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Agenda Item # 23b
Date 4/19/23

2023 APR -4 PM 2:40
COUNTY CLERK

AGREEMENT

PROJECT NO. ROAD 18

FORM B

CONTROL NO. _____

THIS AGREEMENT, made and entered into by and between the Omaha Public Power District of Omaha, Nebraska, hereinafter referred to as the "Utility", and the County of Dodge, hereinafter referred to as the "County".

WITNESSETH:

WHEREAS, the County has plans for certain construction work on County Road 18 and

WHEREAS, said construction has been designated as Project No. Road 18, and

WHEREAS, the Utility owns and operates a Electric facility along and adjacent to a portion of this project, some of which is resting outside of the limits of the old County road right of way and on private property, and

WHEREAS, because of the widened right of way which the County has acquired for the new construction, and because of the construction itself, it becomes necessary for the Utility to adjust some, if not all, of its facility along this project, and

WHEREAS, the Utility is willing to rehabilitate its facility where necessary in accordance with the condition hereinafter provided in this agreement, and

WHEREAS, the County is willing to reimburse the Utility for its actual non betterment costs involved in the rehabilitation of its facility where same is presently located outside of the old public right of way and on private property.

NOW THEREFORE, in consideration of these facts, the parties hereto agree as follows:

SECTION 1. It is agreed and understood by the parties hereto that the Federal-Aid Policy Guide (hereinafter referred to as "FAPG") references to Title 23 - Code of Federal Regulations (herein after referenced to as "CFR") and more specifically to 23 CFR 645 A titled "Relocations, Adjustments and Reimbursements" and to 23 CFR 645 B titled "Accommodation of Utilities", as issued by the U.S. Department of Transportation, Federal Highway Administration, and as supplemented, revised, or updated heretofore, is hereby expressly made a part of, and incorporated into, this agreement by this reference.

SECTION 2. The Utility hereby agrees to furnish, or cause to be furnished, all of the tools, labor, equipment and materials necessary for the rehabilitation of its facility including the removal of all known obstacles including anchor rods, if applicable, as made necessary by the highway plans and work of the County.

SECTION 3. *This Section is applicable only if overhead facilities belonging to the Utility are part of the work covered under this agreement.* Where applicable, the County has prepared a

tabulation of all the poles belonging to the utility along and adjacent to this project showing the poles which will have to be moved and indicating in the "Remarks" column by means of the work "Pay" that the moving of such poles will be eligible for payment from the County. If overhead facilities belonging to the Utility are involved, a copy of the tabulation is attached as Exhibit "B", and is hereby expressly made a part of, and incorporated into, this agreement by this reference.

SECTION 4. *This Section is applicable only if underground facilities belonging to the Utility are part of the work covered under this agreement.* Where applicable, the County has indicated on its plans the known location of underground facilities belonging to the Utility along and adjacent to this project. The Utility may have other underground facilities which are not shown on these plans which may require relocation or adjustment due to the proposed construction of this project, which will be shown on the rehabilitation plans prepared by the Utility.

SECTION 5. Prints of the construction plans for this project, showing the currently known location of Utility facilities referred to in Section 3 and 4 hereof have been forwarded to the Utility and are hereby expressly made a part of, and incorporated into, this agreement by this reference.

SECTION 6. The County agrees to reimburse the Utility for its actual nonbetterment costs involved in relocating those utility facilities which are presently located outside of the old public right of way and on private property and which must be moved or adjusted to accommodate project construction.

SECTION 7. The description of work to be performed and the estimate of costs prepared by the Utility are attached as Exhibit "C", and are hereby expressly made a part of, and incorporated into, this agreement by this reference. The total amount of this estimate is \$_____, of which \$_____ is estimated to be the share of the cost chargeable to the County. The Utility agrees upon completion of the work to submit a billing to the County for its eligible actual costs. The Utility's billing shall be prepared in a manner to allow comparison with the approved estimate, and the Utility agrees, as a part of the estimate, to provide the County with a detailed description of the method the Utility intends to employ in performing the necessary rehabilitation work. The Utility further agrees that the billing will be prepared and submitted in accordance with the approved estimate.

SECTION 8. The Utility agrees, as a part of the above-described estimate, to advise the County as to the method which will be used in accumulating the Utility's costs. If this method is prescribed by a Federal or State regulatory body, a statement to that effect shall be made by the Utility. If the accounting method is not prescribed by an agency of the State or Federal Government, it shall be described in the Utility's estimate and approved as a part of this agreement.

SECTION 9. In the event it should prove impracticable to de-energize the Utility facility and relocate, or to relocate without de-energizing, the Utility may install a new facility equal in function to the existing facility and remove the existing facility.

