
UTILITY RELOCATION AGREEMENT

DATE: _____

This Utility Relocation Agreement, dated the date first set forth above (this “AGREEMENT”), is entered into between the COUNTY OF CONTRA COSTA, a political subdivision of the State of California, (hereinafter referred to as “COUNTY”) and DELTA DIABLO, a California special district that provides wastewater resource recovery services and exists under the laws of the State of California (hereinafter referred to as “DISTRICT”)

RECITALS

COUNTY is replacing the bridge on Canal Road (Bridge no. 28C-0376) over the Contra Costa Canal approximately 0.5 miles east of Bailey Road within the unincorporated area of Contra Costa County, (hereinafter referred to as the “PROJECT”).

DISTRICT owns and maintains sanitary sewer lines and appurtenant manholes within the limits of the PROJECT, including sanitary sewer manholes as shown on the plan sheet attached hereto as Exhibit A and incorporated herein by reference (hereinafter referred to as the “SEWER FACILITIES”).

COUNTY provided DISTRICT with Notice to Relocate (Notice to Owner) No. 003, dated March 29, 2016 (“NOTICE 003”), advising that in connection with the PROJECT, the DISTRICT needed to adjust SEWER FACILITIES within the newly realigned Canal Road under its statutory rights to use public rights-of-way.

COUNTY and DISTRICT desire to set forth their respective obligations regarding adjusting SEWER FACILITIES in connection with the PROJECT pursuant to the terms of this AGREEMENT.

AGREEMENT

It is hereby mutually agreed that:

I. WORK TO BE DONE

DISTRICT has requested that COUNTY perform certain portions of the work described in NOTICE 003, and COUNTY has agreed to perform the work or to cause its contractor to perform the work as follows: COUNTY shall, in coordination with the PROJECT schedule, adjust SEWER FACILITIES within the newly realigned Canal Road according to the plans and specifications prepared by DISTRICT (the “WORK”).

COUNTY will obtain environmental compliance and regulatory permits necessary for the PROJECT, which includes the WORK.

DISTRICT will provide COUNTY with plans and specifications for the WORK.

Deviations from the WORK initiated by either the COUNTY or the DISTRICT, shall be agreed upon by both parties hereto under a Revised Notice to Relocate from COUNTY to DISTRICT. Such Revised Notice to Relocate to DISTRICT, if any, approved by the COUNTY and agreed to/acknowledged by the DISTRICT, will constitute an approved revision of the WORK. No work under any deviation from the WORK shall commence prior to written acknowledgment by the DISTRICT of the Revised Notice to Relocate to DISTRICT. Deviations from the WORK will require an amendment to this Agreement in addition to the Revised Notice to Relocate to DISTRICT.

Upon the completion of the WORK, as determined by the COUNTY in its sole discretion, the COUNTY and DISTRICT shall conduct a joint final inspection. After DISTRICT, through its General Manager in writing, has determined that the WORK has been completed to its satisfaction, COUNTY shall accept the WORK as complete for itself and for the DISTRICT. DISTRICT shall not unreasonably withhold or delay its determination of the WORK as satisfactory. If the DISTRICT does not approve or disapprove the WORK within ten (10) business days after the joint final inspection, the WORK will be deemed approved by DISTRICT.

Upon acceptance of the WORK by COUNTY, DISTRICT will accept the new SEWER FACILITIES, which it shall thereafter own and be responsible for maintaining.

II. LIABILITY FOR WORK

The existing SEWER FACILITIES are located within COUNTY's right of way under statutory franchise rights and will be relocated at DISTRICT's expense.

DISTRICT will pay COUNTY for costs incurred by COUNTY in performing the WORK. These costs include, but are not limited to, the cost of materials (except those furnished by DISTRICT), labor, construction management, administration, overhead, and change order fees. An estimate of the cost of the WORK is provided in the attached Exhibit B, but the final costs may be higher or lower and will be determined as follows:

A. Administration Costs:

Actual cost of COUNTY staff time to incorporate plans and specification for the WORK into the PROJECT, including preparation, review and processing of this AGREEMENT. The estimated cost of this work is \$4,000, as shown in Exhibit B, attached hereto.

