



TriCo Regional Sewer Utility

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JOINT CAPITAL & CONSTRUCTION COMMITTEE AND BOARD OF TRUSTEES MEETING

Tuesday, January 2, 2023 at 4:30 P.M.
7236 Mayflower Park Drive, Zionsville, IN 46077

AGENDA

1. Public Comment
2. Carmel Reimbursement Agreement
3. Capital Project Updates
4. Other Business

Next Scheduled C&C Committee Meeting: Monday, February 5 at 4:30 pm



MEMORANDUM

To: Capital and Construction Committee

From: Wes Merkle

Date: December 27, 2023

Subject: Carmel Reimbursement Agreement

Carmel occasionally builds road or storm improvement projects that require adjustment to sanitary sewer manholes or line relocations. Where TriCo infrastructure is in existing right of way, adjustment costs are reimbursed by TriCo, and where our infrastructure is in easement these costs are on Carmel. Often for purposes of cost, schedule, and coordination, it's best to include these sanitary sewer activities in Carmel's construction contract; sometimes our staff will hire our own contractor or self-perform our work.

Carmel has requested that TriCo document this practice via the attached agreement. Sometimes Carmel's projects receive state or federal money, which may come with strict rules about excluding payment for utility adjustment work that is in existing right of way and is ordinarily paid for by the utility.

Recommended Action: Approve the reimbursement agreement with the City of Carmel.

**REIMBURSEMENT AGREEMENT
BETWEEN
THE CITY OF CARMEL, INDIANA
AND
TRICO REGIONAL SEWER UTILITY**

The City of Carmel, Indiana (the “City” or “Carmel”), by and through its Board of Public Works and Safety, and TriCo Regional Sewer Utility, formerly known as the Clay Township Regional Waste District (“TriCo”), by and through its Board of Trustees, enter into this Reimbursement Agreement (the “Agreement”) as follows:

WHEREAS, in accordance with the Agreement, TriCo owns and operates a wastewater collection system (the “District’s Collection System”) serving throughout the TriCo’s territorial boundaries and transports a portion of the wastewater collected to Carmel for treatment; and

WHEREAS, TriCo is responsible for maintaining its portion of sanitary sewers and related wastewater and sewage collection infrastructure within the Carmel System (collectively “Wastewater Infrastructure”); and

WHEREAS, the City routinely undertakes public works infrastructure improvement projects that from time to time include upgrades, repairs, improvements to, relocations, alterations and maintenance of Wastewater Infrastructure that would fall under TriCo’s responsibilities pursuant to the Service Agreement (“TriCo’s Responsibilities”);

WHEREAS, while undertaking a public works project, it is frequently more economical and efficient for the City contractor to perform TriCo’s Responsibilities; and

NOW THEREFORE, in consideration of the foregoing premises and the terms and conditions contained herein, the Parties agree as follows:

1. Representations. Each party represents to the other party that:
 - a. Each party has all requisite power, authority and legal right to enter into and carry out the obligations set forth in this Agreement; and
 - b. Each party will execute this Agreement by an authorized representative, upon which execution this Agreement will constitute a valid, legally binding obligation of the party, enforceable by its terms, and the party is estopped from making a claim based upon the unenforceability of this Agreement.
2. Obligations of the City. Wherever the City undertakes a public works project that includes TriCo’s Responsibilities, the City shall follow all procedures required by Indiana public works laws, rules, and regulations to obtain lowest responsive bidder/quoter for any such project. The City shall have the following obligations hereunder:

- a. If necessary, appoint a representative to act as liaison with TriCo.
 - b. Perform all activities necessary to complete the project, including any TriCo Responsibilities.
 - c. As a part of the bidding, quoting, or any change order process obtain a line item from the lowest responsive bidder for the cost of performing TriCo Responsibilities (“Line Item Cost”).
 - d. Prior to accepting the bid, quote or a change order, inform and obtain approval from TriCo of the Line Item Cost.
 - e. Identify any infrastructure, equipment and any other property belonging to TriCo that it needs to remove, relocate, or alter to perform all activities necessary to complete the project in a manner as approved by TriCo.
 - f. Submit an invoice to TriCo for the Line Item Cost and a request to perform the work related to any items identified in subsection “e” above.
3. Obligations of TriCo. TriCo shall have the following obligations hereunder:
- a. If necessary, appoint a representative to act as liaison with the City.
 - b. Cooperate with the City during the construction phase of the public works project involving TriCo Responsibilities.
 - c. Remove, relocate, or alter to perform within an agreed-upon timeframe all the items identified in section 2e above.
 - d. Upon receiving an invoice for the Line Item Cost, reimburse the City for such amount within 35 days or as otherwise agreed by the Parties. The Parties may agree on a satisfactory reimbursement amount that is different from the Line Item Cost.
4. No Joint Undertaking. The parties hereby acknowledge and agree that the purpose and intent of this Agreement is not to undertake the joint exercise of power within the meaning of I.C. § 36-1-7-2(a) or any other applicable Indiana law and, therefore, this Agreement need not address other matters related to the financing, staffing, budget, administration through a joint board or separate legal entity, or the manner of acquiring, holding and disposing of real and personal property of a joint undertaking. There will be no jointly held property under this Agreement. Each party will be responsible for its own personnel while performing obligations under this Agreement.

