

# Owner's Sewer Improvement Agreement

## FOR CCCSD USE ONLY

CCCSD Job No. \_\_\_\_\_

Sub No. \_\_\_\_\_

Effective Date \_\_\_\_\_

Completion Date \_\_\_\_\_

Est. Proj. Cost \_\_\_\_\_

Security: Cash \_\_ CD \_\_ Bond \_\_

**1. PARTIES & DATES.** Effective on the above date, the Central Contra Costa Sanitary District, Martinez, California, (CCCSD) and the undersigned Owner, mutually promise and agree as follows concerning the sewer improvement work to be performed under the above-identified sewer project.

**2. IMPROVEMENTS.** Owner or Owner's agent shall construct and complete the installation of sewers and related improvements (hereinafter called "Work") in accordance with plans and specifications reviewed by CCCSD, in a good workmanlike manner, in accordance with accepted construction practices and in a manner equal or superior to the requirements of the CCCSD Code and Standard Specifications, including, but not limited to, those provisions which require a final inspection of the work and payment of all applicable fees before sewer connections are made. Owner or Owner's agent shall obtain all necessary permits and comply with all requirements of the permits, and complete all permit work required thereby and connected therewith.

**3. WARRANTY.** The Owner warrants all Work against any defective workmanship, or materials and any unsatisfactory performance of the Work for a period of **one (1) year** after its completion and express acceptance by CCCSD.

**4. PROJECT SECURITY: DEPOSIT & BONDS.** Upon executing this Agreement, Owner shall deposit with CCCSD as security an amount of one hundred percent (100%) of the value of the Work to be done based upon the bid of the qualified contractor who the Owner proposes to perform the Work in the form of one of the following:

- a. A refundable cash deposit as a certified or cashier's check,
- b. A certificate of deposit escrow agreement (interest payable to owner), or
- c. An acceptable corporate surety bond.

Such deposit shall be used to guarantee the faithful performance of this Agreement (including all the obligations set forth herein) and the maintenance and warranty of the Work for **one (1) year** after completion, and as additional security for the payment for the completion of the Work to the contractor, to its subcontractors, and to persons renting equipment or furnishing labor and materials to them or to the Owner.

The Project Security shall remain in full force and effect from the Effective Date of this Agreement through the entire **one (1) year** warranty period.

**5. DIFFERING SITE CONDITIONS.** Should the Owner's agent or contractor encounter, or the Owner discover, during the progress of the Work, subsurface or latent conditions at the site materially differing from those shown on the plans or indicated in the specifications including, but not limited to, inaccuracies in the layout of subsurface utility pipes, incorrect marking of elevations, unstable foundation conditions and the like, the Owner or Owner's agent shall thereupon promptly investigate said conditions, and if the Owner finds that the conditions materially differ from those indicated in the plans and specifications, the Owner shall, with the approval of CCCSD, have the plans and specifications modified to assure the proper completion of the Work in the manner contemplated, resolving the conflicts occasioned by the inaccuracies therein, or conditions in the field. All changes to the original plans and specifications shall be accomplished at no cost to CCCSD. If, at any time before CCCSD's acceptance of the Work, the improvement plan proves to be inadequate in any respect, Owner shall make changes necessary to accomplish the Work as promised before CCCSD will accept the Work.

**6. NO WAIVER BY CCCSD.** Inspection of the Work and/or materials, or approval of Work and/or materials inspected, or statement by any officer, agent or employee of CCCSD indicating the Work or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of said Work and/or materials, or payment therefore, or any combination of all of these acts, shall not relieve the Owner of Owner's obligation to fulfill the terms of this Agreement as stated; nor shall CCCSD be thereby stopped from bringing any action for damages arising from the failure to comply with any of the terms and conditions hereof.

**7. INDEMNITY.** Owner shall save and hold harmless, indemnify and defend CCCSD, its directors, officers, agents and employees from and against any liability, claim, suit, cost, loss, expense, fine, or damage of any kind allegedly suffered, incurred or threatened, either directly or through a third party, arising from the construction or installation of the Work including personal injury; death; property damage; inverse condemnation; patent and/or copyright infringement; damages arising from disputes as to licensing fees or the ownership of any land associated with the matters covered by this Agreement, any and all damages arising from the imposition of regulatory fines imposed for the violation of local ordinances, administrative regulations, or the like, in connection with the Work ; or any combination of these, and regardless of whether or not such liability, claim, suit, cost, loss, expense, fine, or damage was unforeseeable at any time before acceptance of the improvements as completed, and including the defense of any suit(s), or other proceeding(s) concerning same.

The indemnification shall extend to and include any act or omission (negligent or non-negligent) in connection with the matters covered by this Agreement and attributable to the Owner, contractor, subcontractor, material supplier, or any officer, agent or employee of one or more of them, including, but not limited to, actions related to the

construction, testing, and connection of the Work and the ownership or use of real property.

The covenants set forth in this Section are not conditioned or dependent on whether or not CCCSD has prepared, supplied, accepted, or approved any plan(s) or specification(s) in connection with this Work, or subdivision, or has insurance or other indemnification covering any of these matters.

