

Contract No. DA-04-167-eng-182

Date: 21 July 1950

CONTRACT FOR RELOCATION, REARRANGEMENT
OR ALTERATION OF FACILITIES

CONTRACTOR & ADDRESS: North Fork Ditch Company
914 Forum Building
Sacramento 14, California

CONTRACT FOR: Partial Relocation, Rearrangement or Alteration of
Facilities for Transportation and Distribution of
Water.

LOCATION: At or near Folsom Dam and Reservoir near Folsom,
California.

This contract is authorized by The Flood Control Act of 1944.

CONTRACT FOR RELOCATION, REARRANGEMENT
OR ALTERATION OF FACILITIES

THIS CONTRACT entered into this 21st day of July 1950, between THE UNITED STATES OF AMERICA (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and NORTH FORK DITCH COMPANY, a corporation organized and existing under the laws of the State of California, of the City of Sacramento, in the State of California (hereinafter called "the Contractor"), WITNESSETH THAT:

WHEREAS, the Government has undertaken the development of a project for flood control and other purposes known as the Folsom Dam and Reservoir located near Folsom, California (hereinafter called "the Project"); and

WHEREAS, the Contractor, as a public utility corporation, owns, maintains and operates certain facilities for transporting, temporarily storing and distributing water consisting of ditches, reservoirs, pipe lines and other appurtenant facilities which interfere with the construction and use of the project being developed by the Government; and

WHEREAS, partial relocation, rearrangement and/or alteration of said facilities is necessary at this time so that the construction program of the Government for the project may proceed in an orderly manner; and

WHEREAS, the Contractor is agreeable to the partial relocation, rearrangement and/or alteration of said facilities, as hereinafter provided, in order that orderly progress may be made on the construction program for the project; and

WHEREAS, the Government and the Contractor expect to enter into other contracts which will make suitable provisions for the other facilities of the Contractor which will be affected by the construction, maintenance, operation or use of the project;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE 1. Obligations of the Contractor.

The Contractor shall furnish, deliver and/or perform the following in order to accomplish partial alteration of its facilities for transporting, temporarily storing and distributing water, in accordance with the terms of this contract and as generally indicated on Drawing No. AM-1-5-261, dated 28 December 1949, attached hereto and made a part hereof, so as to make possible the continued operation of said facilities, throughout the period of construction of the project, with capacity, efficiency, effect and use equal to that existing as of the date of this contract;

(a) All drawings, maps and specifications prepared by the Government incident to accomplishing the acts enumerated in Article 2 hereof shall be subject to the written approval of the Contractor or his authorized representative, it being expressly understood that none of the work covered by any particular drawing, map and/or specification shall be performed prior to said approval.

(b) Abandon that portion of the existing Ashland Lateral Pipe Line lying between the present Hinkle Reservoir and the point of junction with the existing Ashland Lateral Pipe Line, hereinafter known as Point "B", of the pipe line to be constructed pursuant to Article 2(a)(5) hereof, upon completion by the Government of the work to be performed pursuant to Articles 2(a)(2), 2(a)(4), 2(a)(5), 2(a)(6) and 2(a)(8) hereof. The Contractor, if it so elects, may at its own expense remove and salvage that portion of said abandoned lateral lying between Point "B" and a line 100 feet southerly from and parallel to the southerly toe of embankment for the Right Wing Dam of the project, or any part of said portion. Pipe obtained from the aforementioned salvage operations shall become and remain the property of the Contractor, shall be removed expeditiously to lands controlled by the Contractor, and all excavations incident to said salvage operations shall be backfilled promptly to the satisfaction of the Contracting Officer.

(c) Abandon the present Hinkle Reservoir and facilities appurtenant thereto upon completion by the Government of the work to be performed pursuant to Articles 2(a)(2), 2(a)(5), 2(a)(6), and 2(a)(8) hereof, and upon completion by the Government of the said work grant to the Government and its contractors, officers, agents and employees immediate right of entry to all property ultimately to be conveyed to the Government pursuant to Article 1(e) hereof for the purpose of constructing the works of the project.

