

**CONSTRUCTION RESPONSIBILITY AND REIMBURSEMENT AGREEMENT
BETWEEN THE COUNTY OF EL DORADO AND THE EL DORADO IRRIGATION DISTRICT
FOR THE LATROBE ROAD REALIGNMENT, WIDENING & BRIDGE PROJECT, SUNCAST
LANE TO GOLDEN FOOTHILL PARKWAY, PROJECT 72403**

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

County is realigning and widening Latrobe Road between Suncast Lane and Golden Foothill Parkway (hereinafter referred to as "the Project" which will require lowering or relocating EID's water and recycled water facilities located in the new alignment.

The existing 8", 12" and 18" water lines within the road construction area will be replaced with approximately 772 meters (2533 feet) of a new 610 mm (24") waterline located along the east side of Latrobe Road. An existing 24" waterline coming from the east will be reconnected to the new 24" waterline. The existing 8", 12", 18" and 24" waterline and associated structures will be removed if required by grade conflicts or abandoned in place. The existing 10" recycled water line within the road construction area will be replaced with approximately 950 meters (3114 feet) of new 406 mm (16") pipe located along the west side of Latrobe Road. The existing 10" recycled waterline and associated structures will be removed if required by grade conflicts or abandoned in place. The existing 12-inch waterline and appurtenances will be abandoned from 'L' station 113+51, offset 15.3m right, to 117+05, offset 5.4m left, and consists of approximately 236.5 m of in-place abandonment and approximately 125.0 m of removal. The existing 8-inch waterline and appurtenances will be removed from 'L' station 117+05, offset 5.4m left, to 124+19, offset 25.4 m right and consists of approximately 723.6 m of removal. The existing 18-inch waterline and appurtenances will be removed from 'L' station 117+05, offset 5.4m left, to 120+92, offset 19.2 m right, and consists of approximately 395.8 m of removal. The existing 24-inch waterline and appurtenances will be removed from 'L' station 117+18; offset 31.3 m left, to 117+05, offset 5.4 m left, and consists of approximately 30.9 m of removal. These waterline abandonment and removals will be replaced with approximately 772.0 m of new 24" waterline and appurtenances from 'L' station 113+57, offset 18.6 m right, to 120+92, offset 19.2 m right. The existing 10-inch recycled waterline and appurtenances will be abandoned from 'L' station 114+95, offset 36.4 m left, to 124+29, offset 27.1 m right, and consists of approximately 99.0 m of in-place abandonment and approximately 857.9 m of removal. These recycled waterline abandonment and removals will be replaced with approximately 950 m of new 16" recycled waterline and appurtenances from 'L' station 115+15, offset 52.7 m left, to 124+29 offset 27.1 m right. A detailed scope of the above waterline and recycled waterline work is shown on Exhibit "A", entitled "El Dorado Irrigation District (EID) Conflict Work", incorporated herein in its entirety and by reference made a part hereof.

EID has requested that County include the relocation and installation of EID facilities, as detailed in Exhibit A, in County's construction bid package, award documents, and construction contract for the Project and County 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 County as follows:

