

**DESIGN AND CONSTRUCTION RESPONSIBILITY AND REIMBURSEMENT AGREEMENT
BETWEEN THE CITY OF PLACERVILLE AND THE EI DORADO IRRIGATION DISTRICT**

FOR THE WESTERN PLACERVILLE INTERCHANGES PROJECT, PHASE 2

CITY CIP: 407051 EID PN 16039

The City of Placerville, a political subdivision of the State of California (hereinafter referred to as "City"), and the El Dorado Irrigation District, a special district created pursuant to State law (hereinafter referred to as "EID"), hereby agree to the following Design and Construction Responsibility and Reimbursement Agreement (hereinafter referred to as "Agreement") terms set forth below.

City of Placerville Engineering Division is constructing an Interchange with U.S. 50 and Ray Lawyer Drive at Forni Road (the "Western Placerville Interchanges Project, Phase 2" hereinafter referred to as "Project"). The work will require relocating EID facilities impacted by the project.

The following are EID facilities to be abandoned in place:

- Approximately 2,000 linear feet of 12" AC water line located within franchise public right of way within the existing alignment of Forni Road, a City owned road. (EID cost item)

The following are EID facilities to be constructed to replace abandonments and removal as needed:

- Installation of approximately 2000 feet of new 12" water line to maintain service to the adjacent parcels and customers currently served by the existing 12" AC water main located in Forni Road. Work involves (EID cost item)
- Installation of blow off valves, air relief valves (ARVs) and gate valves on the new water line. (EID cost item)
- Adjustment of existing valve boxes that are to remain at tie-in connection points as described within the contract documents. (EID cost item)

Details of the above scope of work are shown on Exhibit A, marked "El Dorado Irrigation District (EID) Conflict Work," Exhibit (B) marked "Cost Estimate Summary incorporated herein and made by reference a part hereof.

EID has requested that the City include the design and installation of new EID facilities, as detailed in Exhibit A hereto, in City's design and construction bid packages, award documents, and construction contract for the Project, and City has agreed to do so under the terms and conditions of this Agreement.

A. LIABILITY FOR WORK

Cost for facilities shall be allocated between EID and City as follows:

1. City and EID have agreed to the abandonment, relocation, and installation of EID facilities that are in conflict with the Project that are within franchise public right of way and not within an EID easement as further described herein (hereinafter cumulatively referred to as the "EID Relocation Work").

City and EID agree that EID shall be responsible for 100% of the actual costs associated with the EID Relocation Work affected by City's construction project, as expressly identified in Exhibit B marked "COST ESTIMATE SUMMARY," incorporated herein and made by reference a part hereof.

- a) The EID cost for items EID is responsible for is estimated to be approximately \$841,973.00 including a 10% contingency, as shown on Exhibit B herein.

2. As the construction work progresses, City shall submit invoices to EID, no more frequently than monthly, with supporting documentation indicating the percentage of the work completed since the previous submittal and the amount of costs then due and owing. The invoices submitted by City to EID will include an accounting of any amount retained by City from the contractor. EID will not be liable for payment of any retention amount shown on the invoices until City pays retention either to the contractor or subcontractor(s) or into an escrow account as provided under the Public Contract Code, whichever occurs first. EID shall make payment of the amount indicated on the invoice within thirty (30) calendar days of receiving each invoice, unless an invoice is challenged in accordance with subsection (3) herein below, in which case EID shall make payment of that portion of the invoice which is not in dispute within thirty (30) calendar days of receiving the invoice.
3. In the event that EID challenges any portion of, or any line item shown on, the invoice from City, then EID shall notify City of such challenge, the basis therefore, and provide adequate justification for the challenge, within ten (10) calendar days of receiving said invoice. If the payment of, or adjustment to, any amount challenged by EID cannot be resolved by the parties within thirty (30) calendar days of notification to City of the challenged amount, then both parties mutually agree to resolve the dispute in accordance with the dispute resolution provisions set forth in City's construction contract.
4. The final invoice sent by City to EID shall include and clearly indicate any adjustments made throughout the Project, including the total amount of retention due from all previous invoices, and indicate the final payment required. City shall submit the final invoice no later than sixty (60) calendar days after final payment to City's contractor has been made. EID shall pay the final invoice within thirty (30) calendar days of receipt of invoice, subject to the provisions of Section B-3 of this Agreement regarding submittal by City to EID of as-built drawings.
5. The contractor shall provide City with monthly updates per Caltrans specifications for Progress Schedule General (Critical Path Method). City will supply EID with a copy of these monthly updated schedules.