5. No Acceptance of TriCo Responsibilities. Except as outlined herein, this Agreement does not relieve TriCo of any responsibilities to maintain, repair, upgrade and/or perform any other necessary work on Wastewater Infrastructure under Service Agreement and/or any other applicable agreements, laws, rules, and regulations.
6. Dispute Resolution. Any disputes that may arise under this Agreement shall be resolved by the parties' respective executive officers, or their designees. Failing resolution by the executive officers, the parties shall submit the dispute to mediation. Failing resolution of the dispute by mediation, either party may institute a suit in a court of law as provided for in Section 14 hereof.
7. Effective Date. This Agreement shall be effective upon the latest date of: (a) adoption and execution of appropriate resolutions or ordinances approving this Agreement by appropriate body of each party.
8. Term. This Agreement shall be in effect until terminated by either party pursuant to Section 9 of this Agreement.
9. Termination. Either party may terminate this Agreement by providing a minimum thirty (30) days written notice to the other party.

10. Notice.

- a. With regard to routine communications concerning this Agreement, the parties' respective authorized representatives may communicate directly by whatever means they deem most effective and efficient.
- b. Any other type of formal notice required to be provided under this Agreement shall be sent by internationally recognized overnight courier, certified mail, facsimile or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other party):

c. To the City :

Department of Engineering
 Attention: Director
 City of Carmel
 One Civic Square
 Carmel, IN 46032

To TriCo:

TriCo Regional Sewer Utility
 Attention: Engineering Manager
 7236 Mayflower Park Drive
 Zionsville, IN 46077

11. Indemnification.

- a. The City hereby agrees to indemnify, defend, exculpate, and hold harmless TriCo and its officers, employees and agents, from and against any and all claims, suits and liabilities of any kind or character, including reasonable attorneys' fees ("Claims") which result or arise from any negligent acts or omissions of the City or those for whom the City is responsible, including its officers, employees, agents and contractors, arising from or connected with the performance of any of the City's duties or responsibilities under this Agreement.
- b. TriCo agrees to indemnify, defend, exculpate, and hold harmless the City and its respective officers, employees and agents, from and against Claims, including reasonable attorneys' fees, which result or arise from any negligent acts or omissions of TriCo or those for whom TriCo is responsible, including its officers, employees, agents and contractors, arising from or connected with the performance of any of the duties or responsibilities of TriCo under this Agreement.

12. Modification. The parties may alter, change or amend the terms and conditions of this Agreement only by mutual written agreement approved by the appropriate body of each party.

13. Entire Agreement. This Agreement constitutes the entire and complete agreement between the parties with respect to its subject matter, supersedes any prior discussions, negotiations, and understandings between them, and cannot be altered, changed or amended except as provided for in Section 12 hereof. The parties acknowledge that neither the City or TriCo, nor any of their respective officers, employees, or agents have made any representations relied upon by any other party other than the agreements contained herein.

14. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Indiana. This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency. Suit, if any, shall be brought in the State of Indiana, County of Hamilton.

15. Interpretation. The parties hereby acknowledge and agree that this Agreement is the result of negotiations between the parties and their respective legal counsel, and no party shall be deemed to be the drafter of this Agreement. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against either party.

16. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken,

and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates specified below.

TriCo Regional Sewer Utility

by and through its Board of Trustees

Carl Mills, President
Date: _____

Micheal McDonald, Secretary
Date: _____

ATTEST:

Andrew Williams, Utility Director
Date: _____

CITY OF CARMEL, INDIANA

by and through its Board of Public Works and Safety

James Brainard, Presiding Officer
Date: _____

Mary Ann Burke, Member
Date: _____

Lori S. Watson, Member
Date: _____

ATTEST:

Sue Wolfgang, Clerk
Date: _____



MEMORANDUM

To: Capital and Construction Committee
From: Wes Merkle
Date: December 27, 2023
Subject: Capital Project Updates

The following updates are provided for ongoing capital projects. Please refer to the Capital Project Fact Sheets for background information on individual projects.

- #2202 Lift Station 8 (Laurelwood) Reconstruction

Lykins completed most final grading and cleaned up the site. Paving work continues, which will be followed by fence installation.

- #2204, 2205 and 2206 Lift Stations 11, 14 and 26 Backup Generators

At Lift Station 14 (Austin Oaks), buried conduit installation is underway, which will be followed by installation of new electrical equipment. The generator installation at Lift Station 26 (Jackson's Grant) is complete. The electrical contractor ordered replacement parts for the generator at Lift Station 11 (Old 106th Street/Bennett Parkway) to repair the electrical failure.

- #2207 Lift Station 26 (Jackson's Grant) Parallel Force Main

Construction contractor TPI plans to finally start work after the new year.

- #2208 Lift Station 16 (Michigan/Sycamore Street) Reconstruction

Crews continued installing electrical equipment and controls. The electrician continues to wait for delivery of the manual transfer switch, which is anticipated in January. We continue to wait for Duke Energy to install new power service at the site. The lift station will be started up following installation of the new Duke service, electrical equipment, and force main tie-in.

- #2301 Lift Station 10 (Ashbrook) Upgrades

Design work is complete and permits received. Control panel design will be complete shortly; quotes will be received and presented at the Board of Trustees meeting January 8. Bids for construction will be received at the end of January. Staff will also receive quotes for pumps, VFDs, generator and transfer switch in January. If a construction contract is awarded by the Board, staff anticipates completion in summer.