



ITEM NO. 17

STAFF REPORT

DATE: JULY 17, 2012
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: ROD FOSTER, CITY MANAGER *RF*
PREPARED BY: AMER JAKHER, PUBLIC WORKS DIRECTOR *AJ*
SUBJECT: I-215 HOV PROJECT UTILITY RELOCATION AGREEMENT

RECOMMENDED ACTION

It is recommended that the City Council approve Utility (Water, Sewer and Electric) Relocation Agreements between the City of Colton and the San Bernardino Associated Governments (SANBAG) for the I-215 High Occupancy Vehicles (HOV) Project.

GOAL STATEMENT

The proposed action will support the City's goal to improve utility infrastructure and supports inter-agency cooperation.

BACKGROUND

SANBAG proposes to add HOV lanes on both north and south bound lanes of the I-215 freeway, between Spruce Street and Orange Show Road, in the Counties of Riverside and San Bernardino ("Project"). The Project includes freeway widening to accommodate the HOV lanes, and construction of sound walls and retaining walls. Barrier walls will also be added in various locations within the project limits.

ISSUES/ANALYSIS

The City of Colton owns and maintains power, sewer and water lines within the limits of the Project that is in conflict with the proposed freeway improvements. In order to resolve the conflict, these utility lines need to be relocated. The City will be the lead agency in preparing the plans and construction of the necessary utility relocations. SANBAG will pay for 100% of the cost associated with these relocations that includes engineering plans, estimates, specifications, and construction on a reimbursement basis.

The City Council previously approved both of the Utility Agreement for Sewer and Water relocation. Sewer Utility Agreement was approved on January 17, 2012 and the Water (Fire Hydrant) Utility Agreement was approved on April 17, 2012. After City Council approval on both Agreements, SANBAG requested changes in language and in cost (increased from \$60,540 to \$72,648) for Sewer Utility Agreement and changes in cost (increased from \$15,000 to \$18,000) for Water Utility Agreement. City staff found that the requested changes for both of these Agreements are acceptable.

The Electric Utility Relocation Agreement scope of works includes relocation of existing electric power lines that cross over the I-215 Freeway near Main Street and relocation of guy pole south of La Cadena Drive/Iowa Avenue intersection. The approximate cost of electric utility relocation works is \$25,091.

FISCAL IMPACTS

All expenses incurred by the City for this project will be paid for from the following accounts and are 100% reimbursable by SANBAG: Water Utility Account No. 521-8100-8101-3890, Wastewater Account No. 522-8200-8206-3890 and Electric Utility Account No. 520-8000-8008-3890-0107-000.

ENVIRONMENTAL IMPACTS

Staff recommends that the relocation of existing utilities (electric, water and sewer) for the I-215 High Occupancy Vehicles (HOV) Project be determined to be Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines Section 15301(b). A Notice of Exemption will be filed with the County Clerk should Council take the actions recommended by the Staff.

ALTERNATIVES

1. Provide alternative direction to staff.

ATTACHMENTS

Exhibit A – Water Utility Agreement No. 22463 between the City of Colton and SANBAG
Exhibit B – Sewer Utility Agreement No. 22464 between the City of Colton and SANBAG
Exhibit C – Electric Utility Agreement No. 22462 between the City of Colton and SANBAG

Exhibit A

Water Utility Agreement between the City of Colton and SANBAG

**UTILITY AGREEMENT
SANBAG Agreement No. C12207**

DISTRICT 08	COUNTY Riverside/San Bernardino	ROUTE 91 / I215	POST MILE RIV 91, 21.5/21.7, RIV I215 43.2/45.2, I215 SBD I215 0.0/5.1	EA OM9401
FEDERAL AID NUMBER CML8053(101)		OWNER'S PLAN NUMBER #7665		
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. 22463 DATE

San Bernardino County Transportation Authority, hereinafter referred to as "SANBAG", proposes to add High Occupancy Vehicle lanes on both north- and south-bound lanes of the Interstate 215 (215) freeway between Spruce Street and Orange Show Road in the Counties of Riverside and San Bernardino ("Project"). Sound walls, retaining walls, and barrier walls will be added in various locations within the Project limits. The Union Pacific Rail Road Bridge will be removed only, the BNSF Railway Bridge will be reconstructed, and the Newport Avenue Bridge will be reconstructed.

City of Colton Water

Hereinafter referred to as "Owner", owns and maintains
Water facilities along South La Cadena Drive just N. of Maryknoll Drive

Within the limits of SANBAG Project which requires
Relocation of fire hydrant and gate valve within City right of way

To accommodate SANBAG Project.

