



CITY COUNCIL STAFF REPORT

Date: September 2, 2009 CONSENT CALENDAR

Subject: UTILITY AGREEMENTS FOR THE INDIAN CANYON DRIVE / INTERSTATE 10 INTERCHANGE WIDENING PROJECT

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

The City, as Lead Agency on the Indian Canyon Drive / Interstate 10 Interchange Project ("I-10 Project"), has continued to make progress with right-of-way acquisition and utility coordination. All utilities have been located, and the necessary relocation or adjustment of utilities as part of the I-10 Project has been identified. Approval of agreements with each utility company is required to schedule the necessary utility work.

RECOMMENDATION:

- 1) Approve the State of California, Department of Transportation, Utility Agreement Number 21467 between the City of Palm Springs and Southern California Edison (Distribution) for relocation of electrical distribution facilities for the Indian Canyon Drive / Interstate 10 Interchange Project (City Project 00-14); and
- 2) Approve the State of California, Department of Transportation, Utility Agreement Number 21468 between the City of Palm Springs and Southern California Gas Company for relocation of gas facilities for the Indian Canyon Drive / Interstate 10 Interchange Project (City Project 00-14); and
- 3) Approve the State of California, Department of Transportation, Utility Agreement Number 21471 between the City of Palm Springs and Verizon California, Inc., for relocation of telephone communication facilities for the Indian Canyon Drive / Interstate 10 Interchange Project (City Project 00-14); and
- 4) Approve the State of California, Department of Transportation, Utility Agreement Number 21532 between the City of Palm Springs and Southern California Edison (Transmission) for relocation of electrical transmission facilities for the Indian Canyon Drive / Interstate 10 Interchange Project (City Project 00-14); and

ITEM NO. 2.R.

- 5) Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

The City, as Lead Agency on the Indian Canyon Drive / Interstate 10 Interchange Project ("I-10 Project"), has continued to make progress with right-of-way acquisition and utility coordination. All work related to the I-10 Project is coordinated with the State of California, Department of Transportation ("Caltrans"). A Cooperative Agreement between the City and Caltrans for the I-10 Project outlined responsibilities of Caltrans and the City during the environmental, design and right-of-way phases of the I-10 Project.

Since the City completed the environmental phase of the I-10 Project, and obtained final environmental approval on November 16, 2006, the right-of-way phase work has continued. The right-of-way phase includes not only acquisition of all required right-of-way, but coordination of all necessary utility relocation work with the various utility companies. As this project is a locally funded State Highway Project, and the right-of-way work (specifically utility relocation) is being performed by the City on behalf of and for Caltrans, Caltrans requires that all utility relocation work be performed in accordance with their requirements and agreements with the utility companies.

Caltrans has master contracts with the various utility companies that outline the responsibilities of Caltrans and the utility companies with regard to the disposition of utilities within state highway right-of-way. These master contracts establish an equal share (50%/50%) of the cost to relocate utilities within state highway right-of-way between Caltrans and the utility companies. Caltrans entered into these master contracts to streamline the process to relocate utilities as part of any State Highway Project, eliminating any protracted legal process to determine prior rights and financial liability for relocation of utilities.

Whereas on typical City projects outside of any state highway right-of-way, the City's franchise agreements with each utility company require the utility companies to remove or relocate their facilities in City right-of-way when required by the City, utility relocation work for the I-10 Project is governed by Caltrans' existing master contracts with the utility companies since the work occurs in state highway right-of-way. Therefore, Caltrans requires that the City enter into utility agreements with each utility company that has facilities to be relocated as part of the I-10 Project.

The City's consultant has coordinated all of the utility relocation work with the respective utility companies, and has identified a need to relocate the following utilities:

- Southern California Edison (Distribution)
- Southern California Edison (Transmission)
- Southern California Gas Company
- Verizon California, Inc.

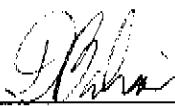
Caltrans requires the City to use the standard Caltrans Utility Agreements with each utility company. The Agreements simply identify the required utility relocation work, the financial liability of each party (in this case, an equal share of the cost), who will perform the utility relocation work (in this case, each utility company will relocate their facilities during construction of the I-10 Project), and payment procedures.

The City's approval of the Caltrans Utility Agreements with the various utility companies is a required component of the right-of-way phase, and must be completed prior to the City certifying completion of all right-of-way work and requesting authorization to proceed with construction. It is recommended that the City Council approve the four utility agreements for the I-10 Project.

