

FACILITIES RELOCATION AGREEMENT

This Facilities Relocation Agreement (“Agreement”) is made and entered into this _____ day of _____ 20__ (the “Effective Date”) by and between _____ (“Owner”), and Orange County Flood Control District (the “District”). OWNER and the District are sometimes individually referred to herein as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, the District is proposing to accommodate an Army Corps of Engineers dike project (the “Project”) within that area generally depicted in the attached Exhibit A (the “Project Location”).

WHEREAS, OWNER currently operates and maintains certain distribution facilities (collectively the “OWNER Facilities”) within and proximate to the Project Location.

WHEREAS, the District has determined that implementation of the Project will require the relocation of portions of the OWNER Facilities and, to that end, the District has requested that OWNER relocate some or all of the OWNER Facilities.

WHEREAS, subject to the terms and provisions set forth herein, OWNER is willing and able to relocate the identified OWNER Facilities in order to accommodate the Project.

NOW, THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE DISTRICT AND OWNER AS FOLLOWS:

AGREEMENT

1. SCOPE OF WORK

This Project will require that certain of OWNER’s overhead distribution facilities be relocated from their current location to a new overhead location. The Scope of Work for the overhead relocation is as follows:

Distribution to replace three poles, intersert one new pole, replace one overhead transformer/one overhead switch, reconductor overhead wire: three phases of approx. 640’ and install one anchor.

RELOCATION PLANS

a. Approved Relocation Plans. In furtherance of the District’s request, OWNER has prepared certain plans/designs that identify (i) the OWNER Facilities that will be impacted by the Project and (ii) the relocation areas for the affected OWNER Facilities (the “Relocation Plans”). Copies of the Relocation Plans are attached hereto as Exhibit B. The District expressly acknowledges that (a) it has reviewed and approved the Relocation Plans and (b) the Relocation Plans do not present any conflicts with the District’s development plans for the Project, nor do the Relocation Plans conflict with any other non-OWNER utilities that are located, or will be located, in the Project Location. It is the District’s sole responsibility to ensure that no conflicts exist between the Relocation Plans and the District’s development plans or other non-OWNER utilities, and to timely inform OWNER of the need for any refinements, modifications, or revisions to the Relocation Plans to resolve any such conflicts that may later arise, all in accordance with subsections (b) – (d) below.

b. Refinements to Plans. Depending upon the design status of the Project as of the Effective Date, the Parties acknowledge that refinements and/or adjustments to portions of the Relocation Plans may be required in order to eliminate minor conflicts. In such instance, OWNER shall prepare such refinements to the Relocation Plans as may be necessary in order to address/eliminate said conflicts. The refined Relocation Plans shall be presented to the District for review and approval; OWNER shall not commence the Relocation Work (see Section 4, below) unless and until the District has reviewed and approved the refined Relocation Plans. The District shall be responsible for all costs and expenses reasonably incurred by OWNER in relation to OWNER's refinement of the Relocation Plans.

c. Revised Plans. In the event that modifications/revisions to the Relocation Plans are required in order to accommodate changes to the Project (including the elimination of conflicts with the District's development plans), to resolve conflicts with other non-OWNER utilities within the Project area, or to address other changed circumstances, then OWNER shall prepare such modifications/revisions as are necessary to address said changes and shall present same to the District for review and approval. The District shall be responsible for all costs and expenses reasonably incurred by OWNER in relation to OWNER's preparation of the modifications/revisions to the Relocation Plans.

d. Potential Project Delays. The District expressly acknowledges that the preparation of refined, modified and/or revised Relocation Plans may cause delays in OWNER's performance of the Relocation Work, and that said delays could impact the development schedule for the Project. The Parties agree that OWNER shall not have any liability or obligation to the District (or others) in the event that the preparation of refined, modified and/or revised Relocation Plans results in delays in the Project.

2. ACQUISITION OF LAND RIGHTS

The District shall be responsible for securing all land rights required by OWNER to allow OWNER to relocate, construct and permanently operate and maintain the OWNER Facilities on the areas depicted in the Relocation Plans (the "Relocation Areas"). The land rights acquired by the District (the "OWNER Land Rights") shall be in a form prescribed by OWNER (the "OWNER Land Rights Form"); OWNER shall provide the OWNER Land Rights Form to the District.

