Dist	Co	Rte	KP	EA
06	KIN	198	8.9/10.1	325501 (0600000367)
Federal Aid No.: ACNH-P198(056)				
Owner's File: N/A				
FEDERAL PARTICIPATION: On the Project ☒ Yes ☐ No On the Utilities ☒ Yes ☐ No				

UTILITY AGREEMENT NO. 06- 1345.32 DATE: _____

The State of California acting by and through the Department of Transportation, hereinafter called "STATE" proposes to construct a new interchange and City of Lemoore, hereinafter called "OWNER", owns and maintains an irrigation facility within the limits of STATE'S project which requires relocation to accommodate STATE's project in Kings County on Route 198 at 19th Avenue.

It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No.06-1345.32, dated June 20, 2011, OWNER shall perform required relocation of their existing underground facility. All work shall be performed substantially in accordance with OWNER's Plan No. L100079-01, L100079-02 and L100079-03, dated April 18, 2011, consisting of three sheets, a copy of which is on file in the District office of the Department of Transportation at 855 M. Street, Suite 200, Fresno, CA 93721. Deviations from the OWNER's plan described above initiated by either the STATE 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 STATE 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

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

UTILITY AGREEMENT NO.
06-1345.32

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 out-of-state personnel (or personnel requiring lodging and meal "per diem" expenses) will not be allowed without prior written authorization by State's representative. Requests for such authorization must be contained in OWNER's estimate of actual and necessary relocation costs. Accounting Form FA-1301 is to be completed and submitted for all non-State personnel travel per diem. 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 State's Department of Personnel Administration travel expense guidelines.

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

IV. PAYMENT FOR WORK

The STATE 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 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 STATE 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 STATE for the accrued depreciation or "used life" 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 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 STATE 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 STATE within 360 days after the completion of the work described in Section I above. If the STATE 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 STATE has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use

Agreements (if required), for OWNER's facilities, STATE 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 the STATE 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, the STATE 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 STATE. 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 STATE.

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 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 STATE upon receipt of STATE billing.

V. GENERAL CONDITIONS

All costs accrued by OWNER as a result of STATE'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 STATE's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, STATE will notify OWNER in writing and STATE 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 STATE under the terms of this Agreement are subject to the passage of the annual Budget Act by the State Legislature and the allocation of those funds by the California Transportation Commission.

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

UTILITY AGREEMENT NO.
06-1345.32

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

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

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.

UTILITY AGREEMENT NO.
06-1345.32

THE ESTIMATED COST TO STATE FOR ITS SHARE OF THE ABOVE DESCRIBED WORK IS $ 259,540.00.

CERTIFICATION OF FUNDS

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure shown here.

Chanin Delway 6/27/11
HQ Accounting Officer Date

ITEM	CHAP	STAT	FY	AMOUNT
2660-301-0890/0042-20.20	712	2010	11	259,540.00

FUND TYPE	EA	AMOUNT
Design Funds		$
Construction Funds		$
RW Funds	0600000367	$ 259,540.00

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

STATE: DEPARTMENT OF TRANSPORTATION

By _____
NICOLAS G. DUMAS Date
Office Chief, Central Region, Right of Way

OWNER: CITY OF LEMOORE

By _____
Name/Title Date

APPROVAL RECOMMENDED:

By _____
DAN F. PANTOJA Date
District Utility Coordinator, Right of Way

By _____
PAULA PADEN Date
Utility Coordinator, Right of Way

DO NOT WRITE BELOW - FOR ACCOUNTING PURPOSES ONLY VC00000020216 AD001

PLANNING AND MANAGEMENT COMPLETES EXCEPT SHADED COLUMNS: UTILITY COMPLETES:

T CODE	DOCUMENT NUMBER	SUF FIX	DIST	UNIT	CHG DIST	EA	SUB JOB	SPECIAL DESIGNATION	FFY	FA	OBJ CODE	DOLLAR AMOUNT
06	1A134532	00	06	1534	0600	000367	9	91345X32	11		054	259,540

EA FUNDING VERIFIED:
Sign:> [signature] 6/28/11
Print> Amanda Levreau
R/W Planning and Management Date

REVIEW/REQUEST FUNDING:
Sign>
Print> Paula Paden
Utility Coordinator Date

Distribution: 3 originals to R/W Program Accounting & Analysis
3 originals returned to R/W Planning & Management