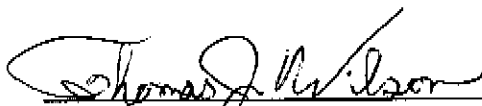
FISCAL IMPACT:

The estimated cost to relocate the various utilities during construction is approximately \$800,000 with the City's 50% share (\$400,000) of the cost to be funded with Regional Measure A funds in accordance with the CVAG Reimbursement Agreement (Agreement No. 4317). Sufficient funds are available in the Regional Measure A account 134-4497-50185 (Indian/I-10 Interchange).


SUBMITTED:



David J. Barakian
Director of Public Works/City Engineer



Thomas J. Wilson
Assistant City Manager



David H. Ready, City Manager

ATTACHMENTS:

1. Agreements (4)

ATTACHMENT 1
UTILITY AGREEMENTS

UTILITY AGREEMENT

RW 13-5 (Rev 4/2000)

<u>District</u>	<u>County</u>	<u>Route</u>	<u>PM</u>	<u>EA</u>
08	Riverside	10	32.6/33.7	455701
Federal Aid No.:		n/a		
Owner's File:		WEP-00644/CAL200491176		
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 NUMBER 21467**DATE**

The City of Palm Springs, hereinafter called "CITY" proposed to upgrade the existing Indian Canyon Drive (formerly Indian Avenue) Interchange.

and

Southern California Edison (An Edison International Company) hereinafter called "OWNER," owns and maintains underground electrical and telecomm facilities along the north of 20th Avenue (west of Indian Canyon Drive), vents along the east of Indian Canyon Drive (south of Garnet Avenue), and underground electrical facilities east-west crossing on Indian Canyon Drive (approx. 120m south of Garnet Avenue) within the limits of CITY'S project which requires relocation to accommodate CITY'S project

It is hereby mutually agreed that:

I. WORK TO BE DONE

"In accordance with Notice to Owner No. 21467 dated August 12, 2009, OWNER shall lower the electrical and telecomm facilities, relocate two (2) vents, and relocate the electrical facilities. All work shall be performed substantially in accordance with OWNER'S Plan No. CU08224 dated August 6, 2009 consisting of 2 sheets, a copy of which is on file in the District office of the Department of Transportation at 464 W. 4th Street, San Bernardino, CA 92401. Deviations from the OWNER'S plan described above initiated by either CITY or the OWNER, shall be agreed upon by both parties hereto under a Revision Notice to Owner. Such Revised Notice to Owner, approved by the CITY and agreed to/ acknowledged by the OWNER, will constitute an approved revision of the OWNER'S 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."

II. LIABILITY FOR WORK

"The existing facilities described in Section I above will be relocated at 50% CITY expense and 50% OWNER expense in accordance with Section 5.C of the Master Contract dated November 1, 2004.

III. PERFORMANCE OF WORK

"OWNER agrees to perform the herein described work with its own forces or to cause the herein described work to be performed by the OWNER'S contractor, employed by written contract on a continuing basis to perform work of this type, and to provide and furnish all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion."

UTILITY AGREEMENT (Cont.)

RW 13-5 (Rev 4/2000)

UTILITY AGREEMENT NO.	21467
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"Use of out-of-state personnel or personnel requiring lodging and meal ("per diem") expenses will not be allowed without prior written authorization by City's representative. Requests for such permission must be contained in OWNER's estimate of actual and necessary relocation costs. OWNER shall include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed. Per diem expenses shall not exceed the per diem expense amounts allowed under the State's Department of Personnel Administration travel expense guidelines."

"Pursuant to Public Works Case No. 2003-059 determination by the California Department of Industrial Relations dated October 25, 2002, work performed by OWNER's contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above."

IV. PAYMENT FOR WORK

"The CITY shall pay its share of the actual and necessary cost of the herein described work within 45 days after receipt of five (5) copies of OWNER'S itemized bill, signed by a responsible official of OWNER'S organization and prepared on OWNER'S letterhead, compiled on the basis of the actual and necessary cost and expense incurred and charged or allocated to said work in accordance with the uniform system of accounts prescribed for Owner by the California Public Utilities Commission, Federal Energy Regulatory Commission or Federal Communications Commission, whichever is applicable."

"It is understood and agreed that the CITY will not pay for any betterment or increase in capacity of OWNER'S facilities in the new location and that OWNER shall give credit to the CITY for the "used life" or accrued depreciation of the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER."

"Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit progress bills for costs incurred not to exceed OWNER'S recorded costs as of the billing date less estimated credits applicable to completed work. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by CITY of documentation supporting the cost increase and after an Amendment to this Agreement has been executed by the parties to this Agreement."

"The OWNER shall submit a final bill to the CITY within 360 days after the completion of the work described in Section I above. If the CITY has not received a final bill within 360 days after notification of completion of OWNER'S work described in Section I of this Agreement, and CITY has delivered to Owner fully executed Director's Deeds, Consents to Common Use or Joint Use Agreement as required for OWNER'S facilities, CITY will provide written notification to OWNER of its intent to close its file within 30 days and OWNER hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned. If the CITY processes a final bill for payment more than 360 days after notification of completion of OWNER'S work, payment of the late bill may be subject to allocation and/or approval by the California Transmission Commission."

"The final billing shall be in form of an itemized CITY of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, the CITY shall not pay final bills which exceed the estimated cost of this Agreement without documentation of the reason for the increase of the said cost from the OWNER and approval of documentation by CITY. Except, if the final bill exceeds the OWNER'S estimated cost 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. In either case, payment of the amount over the estimated cost of this Agreement may be subject to allocation and/or approval by the California Transportation Commission."

UTILITY AGREEMENT (Cont.)

RW 13-5 (Rev 4/2000)

UTILITY AGREEMENT NO.	21467
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"In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an Amended Agreement shall be executed by the parties to this Agreement prior to the payment of the OWNER'S final bill. 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 CITY."

"Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final payment and will be available for audits by CITY and/or Federal auditors. Owner agrees to comply with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23CFR, Chapter 1, Part 645 and/or 18 CFR, Chapter 1, Parts 101, 201, et al. If a subsequent CITY and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse CITY upon receipt of CITY billing."

V. GENERAL CONDITIONS

"All costs accrued by OWNER as a result of CITY'S request of March 31, 2009 to review, study and/ or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement."

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

"All obligations of CITY under terms of this Agreement are subject to the passage of the annual Budget Act by the CITY Legislature and the allocation of those funds by the California Transportation Commission."

"Owner shall submit a Notice of Completion to the CITY within 30 days of the completion of the work described herein."

"It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement by reference; provided, however, that the provisions of any agreements entered into between the CITY and the OWNER pursuant to CITY law for apportioning the obligations and costs to be borne by each, or the use of accounting procedures prescribed by the applicable Federal or CITY regulatory body and approved by the Federal Highway Administration, shall govern in lieu of the requirements of said 23 CFR 645."

UTILITY AGREEMENT

RW 13-5 (Rev 4/2000)

<u>District</u>	<u>County</u>	<u>Route</u>	<u>PM</u>	<u>EA</u>
08	Riverside	10	32.6/33.7	455701
Federal Aid No.:		n/a		
Owner's File:		wr1926144		
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 NUMBER 21468**DATE**

The City of Palm Springs, hereinafter called "CITY" proposed to upgrade the existing Indian Canyon Drive (formerly Indian Avenue) Interchange.

and

Southern California Gas Company hereinafter called "OWNER," owns and maintains a 6-inch steel gas main along the east of Indian Canyon Drive to Garnet Avenue, along the south of Garnet Avenue (within the intersection), and along the west of Indian Canyon Drive heading south within the limits of CITY'S project which requires relocation to accommodate CITY'S project

It is hereby mutually agreed that:

I. WORK TO BE DONE

"In accordance with Notice to Owner No. 21468 dated August 12, 2009, OWNER shall relocate and lower the gas facilities. All work shall be performed substantially in accordance with OWNER'S Plan No. wr1926144 dated May 18, 2009 consisting of 1 sheet, a copy of which is on file in the District office of the Department of Transportation at 464 W. 4th Street, San Bernardino, CA 92401. Deviations from the OWNER'S plan described above initiated by either CITY or the OWNER, shall be agreed upon by both parties hereto under a Revision Notice to Owner. Such Revised Notice to Owner, approved by the CITY and agreed to/ acknowledged by the OWNER, will constitute an approved revision of the OWNER'S 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."

II. LIABILITY FOR WORK

"The existing facilities described in Section I above will be relocated at 50% CITY expense and 50% OWNER expense in accordance with Section 5.C of the Master Contract dated November 1, 2004.

III. PERFORMANCE OF WORK

"OWNER agrees to perform the herein described work with its own forces or to cause the herein described work to be performed by the OWNER'S contractor, employed by written contract on a continuing basis to perform work of this type, and to provide and furnish all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion."

