, the non-contracting entity is solely responsible for its installed facilities after construction and its acceptance of the facilities. Three copies of each

construction bid package/contract prepared by the contracting entity will be provided to the non-contracting entity. The contracting entity bid plans and specifications that incorporate the non-contracting entity's various utility and/or roadway designs, prepared by the contracting entity shall be reviewed and approved by the non-contracting entity prior to advertising for bids. The non-contracting entity shall be solely responsible for content accuracy, adequacy, and clarity of the bid plans and specifications pertaining to the non-contracting entity's installation work. The non-contracting entity shall have fifteen (15) working days to review and approve the bid plans and specifications. In addition to content accuracy, adequacy, and clarity, the non-contracting entity's review shall include the following scope:

a. Conformance of roadway and/or facility installation design with the non-contracting entity standards, and applicable Caltrans standards, standard drawings and standard specifications; and conformance with County of El Dorado standards and with the plans, details and specifications for the overall project of which it is to be incorporated.
b. Ability of roadway and/or facility design to meet similar performance standards as the existing non-contracting entity roadways and/or facilities.

The non-contracting entity's authorized representative may review the lowest responsible, responsive bidder's documents and may provide recommendations, if any, to the contracting entity within five business days of bid opening. Notwithstanding that review, the contracting entity shall have sole authority to reject any or all construction bids, resolve any bid protests, and/or to award the construction contract for the entire work.

County and EID understand and agree that for all projects subject to this Agreement, except those that involve (a) the County's receipt of federal funding, state funding, or other funding sources that restrict the County's ability to prequalify contractors and subcontractors or (b) the relocation of EID facilities through the County's construction contract when unanticipated relocations are discovered during the construction phase of a County road improvement project, EID shall have the right in its discretion to pre-qualify any and all firms interested in bidding EID's component of the project either as the prime contractor or a subcontractor thereto. EID shall use its best efforts to coordinate its prequalification process with the County's project delivery schedule. Any such prequalification process shall be conducted in strict accordance with all requirements for prequalification of contractors codified under the Local Agency Public Construction Act (Public Contract Code § 20100, et seq.) or its successor law. Nothing herein shall be construed to constitute the County's intent to incorporate prequalification into its own public contracting solicitation procedures, or its assent to incorporate such procedures into projects outside the scope of this Agreement.

EID agrees to indemnify the County against claims that arise out of and that challenge the prequalification of contractors that will conduct work on EID's component of the project when County is the contracting entity.

2. Irrespective of the costs associated with inspections performed as construction management under Section F(2), the non-contracting entity, at its sole expense, shall provide one or more inspectors for all work involving, pertaining to, or affecting the non-contracting entity's roadways and/or facilities to verify construction is completed in accordance with the non-contracting entity's standards and applicable non-contracting entity standard drawings and technical specifications.

3. The contracting entity shall, upon request of the non-contracting entity, provide the non-contracting entity with a set of as-built drawings for each project. The costs associated with providing as-built drawings to the non-contracting entity shall be paid for in accordance with the principles set forth in Sections B(1)-(6).

4. The contracting entity shall be solely responsible for all items of construction management, as defined in Section F(2), for each of the contracting entity's projects, except as specified in Sections B, C, D(8), and F(2) herein.

5. All non-contracting entity work, inclusive of all extra work and additional work as set forth in Section D(8) herein, to be performed through exercise of the rights under this Agreement shall be in conformance with all applicable Caltrans, El Dorado County Department of Transportation, and EID standards and with the plans, details and specifications for the overall project to which the non-contracting entity work is incorporated.

6. For each project, the contracting entity's contractor shall provide written guarantee of all of its work for one (1) year from acceptance by the contracting entity. The contracting entity shall ensure that the guarantee inures to both County's and EID's benefit, by naming the non-contracting entity as an additional beneficiary of the guarantee in the initial contract. Alternatively, in those cases of unanticipated work for the non-contracting entity, the contracting entity agrees to present any warranty claim on behalf of the non-contracting entity as to any warranty issues associated with change order work performed by the contracting entity's contractor.

7. For projects other than those involving unanticipated relocations or modifications of either party's roadways or facilities, the contracting entity shall provide in the bid specifications for each project that the selected contractor shall, by policy endorsement, add the non-contracting entity, and its officials, employees, agents and representatives, as additional insured on contractor's general liability insurance policy for the project.