B. WORK TO BE DONE

1. In order for City to include the EID Relocation Work in City's bid package, design drawings and specifications must be developed for the work. City shall provide design drawings, specifications and estimates to EID for review, and City will incorporate the EID approved drawings and specifications into City's contract documents. The consultant used by City for the design of the Project will perform the design for the EID facilities. Except as provided in Section B-6 below, EID is solely responsible for its installed facilities after construction and its acceptance of the facilities. Three copies of the construction bid package/contract prepared by City will be provided to EID. City bid plans and specifications that incorporate EID's various utility designs, prepared by City, shall be reviewed and approved by EID prior to advertising for bids. EID shall be solely responsible for content accuracy, adequacy, and clarity of the bid plans and specifications pertaining to EID installation work. EID shall have fifteen (15) working days to review and approve the bid plans and specifications. In addition to content accuracy, adequacy, and clarity, EID review shall include the following scope:
 - a) Conformance of the EID Relocation Work design with EID, applicable Caltrans standards, standard drawings and standard specifications; and conformance with City Engineering Division standards and with the plans, details, and specifications for the Project.
 - b) Ability of relocation design to meet the same performance standards as the existing EID facilities.

EID's authorized representative may review the lowest responsible, responsive bidder's documents and may provide recommendations, if any, to City within seventy-two (72) hours of bid opening. Notwithstanding that review, City shall have sole authority to reject any or all construction bids, resolve any bid protests, and/or to award the construction contract for the entire work.

2. EID shall provide one or more inspectors for all work involving, pertaining to, or affecting EID facilities to verify construction is completed in accordance with EID standards and applicable EID standard drawings and technical specifications.
3. City shall provide EID with a set of as-built drawings. At the conclusion of the final cost accounting, EID shall retain no more than five percent (5%) of the EID reimbursable portion of the total cost associated with EID facilities until as-built drawings are provided and approved by EID.
4. City shall be solely responsible for all items of contract administration for City's Project, such as surveying and contractor correspondence. All submittals related to EID's facilities shall be provided by City or City's representative to EID for review and approval. EID shall provide comments on the submittals within 14 calendar days of receipt. The City's design consultant shall also review and approve all EID related submittals.
5. All EID relocation Work, inclusive of all extra work and additional work performed shall be in conformance with all applicable Caltrans, City, and EID standards and with the plans, details, and specifications for the Project.
6. City's contractor shall provide written guarantee of all of its work for one (1) year from acceptance by City. The guarantee shall inure to both City's and EID's benefit.

7. City shall provide in the Project bid specifications for the Project that the selected contractor shall add EID, and its officials, employees, agents, and representatives as an additional insured on contractor's general liability insurance policy for the Project.
8. It is understood that time is of the essence and that City would be harmed by delays to the Project. In order to avoid delays, City and EID agree that City must maintain administrative control of the Project. To protect City from unnecessary Project delays arising from the EID Relocation Work, City and EID agree that changes to the EID Relocation Work on the Project will be handled in the following manner:
 - a. **Extra Work Required:** As used in this section, "extra work" means work that is not foreseen at the time the Project is bid, and is not anticipated in the bid documents, but must necessarily be performed in order to address conflicts, changed or differing conditions, or otherwise necessary in order to complete the Project. The expense of any increased costs or the credit for any reduced costs resulting from any and all extra work required shall be apportioned in accordance with Sections a-i and a-ii, herein below. EID, at its sole expense, will be responsible for designing and inspecting all facets of any extra work on, related to, or caused by EID relocation work.