B. Construction Costs:

1. The cost of materials and labor for adjusting the SEWER FACILITIES will be based upon the amounts listed for those adjustments in the various bid items in the contract of the bidder who is ultimately awarded the PROJECT (the "CONTRACTOR").

2. At the DISTRICT's request, COUNTY agrees to include separate bid items for the WORK that can be deleted in its entirety at the DISTRICT's sole discretion. The estimated total cost of the WORK is \$27,500, as more particularly described in Exhibit B attached hereto. If the amount set forth in the bid schedule of the CONTRACTOR's bid exceeds the \$27,500 estimate, the DISTRICT may, at its sole discretion, elect to remove the WORK from the COUNTY construction contract at no cost to the DISTRICT. If the DISTRICT elects to remove the WORK from the COUNTY construction contract, the DISTRICT shall notify the COUNTY of such election in writing within seven (7) calendar days of receiving bid results from the COUNTY. If the District elects to remove the WORK from the COUNTY construction contract, COUNTY agrees to provide the following access to the PROJECT site, at no cost to the DISTRICT: one (1) week of access to the PROJECT site after rough grading of the approach roads to the new bridge is complete for the DISTRICT to adjust the SEWER FACILITIES and one (1) day of access to the main road after paving is complete for the DISTRICT to complete the adjustment of the SEWER FACILITIES.
3. The cost of construction engineering for the WORK will be equal to ten percent (10%) of the total amount listed in the bid schedule for the WORK bid items in the contract of the bidder who is ultimately awarded the PROJECT. DISTRICT will provide construction inspection of the WORK and develop responses to submittals, requests for information and requests for clarification, design clarifications, and similar construction documentation with respect to the SEWER FACILITIES. DISTRICT will direct communication with the COUNTY's Contractor through the COUNTY's Resident Engineer.
4. A 10% construction engineering cost will be added on contract change orders for the portion of the work comprising the SEWER FACILITIES. DISTRICT will provide information, as needed, for such change orders. The COUNTY shall notify the DISTRICT of its intent to issue a change order, and will provide copies of the change order and supporting documentation to the DISTRICT. Any change orders in excess of \$5,000 shall be approved by the DISTRICT in advance of the work. The COUNTY shall have authority to make minor changes as needed during construction in response to field conditions.
5. Actual cost of any additional work required on the SEWER FACILITIES not covered in the bid item, including 10% construction engineering.

III. PERFORMANCE OF WORK

DISTRICT shall have access to all phases of the WORK to be performed by COUNTY, as described in Section I above, for the purpose of inspection to ensure that the WORK is being performed in accordance with the specifications contained in the COUNTY's contract plans for the PROJECT, EA 0400021082L-N; however, all questions regarding the work being performed will be directed to COUNTY's Resident Engineer for the PROJECT for evaluation and final disposition.

DISTRICT agrees to perform the herein described WORK, excepting that WORK being performed by the COUNTY's contractor, with its own forces and to provide and furnish all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion. Notwithstanding the preceding sentence, DISTRICT may cause the WORK to be performed under contract with a properly licensed contractor, who will be subject to prevailing wage requirements, and be selected pursuant to a procedure consistent with laws governing the DISTRICT, and who will furnish or cause to be furnished all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion.

WORK performed directly by DISTRICT'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. COUNTY and DISTRICT shall verify compliance with prevailing wage requirements in the administration of their respective contracts referenced above.

COUNTY's Resident Engineer shall coordinate with the COUNTY's contractor, and with the District's Inspector, Engineer, or a designated staff from the DISTRICT, for all sewer manhole inspections. All inspection of the SEWER FACILITIES shall be performed by DISTRICT and will be described in the DISTRICT's plans and specifications.

COUNTY shall cause the WORK to be performed by a contract with the lowest responsible bidder, a properly licensed contractor, who will be subject to prevailing wage requirements and be 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.

