

**ORANGE COUNTY TRANSPORTATION AUTHORITY
UTILITY AGREEMENT**

RW 13-05 (REV 12/2016)

DISTRICT 12	COUNTY Orange	ROUTE SR-55	POST MILE <u>6.4/10.2</u>	Project ID <u>1200020328</u>
FEDERAL AID NUMBER STPLN-6071 (129)		OWNER'S PLAN NUMBER OCSD-1005		
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		

UTILITY AGREEMENT NO. OCSD-1005

DATE *04/07/2020*

Pursuant to Cooperative Agreement Number C-7-1936 (Cooperative Agreement), the Orange County Transportation Authority (OCTA) is partnering with the California Department of Transportation (Caltrans) in a project that proposes to widen State Route 55 (SR-55) between Interstate 405 and Interstate 5 (SR-55 Improvement Project). Per the Cooperative Agreement, OCTA is the lead agency for Right of Way Acquisition and Utility. The SR-55 Improvement Project proposes to reduce traffic congestion, improve mobility as well as traffic operations to an existing four mile stretch of SR-55.

Orange County Sanitation District (OCSD)
10844 Ellis Avenue
Fountain Valley, CA 92708

Hereinafter referred to as "OWNER", owns and maintains sewer facilities in the City of Santa Ana within the limits of OCTA's project which requires project development, design, inspection, project management, relocation of a manhole and sewer segments and the extension of casing to accommodate OCTA's project, and provision of necessary easement interests as set forth in Section V below.

It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. OCSD-1005 dated February 13, 2020, OWNER shall relocate sewer manhole and extend casing. All work shall be performed substantially in accordance with OWNER's Plan No. OCSD-1005 dated February 13, 2020 consisting of 1 sheet, a copy of which is on file in the OCTA office at 550 S. Main Street; Orange, CA 92863-1584.

Deviations from the OWNER's plan described above initiated by either the OCTA or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the OCTA and agreed to/acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to written execution by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner.

II. LIABILITY FOR WORK

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For alternate format information, contact the Forms Management Unit at (916) 445-1233, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

The existing facilities are lawfully maintained in their present location and qualify for relocation at OCTA expense under the provisions of Section (703) of the Streets and Highways Code.

III. PERFORMANCE OF WORK

OWNER agrees to cause the herein described work to be performed by a contract with the lowest qualified bidder, selected pursuant to a valid competitive bidding procedure, and to furnish or cause to be furnished all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion.

Use of personnel requiring lodging and meal 'per diem' expenses shall not exceed the per diem expense amounts allowed under the California Department of Human Resources travel expense guidelines. Accounting Form FA-1301 is to be completed and submitted for all non-OCTA personnel travel per diem. Owner shall also include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed.

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.

Work performed directly by Owner's employees falls within the exception of Labor Code Section 1720(a)(1) and does not constitute a public work under Section 1720(a)(2) and is not subject to prevailing wages. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above.

IV. PAYMENT FOR WORK

The OCTA shall pay its share of the actual and necessary cost of the herein described work within 45 days after receipt of OWNER's itemized bill, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual and necessary cost and expense. The OWNER shall maintain records of the actual costs incurred and charged or allocated to the project in accordance with recognized accounting principles.

It is understood and agreed that OCTA will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to OCTA for the salvage value of any material or parts salvaged and retained or sold by OWNER.

Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit detailed itemized progress bills for costs incurred, not to exceed OWNER's recorded costs as of the billing date less estimated credits applicable to completed work. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by OCTA 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 OCTA within 360 days after the completion of the work described in Section I above. If OCTA has not received a final bill within 360 days after notification of completion of OWNER's work described in Section I of this Agreement, and OCTA has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements for OWNER's facilities (if required), OCTA will provide written notification to OWNER of its intent to close its file within 30 days. OWNER hereby acknowledges, to the extent

allowed by law, that all remaining costs will be deemed to have been abandoned. If OCTA processes a final bill for payment more than 360 days after notification of completion of OWNER's work, payment of the late bill may be subject to allocation and/or approval by the OCTA Board of Directors.

