

COST REIMBURSEMENT AGREEMENT

This Cost Reimbursement Agreement (Agreement) is entered into on this ____ day of _____ 2021, by and between the City of Fresno (CITY) and the State Center Community College District (DISTRICT).

RECITALS

WHEREAS, the CITY is a charter city organized and existing under the laws of the State of California; and

WHEREAS, the DISTRICT is organized and existing pursuant to the provisions of California Education Code and has specific authority thereunder to engage in providing educational programs including the development and construction of facilities therefore; and

WHEREAS, the DISTRICT and the CITY are expanding facilities within their respective service areas; and

WHEREAS, the CITY owns and operates recycled water facilities, and is in the process of planning and constructing a segment of "12" recycled water main in Church Avenue (FACILITY) for the purpose of providing recycled water supplies to potential residents, businesses and industries within its service area, including the DISTRICT facilities; and

WHEREAS, the DISTRICT owns and operates the DISTRICT's educational facilities; and

WHEREAS, the DISTRICT is in the process of planning and constructing a new educational campus (CAMPUS) that borders the FACILITY at Church Avenue; and

WHEREAS, the CITY is constructing the new FACILITY in Church Avenue, north of the CAMPUS, with the CITY responsible for bidding the construction work and contracting with the general construction contractor and the DISTRICT desiring to have a 6" recycled water service and a necessary 12" recycled water main extension (SERVICE) constructed for its use ; and

WHEREAS, it is in the CITY's and DISTRICT's interests to cooperate in the construction of the DISTRICT'S desired SERVICE to avoid future destruction of new CITY construction; and

WHEREAS, the CITY and the DISTRICT desire to enter into this Agreement for the purpose of defining the financial obligations of the CITY and the DISTRICT for the construction and related costs of said SERVICE; and

NOW THEREFORE BE IT RESOLVED, that based upon the covenants and representations contained herein, the CITY and DISTRICT agree as follows:

1. The CITY agrees to include the Plans and Specifications for the construction of the DISTRICT's desired SERVICE in the construction bid documents of the Recycled Water Extension to the Martin Luther King Activity Center project (PROJECT).

2. The CITY agrees to provide the environmental studies necessary for the construction of the PROJECT, including compliance with the California Environmental Quality Act (CEQA) and the State's CEQA Guidelines.
3. The CITY shall cause the bid documents for construction bid of the PROJECT to require the bidders, before final award, to include all costs for construction of the SERVICE (SERVICE COSTS or "bid amount awarded for the SERVICE portion") separate from the balance of the work under the PROJECT bid package. If the SERVICE COSTS of the low bid for the Project bid package exceeds the CITY's estimated construction cost for the SERVICE as set forth in **Exhibit B** by more than 10%, then the CITY shall not cause or allow award of the SERVICE work portion without the prior written consent of the DISTRICT's Authorized Designee. If such consent is required, then the DISTRICT's Authorized Designee shall notify the CITY by December 24, 2020 or within twenty-one (21) calendar days of receipt of the SERVICE COSTS, whichever date is earlier, as to whether or not he/she will give such consent. In the event such consent is not given, or in the event that all bids for the PROJECT are rejected and the CITY does not re-bid and award a contract within two years of the execution of this AGREEMENT by both parties; then the DISTRICT may terminate this Agreement immediately upon notice to the CITY and will be responsible for paying only the amounts in **Exhibit B** for "incorporation and disincorporation of DISTRICT's plans and specifications for SERVICE into construction bid documents for the PROJECT."
4. The DISTRICT agrees to pay the CITY the cost to incorporate the Plans and Specifications and, subject to Section 3 above, to construct the DISTRICT's SERVICE in accordance with the cost schedule in **Exhibit B**; provided, however, the total amount paid to the CITY by the DISTRICT shall not exceed \$39,815.
5. Provided the CITY obtained the DISTRICT's prior written consent in accordance with Section 3 above; upon award of the SERVICE portion of the work under the Project's bid package, the DISTRICT shall make a payment to the CITY equal to 25% of the SERVICE COSTS, less an amount equal to the interest that would be earned from the date of the deposit until the projected date of completion of 100 calendar days from the date of the notice to proceed issued by the CITY for the work. [For example: \$31,000 SERVICE COSTS awarded; 25% equals \$7,750; interest equals \$7,750 multiplied by 1.665% annual apportionment rate, divided by 365 days equals \$1.14 daily interest rate, multiplied by 100 days for projected completion equals \$171.00 interest. \$7,750 less \$171.00 projected interest earned equals \$7,579.00 as the amount of initial payment by the DISTRICT to the CITY.] After the initial payment is expended by the CITY for costs and fees identified in **Exhibit B**, then the CITY will invoice the DISTRICT for progress payments throughout the duration of the SERVICE construction portion under the Project's bid package. Payments will be due 30 days after receipt of invoice by the DISTRICT.
6. The CITY's invoice shall be for work completed and accepted by the DISTRICT and shall include a description of work performed, status of work, an accounting of costs and fees incorporated into invoice, and an estimate of the remaining costs and fees to be incurred to complete the work.