**8. COSTS.** Owner shall pay, when due, all the costs of the Work, including inspections thereof and relocating existing utilities required thereby.

**9. EASEMENTS.** Owner or Owner's agent shall grant, acquire or otherwise provide such easements as are necessary to the Work, or will be necessary for CCCSD to maintain the Work after final acceptance. The Owner shall provide easement and real property legal documents and title-reports needed to identify existing property rights. CCCSD easement rights shall be created through the use of irrevocable offers of dedication except where grants of easement are required by CCCSD. The Owner or Owner's agent shall make arrangements and be responsible for agreements with any third-party property owners whose permission is required to allow construction access for the undertaking of the Work.

**10. RESTORATION OF SITE.** The Owner is responsible for the restoration of the Work site, as near as it is possible, to pre-construction condition at the conclusion of the Work, provided the project plans do not call for any surface improvements within the areas of the easements dedicated to CCCSD. All rubbish, unused material, or equipment connected with the Work shall be removed from the work site and said premises left in a condition satisfactory to CCCSD. To the extent the accepted plans provide for surface improvements in the dedicated easement areas, such improvements shall be completed to the satisfaction of CCCSD prior to the acceptance of the Work.

**11. PROTECTION OF PROPERTY AND CCCSD FACILITIES.** The Owner is responsible for protecting existing CCCSD facilities and the property of third parties or entities that are not parties to this Agreement from damage during the course of the Work. The Owner shall repair, at no cost to CCCSD, any such damages. The Owner shall warrant the repaired facilities for a period of **one (1) year** after completion. Should the repaired improvements fail, the Owner or Owner's agent, contractor, or subcontractor shall make repairs at no cost to CCCSD as may be required, at the discretion of CCCSD.

**12. NONPERFORMANCE AND COSTS.** If Owner fails to complete the Work and improvements within the time specified in this Agreement or extensions granted, or fails to properly warrant the Work for a period of **one (1) year**, or if the Work proves defective within said **one (1) year** period, the General Manager may declare a forfeiture, or partial forfeiture, of the Project Security. By entering into this Agreement, the Owner is deemed to have waived any requirement of prior notice as a prerequisite to CCCSD claiming or proceeding against the Project Security described in Section 4. CCCSD

may, in its sole discretion, complete or repair the Work by contract or otherwise, and Owner shall pay all costs and charges therefore immediately upon demand.

**13. COSTS AND ATTORNEYS' FEES.** Should either party hereto bring suit in court to enforce the terms hereof, it is agreed that the prevailing party shall have a right to costs and reasonable attorneys' fees. "Prevailing party" is herein defined as:

A party which dismisses an action for recovery hereunder in exchange for payment of a sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the claim, action, or proceeding. "Prevailing party" shall not include any party who refuses an offer of compromise prior to ten (10) days before trial or arbitration of the matter, and fails to receive an award more favorable than the terms and conditions set forth in the offer of compromise, either in the amount of damages awarded, or the type of relief granted.

**14. SEWER SERVICES.** In further consideration of the execution of this Agreement by the undersigned Owner, CCCSD shall accept the Work, provided that the Work has been completed in accordance with CCCSD Code and Standard Specifications, and supply sewer service to certain real property for which this sewer project is to serve and in which Owner has an interest, provided that all applicable CCCSD rules, regulations, procedures, specifications, and all provisions of CCCSD Code are adhered to, including payment of all applicable fees. The provisions of this Agreement shall inure to the benefit of and be binding upon the heirs, successors, assigns, and personal representatives of the respective parties hereto.

**15. ELIGIBILITY FOR REIMBURSEMENT ACCOUNT.** The Owner may apply to CCCSD to establish a Reimbursement Account for the public main sewer extension project installed pursuant to this Agreement, subject to the provisions and limitations of CCCSD Code Chapter 6.20 Reimbursement Fees. To be eligible for the reimbursement program, the Owner must furnish to CCCSD, within six months of project acceptance, all of the following information (in addition to and separate from any other project submittals): 1) A scale map showing the new sewer as well as all parcels which could reasonably connect to the new sewer; 2) a list of all parcels which could reasonably connect to the new sewer including each owner's name, address, county assessor's parcel number and current zoning; 3) a statement disclosing any agreements regarding the sharing of sewer costs which exist between the installer and any other party; 4) contracts and receipts documenting to the satisfaction of CCCSD the actual costs of engineering, right-of-way, construction and bonds; and 5) applicable Reimbursement Account application and setup fees. If a Reimbursement Account is established, CCCSD will collect applicable Reimbursement Fees when a permit for direct physical connection of a private side sewer to the particular main sewer is issued, and subsequently disburse collected monies to the account holder.

\_\_\_\_\_  
Tom Godsey  
Senior Engineer

Date: \_\_\_\_\_

**OWNER:**

\_\_\_\_\_  
Please Print Name of Person Signing

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Company Name (if any)

\_\_\_\_\_  
(Designate official capacity in the business where applicable)

\_\_\_\_\_  
Street

\_\_\_\_\_  
Phone

\_\_\_\_\_  
City                      State                      Zip

\_\_\_\_\_  
Date