The OWNER Land Rights shall also include permanent rights of ingress/egress that allow OWNER to gain reasonable, unimpeded and non-escorted access to and from the Relocation Areas and the OWNER Facilities (whether over lands owned by the District or otherwise). In connection with the acquisition of the OWNER Land Rights, the District shall be responsible for clearing all encumbrances identified by OWNER that could interfere with the Relocation Work and the exercise of the OWNER Land Rights on/about the Relocation Areas (including access thereto/therefrom). Unless otherwise agreed (in writing) by OWNER, the OWNER Land Rights shall be granted directly to OWNER. Notwithstanding any provision herein to the contrary, OWNER will not begin the Relocation Work unless and until all required OWNER Land Rights have been executed, in writing, and presented to and approved by OWNER.

3. RELOCATION WORK

Following (i) the Parties' confirmation of the finality of the Relocation Plans and (ii) the District's acquisition (and OWNER's approval) of the OWNER Land Rights, OWNER shall cause the OWNER Facilities to be removed and relocated to the Relocation Areas in accordance with the Relocation Plans (the "Relocation Work"). OWNER shall perform the Relocation Work in accordance with all applicable laws, rules and regulations.

4. COST ALLOCATION

District is exclusively responsible for all costs and expenses associated with OWNER's implementation of the Relocation Plans (including, but not limited to, the costs and expenses associated with (i) OWNER's preparation of the Relocation Plans (and any revisions thereto and refinements thereof), (ii) OWNER's performance of the Relocation Work and (iii) the District's acquisition of the OWNER Land Rights). District shall reimburse OWNER for all costs and expenses incurred by OWNER in accordance with the provisions of Section 6, below.].

5. INITIAL COST ESTIMATE, PAYMENT(S) AND RECONCILIATION

a. Initial Cost Estimate. The total estimated cost for the Relocation Work for which the District is responsible is \$_____ (the "Initial Cost Estimate").

The Initial Cost Estimate does not include an Income Tax Component of Contribution ("ITCC") based on OWNER's understanding that this project is exempt from ITCC charges. In the event that the Internal Revenue Service, state, city, and/or local governmental taxing authority determines that this project is taxable, the District will reimburse OWNER for the full amount of the tax liability, plus interest, penalties, fees, and related costs. Such amounts will be paid to OWNER within 60 days after notification of such event by OWNER to the District. By execution of this document, the District hereby acknowledges that this project is funded by the District.

b. Prior Advances; Outstanding Balance. OWNER has previously received an engineering advance from the District in the amount of \$_____ which has been applied toward the total Initial Cost Estimate owed by the District. Thus, the total remaining balance due to OWNER at this time is \$_____ (the "Outstanding Balance").

c. Payment of Outstanding Balance. Concurrent with the District's execution and delivery of this Agreement, the District shall pay to OWNER the Outstanding Balance. The Outstanding Balance shall be delivered to OWNER at the address shown in Section 12.b, below, and shall reference the following OWNER Project File Number: Project ID #_____. Notwithstanding any provision herein to the contrary, the District acknowledges and agrees that OWNER will not begin the Relocation Work unless and until OWNER has received the Outstanding Balance.

d. Reconciliation. The Parties acknowledge that the Initial Cost Estimate is valid only for a period of 90 days following the Effective Date, and that the costs associated with OWNER's performance of the Relocation Work could increase prior to OWNER's completion of the Relocation Work. Upon completion of the Relocation Work (or cancellation of the Project or termination of this Agreement), the District will be responsible for paying the total costs and expenses actually incurred by OWNER in relation to implementation of the Relocation Plans. Thus, at the completion of the Relocation Work (or upon cancellation of the Project or termination of this Agreement), OWNER will calculate the total actual costs and expenses for which the District is responsible hereunder, and the District will be provided with a final invoice identifying said costs and expenses. The District will be billed or refunded, as applicable, for any difference between the amounts paid by the District hereunder and the actual costs and expenses incurred by OWNER. Any amount owed to OWNER shall be due no later than 30 days after the District's receipt of the final invoice. Similarly, any amount owed by OWNER to the District shall be refunded by OWNER to the District within 30 days following OWNER's preparation and delivery of the final invoice.

If the District fails to pay the final invoice within 30 days of receipt, the District is responsible for paying to OWNER, in addition to the invoiced amount, any and all costs incurred by OWNER to collect the past due amount, including but not limited to, collection agency fees and court costs, but excluding attorneys' fees.