1. The County and EID have agreed to the abandonment, relocation, and installation of EID facilities as described in Exhibit "A", and also shown in the County's improvement plans on sheets W1 through W7, namely water lines as EID Project No. **07014E** and recycled water lines as EID Project No. **03003E**, and said sheets are incorporated by reference herein and made a part hereof as Exhibit "E", and as further described herein (hereinafter cumulatively referred to as the "EID Installation Work"). Certain of the EID installation Work, constituting approximately 37.07%, is relocation work located outside the County's existing right-of-way in EID easements for which the County has a payment/reimbursement obligation to EID (hereinafter referred to as "EID Prior Rights Relocation Work"). The remaining approximately 62.93% of the EID Installation Work is relocation, upgrading/upsizing and installation of EID facilities for which EID has sole responsibility for funding (hereinafter referred to as "Additional EID Improvement Work")(the EID Prior Rights Relocation Work and the Additional EID Improvement Work is cumulatively referred to hereinafter as the "EID Installation Work"). Except as provided in Section B-8, and Sections C-1 through C-2 hereinafter, County and EID agree that County shall be responsible for the actual costs associated with the EID Prior Rights Relocation Work affected by County's Project, and EID shall be responsible for the actual costs associated with the Additional EID Improvement Work, all as preliminarily estimated in Exhibit "C", entitled "EID and County Cost Responsibility Cost Estimate," and set forth in Exhibit "D" entitled "Cost Estimate Summary", each incorporated by reference herein and made a part hereof.
2. As the work progresses, County 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 County to EID will include an accounting of any amount retained by County from the contractor. EID will not be liable for payment of any retention amount shown on the invoices until County 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 County, then EID shall notify County 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 County of the challenged amount, then both parties mutually agree to resolve the dispute in accordance with the dispute resolution provisions set forth in the County's construction contract.

4. The final invoice sent by County 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. County shall submit the final invoice no later than sixty (60) calendar days after final payment to County'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 County to EID of as-built drawings.

B. Work to be Done

1. In order for County to include the EID Installation Work in the County's bid package, EID shall provide material specifications to County for the work. EID shall include design drawings, specifications and estimates to County for review and incorporation into County's construction contract documents. 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 County will be provided to EID. County bid plans and specifications that incorporate EID's various utility designs, prepared by County 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 the 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 Installation Work design with EID, and applicable Caltrans standards, standard drawings and standard specifications; and conformance with El Dorado County Department of Transportation standards and with the plans, details and specifications for the Project entitled Latrobe Road Realignment, Widening & Bridge Project, Suncastr Lane to Golden Foothill Parkway, Project 72403

County will provide to EID's authorized representative a copy of the complete bidders summary and will make available for EID inspection at County offices the bidder's bid documents and EID will provide recommendations, if any, to County within forty-eight (48) hours of bid opening. Notwithstanding that review, County 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, at EID's sole expense, 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. County 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 Installation Work until as-built drawings are provided and approved by EID in both Auto-Cad and paper format.
4. County shall be solely responsible for all items of contract administration for the County's Project, such as surveying and contractor correspondence, except as specified in Sections A-1, B-2, B-8 and D-2, and Exhibit F herein.
5. All EID Installation Work, inclusive of all extra work and additional work as set forth in Section B-8 herein, performed shall be in conformance with all applicable Caltrans, El Dorado County Department of Transportation and EID standards and with the plans, details and specifications for the Project entitled "Latrobe Road Realignment, Widening & Bridge Project, Suncastr Lane to Golden Foothill Parkway, Project 72403".
6. County's contractor shall provide written guarantee of all of its work for one (1) year from acceptance by County. The guarantee shall inure to both County's and EID's benefit.
7. County shall provide in the Project bid specifications for the Project that the selected contractor shall add EID, and its officials, employees, and representatives as an additional insured on contractor's general liability insurance policy for the Latrobe Road Realignment, Widening & Bridge Project, Suncastr Lane To Golden Foothill Parkway, Project 72403
8. It is understood that time is of the essence and that County would be harmed by delays to the Project. In order to avoid delays, the County and EID agree that the County must maintain administrative control of the Project. To protect the County from unnecessary Project delays arising from the EID Installation Work, County and EID agree that changes to the EID Installation 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. Any and all extra work required to the Additional EID Improvement Work shall be at EID's sole expense or to EID's sole credit. EID, at its sole expense, will be responsible for designing and inspecting all facets of any extra work on, related to, or caused by the Additional EID Improvement Work. Any and all extra work necessary for the EID Prior Rights Relocation Work shall be at County's expense or to County's sole credit.

