

County	Route	P.M.	Project #
SON	Wohler Road	11.52-11.65	04133000089L-0
Fed. Aid. No. STPLZ-5920(137)			
Owner's File: Wohler Road Bridge over Russian River Seismic Retrofit, Sonoma County Water Agency's Fiber Optic Improvements (OWNER'S Project-Activity Code T0135C004)			
FEDERAL PARTICIPATION:		On the Project <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No On the Utilities <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

UTILITY AGREEMENT NO. 8901.2 DATE: _____

The County of Sonoma, through its Department of Transportation and Public Works (hereinafter "COUNTY") proposes to seismically retrofit the Wohler Road Bridge over Russian River, Sonoma County, California (Project).

And: The Sonoma County Water Agency

Hereinafter called "OWNER" owns and maintains the fiber optic facilities within the limits of COUNTY's Wohler Road Bridge over Russian River that require the relocation of said facilities to accommodate COUNTY's project.

It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. # 8901.2, dated May 11, 2017, COUNTY, shall relocate OWNER'S fiber optic cable, appurtenances and facilities ("Fiber Optic Improvements") on, under and attached to the Wohler Road Bridge over the Russian River to be out of conflict with the proposed Wohler Road Bridge seismic retrofit improvements. The COUNTY has agreed to include Fiber Optic Improvements in its Project as shown on COUNTY's contract plans for the construction of the Wohler Road Bridge Seismic Retrofit which by this reference are made a part hereof. OWNER hereby acknowledges review of COUNTY's plans for work and agrees to the construction in the manner proposed. COUNTY has completed the design phase. Deviations from the plan described above initiated by either the COUNTY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the COUNTY and agreed to/acknowledged by the OWNER, will constitute an approved revision of the plan described above and are hereby made a part hereof. No work under said deviation shall 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. OWNER shall have the right to inspect the work during construction. Upon completion of the work by COUNTY, and OWNER's approval of the work after inspection and testing review, OWNER agrees to accept ownership and maintenance of the Fiber Optic Improvements.

UTILITY AGREEMENT NO. 8901.2

II. LIABILITY FOR WORK

The existing Fiber Optic Improvements are located within the COUNTY's right of way under permit and will be relocated (the "adjustment") at OWNER's expense under the provisions of the COUNTY's permit.

Cost Estimate:	\$90,000
Total Estimated OWNER Liability (100%).....	\$90,000
Total Estimated COUNTY Liability (0%)	\$0

III. PERFORMANCE OF WORK

OWNER shall have access to all phases of the adjustment work to be performed by COUNTY, as described in Section I above, for the purpose of inspection to ensure that the work is in accordance with the specifications contained in the Wohler Road Bridge Seismic Retrofit over Russian River Construction Contract; however, all questions regarding the work being performed will be directed to COUNTY's Resident Engineer for their evaluation and final disposition.

COUNTY shall coordinate the work with OWNER's Project Manager. Contact information and mailing addresses:

COUNTY:

John Leong or Stevan Hunter
County of Sonoma
2300 County Center Drive, Suite B 100
Santa Rosa, CA 95403

OWNER:

Anjenette Hayre
Sonoma County Water Agency
404 Aviation Boulevard
Santa Rosa, CA 95403
707- 521-1830
Anjenette.Hayre@scwa.ca.gov

UTILITY AGREEMENT NO. 8901.2

IV. PAYMENT FOR WORK

The estimated cost to OWNER for the adjustment work being performed by the COUNTY's contractor is \$90,000. Upon execution of this Agreement and receipt of an invoice therefore, OWNER shall deposit with COUNTY \$90,000, which is to finance 100 percent of OWNER's share of adjustment costs.

In the event actual final adjustment costs as established herein are less than the sum of money advanced by OWNER to COUNTY, COUNTY hereby agrees to refund to OWNER the difference between said actual cost and the sum of money so advanced. In the event that the actual cost of adjustment exceeds the amount of money advanced to COUNTY, in accordance with the provisions of this Agreement, OWNER hereby agrees to reimburse COUNTY said deficient costs upon receipt of an itemized bill as set forth herein.

It is understood and agreed that the COUNTY will not pay for any betterment of OWNER's facilities in the new location.

The COUNTY shall submit a final bill to the OWNER within 360 days after the completion of the work described in Section I above. If the OWNER has not received a final bill within 360 days after notification of completion of COUNTY's work described in Section I of this Agreement, OWNER will provide written notification to COUNTY of its intent to close its file within 30 days and COUNTY hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned.