SECTION 10. The Utility agrees that any work to be done under this agreement by someone other than the Utility itself shall be contracted for in accordance with the provisions of FAPG, as referenced in Section 1 of this agreement.

SECTION 11. The Utility shall comply with, and shall require anyone performing work under this agreement other than the Utility itself to comply with, the regulations relative to nondiscrimination in federal-assisted programs of the Department of Transportation, Title 49-CFR-21 and 49-CFR 27, as set forth in the attached Exhibit "A", which is hereby expressly made a part of, and incorporated into, this agreement by this reference.

EXHIBIT 12. Consistent with the terms and provisions of this agreement, the County hereby agrees to reimburse the Utility for the rehabilitation of its facilities when such rehabilitation is based upon this agreement and upon the said approved estimate of the Utility. It is further agreed and understood that the rehabilitation contemplated constitutes a replacement in function of said facilities only and any cost beyond the scope of said function replacement, made solely for the benefit of and at the election of the Utility to affect a functional or facility betterment and not attributable to highway construction, shall not be considered to be eligible for County reimbursement.

SECTION 13. If the Utility elects to replace the existing facility with a betterment facility, the County will pay only the eligible costs of the cost of the most economical nonbetterment methods of rehabilitation necessary to provide functional replacement of the existing facility.

SECTION 14. The Utility agrees, when feasible, to advise the County in writing at least one week prior to the time the Utility expects to begin work on each project. The Utility agrees to promptly advise the County in writing of the date the Utility completes the work on each project.

SECTION 15. In consideration of the payment as mentioned in Section 7 of this agreement, the Utility agrees to relinquish or subordinate sufficient property rights or interests that it may have in property upon which it has an easement or similar right that will be occupied by the proposed county road improvements as are necessary for the construction, operation, and maintenance of the roadway and related facilities.

SECTION 16. The Utility agrees to abide by the provisions of the Nebraska Fair Employment Practices Act, as provided by Neb. Rev. Stat. §48-1101 through 48-1126, as amended, and are hereby expressly made a part of, and incorporated into, this agreement by this reference.

SECTION 17. The Utility agrees that it and any contractor or subcontractor engaged under this agreement will fully comply with the provisions of the Nebraska Employment Security Law as provided by Neb. Rev. Stat. §48-601 through 48-683, as amended, and are hereby expressly made a part of, and incorporated into, this agreement by this reference.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

Executed by the County this _____ day of _____, 20__

ATTEST:

COUNTY OF DODGE

County Clerk

Chairman of the County Board

Executed by the Utility this _____ day of _____, 20__

WITNESS:

Omaha Public Power District
Name of Utility

Signature

Title

NONDISCRIMINATION CLAUSES

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- (1) Compliance with Regulations: The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, CFR Subtitle A, Parts 21 and 27, hereinafter referred to as the Regulations), which are hereby expressly made a part of, and incorporated into, this agreement by this reference.
- (2) Nondiscrimination: The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of handicap, race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A", "B" and "C" of Part 21 of the Regulations.
- (3) Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of handicap, race, color, or national origin.
- (4) Information and Reports: The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the State Highway Department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders, and instruction. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the County or the State Highway Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the County or the State Highway Department shall impose such contract sanctions as they or the Federal Highway Administration may determine to be appropriate, including but not limited to,
 - (a) withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - (b) cancellation, termination, or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The Contractor will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the County or the State Highway Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the County or the State to enter into such litigation to protect the interests of the County or the State, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

UTILITY POLE TABULATION SHEET

PROJECT NO.: ROAD 18

COUNTY: DODGE

LOCATION: SEC 1/2-T17N-R7E

DISTRICT OR COMPANY: Omaha Public Power District
 ADDRESS: 444 S. 16th St. Omaha, NE 68102
 PHONE: 402.536.4131

PROJECT STATION	DISTANCE FROM CENTERLINE	SIDE OF ROAD	DISTANCE FROM SECTION LINE	DISPOSITION OF POLES	REMARKS
0+34	22	RT	33	*	NO PAY
3+35	26	RT	38	*	PAY
6+26	25	RT	38	*	PAY
9+26	26	RT	38	*	PAY
12+17	26	RT	37	*	PAY
15+15	25	RT	36	*	PAY
18+07	23	RT	33	*	NO PAY
21+05	23	RT	34	*	PAY
23+90	22	RT	33	*	NO PAY
26+87	21	RT	32	*	NO PAY
29+76	20	RT	31	*	NO PAY
32+72	21	RT	32	*	NO PAY
32+74	63	LT	52	UIP	NO PAY
35+19	26	RT	32	*	NO PAY
35+54	44	LT	37	UIP	NO PAY
37+46	30	RT	32	*	NO PAY

*Move to new right-of-way line

UIP = Use in Place

Utility Pole Tab