7. The CITY and the DISTRICT agree that all change orders related to the construction of the SERVICE shall be subject to approval by the DISTRICT's Authorized Designee in a timely manner.

8. Indemnification and Insurance:

A. CITY

The CITY shall indemnify, hold harmless and defend the DISTRICT and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the CITY, DISTRICT or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts or omissions of the DISTRICT or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

The DISTRICT shall indemnify, hold harmless and defend the CITY and each of their officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the DISTRICT, CITY or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts or omissions of the CITY or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

In the event of concurrent negligence on the part of the CITY, or any of its officers, officials, employees, agents or volunteers, and the DISTRICT or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

This and the preceding paragraphs of this Section 8A shall survive termination or expiration of the Agreement.

It is understood and agreed that the CITY and DISTRICT maintain insurance policies or self-insurance programs to fund their respective liabilities. The parties agree that such respective programs or policy coverage for Workers' Compensation shall contain a waiver of subrogation as to the other party, and each of their officers, officials, agents, employees and volunteers. Evidence of Insurance, Certificates of Insurance or other similar documentation shall not be required of either party under this Agreement.

9. General Provisions:

A. All communication and notices required by this Agreement shall be in writing and provided as follows

To the DISTRICT:

Christine Miktarian
Vice Chancellor, Operations
State Center Community College District
1171 Fulton Street
Fresno CA 93721

To the CITY:

Michael Carbajal
Director
Department of Public Utilities
City of Fresno
2600 Fresno Street
Fresno CA 93721-3600

- B. This Agreement shall be binding upon and shall inure to the benefit of any successors or assigns of the parties.
- C. Neither the CITY nor the DISTRICT shall assign, delegate or transfer their rights and duties in this Agreement without the prior written consent of the other party.
- D. The CITY and DISTRICT agree to mediate any dispute under this Agreement before commencing litigation in a court of law under the laws of the State of California. The parties shall mutually agree to a mediator.
- E. This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall only be in California. Any action brought to interpret or enforce this Agreement, or any of the terms or conditions hereof, shall be brought in the California Superior Court of Fresno County, California. The CITY and DISTRICT hereby expressly waive any right to remove any action to a county other than Fresno County as permitted pursuant to Section 394 of the California Code of Civil Procedure.
- F. This Agreement and each of the Exhibits referred to herein, which are incorporated by reference, represent the entire understanding of the CITY and the DISTRICT to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except by writing signed by the CITY and the DISTRICT
- G. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void and so far as it is in conflict with said law that the remainder of the Agreement shall remain in full force and effect.
- H. In the event either party commences any litigation for the enforcement of this Agreement, the prevailing party, as determined by the court or arbitrator, shall be entitled to recover their reasonable attorney's fees and court costs included in the action brought thereon.