In the event that a contract change order ("CCO") is required, City will notify EID on the next working day from notification from City's contractor, and within five (5) working days will prepare a CCO. If the CCO impacts construction items of work on the contractor's critical path schedule, EID will then have five (5) working days to review, approve, and return the CCO to City or return it to City for modification. If the CCO does not impact the critical path schedule, EID will have ten (10) working days to review, approve, and return the CCO to City or return it to City for modification. City will notify EID at the time City submits a proposed CCO to EID whether the CCO impacts the critical path schedule or not. If EID fails to return the submitted CCO to City as approved within the time periods set forth herein, then City will take one of the following actions:

- i. The CCO will be executed by City per the terms, conditions, and price shown on the CCO that had been submitted to EID. EID will be required to reimburse City, in accordance with Section A-1, Liability For Work, for the cost of the CCO.
- ii. City will direct the contractor to perform the work on a force account basis in accordance with Caltrans Standard Specification 9-1.03. For extra work performed at force account, EID shall be responsible for inspecting the extra work and tracking the time that the contractor's forces spend pursuing the extra work. On each day that extra work is performed at force account, an EID inspector will prepare and sign a work report that details the labor, equipment, and materials that were used during that day's force account work. Said reports shall be given to City's Resident Engineer for payment processing. EID will be required to reimburse City, in accordance with Section A-1, Liability For Work, for the cost of the force account work.
- iii. City will direct the contractor to stop work on the contract only to the extent reasonably deemed necessary by City. EID will then be

responsible for justified costs associated with Project delay arising from the EID work. Such delay costs include but are not limited to right of way delays, extended contractor overhead, additional water pollution control costs due to the Project extending into winter, and equipment rental. EID will be required to reimburse City, in accordance with Section A-1, Liability For Work, for all said delay costs.

When City submits a CCO to EID for EID's review and approval, the CCO will clearly state which of the actions listed above that City intends to take should EID fail to return the CCO to City within the time specified above. In the event that the CCO exceeds One Hundred Thousand dollars (\$100,000), City shall only execute actions ii, or iii above.

It is agreed that all increases or decreases in justified costs associated with CCOs related to EID Relocation Work may include but are not limited to direct construction costs, extended contractor overhead, additional water pollution control costs due to CCOs extending the Project into winter, dust control, and equipment rental.

- b. **Additional Work:** As used in this section, "additional work" means work that is not foreseen at the time the Project is bid, and is not necessary work for the Project but may be desirable for the benefit of the EID facilities. Any and all additional work requested by EID shall be at EID's sole expense. EID, at its sole expense, will be further responsible for designing and inspecting all facets of any additional work requested by EID. In the event that EID desires additional work to be performed by City's contractor, EID shall address its request to City. If a price for additional work can be directly negotiated between EID and City's contractor, then the additional work will be in accordance with a CCO for the negotiated cost. If City's contractor and EID cannot agree to a negotiated price, EID may request that the work be performed on a force account basis in accordance with the 2010 Caltrans Standard Specification 9-1.04,. For additional work performed at force account, EID shall be responsible for inspecting the additional work and tracking the time that the contractor's forces spend pursuing the additional work. On each day that EID work is performed at force account, an EID inspector will prepare and sign a work report that details the labor, equipment, and materials that were used during that day's force account work. Said reports shall be given to City's Resident Engineer for payment processing. Before any additional work may commence, City must write and execute the CCO for EID's additional work, at EID's direct negotiated price or at force account, whichever is applicable. If the CCO impacts construction items of work on the contractor's critical path schedule, then EID will have five (5) calendar days to review, approve, and return the CCO to City. If the CCO does not impact the critical path schedule, EID will have ten (10) calendar days to review, approve, and return the CCO to City. If EID fails to return the CCO as approved to City within the time periods set forth herein, then City shall have no obligation to compel the contractor to perform the additional work.

It is agreed that all increases or decreases in justified costs associated with CCOs related to additional EID work may include but are not limited to direct construction costs, extended contractor overhead, additional water pollution control costs due to CCOs extending the Project into winter, dust control, and equipment rental.