It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. 22463, dated 2/16/2012, OWNER shall relocate fire hydrant and gate valve facility within City right of way along South La Cadena Drive. All work shall be performed substantially in accordance with OWNER's Plan #7665 consisting of 1 sheet, prelim design received on 1/18/2012 a copy of which is on file at the District office of the Department of Transportation, at 464 W. 4th Street, San Bernardino CA 92401-1400.

Deviations from the OWNER's plan described above initiated by either SANBAG or OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by SANBAG and agreed to/acknowledged by 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 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.

243

UTILITY AGREEMENT NO. 22463

II. LIABILITY FOR WORK

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

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.

OWNER shall ensure that the contractor hired to complete the work described herein obtain proof of insurance coverage sufficient to cover the risks involved with such work, and shall require that said contractor add SANBAG as an additional insured under such policies. OWNER's contract with the contractor shall require that the contractor indemnify and defend SANBAG for any claims or liability arising out of the contractor's or any subcontractor's performance of the work described herein.

Use of out-of-state personnel or personnel requiring lodging and meal ("per diem") expenses will not be allowed without prior written authorization by SANBAG representative. Requests for such permission must be contained in OWNER's estimate of actual and necessary relocation costs. OWNER 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 Transportation's Department of Personnel Administration travel expense guidelines.

Pursuant to Public Works Case No. 2001-059 determination by the California Department of Industrial Relations dated October 25, 2002, work performed by 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.

OWNER shall indemnify and defend SANBAG for any claims or liability arising out of the OWNER's failure to comply with the prevailing wage requirements.

IV. PAYMENT FOR WORK

SANBAG shall pay its share of the actual and necessary cost of the herein described work within 45 days after receipt of five (5) copies 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 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, Federal Energy Regulatory Commission or Federal Communications Commission, whichever is applicable.

UTILITY AGREEMENT NO. 22463

It is understood and agreed that SANBAG 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 SANBAG for the "used life" or accrued depreciation of the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER.

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 specified below 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 SANBAG 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 SANBAG within 360 days after the completion of the work described in Section I above. If SANBAG has not received a final bill within 360 days after notification of completion of OWNER's work described in Section V of this Agreement, and SANBAG has delivered to OWNER fully executed Deeds, Consents to Common Use or Joint Use Agreements as required for OWNER's facilities, SANBAG 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. If SANBAG 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 California Transportation Commission.

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, SANBAG 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 SANBAG. 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 California Transportation Commission.

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 SANBAG.

Detailed records from which the billing is compiled shall be retained by OWNER for a period of three years from the date of the final payment and will be available for audit by State and/or Federal auditors. Owner agrees to comply with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and or 18 CFR, Chapter 1, Parts 101, 201, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse SANBAG upon receipt of SANBAG billing.

UTILITY AGREEMENT NO. 22463

V. GENERAL CONDITIONS

All costs accrued by OWNER as a result of SANBAG Liability Claim Letter request of November 7, 2011 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 SANBAG'S Project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, SANBAG will notify OWNER, in writing, and SANBAG 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 SANBAG under the terms of this Agreement are contingent upon the acceptance of this Agreement by SANBAG's Board of Directors.

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

It is understood that I215 is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement.

THE ESTIMATED COST TO SANBAG FOR THE ABOVE DESCRIBED WORK IS \$18,000.00

Signatures on Following Page

UTILITY AGREEMENT NO. 22463

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

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

Owner:
City of Colton Water

APPROVED

APPROVED

By: _____
Larry McCallon
Board President

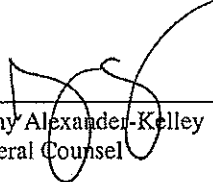
By: _____
Sarah S. Zamora
Mayor

Date: _____

Date: _____

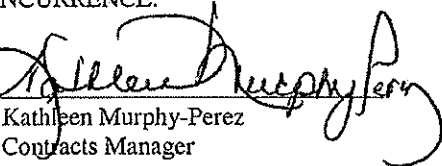
APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____

Penny Alexander-Kelley
General Counsel

By: _____
City Attorney

CONCURRENCE:

By: _____

Kathleen Murphy-Perez
Contracts Manager

APPROVAL RECOMMENDED:

By: Pete Castelan 5/22/12
Pete Castelan Date
Utility Coordinator
Overland, Pacific & Cutler, Inc.

Exhibit B

Sewer Utility Agreement between the City of Colton and SANBAG

UTILITY AGREEMENT
SANBAG Agreement No. C12206

DISTRICT 08	COUNTY Riverside/San Bernardino	ROUTE 91 / I215	POST MILE RIV 91, 21.5/21.7, RIV I215 43.2/45.2, I215 SBD I215 0.0/5.1	EA OM9401
FEDERAL AID NUMBER CML6053(101)		OWNER'S PLAN NUMBER 2640		
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. 22464 DATE

San Bernardino County Transportation Authority, hereinafter referred to as "SANBAG", proposes to add High Occupancy Vehicle lanes on both north- and south-bound lanes of the Interstate 215 (I215) freeway between Spruce Street and Orange Show Road in the Counties of Riverside and San Bernardino ("Project"). Sound walls, retaining walls, and barrier walls will be added in various locations within the Project limits. The Union Pacific Rail Road bridge will be removed only, the BNSF Railway bridge will be reconstructed, and the Newport Avenue Bridge will be reconstructed.

