UTILITY AGREEMENT

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FTA FUNDED

OWNER'S PLAN NUMBER
PM 41973560

FEDERAL PARTICIPATION

On the project ☑ YES ☐ NO

On the Utilities ☑ YES ☐ NO

UTILITY AGREEMENT NO. 1908.9 DATE

The Alameda Contra Costa Transit District, hereinafter referred to as ("AC TRANSIT") proposes the East Bay Bus Rapid Transit ("BRT") improvement ("Project") through the cities of Oakland and San Leandro. Proposed construction will include dedicated transit lanes and light-rail like stations to improve bus service through Oakland and San Leandro. The alignment begins in downtown Oakland at 20th Street (Uptown station) between Telegraph Avenue and Broadway; follows Broadway to the 11th/12th Street couplet; continues on East 12th Street around Lake Merritt to the East 12th/International Boulevard couplet to 14th Avenue; then follows International Boulevard to the Oakland/San Leandro border. In San Leandro, the alignment follows East 14th Street to Davis Street, then Davis Street to San Leandro Boulevard, terminating at the San Leandro BART Station.

PACIFIC GAS & ELECTRIC COMPANY

Hereinafter referred to as "Owner", owns and maintains gas distribution facilities

Within the limits of AC TRANSIT’s Project which require relocation to accommodate the AC TRANSIT BRT East Bay Project.

It is hereby mutually agreed that:

I. WORK TO BE DONE

Work Performed by Owner per Owner's Plan:

In accordance with Notice to Owner No. 1908.9 dated 12/17/13, OWNER shall relocate gas facilities in conflict with project. All work shall be performed substantially in accordance with OWNER's Plan No. PM 41973560 dated November 26, 2013, a copy of which is on file in the office of the ("BRT"), located at the Alameda-Contra Costa Transit District at 1600 Franklin Street. Oakland, CA 94612.

Deviations from the OWNER's plan described above initiated by either AC Transit or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notice to Owner, approved by AC TRANSIT 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 AC Transit and will be relocated at AC TRANSIT's expense.

Total Estimated Cost……………………………..$324,000.00
Total Estimated AC Transit Liability…………………..$324,000.00

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 AC TRANSIT 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 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.

It is understood that this Agreement is funded in part by the Federal Transit Administration and applicable Buy America requirements set forth in 49 U.S.C. 5323(j) and 49 CFR Part 661 apply to the work that is the subject of this Agreement. PG&E will require its suppliers to certify Buy America compliance with regard to materials used in the work and will provide all such certificates to AC TRANSIT. Certification will be substantially in the form of the Certificate of Buy America Compliance attached to this agreement as Exhibit [A].

IV. PAYMENT FOR WORK

AC TRANSIT 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 AC TRANSIT 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 AC
TRANSIT 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.

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 AC TRANSIT 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 AC TRANSIT within 180 days after the completion of the work described in Section I above. If AC TRANSIT 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 AC TRANSIT has delivered to OWNER fully executed Director’s Deeds, Consents to Common Use or Joint Use Agreements for OWNER’s facilities (if required), AC TRANSIT 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 AC TRANSIT processes a final bill for payment more than 180 days after notification of completion of OWNER’s work, payment of the late bill may be subject to allocation and/or approval by AC TRANSIT’s General Manager.

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, AC TRANSIT shall not pay final bills which exceed the estimated cost of this Agreement without adequate documentation acceptable to AC TRANSIT of the reason for the increase of said cost from the OWNER and approval of documentation by AC TRANSIT. Except, if the final bill exceeds the OWNER’s estimated costs solely as a 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 AC TRANSIT 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, require the prior concurrence of AC TRANSIT.

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 AC TRANSIT upon receipt of AC TRANSIT billing.
V. GENERAL CONDITIONS

All costs accrued by OWNER as a result of AC TRANSIT Liability Claim Letter request of 3/19/2013 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 AC TRANSIT’s Project, which precipitated this Agreement, is canceled or modified so as to eliminate the necessity of work by OWNER, AC TRANSIT will notify OWNER, in writing, and AC TRANSIT reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

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

THE ESTIMATED COST TO AC TRANSIT FOR THE ABOVE DESCRIBED WORK IS

$ 324,000.00

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

Alameda-Contra Costa Transit District

APPROVED

By: [Signature]

David J. Armijo
General Manager

Date: 1-24-14

APPROVED AS TO FORM

By: [Signature]

CONCURRENCE:

By: ________________________________

APPROVAL RECOMMENDED:

By: ________________________________

Pacific Gas & Electric Company

APPROVED

By: [Signature]

Douglas W. Mayekawa
Director Land Management

Date: 12/18/13

By: ________________________________

Date: ________________________________
BUY AMERICA FTA CERTIFICATE OF COMPLIANCE

[INSERT HEADER BLOCK WITH PURCHASE ORDER NUMBER AND IDENTIFICATION OF "CONTRACTOR"]

(Attach Line items from the Purchase Order and Identify all Items Delivered by this Contractor)

Contractor is aware that the Project may be funded in part by the Federal Transit Administration. This Buy America Certificate of Compliance is submitted in compliance with 49 U.S.C. § 5323(j) and implementing regulations contained in 49 C.F.R. Part 661 (collectively referred to as the "Buy America Rule").

Contractor certifies that it will comply with the requirements of the Buy America Rule and in particular that all steel, iron and manufactured products it provides for the Project are produced in the United States. A list of these steel, iron, and manufactured products are attached to this Certificate.

Date: __________________________

Signature: ________________________

Company: ________________________

Name: __________________________

Title: __________________________

Include a copy of this completed and signed document with each packing slip and invoice.