- c. **EID Forces:** EID may alternatively request of City that EID use its own forces to perform additional work, as that term is defined hereinabove. The determination of whether to allow the additional work to be done by EID forces shall be within City's sole discretion. In the event City determines to allow EID to perform the additional work, EID shall comply with all conditions of City's standard encroachment permit, inclusive of indemnity and insurance, and shall provide proof of insurance meeting those requirements in advance of the commencement of the work. All additional work performed by EID shall comply with the requirements of this Agreement, with the Project construction schedule and be coordinated with City's contractor work. Any and all of City's contractor justified extra work, claims or delay costs arising from or caused by EID's force work shall be EID's sole responsibility. City and EID will determine in advance of City's approval whether any Project cost savings arise from EID's proposed force work and will mutually agree to whom said cost savings, if any, shall be credited. If the parties cannot reach agreement, City may decline to allow the EID force work.

C. DUTY OF COOPERATION, DEFENSE AND INDEMNITY OF CONTRACTUAL CLAIMS

1. City has agreed to include the EID Relocation Work within its Project on condition that EID remain solely responsible for the design, operation, inspection, relocation and maintenance of its facilities, and solely responsible for all actual costs associated therewith, and so long as the performance of the EID Relocation Work does not result in any delays to City's Project. Accordingly, EID shall fully cooperate with City in the timely response to all inquiries, notices, and contractual claims asserted by City's contractors and subcontractors as they pertain to the EID Relocation Work. Further, EID shall fully cooperate and assist City in the resolution and/or settlement of all claims from City's contractor and subcontractors as it relates to the EID Relocation Work. EID shall reimburse City for any amounts paid by City to City's contractor as a result of the settlement or resolution of said claims in accordance with the parties' respective rights and responsibilities under this Agreement.
2. As between EID and City, EID shall bear the sole and exclusive responsibility for any and all errors and omissions, costs associated with delays, claims, penalties, fines, damages, and liabilities of whatever kind or nature arising from the construction of the EID Relocation Work, whether to City's contractor or utility performing work in the Project area. Therefore, to the fullest extent allowed by law, EID shall hold harmless, defend at its own expense, and indemnify City and the officers, agents, employees and volunteers of City from any and all fines, penalties, liability, claims, losses, delays, damages or expenses, including reasonable attorney's fees, and economic or consequential losses, which are claimed to or in any way arise out of or are connected with the construction of EID Relocation Work, inclusive of the design, plans and specifications, excepting only the sole or active negligence, or willful misconduct, of City. Notwithstanding the above, in the event it is ultimately determined that the claim or liability is the result of the joint negligence of City and EID, EID'S obligation to indemnify City shall be reduced to the extent of City's negligence. However, EID's obligation to defend and indemnify City, except for City's sole and active negligence, shall apply in the first instance and until a determination of respective negligence is made. A determination made of respective liability between the two parties may be made either by agreement between City and EID, or by a court of competent jurisdiction and City shall make any reimbursements required as a result of that determination. Each party shall notify the other party immediately in writing of any anticipated claim or damage

related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under the attorney-client privilege.

D. GENERAL PROVISIONS.

1. City shall disclose to its contractor for the Project the horizontal and vertical locations of EID facilities as provided by EID to City. City's construction contract for the Project shall require the contractor to indemnify and save harmless and defend, including attorneys fees and expenses, EID, its officials, agents, employees, and representatives from and against any and all claims, liability, losses, and/or causes of action which arise or are claimed to arise from the negligence or willful misconduct of the contractor, its subcontractor(s), or the agents, servants or employees of any of them.
2. EID shall reimburse City for EID's portion of Design, Mobilization, Flagging Traffic, Traffic Control Systems, Water and Dust Pollution Control Measures and City Construction Management Costs (which include Soils Testing and Surveying), for the design and placement of EID's facilities by City's engineer and contractor as outlined in this Agreement. All the above listed costs will be calculated at a total of twenty-five percent (25%) of EID's direct construction contract costs related to those facilities EID is responsible for as detailed in Exhibit B.

EID shall reimburse City for EID's portion of Mobilization, for the placement of EID's facilities by City's contractor as outlined in this Agreement, for which total cost will be calculated as the actual percentage of the Mobilization bid line item of the total direct construction cost.