The COUNTY'S contract with the CONTRACTOR will require the CONTRACTOR to:

(a) Procure public liability insurance and automobile insurance policies. Said policies shall be satisfactory to the COUNTY as to form and amount of coverage and shall be placed with a carrier or carriers licensed to do business in the State of California. The policy shall name the COUNTY, the DISTRICT, and their respective governing bodies, officers, employees, and agents as additional named insureds and shall cover the contractor's contractual liability to the COUNTY thereunder. A certificate of insurance shall be delivered to the COUNTY which shall include a statement that 30 days' written notice will be given by the carrier to the COUNTY prior to any cancellation of or material change in said policy.

(b) Furnish the COUNTY with a surety bond in a form and with sureties satisfactory to the COUNTY in the amount of the contract securing the faithful performance of the WORK to be performed hereunder.

(c) Indemnify, defend and agree to hold the COUNTY and the DISTRICT, and their respective governing bodies, officers, employees, and agents, harmless from and against any loss, damage, liability, claims, demands, causes of action or judgments connected in any way with the installation of the water service facilities provided herein to the extent arising from the negligence or willful misconduct of the CONTRACTOR, including, without limitation, any such

loss, damage, liability, claims, demands, causes of action or judgments for personal injuries or death as may be asserted, made or brought by or on behalf of any employee of the COUNTY, the DISTRICT, the CONTRACTOR, or any subcontractor employed on the PROJECT.

Except as noted above, the adjustment of the SEWER FACILITIES is a public work as defined in section 1720 of the California Labor Code. The COUNTY shall verify compliance with this requirement in the administration of its contracts referenced above.

The WORK to be performed pursuant to this AGREEMENT shall comply with the "Buy America" requirements of Title 23, United States Code, Section 313 and the regulation adopted pursuant thereto.

COUNTY and DISTRICT shall verify compliance with prevailing wage requirements in the administration of their respective contracts referenced above.

In the event that DISTRICT provides written notice to COUNTY to remove the WORK from the County construction contract as provided in Section II.B.2, COUNTY will notify the CONTRACTOR that the WORK shall be removed from the contract.

IV. PAYMENT FOR WORK

1. Administration Cost:

COUNTY administration costs will be billed directly to DISTRICT.

2. Construction Costs:

After COUNTY opens bids for the PROJECT, DISTRICT will advance to COUNTY a sum of money equal to the total amount set forth in the bid schedule submitted by the lowest responsible bidder for the PROJECT, as determined by the COUNTY, for the separate bid items for the WORK, plus 10% for construction engineering per Section II, Paragraph B.3 above. DISTRICT will deposit such advance with COUNTY within 30 days after COUNTY gives DISTRICT notice of such amount. In the event that the COUNTY awards the PROJECT contract to a different bidder, the following shall apply: (1) If the costs for the WORK in the successful bidder's contract are less than the amount of DISTRICT's deposit, or do not exceed the amount on deposit with the COUNTY by more than 10%, no adjustments to DISTRICT's deposit will be made until the WORK has been completed and accepted by the COUNTY; (2) If the costs for the WORK in the successful bidder's contract exceed the amount on deposit with the COUNTY by more than 10% above, DISTRICT will advance 100% of the excess amount, plus an additional 5% of the cost of the WORK within 30 days after COUNTY gives DISTRICT notice of such amount.

Change orders as described in Section II, Paragraph A.4, if any, shall be part of the final construction cost and payment shall be accordance with the following paragraph.

In the event actual final construction costs of the WORK as established herein are less than the sum of money advanced by DISTRICT to COUNTY, COUNTY agrees to refund to DISTRICT within 90 days of the acceptance of the WORK the difference between said actual cost and the sum of money so advanced. In the event that the actual final construction cost of the WORK exceeds the amount of money advanced to COUNTY pursuant to Section IV, "Payment for Work", of this AGREEMENT, DISTRICT agrees to reimburse COUNTY said additional costs within 90 days after receipt of an itemized bill.