6. PROJECT SCHEDULING

The Parties acknowledge and agree that completion of the Relocation Work is contingent upon mutually acceptable schedules, available resources, the timely obtaining of permits, licenses, real property rights, and other documents, outages or other key items and not being delayed by those forces described in Section 8, below. The Parties shall work cooperatively and in good faith to timely meet all mutually-acceptable schedules and to minimize delays; however, the District expressly acknowledges and agrees that OWNER offers no guarantees or warranties regarding the completion date for the Relocation Work.

7. NO RESPONSIBILITY FOR DELAYS

OWNER shall not be responsible or liable to the District (or others) for any delay in its performance hereunder, or for any delays in the Project, due to any reason including, but not limited to: shortage of labor or materials, delivery delays, major equipment breakdown, load management, strikes, labor disturbances, war, riot, insurrection, civil disturbance, weather conditions, epidemic, quarantine restriction, sabotage, act of public enemy, earthquake, governmental rule, regulation or order, including orders of judgments of any court or commission, requirement of additional or separate Environmental Impact Reports requested by the California Public Utilities Commission ("CPUC"), delay in receiving a Certificate of Public Convenience and Necessity from the CPUC, delay in obtaining necessary rights of way, act of God, or any cause or conditions beyond the control of OWNER or the District. The District expressly waives and releases any and all claims for damages against OWNER arising out of any delays in the Project unless due to OWNER's sole negligence or willful misconduct.

8. COMPLIANCE WITH CEQA AND OTHER ENVIRONMENTAL LAWS

The District, at no cost to OWNER, but with OWNER's reasonable cooperation, shall comply with the requirements of the California Environmental Quality Act ("CEQA") and other environmental laws, as applicable, and shall prepare any and all Negative Declarations, Mitigated Negative Declarations and/or Environmental Impact Reports which may be required by any agency or entity having jurisdiction over the Project and the Relocation Work. The District expressly acknowledges that OWNER is relying upon the District's representations that the Relocation Work is covered by the environmental documentation, clearances and permits issued (or to be issued) in relation to the Project, and that the District is responsible for satisfying all mitigation requirements and conditions attendant to OWNER's performance of the Relocation Work. Notwithstanding any provision herein to the contrary, the District acknowledges and agrees that OWNER will not begin the Relocation Work unless and until OWNER has confirmed that all environmental permits, approvals, certifications and authorizations have been issued in relation to the Project and the Relocation Work.

9. COOPERATION BY BOTH PARTIES; TIMELY COMMUNICATION

The Parties shall work cooperatively and in good faith to timely implement their respective duties and obligations set forth herein. To that end, the Parties shall timely communicate with one another regarding the status of the Project, the status of the Relocation Work, and ways that the Parties may work together to facilitate the completion of this Agreement. Notwithstanding any provision herein to the contrary, failure by the District to timely respond to requests for information by OWNER shall be considered a default of this Agreement.

10. INDEMNIFICATION

The District agrees, for itself, and for its agents, contractors, and employees, to save harmless, defend, and indemnify OWNER, its officers, agents, contractors, and employees, and its successors and assigns, from and against all claims, loss, damage, actions, causes of action, expense and/or liability arising from or growing out of loss or damage to property, including OWNER's own personal property, or injury to or death of persons, including employees of OWNER, resulting in any manner whatsoever, directly or indirectly, by reason of the District's Project necessitating the subject work. District's duty to indemnify OWNER includes, without limitation, claims against OWNER regarding approvals given by District for OWNER's plans, claims against OWNER pertaining to the location and/or underlying real property rights for OWNER's facilities in new locations (as may be applicable), and claims against OWNER for the removal and/or remediation of pre-existing environmental contamination (provided such contamination was not caused by OWNER). District shall not be excused of its duty to indemnify for OWNER's ordinary negligence, but shall be excused to the extent claims, losses, or damages are attributable to OWNER's sole negligence, gross negligence, or willful misconduct.

11. NOTICES, CORRESPONDENCE, AND PAYMENT ADDRESS

a. Notices and Correspondence. Any notices and correspondence provided for in this Agreement, *other than payments*, to be given by either Party hereto to the other shall be deemed to have been duly given when made in writing and deposited in the United States mail, registered or certified and postage prepaid, addressed as follows:

To OWNER:

To District:
OC Public Works
601 N. Ross Street
Santa Ana, CA 92701
Attention: Nardy Khan

b. Payments: Any payments provided for in this Agreement shall be forwarded to the addresses below.

