

Dist.	County	Route	P.M.	Project ID	Project E.A.
<b>04</b>	<b>SCL</b>	<b>280</b>	<b>8.0/8.9</b>	<b>0416000226</b>	<b>04-1K300</b>
Federal Aid No.: N/A					
Owner's File: <b>CuSd # 21-00108 Dated August 17, 2022</b>					
Federal Participation/Federally Eligible/NEPA Document					
On the Project <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                      On the Utilities <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					

DATE: April 9, 2025

## **SANTA CLARA VALLEY TRANSPORTATION AUTHORITY**

### **AMENDMENT No. 2 TO UTILITY AGREEMENT NO. 2180-01**

The City of Cupertino, hereinafter referred to as "CITY", in cooperation with the Santa Clara Valley Transportation Authority ("VTA") and California Department of Transportation ("CALTRANS"), proposes to construct modifications to the I-280 / Wolfe Road interchange in the City of Cupertino in accordance with VTA's Project No. EA-04-1K300, hereinafter referred to as "PROJECT" and Cupertino Sanitary District hereinafter referred to as "OWNER", owns and maintains a 15" sanitary sewer facility and related appurtenances, hereinafter referred to collectively as "FACILITY", within the construction limits of the PROJECT which requires relocation and/or replacement to accommodate the PROJECT.

It is hereby mutually agreed that:

#### **I. SCOPE OF WORK**

In accordance with Notice to Owner No. 2180-01 dated October 31, 2022, OWNER shall relocate OWNER's 15" vitrified clay pipe (VCP) sanitary sewer line in concrete casing and OWNER's four (4) sanitary manholes. All work must be performed in accordance with CITY's and CALTRANS' standards of construction incorporated into VTA's Plan No. 04-1K300 dated April 19, 2022 consisting of eight (8) sheets, a copy of which is on file in the VTA's Office's at 3331 N. 1<sup>st</sup> Street, San Jose, CA. 95134.

Deviations from the VTA's plan described above initiated by either VTA or the OWNER, must be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notice to Owner, approved by VTA and agreed to/acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and made a part hereof. No work under said deviation may commence prior to written execution by the OWNER of the 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.

It is mutually agreed that VTA will include the work of installing six (6) sanitary manholes as part of PROJECT highway construction contract. OWNER shall have access to all phases of the work to be performed by VTA for the purpose of inspection to ensure that the work being performed for the OWNER is in accordance with the specifications contained in the highway contract. Upon completion

for the work performed by VTA, OWNER agrees to accept ownership and maintenance for the constructed facilities and the replaced facilities, except in the case of liability determined pursuant to Water Code 7034 or 7035.

## **II. LIABILITY FOR WORK**

The cost of the FACILITY relocation described in Section I above will be relocated at VTA's expense pursuant to rights superior to those of the VTA and the agreement is amended as follow:

Original Estimated work to be performed by OWNER:	\$6,823,680.00
Amended Estimated work to be performed by OWNER:	\$8,220,730.00
Estimated work to be performed by VTA's CONTRACTOR:	\$0.00
VTA's TOTAL Estimated Liability @ 100%:	\$8,220,730.00

## **III. PERFORMANCE OF WORK**

OWNER shall have access to all phases of OWNER's relocation work and relocation work to be performed by VTA, as described in Section 1 above, for the purpose of inspection to ensure that the work is in accordance with the specifications contained in the highway construction contract. All questions regarding work being performed will be directed to VTA's Resident Engineer for their evaluation and final disposition.

Use of personnel requiring lodging and meal "per diem" expenses shall not exceed the per diem expense amounts allowed under the California Department of Human Resources travel expense guidelines. Accounting Form FA-1301 must be completed and submitted for all non-State personnel travel per diem. OWNER shall also include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed.

- (a) Work performed by OWNER'S contractor is a public work under the definition of Labor Code Section 2720 (a) and is therefore subject to prevailing wage requirements.
- (b) Work performed directly by OWNER's employees and their sub-consultants falls within the exception for Labor Code Section 1720 (a)(1) and does not constitute a public work under section 1720(a)(2) and is not subject to prevailing wages. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above.