8. It is understood that time is of the essence and that the contracting entity would be harmed by delays to a project. In order to avoid delays, the contracting entity and non-contracting entity agree that the contracting entity must maintain administrative control of each project. To protect the contracting entity from unnecessary project delays arising from the non-contracting entity work, the contracting entity and non-contracting entity agree that changes to the non-contracting entity work on a project will be handled in the following manner:

    a. **Extra Work Required:** As used in this section, "extra work" means work that is not foreseen at the time the project is bid, and is not anticipated in the bid documents, but must necessarily be performed in order to address conflicts, changed or differing conditions, or otherwise necessary in order to complete the project. The expense of any increased costs or the credit for any reduced costs resulting from any and all extra work required shall be apportioned in accordance with Sections a-i and a-ii, herein below. A non-contracting entity will be responsible for designing and inspecting all facets of any extra work on, related to, or caused by that non-contracting entity's roadways and/or facilities. Costs for such extra work shall be allocated in conformity with the principles established in Section B above.

    In the event that a CCO is required, the contracting entity will notify the non-contracting entity on the next calendar day from notification from the contracting entity's contractor, and within five (5) calendar days will prepare a CCO. The non-contracting entity will then have five (5) calendar days to review, approve, and return the CCO to the contracting entity or return it to the contracting entity for modification. If the non-contracting entity fails to return the submitted CCO to the contracting entity as approved herein within five (5) calendar days, then the contracting entity will take one of the following actions:

        i. The CCO will be executed by the contracting entity per the terms, conditions, and price shown on the CCO that had been submitted to the non-contracting entity. The non-contracting entity will be required to reimburse the contracting entity, in accordance with the provisions specified in Sections B and C of this Agreement, for the non-contracting entity's share of the cost of the CCO.

        ii. The contracting entity will direct the contractor to perform the work on a force account basis. For extra work to non-contracting entity roadways and/or facilities performed on force account, the non-contracting entity shall be responsible for inspecting the extra work and tracking the time that the contractor's forces spend pursuing the extra work. On each day that extra work to non-contracting entity roadways and/or facilities is performed on force account, a non-contracting entity inspector will prepare and sign a work report that details the labor, equipment, and materials that were used

during that day's force account work. Said reports shall be given to the Resident Engineer in the case of the County, or the Project Engineer in the case of EID, for payment processing. The non-contracting entity will be required to reimburse the contracting entity, in accordance with the provisions specified in Sections B and C of this Agreement, for its share of the cost of the force account work.

iii. The contracting entity will direct the contractor to stop work on the contract only to the extent reasonably deemed necessary by the contracting entity. The non-contracting entity will then be responsible for justified costs associated with Project delay arising from non-contracting entity work. Such delay costs include but are not limited to right of way delays, extended Contractor overhead, additional water pollution control costs due to a project extending into winter, and equipment rental. The non-contracting entity will be required to reimburse the contracting entity, in accordance with the provisions specified in Sections B and C of this Agreement for all said delay costs arising from non-contracting entity work.

When the contracting entity submits a CCO to the non-contracting entity for the non-contracting entity's review and approval, the CCO will clearly state which of the actions listed above the contracting entity intends to take should the non-contracting entity fail to return the CCO to the contracting entity within the time specified above.

It is agreed that all increases or decreases in justified costs associated with CCOs related to the non-contracting entity's work may include but are not limited to direct construction costs, extended contractor overhead, additional water pollution control costs due to CCOs extending a project into winter, dust control, and equipment rental.

b. **Additional Work:** As used in this section, "additional work" means work that is not foreseen at the time a project is bid, and is not extra work but may be desirable for the benefit of non-contracting entity roadways and/or facilities. Any and all additional work requested by a non-contracting entity shall be at the non-contracting entity's sole expense. The non-contracting entity, at its sole expense, will be further responsible for designing and inspecting all facets of any additional work requested by the non-contracting entity. In the event that the non-contracting entity desires additional work to be performed by the contracting entity's contractor, the non-contracting entity shall address its request to the contracting entity. If a price for additional work can be directly negotiated between the non-contracting entity and the contracting entity's contractor, then the additional work may be incorporated into the contract via a CCO for the negotiated cost. If the contracting entity's contractor and the non-contracting entity cannot agree to a negotiated price,

the non-contracting entity may request that the work be performed on a force account basis. For additional work performed at force account, the non-contracting entity shall be responsible for inspecting the additional work and tracking the time that the contractor's forces spend pursuing the additional work. On each day that the non-contracting entity work is performed at force account, a non-contracting entity inspector will prepare and sign a work report that details the labor, equipment, and materials that were used during that day's force account work. Said reports shall be given to, in the case of the County, the County's Resident Engineer, and in the case of EID, EID's Project Engineer for payment processing. Before any additional work may commence, the contracting entity must write and execute the CCO for the non-contracting entity's additional work, at the non-contracting entity's direct negotiated price or at force account, whichever is applicable. The non-contracting entity will then have five (5) calendar days to review, approve, and return the CCO to the contracting entity. If non-contracting entity fails to return the CCO as approved to the contracting entity within five (5) calendar days, then the contracting entity shall have no obligation to compel the contractor to perform the additional work.