(d) Convey to the Government a temporary easement to construct and operate facilities to bypass the Contractor's Main Canal, Rose Spring Ditch and telephone line under and/or through the Right Wing Dam and Dike No. 5 of the project, said easement to be for such period of time as may be necessary to complete final readjustment of all the Contractor's facilities; and convey a perpetual easement for rights of way purposes for the relocated Folsom-Auburn County Road across any of the Contractor's lands or facilities it traverses, all without interfering with the operations of the Contractor.

(e) Convey to the Government by good and sufficient deed of conveyance all its right, title and interest in and to the real property lying southerly from the southerly right-of-way line of its Main Canal, or a line parallel to and 660 feet northerly from the southerly line of Section 13, T. 10 N., R. 7 E., M.D.B. & M., whichever is the most southerly of the two, easterly from the westerly right-of-way line of the relocated Folsom-Auburn County Road, and westerly from the existing Folsom-Auburn County Road, except for the right-of-way occupied by that portion of the existing Ashland Lateral Pipe Line lying between the westerly right-of-way line of the relocated Folsom-Auburn County Road and Point "B", and at the same time deliver to the Government releases from all liens and encumbrances caused or suffered to be placed on said property by Contractor except taxes and assessments not due

or payable and easements or rights-of-way on the Contractor's right, title and interest conveyed to the Government. (In event the Contractor is vested with fee title, conveyance of fee title, free and clear of all liens and encumbrances required, except taxes and assessments not due or payable and easements or rights-of-way.)

(f) The perpetual easement cited in Article 1(d) hereof and the right, title and interest in realty cited in Article 1(e) hereof shall not be conveyed to the Government by the Contractor before delivery by the Government to the Contractor of conveyances pursuant to Articles 2(a) (10) and (11) hereof.

(g) Should it be determined for any reason that the right, title and interest in and to the said real property and rights of way mentioned in Article 1(e), above, of this contract shall be acquired by condemnation or other judicial proceedings, the Contractor shall cooperate in the prosecution of the proceedings and this agreement shall, without more, constitute a stipulation which may be filed in the proceedings and be final and conclusive evidence of the adjustments to be made for this portion of the project.

ARTICLE 2. Obligations of the Government.

(a) The Government shall accomplish the following so as to make possible the continued operation of the Contractor's facilities for transporting, temporarily storing and distributing water, throughout the period of construction of the project, with capacity, efficiency, effect and use equal to that as of the date of this contract: //

(1) Make such surveys and prepare such drawings, schedules and specifications as are reasonably necessary for the work to be performed by the Government hereunder, all of which shall be subject to the written approval of the Contractor pursuant to Article 1(a) hereof.

(2) Construct a new reservoir, which will replace the present Hinkle Reservoir and hereafter shall be known as the New Hinkle Reservoir, westerly from the Right Wing Dam of the project and easterly from the relocated Folsom-Auburn County Road, complete with intake canal and stoplog structures, outlet to serve Ashland Lateral Pipe Line, gated emergency drain, bridges and outlet structure to the Main Canal.

(3) Construct and operate facilities to bypass the Contractor's Main Canal, Rose Spring Ditch and telephone line under and/or through the Right Wing Dam and Dike No. 5 of the project, and to pass the relocated Folsom-Auburn County Road over any of the Contractor's facilities it traverses, all without interfering with the operations of the Contractor.

(4) Remove and salvage, remove and waste or abandon in place, as the Contracting Officer may elect, that portion of the existing Ashland Lateral Pipe Line lying between the present Hinkle Reservoir and a line 100

feet southerly from and parallel to the southerly toe of embankment for the Right Wing Dam of the project. Any usable pipe resulting from this operation shall become and remain the property of the Contractor, and shall be removed expeditiously by the Contractor to lands controlled by the Contractor.