## **IV. PAYMENT FOR WORK**

Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit detailed itemized progress bills for costs incurred not to exceed OWNER'S recorded costs as of the billing date less estimated credits applicable to completed work. The OWNER'S cost shall include OWNER'S employees and the costs of the OWNER'S sub-consultants, construction contractor and sub-contractors. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by VTA of documentation supporting the cost

increase and after an Amendment to this Agreement has been executed by the parties to this Agreement.

OWNER shall submit a final bill to VTA within 360 days after the completion of the work described in Section I above. If VTA has not received a bill within 360 days after notification of completion of OWNER's work described in section I of this Agreement, and VTA has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements for OWNER's facility (if required), VTA will provide written notification to OWNER of its intent to close its file within 30 days. OWNER hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned. If VTA processes a final bill for payment more than 360 days after notification of completion of OWNER's work, payment of the late bill may be subject to VTA's discretion.

In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an Amended Agreement must be executed by the parties to this Agreement prior to the payment of the OWNER'S final bill. 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 VTA.

Detailed records from which the billing is compiled must be retained by the OWNER for a period of three years from the date of the final payment and will be available for audit by State and/or Federal auditors. In performing work under this Agreement, OWNER agrees to comply with the Uniform System of Accounts for Public Utilities found at 18 CFR, Parts 101, 201, et al., to the extent that are applicable to OWNER doing work on the project that is the subject of this agreement, the contract cost principles and procedures as set forth in 48 CFR, Chapter 1, Subpart E, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and 2 CFR, Part 200, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse VTA upon receipt of VTA billing. If OWNER is subject to repayment due to failure by VTA to comply with applicable laws, regulations and ordinances, then VTA will ensure that OWNER is compensated or actual cost in performing work under this agreement.

## **V. GENERAL CONDITIONS**

All costs accrued by OWNER as a result of VTA's request of March 9, 2021 to review, study and/or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement. Payments made by VTA to OWNER under any encroachment permit issued as part of PROJECT will be rejected as duplicate billing for work under this Agreement.

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

All obligations of VTA and OWNER under the terms of this Agreement are subject to the acceptance of the Agreement by OWNER or the Delegated Authority (as applicable).

OWNER shall submit a Notice of Completion to VTA within 60 days of the completion of the work described herein.

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.

If, in connection with OWNER's performance of the Work hereunder, VTA provides to OWNER, materials that are subject to the Buy America Rule, VTA acknowledges and agrees that VTA shall be solely responsible for satisfying any and all requirements relative to the Buy America Rule concerning the materials thus provided (including, but not limited to, ensuring and certifying that said materials comply with the requirements of Buy America Rule.

VTA further acknowledges that OWNER, in complying with the Buy America Rule, is expressly relying upon the instructions and guidance (collectively, "Guidance") issued by Caltrans and its representatives concerning Buy America Rule requirements for utility relocations within the State of California. Notwithstanding any provision herein to the contrary, OWNER shall not be deemed in breach of this Agreement for any violations of the Buy America Rule if OWNER's action are in compliance with the Guidance.

THE AMENDED ESTIMATED COST TO VTA FOR ITS SHARE OF THE ABOVE-DESCRIBED WORK IS \$8,220,730

IN WITNESS WHEREOF, the below parties have executed this agreement the day and year first above written.

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY**

Approval Recommended:

By \_\_\_\_\_  
Neil Oettinger  
VTA Utility Coordination Manager

By \_\_\_\_\_  
Carolyn M Gonot  
General Manager/CEO

By \_\_\_\_\_  
Taghi Saadati  
Director of Cupertino Sanitary District

By \_\_\_\_\_  
Nicole Chapman  
Chief Procurement Officer

By \_\_\_\_\_  
Shannon Smyth-Mendoza  
Deputy General Counsel