It is agreed that all increases or decreases in justified costs associated with CCOs related to additional non-contracting entity work may include but are not limited to direct construction costs, extended contractor overhead, additional water pollution control costs due to CCOs extending the project into winter, dust control, and equipment rental.

c. Non-contracting Entity Forces: The non-contracting entity may alternatively request of the contracting entity that the non-contracting entity use its own forces to perform additional work, as that term is defined hereinabove. The determination of whether to allow the additional work to be done by the non-contracting entity forces shall be within the contracting entity's sole discretion. In circumstances where the County is the contracting entity, and the County determines to allow EID, as the non-contracting entity, to perform the additional work, the non-contracting entity shall comply with all conditions of County's standard encroachment permit, inclusive of indemnity and insurance, and shall provide proof of insurance meeting those requirements in advance of the commencement of the work. All additional work performed by the non-contracting entity shall comply with the requirements of this Agreement, with the project construction schedule and be coordinated with the contracting entity's contractor work. In order to coordinate the non-contracting entity's work with the work of the contracting entity's contractor, the contracting entity may require that the non-contracting entity perform its work within an agreed-upon window of time. Any and all of the contracting entity's contractor justified extra work, claims or delay costs arising from or caused by non-contracting entity's force work shall be non-contracting entity's sole responsibility. The contracting entity and non-contracting entity will determine in advance of the contracting entity's approval whether any

Project cost savings arise from non-contracting entity's proposed force work and will mutually agree to whom said cost savings, if any, shall be credited. If the parties cannot reach agreement, the contracting entity may decline to allow the non-contracting entity force work.

9. During the Term of this Agreement (as defined below), the parties shall execute a "Project Statement" in the form of Exhibit "1" attached hereto and incorporated herein by reference to effect the inclusion of improvements or modifications to the non-contracting entity's facilities in the contracting entity's project. The Project Statement shall include contractual provisions required by federal or state laws or regulations applicable to the contracting entity and/or its funding source(s). All such Project Statements shall become part of this Agreement and incorporated herein once mutually executed by County and EID.

10. For utility relocation projects on right of way that are financed with federal funds, both County and EID agree to comply with the applicable procedures and guidelines specified in the Caltrans Local Assistance Procedures Manual, including, but not limited to, executing the Caltrans-approved Utility Agreement, as may be revised by Caltrans from time to time, in the form of Exhibit "2", attached hereto and incorporated herein by reference.

E. DUTY OF COOPERATION, DEFENSE AND INDEMNITY OF CONTRACTUAL CLAIMS

1. In exchange for the rights granted under this Agreement, the non-contracting entity shall remain solely responsible for the design, operation, inspection, relocation and maintenance of its roadways and/or facilities. Accordingly, the non-contracting entity shall fully cooperate with the contracting entity in the timely response to all inquiries, notices, and contractual claims asserted by the contracting entity's contractors and subcontractors as they pertain to the non-contracting entity roadways and/or facilities. Further, the non-contracting entity shall fully cooperate and assist the contracting entity in the resolution and/or settlement of all claims from the contracting entity's contractor and subcontractors as it relates to the non-contracting entity roadways and/or facilities. The non-contracting entity shall reimburse the contracting entity for any amounts paid by the contracting entity to the contracting entity's contractor as a result of the settlement or resolution of said claims in accordance with the parties' respective rights and responsibilities under this Agreement.

2. As between the non-contracting entity and the contracting entity, the non-contracting entity shall bear the sole and exclusive responsibility for any and all errors and omissions, costs associated with delays, claims, penalties, fines, damages, and liabilities of whatever kind or nature arising from the construction of the non-contracting entity roadways and/or facilities, whether to the contracting entity's contractor or utility performing work in the project area. Therefore, to the

