

VENDOR  
Roads

**AGREEMENT BETWEEN THE CITY OF SANTA ROSA  
AND THE COUNTY OF SONOMA  
FOR  
ADJUSTMENTS TO CITY OWNED UTILITY FACILITIES**

The following is an Agreement, dated as of February 6, 2018, by and between the City of Santa Rosa, a municipal corporation ("CITY"), and the County of Sonoma, a political subdivision of the State of California ("COUNTY"). COUNTY and CITY are referred to herein individually as PARTY and collectively as PARTIES.

**RECITALS**

- A. COUNTY is responsible for the construction, operation, and maintenance of the COUNTY maintained public road system, and annually administers an engineered capital roadway paving project ("PAVEMENT PROJECT"). Projects involving full road reconstruction, overlay, or bonded wearing course surface rehabilitation efforts shall be considered a PAVEMENT PROJECT. The CITY owns, operates and maintains a water distribution, wastewater collection and urban water reuse system located at various locations under the COUNTY road system. CITY owned utility facilities ("APPURTANANCES") comprise of, but are not limited to, water valve covers, wastewater collection manhole covers, and water reuse facility covers within this road system.
- B. When necessary, the annual PAVEMENT PROJECT will require the adjustments of CITY APPURTANANCES located within the boundaries of the PAVEMENT PROJECT to comply with both COUNTY and CITY design and construction standards.
- C. COUNTY will solicit bids and award contracts for PAVEMENT PROJECTS to the lowest responsive and responsible bidders ("CONTRACTORS").

**AGREEMENT**

The parties agree as follows:

1. **OBLIGATIONS OF COUNTY**

- 1.1 COUNTY shall complete the required environmental review, engineering, surveying, design, and other preparation for the PAVEMENT PROJECTS.
- 1.2 COUNTY shall incorporate bid items, plans and specifications consistent with the CITY'S design and construction standards into the PAVEMENT PROJECTS for any required adjustments to CITY APPURTANANCES.
- 1.3 COUNTY shall notify the CITY with an itemized 100% engineer estimate for all work required, including but not limited to construction engineering, contract administration and construction contingency, for any adjustments to CITY APPURTANANCES associated with any PAVEMENT PROJECT prior to the COUNTY calling for the public bid.

1.4 COUNTY shall notify the CITY with the cost revision in accordance with the bid for all work required to adjust any CITY APPURTANANCES upon the COUNTY award of every contract to CONTRACTORS for construction of a PAVEMENT PROJECT.

1.5 COUNTY shall include CITY and its officers, employees, and agents as indemnified parties in the PAVEMENT PROJECTS. CITY and its officers, employees, and agents shall be indemnified to the same extent as COUNTY is indemnified in its contracts with the CONTRACTORS.

1.6 COUNTY shall require the CONTRACTORS to name CITY as an additional insured on the CONTRACTORS' insurance policy obtained as part of CONTRACTORS' work on the PAVEMENT PROJECTS.

2. **OBLIGATIONS OF CITY**

2.1 CITY will pay to COUNTY the balance due for costs associated with the PAVEMENT PROJECT for all work required to adjust any CITY APPURTANANCES, including changes to the work approved by CITY in compliance with Section 3 of this Agreement, within thirty (30) days of the receipt of an invoice from COUNTY, which shall be issued upon completion of the PAVEMENT PROJECT. Costs and fees shall be in accordance with Section 1.

3. **CHANGES TO WORK**

3.1 COUNTY may make changes to any aspect of the plans and specifications for the work required to adjust any CITY APPURTANANCES, and CITY shall be responsible for the costs of all such changes, provided that all such changes are approved by CITY's City Engineer. CITY agrees to respond to such requests within 48 hours and that such requests will not be unreasonably withheld, conditioned, delayed or denied.