(5) Construct a pipe line from the new reservoir constructed pursuant to Article 2(a)(2) hereof to Point "B", as indicated on the drawing cited in Article 1 hereof, complete with a tee at the point of junction with the existing Ashland Lateral pipe line which in the future may be used to connect a water service line proposed for the Government housing area for the project.

(6) Remove all of the Contractor's buildings, power lines, telephone lines and other utilities from the vicinity of the present Hinkle Reservoir, and relocate or reconstruct in the vicinity of the existing Baldwin Reservoir those buildings and utilities, including a septic tank, necessary for the operation of the rearranged facilities of the Contractor, including relocation of the said telephone lines substantially as indicated on the drawing cited in Article 1 hereof. Materials removed and not incorporated in the said relocated facilities shall become and remain the property of the Government. Transport all supplies and equipment stored in the Contractor's corporation yard in the vicinity of the present Hinkle Reservoir to the new corporation yard in the vicinity of the existing Baldwin Reservoir, and store in said new yard.

(7) Construct turn-outs from the relocated Folsom-Auburn County Road to the existing service road along the bank of the Contractor's Main Canal.

(8) Remove the Contractor's derrick from the vicinity of Hinkle Reservoir, and relocate or reconstruct at the Contractor's chlorination plant in the vicinity of the existing Penstock Reservoir.

(9) Obtain all realty or interests therein necessary for the construction and/or relocation by the Government and subsequent operation and maintenance by the Contractor of all facilities to be constructed and/or relocated pursuant to this contract, excepting any realty or interests therein owned by the Contractor as of the date of this contract and lying outside the area described in Article 1(e) hereof, which can be utilized for said construction and/or relocation and subsequent operation and maintenance.

(10) Subject to the approval of the Secretary of the Army, convey by quit claim deed to the Contractor satisfactory title to the real property occupied by the facilities to be constructed and/or relocated pursuant to Article 2(a)(2) hereof, and the buildings to be relocated pursuant to Article 2(a)(6) hereof, together with such appropriate contiguous areas so that the Contractor can operate and maintain the said facilities, excepting, however, fee ownership of the Contractor as cited in Article 2(a)(9) hereof.

(11) Subject to the approval of the Secretary of the Army, convey to the Contractor easements upon which to operate and maintain the facilities

to be constructed and/or relocated pursuant to Article 2(a)(5) hereof; upon which to operate and maintain the utilities, including telephone line, to be relocated pursuant to Article 2(a)(6) hereof; and upon which to discharge and flow water resulting from use of the gated emergency reservoir drain constructed pursuant to Article 2(a)(2) hereof until said water reaches a natural stream of sufficient size to accommodate the flow involved without damage to adjacent property; excepting, however, any realty or interests therein of the Contractor as cited in Article 2(a)(9) hereof.

(b) The Government agrees to deliver to the Public Utilities Commission of the State of California upon request of such Commission such necessary or required information as to the cost to the Government of performing the work as is consistent with Government policy.

(c) The work to be performed by the Government under this Article shall be so coordinated with the operations of the Contractor as to minimize outages of the Main Canal, the Rose Spring Ditch and the Ashland Lateral.

(d) It is recognized that the facilities to be constructed by the Government to bypass the Contractor's Main Canal, Rose Spring Ditch and telephone line under and/or through the Right Wing Dam and Dike No. 5 of the project, pursuant to Article 2(a)(3) hereof, will be of a temporary nature, i.e., a shored conduit which may be subject to partial or complete obstruction by the lodging of debris on the surfaces of the shored conduit, or the deposition of material transported in suspension by the velocity of flow, and that the structural integrity of said bypass facilities, throughout the period of their use to carry water belonging to the Contractor, is of the utmost importance to the Government because the ultimate safety of the said Right Wing Dam and Dike No. 5 is dependent thereon. Therefore, it is understood and agreed that throughout the period of use of said bypass facilities to carry water belonging to the Contractor, all operations required to provide for and insure the unabridged passage of water belonging to the Contractor through the said bypass facilities shall be classified as deferred construction; that said deferred construction operations shall be performed by the Government; and that the Government shall bear the cost of all such operations which are not due to fault or negligence on the part of the Contractor, while the Contractor shall reimburse the Government for the cost of all such operations which are due to the Contractor's fault or negligence. It is further understood and agreed that in the event of interruption in the utility service required to be furnished by the Contractor under the terms of its franchise occasioned by the occurrence of any event to the bypass facilities above described, not due to fault or negligence on the part of the Contractor, then the Government shall provide temporary utility service during the period required to eliminate the cause of interruption.

