

ATTACHMENT C

Exhibit 14-F Utility Agreements

UTILITY AGREEMENTS

City of Oakland

UTILITY AGREEMENT

County	Route	P.M.	Project #
Alameda	Leimert Blvd	N/A	1000820
Fed. Aid. No. STPLZ-5012(124)			
Owner's File			
FEDERAL PARTICIPATION: On the Project : <u>Yes</u>/No			
On the Utilities: Yes/<u>No</u>			

UTILITY AGREEMENT NO. 01

The City of Oakland hereinafter called "LOCAL AGENCY" proposes project "Seismic Retrofit: Leimert Blvd. Bridge over Sausal Creek, Bridge No. 33C0215" (also referred to as "Sausal Creek Bridge at Leimert Boulevard Retrofit"). LOCAL AGENCY proposes to seismically retrofit the Leimert Blvd. Bridge (#33C0215). Project work includes wrapping carbon fiber reinforced polymer (CFRP) around concrete members; applying a mortared finish over the CFRP wrap; application of localized shotcrete; removal and replacement of existing AC overlay with a polyester concrete overlay; removal of graffiti paint; patching of spalled concrete; and repair or replacement of the existing chain link fence. In the City of Oakland, County of Alameda, California.

And: East Bay Municipal Utility District (EBMUD) hereinafter called "OWNER," owns and maintains 16" water pipeline facilities; within the limits of LOCAL AGENCY's project that requires relocation and protection of said facilities to accommodate LOCAL AGENCY's project.

It is hereby mutually agreed that:

I. WORK TO BE DONE:

In accordance with Notice to Owner No. 01 dated 12/17/2020, OWNER shall review contractor's submittals, conducting field inspections to ensure compliance with the OWNER's design drawings and specifications, and providing final acceptance of the work as shown on LOCAL AGENCY's contract plans for the improvement of "Seismic Retrofit: Leimert Blvd. Bridge over Sausal Creek, Bridge No. 33C0215" (also referred to as "Sausal Creek Bridge at Leimert Boulevard Retrofit"), consisting of pages U1 to U2 dated 08/21/2020 and, consisting of Sheets S7 to S9 dated 9/25/2020, a copy of which is on file in the LOCAL AGENCY at Department of Transportation, filed under "1000820 - Leimert Bridge Seismic Retro (MB)4. CONSTRUCTION4. Submittals".

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 agreed to/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 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.

It is mutually agreed that the LOCAL AGENCY will include the work of relocating OWNER's 16" Water Pipeline supports, installing overhead pipe hanger brackets, adding new cradle supports, preparing pipeline surface, and installation of anticorrosion wrapping as part of the LOCAL AGENCY's bridge/roadway 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 bridge/roadway contract. 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 except in the case of liability determined pursuant to Water Code 7034 or 7035.

II. LIABILITY FOR WORK

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 encroachment permit.

Total estimated costs for relocation work by LOCAL AGENCY contractor	\$293,322.00
OWNER's liability at 100%	\$293,322.00
LOCAL AGENCY's liability at 0%	\$ 0.00

III. PERFORMANCE OF WORK

"OWNER shall have access to all phases of the relocation work to be performed by LOCAL AGENCY, as described in Section I above, for the purpose of inspection to ensure that the work is in accordance with the specifications contained in the Bridge/Roadway Construction Contract; however, all questions regarding the work being performed will be directed to LOCAL AGENCY's Resident Engineer for their evaluation and final disposition.

Use of personnel requiring lodging and meal "per diem" expenses will not be allowed without prior written authorization by OWNER's representative. Requests for such authorization must be contained in LOCAL AGENCY's estimate of actual and necessary relocation costs. LOCAL AGENCY shall include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed. Per diem expenses shall not exceed the per diem expense amounts allowed under the California Department of Human Resources travel expense guidelines.

IV. PAYMENT FOR WORK

The LOCAL AGENCY shall pay its share of the actual and necessary 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 and necessary cost and expense. The OWNER shall maintain records of the actual costs incurred and charged or allocated to the project in accordance with recognized accounting principles.

It is understood and agreed that the 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 of the replaced facilities and 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, LOCAL AGENCY will prepare and submit itemized progress bills for costs incurred not to exceed LOCAL AGENCY’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 OWNER of documentation supporting the cost increase and after an Amendment to this Agreement has been executed by the parties to this Agreement.”

“The LOCAL AGENCY shall submit a final bill to the OWNER within 60 days after the completion of the work described in Section I above. If the OWNER has not received a final bill within 60 days after notification of completion of LOCAL AGENCY’s work described in Section I of this Agreement, and OWNER has delivered to LOCAL AGENCY fully executed Director’s Deeds, Consents to Common Use or Joint Use Agreements as required for OWNER’s facilities; OWNER will provide written notification to LOCAL AGENCY of its intent to close its file within 30 days. LOCAL AGENCY 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 OWNER 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 LOCAL AGENCY and approval of documentation by OWNER. Except, if the final bill exceeds the LOCAL AGENCY’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 120% 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 LOCAL AGENCY 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 OWNER.”

“Detailed records from which the billing is compiled shall be retained by the LOCAL AGENCY for a period of four years from the date of the final payment and will be available for audit in accordance with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Subpart E, Part 31 by OWNER and/or Federal Auditors. In performing work under this Agreement, LOCAL AGENCY 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 LOCAL AGENCY 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, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and 2 CFR, Part 200, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse LOCAL AGENCY upon receipt of LOCAL AGENCY billing. If OWNER is subject to repayment due to failure by Local Public Agency (LPA) to comply with applicable laws, regulations, and ordinances, then LPA will ensure that OWNER is compensated for actual cost in performing work under this agreement.”

The OWNER shall pay its share of the actual cost of said work included in the LOCAL AGENCY’s bridge/roadway 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 bridge/roadway contractor is \$ 293,322.

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.

V. GENERAL CONDITIONS

All costs accrued by OWNER as a result of LOCAL AGENCY's request on November 5, 2020 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.

All obligations of LPA under the terms of this Agreement are subject to the acceptance of the Agreement by LPA 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.

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

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

In addition, the provisions of 23 CFR 635.410, 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.

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 STATE 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.

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

If, in connection with LOCAL AGENCY's performance of the Work hereunder, LOCAL AGENCY provides to OWNER any materials that are subject to the Buy America Rule, LOCAL AGENCY acknowledges and agrees that LOCAL AGENCY shall be solely responsible for satisfying any and all requirements relative to the Buy America Rule concerning the materials thus provided

(including, but not limited to, ensuring and certifying that said materials comply with the requirements of the Buy America Rule).”

LOCAL AGENCY further acknowledges that OWNER, in complying with the Buy America Rule, is expressly relying upon the instructions and guidance (collectively, “Guidance”) issued by LOCAL AGENCY 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.

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

LOCAL AGENCY

(OWNER)

By: _____
(Name)
Local Agency Director

By: _____
Olujimi O. Yoloye
Director of Engineering and Construction

Date: _____

Date: _____

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