fullest extent allowed by law, the non-contracting entity shall hold harmless, defend at its own expense, and indemnify the contracting entity and the officers, agents, employees and volunteers of the contracting entity from any and all fines, penalties, liability, claims, losses, delays, damages or expenses, including reasonable attorney's fees, and economic or consequential losses, which are claimed to or in any way arise out of or are connected with the construction of non-contracting entity's roadways and/or facilities, inclusive of the design, plans and specifications, excepting only the sole or active negligence, or willful misconduct, of the contracting entity. Notwithstanding the above, in the event it is ultimately determined that the claim or liability is the result of the joint negligence of the contracting entity and the non-contracting entity, the non-contracting entity's obligation to indemnify the contracting entity shall be reduced to the extent of the contracting entity's negligence. However, non-contracting entity's obligation to defend and indemnify the contracting entity, except for the contracting entity's sole and active negligence, shall apply in the first instance and until a determination of respective negligence is made. A determination made of respective liability between the two parties may be made either by agreement between the contracting entity and the non-contracting entity, or by a court of competent jurisdiction and the contracting entity shall make any reimbursements required as a result of that determination. Each party shall notify the other party immediately in writing of any anticipated claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under the attorney-client privilege.

F. GENERAL PROVISIONS

1. The contracting entity shall disclose to its contractor for each project the horizontal and vertical locations of the non-contracting entity roadways and/or facilities as provided by the non-contracting entity to the contracting entity. For projects other than those involving unanticipated relocations or modifications of either party's roadways or facilities, the contracting entity's construction contract for each project shall require the contractor to indemnify, hold harmless and defend, including attorney's fees and expenses, the non-contracting entity, and its officials, employees, agents and representatives, from and against any and all claims, liability, losses, and/or causes of action which arise or are claimed to arise from the negligence or willful misconduct of the contractor, its subcontractor(s), or the agents, servants or employees of any of them.

2. In conformance with Sections B(2)-(5) and C(1)-(3), the non-contracting entity shall reimburse the contracting entity for the non-contracting entity's portion of construction administration costs, which include flagging traffic, traffic control system, water and dust pollution control measures, and the contracting entity's construction management costs (which include inspections, soils testing and

staking) for the modification or improvement of the non-contracting entity's roadways and/or facilities by the contracting entity's contractor. Administrative costs shall not include staff time of the non-contracting entity associated with processing payment of reimbursement expenses to the contracting entity. All the above-listed costs will be calculated at a total of fifteen percent (15%) of the non-contracting entity's direct construction contract costs for construction of the non-contracting entity's facilities for each project. Listed below is a percentage breakdown of the non-contracting entity's cost responsibilities:

Flagging Traffic	2%
Traffic Control Systems	2%
Water and Dust Pollution	1%
Construction Management	10%
	15% Total

The non-contracting entity shall reimburse the contracting entity for the non-contracting entity's portion of mobilization as outlined in this Agreement, for which total cost will be calculated as the actual percentage of the mobilization bid line item of the total direct construction cost.

The non-contracting entity shall reimburse the contracting entity for the contracting entity's construction management costs for any extra or additional work as defined in Section D(8) above, at a reduced rate of eight percent (8%) of the direct construction cost of the extra or additional work. Any additional flagging, traffic control, water and dust pollution control measures or mobilization required by the extra or additional work shall be included in the direct construction contract cost of the CCO and no additional reimbursement will be added thereto.

3. The contracting entity shall maintain all books, documents, papers, accounting records, and other evidence pertaining to direct construction costs incurred by The contracting entity related to any constructed non-contracting entity facilities, and shall make such materials available for inspection at the contracting entity's offices at reasonable times during the Term of this Agreement and for three (3) years following completion of the projects subject to this Agreement. In order to provide complete information for an audit, all project billings must show separate detailed and itemized line items of work performed by the contracting entity's contractor.

4. All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

To County:	With a Copy to:
County of El Dorado Department of Transportation 2850 Fairlane Court Placerville, Ca 95667 Attn.: Bard R. Lower Director of Transportation Community Development Agency	County of El Dorado Department of Transportation 2850 Fairlane Court Placerville, Ca 95667 Attn: Office Engineer Transportation Division Community Development Agency

or to such other location as County directs in writing.

Notices to EID shall be addressed as follows:

TO EID:	With a Copy to:
El Dorado Irrigation District 2890 Mosquito Road Placerville, CA 95667 Attn.: Brian Mueller Director of Engineering	El Dorado Irrigation District 2890 Mosquito Road Placerville, CA 95667 Attn.: Elizabeth Wells Waste/Recycled Water Engineering Division Manager

or to such other location as EID directs in writing.

5. The County officer or employee with responsibility for administering this Agreement is Bard R. Lower, Director of Transportation, Community Development Agency, or successor.

6. The EID officer or employee with responsibility for administering this Agreement Brian Mueller, Director of Engineering, El Dorado Irrigation District, or successor.

7. The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

8. This Agreement and the attached exhibits contain all of the terms of agreement between County and EID. All modifications or amendments to this Agreement must be in writing and signed by both parties.

9. Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

10. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

11. The waiver by either party of any requirements, condition or provision of this Agreement shall not be deemed a waiver of any subsequent breach of that or any other requirement, condition or provision of this Agreement.

12. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. County and EID agree that the following applicable approvals, permits and authorizations will be obtained by the contracting entity and/or the contracting entity's contractor prior to the commencement of each project: the SWPPP, County encroachment permit, all discharge permits, trenching and shoring, grading permits, a blasting plan and blasting permit where authorized by the project specifications, and Dust Control Plan and Asbestos Mitigation Plan. Nothing herein shall restrict or otherwise impair County's authority to issue encroachment permits or its ability to impose conditions on issuance of such permits. Any other permits, approvals and authorizations necessary for the commencement of construction of non-contracting entity's component of the project shall be the responsibility of non-contracting entity. After the issuance of the notice to proceed and commencement of work, if there are any necessary additional permits, approvals and authorizations that are necessary for the non-contracting entity component of the project, non-contracting entity shall be responsible for obtaining said permits, approvals and authorizations in a timely fashion so as not to delay the work. If non-contracting entity is unable to obtain said permit, approval, or authorization, or to do so will result in a delay in the either the non-contracting entity component of the project or the contracting entity's project as a whole, then either (i) the contracting entity may issue a change order deleting the non-contracting entity work in its entirety if it has not yet commenced, or (ii) if work has commenced on the non-contracting entity work, non-contracting entity shall be responsible for all costs and claims associated with the delay, inclusive of delay claims or extra work claims resulting to the contracting entity's project as a result of the delay.

14. County and EID understand and agree that this Agreement creates rights and obligations solely between County and EID and is not intended to benefit any other party. No provision of this Agreement shall in any way inure to the benefit of any third-person so as to constitute any such third-person as a third-party beneficiary of this Agreement or any of its terms or conditions, or otherwise give rise to any cause of action in any person not a party hereto.

15. The term of this Agreement shall be five years from the effective date. Prior to expiration of the Agreement, and upon written stipulation, the parties may extend the term of this Agreement an additional five years.

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Requesting Department Concurrence:

By: _____ Dated: _____
Director of Transportation

Reviewed & Approved on:_____
Date

By:_____
EID General Counsel's Office

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

- - COUNTY OF EL DORADO - -

By: _____ Dated: _____
Brian K. Veerkamp, Chair
Board of Supervisors
”County”

Attest:
James S. Mitrisin
Clerk of the Board of Supervisors

By: _____ Dated: _____
Deputy Clerk

- - EL DORADO IRRIGATION DISTRICT - -

By: _____ Dated: _____
Jim Abercrombie
“EID”

EXHIBIT "1"

PROJECT STATEMENT

IN ACCORDANCE WITH SECTION D(9) OF THE MASTER CONSTRUCTION RESPONSIBILITY AND REIMBURSEMENT AGREEMENT, THIS PROJECT STATEMENT – IF EXECUTED BY COUNTY AND EID – SHALL BECOME THE SCOPE OF WORK FOR [EID/COUNTY] IMPROVEMENTS TO BE INCLUDED IN THE FOLLOWING [EID/COUNTY] PROJECT.

[EID/County] Project Name:

[EID/County] Project No.:

Description of [EID/County] [Roadway/Facility] Improvements to be Included in the Project and All Associated Costs:

- - C O U N T Y O F E L D O R A D O - -

By:_____ Date: _____
Deputy Director of Engineering
Community Development Agency
El Dorado County

- - E L D O R A D O I R R I G A T I O N D I S T R I C T - -

By: _____ Date:_____
Brian Mueller, P.E., Engineering Director
El Dorado Irrigation District

Attachment “A” to this Exhibit “1”: All Plans and Specifications for the [EID/County] Work Described Above.

Exhibit 14-F Utility Agreements

UTILITY AGREEMENTS

(Name of LOCAL AGENCY)

UTILITY AGREEMENT

County	Route	P.M.	Project #
Fed. Aid. No.			
Owner's File			
FEDERAL PARTICIPATION: On the Project : Yes/No **On the Utilities: Yes/No**			

UTILITY AGREEMENT NO. XXXX.xx

The (*Name of local agency)* hereinafter called "LOCAL AGENCY" proposes to *(project description)* on _____ Street, in ____City/Town, _____County, California.

And: ***Owner's name***

hereinafter called "OWNER," owns and maintains *(impacted facility)* facilities; within the limits of LOCAL AGENCY's project that requires relocation of said facilities to accommodate LOCAL AGENCY's project.