ARTICLE 3. Ownership. The facilities constructed or relocated hereunder, except those constructed or relocated pursuant to Article 2(a)(3) hereof, shall be or become the property of the Contractor.

ARTICLE 4. Betterments. The relocation, rearrangement or alteration of the facilities shall place them as nearly as practicable in the condition thereof as of the date of this contract. Any betterments which may be installed or constructed superior in capacity or quality to the previously existing facilities shall be at the Contractor's own expense.// None of the work performed or facilities installed hereunder shall be considered a betterment unless so certified by the Contracting Officer at the time of the submission of the plans and specifications to the Contractor for approval.

ARTICLE 5. Interference. The Contractor agrees that pending the entering into of other contracts with the Government which will make suitable provisions for the relocation, rearrangement or alteration of the other facilities of the Contractor which will be affected by the construction, maintenance, operation or use of the project, the facilities as relocated, rearranged or altered pursuant to this contract shall not be so further altered or modified nor other facilities constructed by the Contractor, so as to interfere with the construction of or acquisition of right-of-way for the project by the Government.

ARTICLE 6. Completion. The parties hereto shall complete all obligations hereunder by the time of completion of the final readjustment of all the facilities of the Contractor.

ARTICLE 7. Contract to be Without Prejudice to Contractor. The execution and delivery of this contract by the Contractor is understood to be without prejudice to such claims as the Contractor may have for appropriate compensation if the project (otherwise than such as may result from the work provided for herein) interferes with or damages any of the properties or rights of the Contractor. It is understood and agreed that upon satisfactory performance by the Government hereunder, the Contractor hereby releases the Government from any and all claims of the Contractor against the Government because of the work performed hereunder.

ARTICLE 8. Covenant against Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 9. Officials not to Benefit. No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

ARTICLE 10. Definitions.

(a) The terms "Secretary of the Army" or "Head of the Department" as used herein shall have one and the same meaning and shall include the Assistant Secretary of the Army, and the term "his duly authorized representative" shall mean the Chief of Engineers, Department of the Army, or an individual or board designated by him.

(b) Except for the original signing of this contract and except as otherwise stated herein, the term "Contracting Officer" as used herein shall include his duly appointed successor or his authorized representative.

ARTICLE 11. Negotiated Contract. This contract is authorized by and negotiated under the following law:

The Flood Control Act of 1944.

~~ARTICLE 12. Approval. This contract shall be subject to the written approval of the Chief of Engineers, Department of the Army, Washington, D.C., or his authorized representative, and shall not be binding until so approved.~~

H.L.R.
C.J.
C.C.H.

Contract No. DA-04-167-eng-182

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

By /s/ C. C. Haug
C. C. HAUG, Lt. Colonel, CE
Contracting Officer
(Official Title)

TWO WITNESSES:

NORTH FORK DITCH COMPANY
(Contractor)

/s/ Emma C. Baldwin
San Francisco, Calif.
(Address)

BY /s/ H. L. Roloff
President
(Title)

/s/ Gladys Buchanan Brown
San Francisco, Calif.
(Address)

I, Christina Jobst, certify that I am the secretary of the corporation named as Contractor herein; that H. L. Roloff who signed this contract on behalf of the Contractor was then President of said corporation; that said contract was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of the corporate powers.

In witness whereof, I have hereunto affixed my hand and the seal of said corporation this 21st day of July 1950.

/s/ Christina Jobst
(Secretary)

(SEAL)

