

UTILITY AGREEMENT NO. 633
BETWEEN
CONTRA COSTA TRANSPORTATION AUTHORITY
AND
CENTRAL CONTRA COSTA SANITARY DISTRICT

This Agreement (Agreement) is entered into as of May 17, 2023 (Effective Date) by and between the Contra Costa Transportation Authority (AUTHORITY) and the Central Contra Costa Sanitary District (OWNER) in cooperation with the California Department of Transportation (STATE). AUTHORITY proposes to construct improvements to the State Route 4/Interstate 680 interchange Phases 1, 2A, and 4, Contract No. 04-229144 (PROJECT). "OWNER" owns and maintains underground sanitary sewer facilities and related appurtenances, hereinafter collectively referred to as "FACILITY", within the construction limits of the PROJECT which FACILITY requires relocation to accommodate the PROJECT.

It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. 2231.1, (Attachment A) dated August 16, 2022, OWNER shall prepare engineering plans for the relocation of the 84-inch, 12-inch and 8-inch sanitary sewer pipelines noted on the site map attached hereto as Attachment B (WORK) which is necessary for the PROJECT. OWNER will submit OWNER's engineering plan to Authority for approval by September 30, 2024. Relocation of the pipes shall be within the existing Project right-of-way.

Any deviations that cause an increase in the cost of 10% or more from the OWNER's plan described above initiated by either the Authority or the OWNER following AUTHORITY's approval thereof, shall be agreed upon by OWNER and AUTHORITY under a Revised Notice to Owner. Such Revised Notice(s) to Owner, approved by the AUTHORITY and acknowledged by the OWNER, will constitute an approved revision and hereby made a part hereof. No work under said deviation shall commence prior to receipt by the OWNER of an approved 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. COST LIABILITY FOR WORK

The existing 84-inch, 12-inch and 8-inch sewer pipelines are lawfully maintained in their present location pursuant to rights superior to those of the Authority and will be relocated at the Authority's expense pursuant to a separate written agreement to be negotiated between OWNER and AUTHORITY.

Total Estimate for OWNER's WORK: Engineering	<u>\$1,907,382</u>
Total Estimated Authority Liability (100%)	<u>\$1,907,382</u>

In the event that contaminated or hazardous materials are encountered during the relocation work, the Authority will be solely responsible for the cost of, and schedule impacts associated with, legally

mandated remediation requirements. However, OWNER shall be responsible for any and all hazardous materials encountered outside the Authority's project limits. The clause does not create duties and obligations with respect to non-parties, including non-party government agencies, over and above duties and obligations created under Federal, State, and local laws.

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 or consultant, 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.

IV. PAYMENT FOR WORK

OWNER has estimated the cost for the engineering work provided for by this Agreement and, as hereinafter set forth, is the sum of \$1,907,382. Upon the completion of the preliminary work by OWNER, an estimate may be prepared by the OWNER for the relocation work at which time a new agreement to address relocations cost will be prepared.

The method of payment for this Agreement will be based on actual cost. Authority will reimburse Owner for actual costs incurred by Owner in performance of the work.

No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.

It is understood and agreed that the AUTHORITY 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 invoices or statements for costs incurred not to exceed OWNER's recorded costs as of the invoice or statement date less estimated credits applicable to completed work.

The OWNER shall submit a final bill to the AUTHORITY, including any refund due the AUTHORITY under the above terms, within 360 days after the completion of the work described in Section I above. Should OWNER have recorded costs in excess of the amount advanced above, OWNER shall submit a bill to the Authority within 360 days after the completion of the work described in Section 1 above. If the Authority has not received a final bill within 360 days after notification of completion of OWNER's work described in Section 1 AUTHORITY may, at its option, 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.

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 Authority 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. 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.

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 Authority. An Amended Agreement shall be executed by the parties to this Agreement prior to the payment of the OWNER'S final bill.

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 bill and will be available for audit by State and/or Federal auditors. OWNER, in conjunction with the Authority, agrees to comply with audit principles and standards as set forth in 48 CFR, Chapter 1, Part 31, et. Seq., 23 CFR Chapter 1, Part 645 and/or 18 CFR Parts 101, 201, et al. If a subsequent Authority and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse Authority upon receipt of Authority billing.

V. GENERAL CONDITIONS

If AUTHORITY's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, AUTHORITY will notify OWNER in writing and AUTHORITY reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

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.

[Signatures on Next Page]

**SIGNATURE PAGE FOR UTILITY AGREEMENT NO. 633
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AND CENTRAL CONTRA COSTA SANITARY DISTRICT**

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

CONTRA COSTA TRANSPORTATION
AUTHORITY

CENTRAL CONTRA COSTA SANITARY DISTRICT

By: _____
Federal Glover, Chair

By: _____
Roger S. Bailey
General Manager

ATTEST:

By: _____
Tarienne Grover, Clerk of the Board

APPROVED AS TO FORM AND LEGALITY:

By: _____
Fennemore Wendel
Authority Counsel