City of Colton Sewer

Hereinafter referred to as "Owner", owns and maintains
Sewer facilities along Interstate Route 215

Within the limits of SANBAG Project which requires
Relocation of sewer facilities along I215

To accommodate SANBAG Project.

It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. 22464, dated 2/16/2012, OWNER shall relocate sewer facilities within South La Cadena. All work shall be performed substantially in accordance with OWNER's Plan #2640 consisting of 1 sheet, prelim design received on 11/21/2011 a copy of which is on file at the District office of the Department of Transportation, at 464 W. 4th Street, San Bernardino CA 92401-1400.

Deviations from the OWNER's plan described above initiated by either SANBAG or OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by SANBAG and agreed to/acknowledged by 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 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

The existing facilities are lawfully maintained in their present location and qualify for relocation at SANBAG's 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.

OWNER shall ensure that the contractor hired to complete the work described herein obtain proof of insurance coverage sufficient to cover the risks involved with such work, and shall require that said contractor add SANBAG as an additional insured under such policies. OWNER's contract with the contractor shall require that the contractor indemnify and defend SANBAG for any claims or liability arising out of the contractor's or any subcontractor's performance of the work described herein.

Use of out-of-state personnel or personnel requiring lodging and meal ("per diem") expenses will not be allowed without prior written authorization by SANBAG representative. Requests for such permission must be contained in OWNER's estimate of actual and necessary relocation costs. OWNER 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 Transportation's Department of Personnel Administration travel expense guidelines.

Pursuant to Public Works Case No. 2001-059 determination by the California Department of Industrial Relations dated October 25, 2002, work performed by 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.

OWNER shall indemnify and defend SANBAG for any claims or liability arising out of the OWNER's failure to comply with the prevailing wage requirements.

IV. PAYMENT FOR WORK

SANBAG shall pay its share of the actual and necessary cost of the herein described work within 45 days after receipt of five (5) copies 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 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 SANBAG will not pay for any betterment or increase in capacity of OWNER's facilities in the new location.

UTILITY AGREEMENT NO. 22464

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 specified below 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 SANBAG 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 SANBAG within 360 days after the completion of the work described in Section I above. If SANBAG has not received a final bill within 360 days after notification of completion of OWNER's work described in Section V of this Agreement, and SANBAG has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements as required for OWNER's facilities, SANBAG 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. If SANBAG 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 California Transportation Commission.

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, SANBAG 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 SANBAG. 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 California Transportation Commission.

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 SANBAG.

Detailed records from which the billing is compiled shall be retained by OWNER for a period of three years from the date of the final payment and will be available for audit by State and/or Federal auditors. Owner agrees to comply with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and or 18 CFR, Chapter 1, Parts 101, 201, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse SANBAG upon receipt of SANBAG billing.

UTILITY AGREEMENT NO. 22464

V. GENERAL CONDITIONS

All costs accrued by OWNER as a result of SANBAG Liability Claim Letter request of November 7, 2011 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 SANBAG'S Project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, SANBAG will notify OWNER, in writing, and SANBAG 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 SANBAG under the terms of this Agreement are contingent upon the acceptance of this Agreement by SANBAG's Board of Directors.

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

It is understood that I215 is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement.

THE ESTIMATED COST TO SANBAG FOR THE ABOVE DESCRIBED WORK IS **\$72,648.00**

Signatures on Following Page

UTILITY AGREEMENT NO. 22464

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

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

Owner:
City of Colton Sewer

APPROVED

APPROVED

By: _____
Larry McCallon
Board President

By: _____
Sarah S. Zamora
Mayor

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Penny Alexander-Kelley
General Counsel

By: _____
City Attorney

CONCURRENCE:

By: _____
Kathleen Murphy-Perez
Contracts Manager

APPROVAL RECOMMENDED:

By: Pete Castelan 5/22/12
Pete Castelan Date
Utility Coordinator
Overland, Pacific & Cutler, Inc.