It is hereby mutually agreed that:

I. WORK TO BE DONE:
(Use appropriate clause(s) in EXHIBIT 14-G, Section I)

II. LIABILITY FOR WORK
(Use appropriate clause(s) in EXHIBIT 14-G, Section II)

III. PERFORMANCE OF WORK
(Use appropriate clause(s) in EXHIBIT 14-G, Section III)
Use Clause III-6, Prevailing Wages, when applicable.

IV. PAYMENT FOR WORK
(Use appropriate clause(s) in EXHIBIT 14-G, Section IV)

V. GENERAL CONDITIONS
(Use appropriate clause(s) in EXHIBIT 14-G, Section V)

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

LOCAL AGENCY	**(OWNER)**
By: _____	By: _____
(Name) Local Agency Director	*(Name)* *(Title)*
Date: _____	Date: _____

Distribution: 1) Owner, 2) Utility Coordinator, 3) DLAE –File, 4) District Utility Coordinator – File

EXHIBIT 14-G UTILITY AGREEMENT CLAUSES

Use of these clauses will reduce errors and omissions as well as save preparation, review, and approval time as the clauses have been pre-reviewed and approved by Caltrans, as well as most major Utility Owners. The clauses are numbered for each section of the Utility Agreement. The Local Agency preparing the Utility Agreement will need to select the appropriate clause(s) for each section. Some of the clauses pertain to involvement with State Highway Right of Way; a careful analysis should be made to determine which clauses would be appropriate.

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 Office of the LOCAL AGENCY at _____. Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY 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 LOCAL AGENCY and 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 receipt 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 itemized estimates require a revised FHWA Specific Authorization.

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

"In accordance with Notice to Owner No. _____ dated _____, LOCAL AGENCY shall relocate OWNER's _____. as shown on LOCAL AGENCY's contract plans for the improvement of _____, which by this reference are made a part hereof. OWNER hereby acknowledges review of LOCAL AGENCY's plans for work and agrees to the construction in the manner proposed.

Deviations from the plan described above initiated by either the LOCAL AGENCY 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 LOCAL AGENCY and 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 receipt 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 LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facilities."

NOTE: Whenever liability is determined pursuant to Water Code Sections 7034 or 7035, Standard Clauses I-2, 3 or 4, may be modified by the deletion of the sentence: "Upon completion of the work by LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facility." (Also Clause V-10 will need to be added to the Utility Agreement.)

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

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

Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY 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 LOCAL AGENCY and 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 receipt 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 LOCAL AGENCY's contractor during construction. Upon completion of the work by LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facilities."

NOTE: See NOTE under Clause I-2.

I-4. Work Performed by Both Owner and Local Agency'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 Office of the LOCAL AGENCY at _____."

"Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY 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 LOCAL AGENCY and 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 receipt 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 LOCAL AGENCY will include the work of _____ as part of the LOCAL AGENCY's highway construction contract. OWNER shall have access to all phases of the work to be performed by the LOCAL AGENCY 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 LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facilities."

NOTE: See NOTE under Clause I-2.

Section II. Liability for Work

II-1. Local Agency's Expense - California Streets and Highways Code (S&HC), Section 702 or 703:

"The existing facilities are lawfully maintained in their present location and qualify for relocation at

LOCAL AGENCY's expense under the provisions of Section (702) or (703) of the Streets and Highways Code."

II-2. Local Agency'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 LOCAL AGENCY's expense under the provisions of Section 704 of the Streets and Highways Code."

II-3. Local Agency's Expense - Superior Rights:

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

II-4. Local Agency'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 LOCAL AGENCY's expense."

II-5. Local Agency's Expense - Prescriptive Rights:

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

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

"The existing facilities are located within the LOCAL AGENCY's right of way under permit and will be relocated at OWNER's expense under the provisions of Sections (673) and (680) of the Streets and Highways Code."

II-7. Owner's Expense - Trespass:

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

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

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

II-9. Local Agency or Prorated Expense - Master Agreement:

"The existing facilities described in Section I above will be relocated (at LOCAL AGENCY's expense) (at _____% LOCAL AGENCY's expense and _____% OWNER's expense) in accordance with (Section _____ of the Master Agreement dated _____) (Sections _____ of the Master Agreement 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 Agreement, the equation used to develop the overall percentage

of liability is to be included in the Agreement.

II-10. Prorated Expense - No Master Agreement:

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

NOTE: Insert the equation used to develop the overall percentage of liability for the relocation following the word "proration."

II-11. 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. In signing this AGREEMENT neither LOCAL AGENCY nor OWNER shall diminish their position nor waive any of their rights nor does either party accept liability for the disputed work. LOCAL AGENCY 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 90 days."