- I. Each signatory to this Agreement represents that they are authorized to enter into this Agreement and bind the party to which their signature represents.
- J. Section headings are provided for organizational purposes only and do not, in any manner, affect the scope or intent of the provisions thereunder.
- K. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. It is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

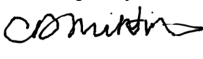
[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day, month and year first above written.

CITY OF FRESNO
a Municipal Corporation

STATE CENTER COMMUNITY
COLLEGE DISTRICT

By: _____
Michael Carbajal
Director
Department of Public Utilities
City of Fresno

DocuSigned by:

By: _____ 1/14/2021
508E7865134E450...
Christine Miktarian
Vice Chancellor, Operations
State Center Community College District


ATTEST:

YVONNE SPENCE, MMC CRM
City Clerk

By: _____
Yvonne Spence
Deputy

APPROVED AS TO FORM:

DOUGLAS T. SLOAN
City Attorney

DocuSigned by:

By: _____ 1/14/2021
1CEC5444CAA64DB...
Brandon M. Collet
Senior Deputy

REVIEWED:


DocuSigned by:

By: _____ 1/14/2021
850A517DB3DD42F...
Brock D. Buche, PE, PLS
Assistant Director
Department of Public Utilities
City of Fresno

EXHIBIT B

Costs and Fees

- A. CITY's "estimated construction cost" of SERVICE: \$31,000
- B. DISTRICT shall pay the following costs and fees to CITY in accordance with this Agreement:
1. For incorporation of DISTRICT's plans and specifications for SERVICE into construction bid documents for the PROJECT: \$910.
 2. For disincorporation of DISTRICT's plans and specifications for SERVICE from construction bid documents for the PROJECT if DISTRICT exercises its right of termination under section 3 of the Agreement: actual costs, plus 6% of such costs; provided such costs are detailed on an invoice to DISTRICT and are not duplicative of costs previously paid or incurred by CITY.
 3. For the CITY's consulting architect's and/or engineer's fees for services during the Bid Phase: 0.4 % of bid amount awarded for the SERVICE portion of the PROJECT.
 4. For the CITY's consulting architect's and/or engineer's fees for services during Construction Administration Phase: 1.6% of the bid amount awarded for the SERVICE portion of the PROJECT.
 5. For the CITY's consulting architect's and/or engineer's fees for additional services related to contract change orders: 4% of the amount of any price increase in the bid amount awarded for the SERVICE portion of the PROJECT due to approved contract change orders, provided each such contract change order was for an enhancement requested or change approved in writing by the CITY's Public Utilities Director and the increase in price and contract change order for construction of the SERVICE is approved by the DISTRICT in advance of any such work.
 6. For the CITY's general construction contractor: The sum of the bid amount awarded for the SERVICE portion of the PROJECT plus any increase in such amount due to approved contract change orders, provided each such contract change order was for an enhancement requested or change approved in writing by the CITY's Public Utilities Director and the increase in price and contract change order for construction of the SERVICE is approved by the DISTRICT in advance of any such work.
 7. For the CITY's costs for construction manager (also referred to in this Agreement as the "project manager") services: 3.5% of bid amount awarded for the SERVICE portion of the PROJECT.
 8. For the DISTRICT's other costs, fees or expenses incurred by the CITY for the SERVICE portion of the PROJECT, such as engineering costs, plan review fees, City and/or County inspection fees, off-site construction staking costs, testing costs and

fees, actual costs, plus indirect costs equal to 6% of the bid amount awarded for the SERVICE portion of the PROJECT plus any increase in such amount due to approved contract change orders; provided (i) each such contract change order was for an enhancement requested or change approved in writing by DISTRICT's Authorized Designee and the increase in price and contract change order for construction of the SERVICE is approved by the DISTRICT in advance of any such work, and (ii) such costs are detailed on an invoice to the DISTRICT and are not duplicative of costs previously paid or incurred by the CITY. Such indirect costs are in order to cover staff time required for subcontractor bid document preparation and facilitation and related in-house costs.