EID shall reimburse City for City Construction Management costs for any extra or additional work as defined in Section B-8 above, at a rate of eight percent (8%) of the direct construction cost of the extra or additional work. Any additional flagging, traffic control, water and dust pollution control measures or mobilization required by the extra or additional work shall be included in the direct construction contract cost of the CCO and no additional reimbursement will be added thereto.

3. City shall maintain all books, documents, papers, accounting records, and other evidence pertaining to direct construction costs incurred by City related to those facilities detailed in Exhibit A, and shall make such materials available for inspection at City's offices at reasonable times during this Agreement, the Project construction contract period, and for three (3) years from the date of final payment. In order to provide complete information for an audit, the Project billings must show separate detailed and itemized line items of work performed by City's contractor.
4. All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to City shall be in duplicate and addressed as follows:

To City:

City of Placerville
Engineering Division
3101 Center Street
Placerville, CA 95667
Attn.: Rebecca Neves,
City Engineer
Engineering Division

or to such other location as City directs in writing.

Notices to EID shall be in duplicate and shall be addressed as follows:

To EID:

El Dorado Irrigation District
2890 Mosquito Road
Placerville, CA 95667
Attn.: Brian Mueller,
Director of Engineering

With a Copy to:

El Dorado Irrigation District
2890 Mosquito Road
Placerville, CA 95667
Attn.: Elizabeth Wells,
Engineering Manager

or to such other location as EID directs in writing.

5. City Officer or employee with responsibility for administering this Agreement is Rebecca Neves, City Engineer, Engineering Division, or successor.
6. The EID Officer or employee with responsibility for administering this Agreement is Elizabeth Wells, Engineering Manager, El Dorado Irrigation District, or successor.
7. The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.
8. This Agreement and the attached Exhibits contain all of the terms of agreement between City and EID. All modifications or amendments to this Agreement must be in writing and signed by both parties.
9. Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.
10. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.
11. The waiver by either party of any requirements, condition or provision of this Agreement shall not be deemed a waiver of any subsequent breach of that or any other requirement, condition or provision of this Agreement.

12. City and EID understand and agree that this Agreement creates rights and obligations solely between City and EID and is not intended to benefit any other party. No provision of this Agreement shall in any way inure to the benefit of any third-person so as to constitute any such third-person as a third-party beneficiary of this Agreement or any of its items or conditions, or otherwise give rise to any cause of action in any person not a party hereto.
13. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
14. City and EID agree that the following approvals, permits and authorizations per the contract documents will be obtained by City and/or City's contractor prior to the commencement of the Project: the SWPPP, City encroachment permit, all discharge permits, trenching and shoring, grading permits and Dust Control Plan and Asbestos Mitigation Plan. Any other permits, approvals, and authorizations necessary for the commencement of construction of the EID Relocation Work shall be the responsibility of EID. After the issuance of the notice to proceed and commencement of work, if there are any necessary additional permits, approvals and authorizations that arise from or are related to the EID Relocation Work, EID shall be responsible for obtaining said permits, approvals and authorizations in a timely fashion so as not to delay the work. If EID is unable to obtain said permit, approval, or authorization, or to do so will result in a delay in either the EID Installation Work or City's Project as a whole, then either (i) City may issue a CCO deleting the EID work in its entirety if it has not yet commenced, or (ii) if work has commenced on the EID work, EID shall be responsible for all costs and claims associated with the delay, inclusive of delay claims or extra work claims resulting to City's Project as a result of the delay.

Contract Administrator Concurrence:

By: _____

Rebecca Neves, P.E.
City Engineer
Engineering Division
City of Placerville

Dated: _____

Reviewed & Approved:

By: _____
EID General Counsel's Office

Dated: _____

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

- - CITY OF PLACERVILLE - -

By: _____
M. Cleve Morris
City Manager
"City"

Dated: _____

Attest:
Regina O'Connell
City Clerk

By: _____
City Clerk

Dated: _____

- - EL DORADO IRRIGATION DISTRICT - -

By: _____
Jim Abercrombie
General Manager
"EID"

Dated: _____

Attachments

A. Exhibit A – El Dorado Irrigation District (EID) Conflict Work

B. Exhibit B – Cost Estimate Summary