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. Local Agency's Contractor Performs All or Portion of Work:

"OWNER shall have access to all phases of the relocation work to be performed by LOCAL AGENCY for the purpose of inspection to ensure that the work is in accordance with the specifications contained in the Highway Contract; however, all questions regarding the work being performed will be directed to LOCAL AGENCY'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 LOCAL AGENCY. Cost principles for determining the reasonableness and allow ability of consultant costs shall be determined in accordance with 48 CFR, Chapter 1, Part 31."

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

"OWNER agrees to perform the herein described work, excepting that work being performed by the LOCAL AGENCY'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. Prevailing Wages Requirements for Contracted Work:

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

Section IV. Payment for Work

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

"The LOCAL AGENCY shall pay its share of the actual cost of the herein described work within 90 days after receipt of OWNER's itemized bill in quintuplicate, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual 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 (PUC) or Federal Communications Commission (FCC), whichever is applicable."

"It is understood and agreed that the LOCAL AGENCY 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 LOCAL AGENCY for all accrued depreciation on 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 Local Agency's contractor.

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

"The LOCAL AGENCY shall pay its share of the actual cost of the herein described work within 90 days after receipt of OWNER's itemized bill in quintuplicate, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual 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 LOCAL AGENCY 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 LOCAL AGENCY for all accrued depreciation on 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 publicly owned sewers on freeways do not need to give credits for accrued depreciation. In these cases the following words "... for all accrued depreciation on the replaced facilities and …" shall be eliminated from the second paragraph above.**
(2) See Clause IV-1 for work done being done by Local Agency's contractor.

IV-3. For All Owners - Progress/Final Bills:

"Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit 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 LOCAL AGENCY 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 LOCAL AGENCY within 180 days after the completion of the work described in Section I above. If the LOCAL AGENCY has not received a final bill within 180 days after notification of completion of OWNER's work described in Section I of this Agreement, and LOCAL AGENCY has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements as required for OWNER's facilities; LOCAL AGENCY will provide written notification to OWNER 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."

"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 LOCAL AGENCY 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. 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 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 OWNERS 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 LOCAL AGENCY."

"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 in accordance with Contract Cost Principals and Procedures as set forth in 48 CFR, Chapter 1, Part 31 by LOCAL AGENCY and/or Federal Auditors."

NOTES:

(1) See NOTE under Clause IV-1.
(2) Audit standards of 48 CFR, Part 31 have been accepted as Caltrans standard for all projects.
(3) Under Clause 1V-3, regarding the standard 180 days for Owner to submit a final bill, the Local Agency can negotiate a shorter time frame in which the Owner must submit their final bill.

IV-4. Advance of Funds - Local Agency 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 $ _____ LOCAL AGENCY agrees to advance to OWNER the sum of $ _____ provided hereinabove. Said sum of $ _____ to apply to the cost of the work to be undertaken as will be deposited by the LOCAL AGENCY 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 LOCAL AGENCY 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 LOCAL AGENCY and deposited as provided for above shall be credited to LOCAL AGENCY."

"In the event actual relocation costs as established herein are less than the sum of money advanced by LOCAL AGENCY to OWNER, OWNER hereby agrees to refund to LOCAL AGENCY 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 OWNER, in accordance with the provisions of this Agreement, LOCAL AGENCY will reimburse OWNER said excess costs upon receipt of five (5) copies of an itemized bill as set forth herein."

NOTE: Generally, advance of funds should not exceed 90% of the Agreement amount due to possible credits for depreciation, salvage, etc. No funds should be advanced to cover owner initiated betterments.

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

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 cost of work done) and OWNER shall credit the LOCAL AGENCY for the actual 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. Local Agency Performs Work - Owner Requested Betterments:

"The LOCAL AGENCY 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 LOCAL AGENCY prior to the time that the subject freeway/highway contract bid is opened by the LOCAL AGENCY. The final betterment payment shall be calculated based upon the actual quantities installed as determined by the LOCAL AGENCY's engineer and the current cost data as determined from the records of the OWNER. In addition, the OWNER shall credit the LOCAL AGENCY at the time of the final bill for all the accrued depreciation and the salvage value of any material or parts salvaged and retained by the OWNER."

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

"Upon completion of the work, and within 90 days after receipt of OWNER's bill in quintuplicate, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, LOCAL AGENCY will pay OWNER the lump sum amount of $ _____. The above lump sum amount has been agreed upon between the LOCAL AGENCY and the OWNER and includes any credits due the LOCAL AGENCY for betterment, depreciation and salvage."