3.2 In the event that COUNTY and CITY agree to a deductive change order decreasing the cost of the work required to adjust any CITY APPURTANANCES, and such change order is implemented, COUNTY shall provide CITY with a credit or refund in the amount of the decrease in cost upon completion of the PAVEMENT PROJECT.

4. **INSPECTION OF WORK**

4.1 COUNTY shall permit CITY to inspect the work performed as part of the work required to adjust any CITY APPURTANANCES upon reasonable notice and at reasonable times. COUNTY will provide CITY the opportunity to perform a final inspection of the work required to adjust any CITY APPURTANANCES prior to COUNTY's final acceptance of the PAVEMENT PROJECT. CITY shall determine and communicate its acceptance of the work required to adjust any CITY APPURTANANCES, or any reasons for denial within 5 days.

5. **INDEMNIFICATION**

5.1 Notwithstanding any provisions regarding CONTRACTORS' indemnification of any PARTY, each PARTY shall indemnify, defend, protect, hold harmless, and release the other, and its officer, agents, and employees, from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying PARTY or its agents, employees, contractors, subcontractors, or invitees. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying PARTY under workers' compensation acts, disability benefit acts, or other employee benefit acts. This indemnity provision survives the Agreement.

6. **TERMINATION**

6.1 This Agreement is valid for accumulative not-to-exceed total amount of \$291,000 in invoice payments.

7. **ADDITIONAL PROVISIONS**

7.1 Amendments to Agreement. This Agreement may be amended by mutual consent expressed in writing of the PARTIES hereto.

7.2 Consent to Breach Not Waiver. The waiver by either PARTY of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term or promise contained in this Agreement.

7.3 Interpretation. CITY and COUNTY acknowledge that each has contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one PARTY in favor of the other.

7.4 Third Parties. Nothing contained in this Agreement shall be construed to create, and the PARTIES do not intend to create, any rights in third parties.

7.5 Severability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

7.6 **Defaults and Remedies.**

7.6.1 Default. The failure by either PARTY to perform any of its obligations set forth in this Agreement shall constitute a default of this Agreement. Except as required to protect against further damages, the non-defaulting PARTY may not institute legal proceedings against the PARTY in default until the non-defaulting PARTY has provided the defaulting PARTY notice of the default and the cure period set forth in this Section 7.6.1 has expired.

The cure period for any monetary default shall be thirty (30) days after the defaulting PARTY's receipt of written notice from the non-defaulting PARTY that such obligation was not performed. The cure period for any other default shall be forty five (45) days after the defaulting PARTY's receipt of written notice from the non-defaulting PARTY that such obligation was not performed; provided, however, if the failure cannot be corrected within such forty five (45)-day period, it shall not constitute a default if the failure is correctable without material adverse effect on the non-defaulting PARTY, and if corrective action is instituted within thirty (30) days of notice and diligently pursued until the failure is corrected.

7.6.2 Remedies Upon Default. Upon the occurrence of any default and after the defaulting PARTY has received written notice of default and the time period to cure the default has expired, the non-defaulting PARTY may at its option, (i) pursue damages or specific performance or any other legal and equitable remedies the injured PARTY may have against the defaulting PARTY in accordance with applicable law; and/or (ii) terminate this Agreement.

7.6.3 Termination and Default. The termination of this Agreement for any reason shall not release any PARTY in default.

7.7 Attorneys' Fees. In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each PARTY shall bear its own attorneys' fees, costs, and expenses.

7.8 Method and Place of Giving Notice, Submitting Bills, and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

CITY:                   Transportation and Public Works Department  
                          Attn: Tracy Duenas  
                          69 Stony Circle  
                          Santa Rosa, CA 95401

COUNTY:               Sonoma County Department of Transportation and Public Works  
                          Attn: Sarah Fredericks, Construction Dept  
                          2300 County Center Drive, Suite B100  
                          Santa Rosa, CA 95403

When a notice, bill, or payment is given by a generally recognized overnight courier service, the notice, bill, or payment shall be deemed received on the next business day. When a copy of a notice, bill, or payment is sent by electronic means, the notice, bill, or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill, or payment is deposited in the U.S. mail and postmarked on the date of the electronic transmission (for a payment, on or before the due date), (2) the sender has a confirmation of the electronic transmission, and (3) the electronic transmission is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this Section.