The final billing shall be in the form of an itemized statement of the total costs charged for the Fiber Optic Improvements, less the credits provided for in this Agreement.. However, the OWNER shall not pay final bills which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the COUNTY. If the final bill exceeds the COUNTY's estimated costs solely as the result of a revised Notice to Owner as provided for in Section I, a copy of said Revised Notice to Owner shall suffice as documentation.

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 OWNER.

Detailed records from which the billing is compiled shall be retained by the COUNTY for a period of three years from the date of the final payment and will be available for audit by OWNER, state and/or federal auditors. In performing work under this Agreement, COUNTY agrees to comply with the Uniform System of Accounts for Public Utilities found at 18 CFR, Parts 101, 201, et al., to the extent they are applicable to COUNTY doing work on the project that is the subject of this agreement, the contract cost principles and procedures as set forth in 48 CFR,

UTILITY AGREEMENT NO. 8901.2

Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and 2 CFR, Part 200, et al.

V. GENERAL CONDITIONS

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

COUNTY shall record a Notice of Completion with the Sonoma County Recorder after the completion of the Wohler Bridge Seismic Retrofit Project.

In addition, the provisions of 23 CFR 635.410, Buy America, are also incorporated into this Agreement. The Buy America requirements are further specified in Moving Ahead for Progress in the 21st Century (MAP-21), section 1518; 23 CFR 635.410 requires that all manufacturing processes have occurred in the United States for steel and iron products (including the application of coatings) installed on a project receiving funding from the FHWA.

COUNTY and OWNER understand and acknowledge that this Project is subject to the requirements of the Buy America law (23 U.S.C., Section 313) and applicable regulations, including 23 CFR 635.410 and FHWA guidance. COUNTY and OWNER hereby certify that in the performance of this Agreement, for products where Buy America requirements apply, it shall use only such products for which it has received a certification from its supplier, or provider of construction services that procures the product certifying Buy America compliance. This does not include products for which waivers have been granted under 23 CFR 635.410 or other applicable provisions or excluded material cited in the California Department of Transportation's guidelines for the implementation of Buy America requirements for utility relocations issued on December 3, 2013.

If, in connection with performance of the work hereunder, COUNTY provides any materials that are subject to the Buy America Rule, COUNTY acknowledges and agrees that COUNTY 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 the Buy America Rule).

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

UTILITY AGREEMENT NO. 8901.2

IN WITNESS WHEREOF, the above parties have executed this Agreement the day and year above written.

Reviewed as to funds:

By: _____
Water Agency Division Manager - Administrative
Services

Approved as to form:

By: _____
Adam Brand, Deputy County Counsel
(on behalf of Sonoma County Water Agency)

By: _____
Jeremy Fonseca, Deputy County Counsel
(on behalf of Sonoma County)

Sonoma County Water Agency

By: _____
Grant Davis
General Manager

Date: _____

County of Sonoma

By: _____
Johannes Hoevertsz, Director of Public Works

Date: _____

EXHIBIT A
INSURANCE AND INDEMNIFICATION REQUIREMENTS

UTILITY AGREEMENT NO. 8901.2

OBLIGATION OF COUNTY'S CONTRACTORS:

1. COUNTY shall include the following language in its construction contract for the Wohler Road Bridge Seismic Retrofit Project
 - a. Contractor agrees to accept all responsibility for loss or damage to any person or entity, including Sonoma County Water Agency and to indemnify, hold harmless, and release Sonoma County Water Agency, their officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Contractor, that arise out of, pertain to, or relate to Contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Contractor agrees to provide a complete defense for any claim or action brought against Sonoma County Water Agency based upon a claim relating to Contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Contractor's obligations under this Paragraph apply whether or not there is concurrent or contributory negligence on the part of Sonoma County Water Agency, but, to the extent required by law, excluding liability due to conduct of Sonoma County Water Agency. Sonoma County Water Agency shall have the right to select their legal counsel at Contractor's expense, subject to Contractor's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts. This indemnity provision survives the Agreement.
2. COUNTY shall require that its Contractor name Sonoma County Water Agency as an additional insured on the insurance policies required under the construction contract for the Wohler Road Bridge Seismic Retrofit Project.
3. Documentation: COUNTY shall provide evidence of such insurance and indemnification to Sonoma County Water Agency in a form satisfactory to Sonoma County Water Agency.