Exhibit C

Electric Utility Agreement between the City of Colton and SANBAG

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
UTILITY AGREEMENT
SANBAG Agreement No. C12205

DISTRICT 08	COUNTY Riverside/San Bernardino	ROUTE 91 / I215	POST MILE RIV 91, 21.5/21.7, RIV I215 43.2/45.2, I215 SBD I215 0.0/5.1	EA OM9401
FEDERAL AID NUMBER CML6053(101)		OWNER'S PLAN NUMBER Plan #1 and Plan #2		
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. 22462 DATE

San Bernardino County Transportation Authority, hereinafter referred to as "SANBAG", proposes to add High Occupancy Vehicle lanes on both north- and south-bound lanes of the Interstate 215 (I-215) freeway between Spruce Street and Orange Show Road in the Counties of Riverside and San Bernardino ("Project"). Sound walls, retaining walls, and barrier walls will be added in various locations within the Project limits. The Union Pacific Rail Road Bridge will be removed only, the BNSF Railway Bridge will be reconstructed, and the Newport Avenue Bridge will be reconstructed.

City of Colton Electric

Hereinafter referred to as "Owner", owns and maintains

(2) locations: (1) Electric facilities transiting Interstate Route 215 N. of Main Street and (2) Pole Guy at W. La Cadena Drive / Iowa Avenue intersection.

Within the limits of SANBAG Project which requires
Relocation of electric facilities along I215

To accommodate SANBAG Project.

It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. 22462, dated 2/16/2012, OWNER shall relocate electric facilities transiting I215 North of Main Street and relocate Pole Guy at W. La Cadena / Iowa Ave intersection. All work shall be performed substantially in accordance with OWNER's Plan #1 And Plan #2 consisting of 1 sheet each, prelim design received on 2/1/2012 and 2/16/12, a copy of which is on file at the District office of the Department of Transportation, at 464 W. 4th Street, San Bernardino CA 92401-1400.

Deviations from the OWNER's plan described above initiated by either SANBAG or OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by SANBAG and agreed to/acknowledged by 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 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.

UTILITY AGREEMENT NO. 22462

II. LIABILITY FOR WORK

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

III. PERFORMANCE OF WORK

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

Use of out-of-state personnel or personnel requiring lodging and meal ("per diem") expenses will not be allowed without prior written authorization by SANBAG representative. Requests for such permission must be contained in OWNER's estimate of actual and necessary relocation costs. OWNER 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 Transportation's Department of Personnel Administration travel expense guidelines.

Pursuant to Public Works Case No. 2001-059 determination by the California Department of Industrial Relations dated October 25, 2002, work performed by 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.

OWNER shall indemnify and defend SANBAG for any claims or liability arising out of the OWNER's failure to comply with the prevailing wage requirements.

IV. PAYMENT FOR WORK

SANBAG shall pay its share of the actual and necessary cost of the herein described work within 45 days after receipt of five (5) copies 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 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, Federal Energy Regulatory Commission or Federal Communications Commission, whichever is applicable.

It is understood and agreed that the SANBAG will not pay for any betterment or increase in capacity of OWNER's facilities in the new location.

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 specified below may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after

UTILITY AGREEMENT NO. 22462

receipt and approval by SANBAG 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 SANBAG within 360 days after the completion of the work described in Section I above. If SANBAG has not received a final bill within 360 days after notification of completion of OWNER's work described in Section V of this Agreement, and SANBAG has delivered to OWNER fully executed Deeds, Consents to Common Use or Joint Use Agreements as required for OWNER's facilities, SANBAG 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. If SANBAG 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 California Transportation Commission.

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, SANBAG 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 SANBAG. 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 California Transportation Commission.

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 SANBAG.

Detailed records from which the billing is compiled shall be retained by OWNER for a period of three years from the date of the final payment and will be available for audit by State and/or Federal auditors. Owner agrees to comply with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and or 18 CFR, Chapter 1, Parts 101, 201, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse SANBAG upon receipt of SANBAG billing.

257

V. GENERAL CONDITIONS

All costs accrued by OWNER as a result of SANBAG Liability Claim Letter request of November 7, 2011 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 SANBAG'S Project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, SANBAG will notify OWNER, in writing, and SANBAG 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 SANBAG under the terms of this Agreement are contingent upon the acceptance of this Agreement by SANBAG's Board of Directors.

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

It is understood that I215 is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement.

THE ESTIMATED COST TO SANBAG FOR THE ABOVE DESCRIBED WORK IS \$25,091.00

Signatures on Following Page

258

UTILITY AGREEMENT NO. 22462

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

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

Owner:
City of Colton Electric

APPROVED

APPROVED

By: _____
Larry McCallon
Board President

By: _____
Sarah S. Zamora
Mayor

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Penny Alexander-Kelley
General Counsel

By: _____
City Attorney

CONCURRENCE:

By: _____
Kathleen Murphy-Perez
Contracts Manager

APPROVAL RECOMMENDED:

By: _____ Date _____
Pete Castelan
Utility Coordinator
Overland, Pacific & Cutler, Inc.