To Owner:

To District:
OC Public Works
601 N. Ross Street
Santa Ana, CA 92701
Attention: Nardy Khan

12. TERMINATION

a. District's Right to Terminate Agreement. The District shall have the right to terminate this Agreement at any time upon written notice to OWNER. If this Agreement is

terminated by the District, the District shall be responsible to OWNER for all costs and expenses actually incurred by OWNER in connection with OWNER's preparation of the Relocation Plans, performance of the Relocation Work, and any other actions/activities under this Agreement, notwithstanding the cost allocation provisions in Section 5, above. Additionally, District shall be responsible for any additional costs and expenses incurred by OWNER as a result of the termination, including but not limited to, restoring the OWNER Facilities to a permanent operational state; all costs for equipment and/or materials; and all costs or expenses related to the cancellation of contracts, purchase orders, or other commitments or agreements entered into up to and including the date of the notice of termination, between OWNER and all parties furnishing labor, materials, and services in connection with this Agreement. OWNER shall prepare and deliver to the District an invoice that describes/identifies the costs and expenses thus incurred by OWNER. Within 30 days following OWNER's delivery of said invoice, the District shall pay to OWNER the amounts specified in the invoice.

b. Termination Due to District's Default. If the District is in default of any of the terms, provisions, conditions, limitations and covenants of this Agreement, OWNER may give the District written notice of default ("Default Notice") at the address provided for in Section 12.a, above. If the District does not cure such default within the time specified in the Default Notice, OWNER has the right, but not the obligation, to terminate this Agreement upon 30 days written notice to the District (or such lesser time as may be appropriate under the circumstances). Except as otherwise provided, should OWNER exercise such right of termination, OWNER shall be entitled to payment for all costs and expenses for materials, services, labor, overhead, and any other expenses related to the performance of this Agreement thus incurred by OWNER, up to and including the date of termination, notwithstanding the cost allocation provisions in Section 5, above. OWNER shall also be entitled to payment for all costs and expenses required to effect the termination of this Agreement, including but not limited to: all costs and expenses pertaining to the restoration of the OWNER Facilities to a permanent operational state; all costs for equipment and/or materials; and all costs and expenses related to the cancellation of contracts, purchase orders, commitments or other agreements entered into up to and including the date of the notice of termination, between OWNER and all parties furnishing labor, materials, and services in connection with this Agreement. OWNER shall prepare and deliver to the District an invoice that describes/identifies the costs and expenses thus incurred by OWNER. Within 30 days following OWNER's delivery of said invoice, the District shall pay to OWNER the amounts specified in the invoice.

13. JURISDICTION OF PUBLIC UTILITIES COMMISSION

This Agreement shall at all times be subject to such changes or modifications as the California Public Utilities Commission may, from time to time, direct in the exercise of its jurisdiction pursuant to the authority conferred upon it by law.

14. AMENDMENTS

The provisions of this Agreement shall not be altered or amended by any representations or promises of any Party unless consented to in a writing executed by all Parties.

15. GOVERNING LAW

This Agreement shall be subject to and construed according to the laws of the State of California.

16. HEADINGS

The captions and headings used in this Agreement are strictly for convenience and are not intended to and shall not affect the Parties' rights and obligations, or the construction or interpretation of this Agreement.

17. THIRD PARTY BENEFICIARIES

Nothing herein is intended to create any third party benefit.

18. NO AGENCY, PARTNERSHIP OR JOINT VENTURE

Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent or of partnership or of joint venture by and between the Parties hereto.

19. WAIVER

No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing. No waiver by any Party of any provision under this Agreement shall be effective unless in writing and signed by such Party, and no waiver shall affect any default other than the default specified in the waiver and then said waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same.

20. DUPLICATE ORIGINALS AND ELECTRONIC SIGNATURES

This Agreement may be executed in duplicate originals, each of which, when so executed and delivered, shall be an original but such counterparts shall together constitute one instrument and agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, Portable Document Format (*i.e.*, PDF) or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. This Agreement may be executed by OWNER by way of an electronic signature, in which case, said electronic signature shall have the same force and effect as a written signature.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, this Agreement and each and every term herein is agreed to by and between the undersigned.