In the event that a contract change order ("CCO") for the Additional EID Improvement Work is required, the County will notify EID on the next working day

from notification from the County's contractor, and within five (5) working days will prepare a CCO. If the CCO impacts construction items of work on contractor's critical path schedule, EID will then have five (5) working days to review, approve, and return the CCO to the County or return it to the County 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 the County or return it to the County for modification. If EID fails to return the submitted CCO to the County as approved within the time period set forth herein days, then the County will take one of the following actions:

- i. The contract change order will be executed by the County per the terms, conditions, and price shown on the contract change order that had been submitted to EID. EID will be required to reimburse the County, in accordance with Section A (1), Liability For Work, for the cost of the CCO.
- ii. The County 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 County's Resident Engineer for payment processing. EID will be required to reimburse the County, in accordance with Section A (1), Liability For Work, for the cost of the force account work.
- iii. The County will direct the Contractor to stop work on the Contract only to the extent reasonably deemed necessary by the County. 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 the County, in accordance with Section A (1), Liability For Work, for all said delay costs.

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

It is agreed that all increases or decreases in justified costs associated with CCOs related to the Additional EID Improvement 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 the County's contractor, EID shall address its request to the County. If a price for additional work can be directly negotiated between EID and County's contractor, then the additional work will be in accordance with contract change order for the negotiated cost. If the County'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 Caltrans Standard Specification 9-1.03. 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 County's Resident Engineer for payment processing. Before any additional work may commence, County 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 contractor's critical path schedule, then EID will have five (5) calendar days to review, approve, and return the CCO to the County. 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 the County. If EID fails to return the CCO as approved to the County within ten (10) calendar days, then the County 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 County 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 County's sole discretion. In the event County determines to allow EID to perform the additional work, EID shall comply with all conditions of County'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 County's contractor work. Any and all of the

County's contractor justified extra work, claims or delay costs arising from or caused by EID's force work shall be EID's sole responsibility. County and EID will determine in advance of County'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, will be credited. In the event the parties are unable to reach agreement, County may decline to allow the additional work by EID forces.

C. Duty of Cooperation, Defense and Indemnity of Contractual Claims

1. County has agreed to include the EID Installation 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 with the Additional EID Improvement Work, and so long as the performance of the EID Installation Work does not result in any delays to the County's Project. Accordingly, EID shall fully cooperate with County in the timely response to all inquiries, notices, and contractual claims asserted by the County's contractors and subcontractors as they pertain to the EID Installation Work. Further, EID shall fully cooperate and assist County in the resolution and/or settlement of all claims from the County's contractor and subcontractors as they relate to the EID Installation Work. EID shall reimburse County for any amounts paid by County to the County's contractor as a result of the settlement or resolution in accordance with the parties respective rights and responsibilities under this Agreement..

2. As between EID and County, 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 County's construction contract for the Additional EID Improvement Work, and/or 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 EID design, plans and specifications for the EID Prior Rights Relocation Work, whether to the County's contractor or other third party. Therefore, to the fullest extent allowed by law, EID shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY 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 EID Installation Work, the construction contract for that work, and inclusive of the design, plans and specifications for the construction of improvements under this Agreement excepting only the sole or active negligence, or willful misconduct, of the County. Notwithstanding the above, in the event it is ultimately determined that the claim or liability is the result of the joint negligence of County and EID, EID's obligation to indemnify the County shall be reduced to the extent of County's negligence. However, EID's obligation to defend and indemnify County, except for County'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 County and EID, or by a court of competent jurisdiction and County shall make any reimbursements required as a result of that determination. Each party shall notify the other party immediately