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

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

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

"Upon completion of the potholing and relocation work, and within 90 days after receipt of OWNER's bill in quintuplicate, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead; LOCAL AGENCY will pay OWNER the lump sum amount of $ _____. The above lump sum amount for the physical relocation work has been agreed upon between the LOCAL AGENCY and the OWNER and includes any credits due the LOCAL AGENCY for betterment, depreciation, and salvage."

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

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

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

NOTE: Insert the following Clause after Clause IV-1 or IV-2.

"The OWNER shall pay its share of the actual cost of said work included in the LOCAL AGENCY's highway construction contract within 90 days after receipt of LOCAL AGENCY'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 LOCAL AGENCY'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 LOCAL AGENCY, LOCAL AGENCY 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 LOCAL AGENCY, in accordance with the provisions of this Agreement, OWNER hereby agrees to reimburse LOCAL AGENCY said deficient costs upon receipt of an itemized bill as set forth herein."

Section V. General Conditions

V-1. Local Agency Liable for Review and Design Costs, and Project Cancellation Procedure Clause:

"All costs accrued by OWNER as a result of LOCAL AGENCY'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 LOCAL AGENCY's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, LOCAL AGENCY will notify OWNER in writing, and LOCAL AGENCY reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement."

V-2. For All Owners - Notice of Completion:

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

V-3. Owner to Acquire New Rights of Way:

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

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

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

"Such Easement Deeds as deemed necessary by the LOCAL AGENCY will be delivered to OWNER conveying new rights of way for portions of the facilities relocated under this Agreement over

available LOCAL AGENCY owned property outside the limits of the highway right of way."

"LOCAL AGENCY'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 means a right of way described in the same language as found in the OWNER's document by which it acquired, or held, its original right of way.

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

"LOCAL AGENCY will acquire new rights of way in the name of either the LOCAL AGENCY or OWNER through negotiation or condemnation and when acquired in LOCAL AGENCY's name, shall convey same to OWNER by Easement Deed. LOCAL AGENCY's liability for such rights of way will be at the proration shown for relocation work involved under this Agreement."

NOTE: New rights of way means a right of way described in the same language as found in the OWNER's document by which it acquired, or held, 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; provided the OWNER has the power to condemn and the Local Agency has OWNER's consent for condemnation on OWNER's behalf. The above paragraph should be revised accordingly.

V-6. Joint Use Agreement (JUA) or Consent to Common Use Agreement (CCUA) to be issued:

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

V-7. Master Agreement Specifies Equal Replacement Rights:

"Upon completion of the work to be done by LOCAL AGENCY 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-8. 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-8a. Federal Aid Clause - No 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."

"In addition, the provisions of 23 CFR 635.410, BA, are also incorporated into this agreement. The BA 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-9. 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 FHWA, shall govern in lieu of the requirements of said 23 CFR Part 645."

NOTE: The FHWA allows liability to be determined in accordance with the terms of Master Agreements in lieu of otherwise applicable S&H Code sections.

V-9a. 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 FHWA, shall govern in lieu of the requirements of said 23 CFR 645.

"In addition, the provisions of 23 CFR 635.410, BA, are also incorporated into this agreement. The BA requirements are further specified in 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-10. Facilities Replaced per Liability Determination Under Water Code Sections 7034 & 7035:

"In as much as Water Code Sections (7034) and (7035) require LOCAL AGENCY 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, _____, LOCAL AGENCY will repair or replace the conduit portion of OWNER's facilities, which lies within the LOCAL AGENCY 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 LOCAL AGENCY be liable for any betterment, change, or alteration in said facility made by or at the request of the OWNER for its benefit."

NOTE: See NOTE under Clause I-2 and Section 13.11.05.01 of the ROW Manual.

V-11a. Utility Owner Self Certification Method:

"Owner understands and acknowledges that this project is subject to the requirements of the BA 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 BA 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 BA 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 BA requirements for utility relocations issued on December 3, 2013."

NOTE:

i. Utility Owner will source materials that comply with BA 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 BA law (23 U.S.C., Section 313) and applicable regulations, including 23 CFR 635.410 and FHWA guidance and will demonstrate BA compliance by collecting written certification(s) from the vendor(s) or by collecting written certification(s) from the manufacturer(s) (the mill test report (MTR)."

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

"One set of copies of all documents obtained to demonstrate BA compliance will be attached to, and submitted with, the final invoice."

V-12. Utility Agreement not subject to BA:

"State represents and warrants that this Utility Agreement is not subject to 23 CFR 635.510, the BA provisions."