The final billing shall be in the form of a detailed 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, OCTA shall not pay final bills which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the OWNER and approval of documentation by OCTA. Except, if the final bill exceeds the OWNER's estimated costs solely as the result of a revised Notice to Owner as provided for in Section I, a copy of said revised Notice to Owner shall suffice as documentation. In either case, payment of the amount over the estimated cost of this Agreement may be subject to allocation and/or approval by the OCTA Board of Directors.

In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an Amended Agreement shall be executed by the parties to this Agreement prior to the payment of the OWNER's final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section I of this Agreement, shall have the prior concurrence of OCTA.

Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final payment and will be available for audit by OCTA and or Federal auditors. In performing work under this Agreement, OWNER agrees to comply with the Uniform System of Accounts for Public Utilities found at 18 CFR, Parts 101, 201, et al., to the extent they are applicable to OWNER doing work on the project that is the subject of this agreement, the contract cost principles and procedures as set forth in 48 CFR, Chapter 1, Subpart E, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and 2 CFR, Part 200, et al. If a subsequent OCTA and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse OCTA upon receipt of OCTA billing. If OWNER is subject to repayment due to failure by OCTA to comply with applicable laws, regulations, and ordinances, then OCTA will ensure that OWNER is compensated for actual cost in performing work under this agreement.

V. GENERAL CONDITIONS

All costs accrued by OWNER as a result of OCTA's request of August 22, 2018 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 OCTA's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, OCTA will notify OWNER in writing and OCTA reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

All obligations of OCTA under the terms of this Agreement are subject to the acceptance of the Agreement by OCTA Board of Directors or the Delegated Authority (as applicable), the passage of the annual Budget Act by the State Legislature, and the allocation of those funds by the California Transportation Commission.

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

UTILITY AGREEMENT NO. OCSD-1005

Such Easement Deeds as deemed necessary by the OCTA will be delivered to OWNER, conveying new rights of way for portions of the facilities relocated under this Agreement, over available STATE owned property outside the limits of the highway right of way.

OCTA's liability for the new rights of way will be at the proration shown for the relocation work involved under this Agreement.

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

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

OWNER understands and acknowledges that this project is subject to the requirements of the Buy America law (23 U.S.C., Section 313) and applicable regulations, including 23 CFR 635.410 and FHWA guidance, and will demonstrate Buy America compliance by collecting written certification(s) from the vendor(s) or by collecting written certification(s) from the manufacturer(s) mill test report (MTR).

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

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

This does not include products for which waivers have been granted under 23 CFR 635.410 or other applicable provisions or excluded material cited in the Department's guidelines for the implementation of Buy America requirements for utility relocations issued on December 3, 2013.

OCTA further acknowledges that OWNER, in complying with the Buy America Rule, is expressly relying upon the instructions and guidance (collectively, "Guidance") issued by Caltrans and its representatives concerning the Buy America Rule requirements for utility relocations within the State of California. Notwithstanding any provision herein to the contrary, OWNER shall not be deemed in breach of this Agreement for any violations of the Buy America Rule if OWNER's actions are in compliance with the Guidance.

AB 262 – Buy Clean California Act of 2017 requires as of January 1, 2019 that the Department of General Services (DGS) is to publish in the State Contracting Manual (SCM) a maximum acceptable level of global warming potential (GWP) for each category of required materials. The categories of eligible materials are, carbon steel rebar, flat glass, mineral wool board insulation and structural steel. A statement of Environmental Product Declaration (EDP) is required prior to beginning of relocation work, to the extent required by law.

THE ESTIMATED COST TO OCTA FOR THE ABOVE DESCRIBED WORK IS \$ 1,435,000.00.

Signatures on Following Page

UTILITY AGREEMENT NO. OCSD-1005

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

OWNER:
ORANGE COUNTY SANITATION DISTRICT

ORANGE COUNTY TRANSPORTATION
AUTHORITY,
a public entity

APPROVED

APPROVED

By: David John Shawver 3/25/2020
David John Shawver
Board Chairman

By: [Signature]
James G. Bell, P.E.
Executive Director,
Capital Programs

Date: 3/25/20 [Signature]
COB attest.

Date: 4/7/2020

APPROVED AS TO FORM:
Alston & Bird

APPROVED AS TO FORM:

By: [Signature] Partner
Pamela J. Rivett
Special Counsel

By: [Signature]
Rick E. Rayl
Special Counsel