in writing of any 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. County shall disclose to its contractor for the Project the horizontal and vertical locations of EID facilities as provided by EID to County. The County's construction contract for the Project shall require the contractor to indemnify and save harmless and defend, including attorneys fees and expenses, EID, its agents, servants, and employees 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 County for Flagging Traffic, Traffic Control system, Water and Dust Pollution Control Measures, County Construction Management Costs (which include Inspections, Soils Testing and Surveying) and Mobilization, for the placement of EID's facilities by County's contractor as outlined in this Agreement. All the above listed costs will be calculated at a total of twenty-six percent (26%) of EID's actual construction contract costs related to the Additional EID Improvement work as illustrated on Exhibit "F".
EID shall reimburse County for County Construction Management costs for any extra or additional work, excluding extra work arising from the EID Prior Rights Relocation Work, as defined in Section B-8 above, at a rate of eight (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. County shall maintain all books, documents, papers, accounting records, and other evidence pertaining to direct construction costs incurred by County related to those facilities detailed in Exhibit "A", and shall make such materials available for inspection at County's offices at reasonable times during this Agreement, the EID Installation Work 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 County'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 County shall be addressed as follows:

To County:

County of El Dorado
Department of Transportation
4505 Golden Foothills Parkway
El Dorado Hills, CA 95762
Attn.: Russell A. Nygaard,
Deputy Director Foothills Division

With a Copy to:

County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667
Attn.: Tim C. Prudhel
Contract Services Officer

County of El Dorado
Department of Transportation
4505 Golden Foothills Parkway
El Dorado Hills, CA 95762
Attn.: Rupa Somavarapu
Supervising Civil Engineer

or to such other location as County directs in writing.

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

TO EID:

El Dorado Irrigation District
2890 Mosquito Road
Placerville, CA 95667
Attn.: Steve Setoodeh,
Director Facilities Management

With a Copy to:
El Dorado Irrigation District
2890 Mosquito Road
Placerville, CA 95667
Attn: George Jackson
Project Manager

El Dorado Irrigation District
2890 Mosquito Road
Placerville, CA 95667
Attn.: Elizabeth Wells,
Co-Manager
Wastewater/Recycled Water Division

El Dorado Irrigation District
2890 Mosquito Road
Placerville, CA 95667
Attn: Brian Mueller
Co-Manager
Drinking Water Division

or to such other location as EID directs in writing.

5. The County Officer or employee with responsibility for administering this Agreement is Russell A. Nygaard, Deputy Director Foothills Division, Department of Transportation, or successor.
6. The EID Officers or employees with responsibility for administering this Agreement are Elizabeth Wells, Co-Manager, Wastewater/Recycled Water Division, George Jackson, Project Manager, and Brian Mueller, Co-Manager, Drinking Water Division, El Dorado Irrigation District, or successors.
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.

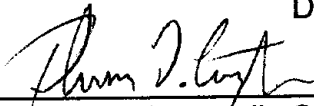
8. This Agreement and the attached Exhibits contain all of the terms of agreement between County and EID. All modifications or amendments to this Agreement must be in writing and signed by both parties.
9. Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, 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. Except as expressly provided in this Agreement, nothing by way of this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement.
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. County and EID agree that the following approvals, permits and authorizations will be obtained by County and/or County's contractor prior to the commencement of the Project: the SWPPP, County encroachment permit, 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 Installation 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 Installation 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 the either the EID Installation Work or the County's Project as a whole, then EID shall be responsible for all costs and claims associated with the delay, inclusive of delay claims or extra work claims resulting to the County's Project as a result of the delay.

Requesting Department Concurrence:

By: _____
Richard W. Shepard, P.E.
Director of Transportation

Dated: _____

Reviewed & Approved on: 1/15/08
Date

By: 
EID General Counsel's Office
as to form

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.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

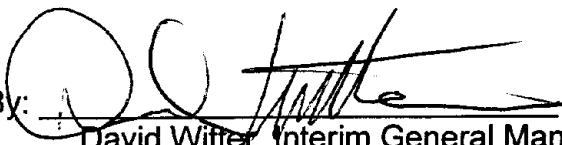
Board of Supervisors
"County"

Attest:
Cindy Keck
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

-- EL DORADO IRRIGATION DISTRICT --

By: 
David Witter, Interim General Manager
"EID"

Dated: 1/15/08