7.9 Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above.

CITY OF SANTA ROSA:

By: 

City Manager

COUNTY OF SONOMA:

By: 

Chair, Board of Supervisors

ATTEST:

By: 

Clerk of the Board

APPROVED AS TO FORM:

By: 

City Attorney

APPROVED AS TO FORM:

By: 

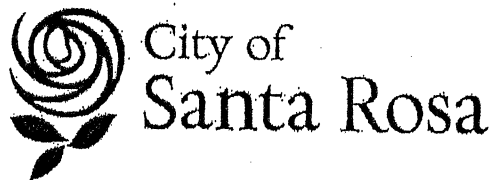
County Counsel

REVIEWED AS TO SUBSTANCE  
FOR COUNTY:

By: 

Department Head

Date: 2-2-18



September 21, 2016

Mrs. Susan R. Klassen, Director  
Attention: Anthony Moore  
Department of Transportation and Public Works  
2300 County Center Drive, Suite B100  
Santa Rosa, CA 95403

Re: **2017 OBAG Pavement Rehabilitation Project, County Project # C14040**

Dear Mrs. Klassen:

I understand that the County of Sonoma, Department of Transportation and Public Works, is planning pavement treatments on various County roads this summer. I further understand that the following water facilities owned by the City of Santa Rosa will impact this project and will require adjustment at the City of Santa Rosa's sole cost and expense:

Road Name	Limits	Treatment	Facility	Bid Item	Estimated Cost
Corby Ave	Hearn Ave to City of Santa Rosa	AC Overlay	15 Water Valves	Adjust Water Valve Cover	\$7,200
Dutton Ave	Hearn Ave to South Ave	AC Overlay	29 Water Valves	Adjust Water Valve Cover	\$13,920
Windsor River Rd	Eastside Rd to Kensington Ln	CIR & AC Overlay	Communication Box	Lower Communication Box	\$480
Windsor River Rd	Eastside Rd to Kensington Ln	CIR & AC Overlay	Communication Box	Adjust Communication Box	\$480
Windsor River Rd	Eastside Rd to Kensington Ln	CIR & AC Overlay	2 Manholes	Lower Manhole Cover	\$720
Windsor River Rd	Eastside Rd to Kensington Ln	CIR & AC Overlay	2 Manholes	Adjust Manhole Cover	\$720
Estimated Total					\$23,520

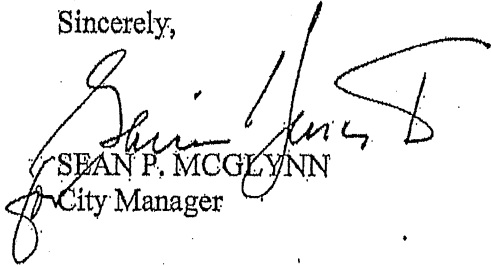
This letter is to request that the County include the adjustment of our water facilities in its pavement construction contract.

I understand that the County will award the pavement construction contract to the lowest responsible bidder and will open bids this spring. The County agrees that both the County and its contractor shall indemnify the City and name the City, its officers, agents and employees as an additional insured.

The City of Santa Rosa agrees to pay the County the bid price for the adjusted water facility items plus 10% for construction engineering and contract administration, and if needed, 10% for construction contingencies, not to exceed a total of \$249,000, after presented with an invoice from the County. The City of Santa Rosa also agrees to allow the County's contractor to adjust the facilities listed above without further permitting or approval from the City of Santa Rosa.

I understand these terms will be stipulated in the forthcoming Interagency Agreement between the City and County.

Sincerely,



SEAN P. MCGLYNN  
City Manager