3. Paragraph 2 of this Section IV is not applicable if the DISTRICT elects to remove the WORK from the COUNTY construction contract per Section II, Paragraph B.2 above.
4. The COUNTY shall maintain records of the actual costs incurred and charged or allocated to the PROJECT in accordance with recognized accounting principles.

V. GENERAL CONDITIONS

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.

DISTRICT and COUNTY each 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. DISTRICT and COUNTY hereby respectively certify that in the performance of this Agreement, for products where Buy America requirements apply, it shall use only such products for which it has received a certification from its supplier, or by its provider of construction services that procures the product, certifying Buy America compliance. 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 performance of the Work hereunder, DISTRICT provides to COUNTY any materials that are subject to the Buy America Rule, DISTRICT acknowledges and agrees that DISTRICT 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).” For materials furnished by COUNTY, COUNTY acknowledges and agrees that COUNTY 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).

Termination: This Agreement may be terminated (1) by COUNTY following 7 days’ advance written notice to DISTRICT of cancellation or modification of the PROJECT that eliminates the necessity of the WORK; (2) immediately by the mutual written consent of the governing bodies of both parties; or (3) by COUNTY in the event of any breach of this AGREEMENT by DISTRICT following 15 days’ advance written notice to DISTRICT if the breach is not cured within the 15 day period. If this AGREEMENT is terminated DISTRICT shall pay COUNTY for all of the reasonable costs associated with the WORK that were incurred by COUNTY up through the date of termination, including COUNTY’s costs to remove the WORK from the COUNTY construction contract for the PROJECT by change order. If DISTRICT has already deposited the estimated cost of the WORK with COUNTY, COUNTY (once all project accounting has been made current) may deduct its reasonable associated costs for the WORK from the deposit and return the balance to DISTRICT.

The COUNTY and the DISTRICT agree to indemnify and hold the other, and its respective governing body, officers, employees, and agents, harmless, to the extent allowed by law, from and against any and all loss, damage, liability, claims, demands, causes of action, or judgments connected in any way with this AGREEMENT or the WORK as provided herein, to the extent arising from the negligence or willful misconduct of the indemnifying party.

Notice of Completion: The COUNTY shall submit a Notice of Completion to the DISTRICT within 30 days of completion of the work described herein.

Notices: All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing.

A. Notice shall be sufficiently given for all purposes as follows:

1. When delivered by first class mail, postage prepaid, notice shall be deemed delivered three (3) business days after deposit in the United States Mail.
2. When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by return receipt.
3. When delivery by overnight delivery by a nationally recognized overnight courier, notice shall be deemed delivered one (1) business day after deposit with that courier.
4. When personally delivered to the recipient, notice shall be deemed delivered on the date personally delivered.

- B. The place for delivery of all notices given under this Agreement is as follows:

COUNTY:

Contra Costa County, Public Works Department
Attn: Julia R. Bueren, Director
255 Glacier Drive
Martinez, CA 94553

DISTRICT:

Delta Diablo
Gary Darling, General Manager
2500 Pittsburg Antioch Highway
Antioch, CA 94509

Or to such other addresses as COUNTY and DISTRICT may respectively designate by written notice to the other.

- C. The number to send all notices by facsimile required by this agreement shall be as follows:

County Fax: (925) 313-2333

District Fax: (925) 756-1960

Or to such other numbers as COUNTY and DISTRICT may respectively designate by written notice to the other.

Retention of Cost Information: Detailed records from which the billing is compiled shall be retained by the COUNTY 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. DISTRICT and COUNTY 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., to the extent they are applicable. If a subsequent State and/or Federal audit determines costs were not properly apportioned, DISTRICT agrees to reimburse COUNTY upon receipt of COUNTY billing.

Entire Agreement: This Agreement contains the entire understanding of the parties concerning the subject matter hereof. Any representation or promise of the parties relating to the subject matter shall not be enforceable unless it is contained in this AGREEMENT or in a subsequent written agreement executed by the parties. This AGREEMENT shall be subject to modification only by a subsequent written agreement executed by both of the parties.