DATED: _____

ORANGE COUNTY FLOOD CONTROL DISTRICT

BY: _____
Director of OC Public Work or designee
Pursuant to Minute Order _____

APPROVED AS TO FORM:
Office of the County Counsel
County of Orange, CA

By: _____
Deputy

Date: _____

DATED: _____

OWNER

BY: _____

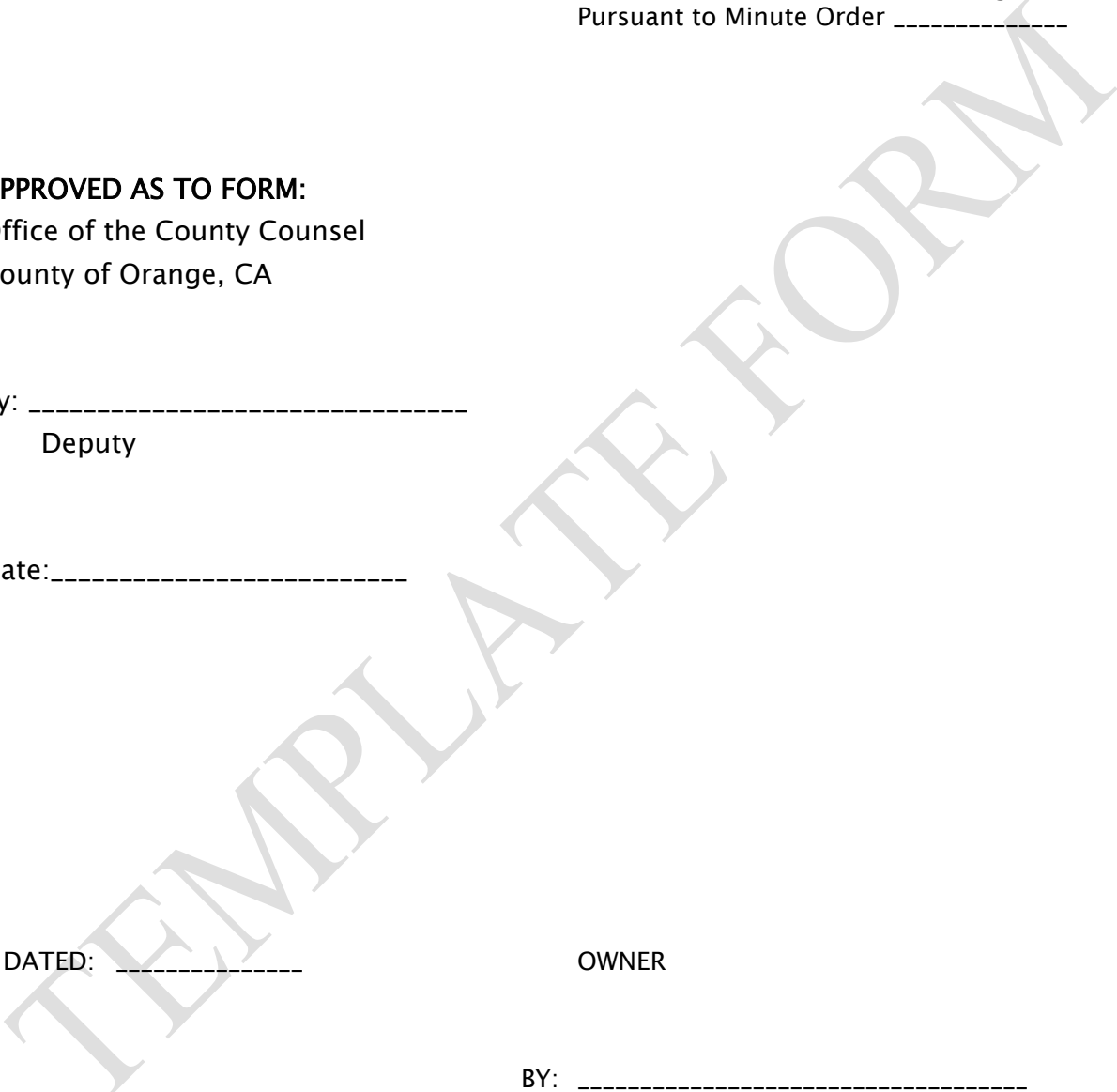


EXHIBIT A

Description of the Project Location

TEMPLATE FORM

EXHIBIT B

APPROVED RELOCATION PLANS

TEMPLATE FORM