UTILITY AGREEMENT (Cont.)

RW 13-5 (Rev 4/2000)

UTILITY AGREEMENT NO. 21468

"Use of out-of-state personnel or personnel requiring lodging and meal ("per diem") expenses will not be allowed without prior written authorization by City's representative. Requests for such permission must be contained in OWNER's estimate of actual and necessary relocation costs. OWNER shall include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed. Per diem expenses shall not exceed the per diem expense amounts allowed under the State's Department of Personnel Administration travel expense guidelines."

"Pursuant to Public Works Case No. 2003-059 determination by the California Department of Industrial Relations dated October 25, 2002, work performed by OWNER's contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above."

IV. PAYMENT FOR WORK

"The CITY shall pay its share of the actual and necessary cost of the herein described work within 45 days after receipt of five (5) copies of OWNER'S itemized bill, signed by a responsible official of OWNER'S organization and prepared on OWNER'S letterhead, compiled on the basis of the actual and necessary cost and expense incurred and charged or allocated to said work in accordance with the uniform system of accounts prescribed for Owner by the California Public Utilities Commission, Federal Energy Regulatory Commission or Federal Communications Commission, whichever is applicable."

"It is understood and agreed that the CITY will not pay for any betterment or increase in capacity of OWNER'S facilities in the new location and that OWNER shall give credit to the CITY for the "used life" or accrued depreciation of the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER."

"Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit progress bills for costs incurred not to exceed OWNER'S recorded costs as of the billing date less estimated credits applicable to completed work. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by CITY of documentation supporting the cost increase and after an Amendment to this Agreement has been executed by the parties to this Agreement."

"The OWNER shall submit a final bill to the CITY within 360 days after the completion of the work described in Section I above. If the CITY has not received a final bill within 360 days after notification of completion of OWNER'S work described in Section I of this Agreement, and CITY has delivered to Owner fully executed Director's Deeds, Consents to Common Use or Joint Use Agreement as required for OWNER'S facilities, CITY will provide written notification to OWNER of its intent to close its file within 30 days and OWNER hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned. If the CITY processes a final bill for payment more than 360 days after notification of completion of OWNER'S work, payment of the late bill may be subject to allocation and/or approval by the California Transmission Commission."

"The final billing shall be in form of an itemized CITY of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, the CITY shall not pay final bills which exceed the estimated cost of this Agreement without documentation of the reason for the increase of the said cost from the OWNER and approval of documentation by CITY. Except, if the final bill exceeds the OWNER'S estimated cost 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. In either case, payment of the amount over the estimated cost of this Agreement may be subject to allocation and/or approval by the California Transportation Commission."

UTILITY AGREEMENT (Cont.)

RW 13-5 (Rev 4/2000)

UTILITY AGREEMENT NO.	21468
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"In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an Amended Agreement shall be executed by the parties to this Agreement prior to the payment of the OWNER'S final bill. 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 CITY."

"Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final payment and will be available for audits by CITY and/or Federal auditors. Owner agrees to comply with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23CFR, Chapter 1, Part 645 and/or 18 CFR, Chapter 1, Parts 101, 201, et al. If a subsequent CITY and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse CITY upon receipt of CITY billing."

V. GENERAL CONDITIONS

"All costs accrued by OWNER as a result of CITY'S request of March 31, 2009 to review, study and/ or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement."

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

"All obligations of CITY under terms of this Agreement are subject to the passage of the annual Budget Act by the CITY Legislature and the allocation of those funds by the California Transportation Commission."

"Owner shall submit a Notice of Completion to the CITY within 30 days of the completion of the work described herein."

"It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement by reference; provided, however, that the provisions of any agreements entered into between the CITY and the OWNER pursuant to CITY law for apportioning the obligations and costs to be borne by each, or the use of accounting procedures prescribed by the applicable Federal or CITY regulatory body and approved by the Federal Highway Administration, shall govern in lieu of the requirements of said 23 CFR 645."

UTILITY AGREEMENT

RW 13-5 (Rev 4/2000)

<u>District</u>	<u>County</u>	<u>Route</u>	<u>PM</u>	<u>EA</u>
08	Riverside	10	32.6/33.7	455701
Federal Aid No.:		n/a		
Owner's File:		0528-8P0A0-BW		
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 NUMBER 21471**DATE**

The City of Palm Springs, hereinafter called "CITY" proposed to upgrade the existing Indian Canyon Drive (formerly Indian Avenue) Interchange.

and

Verizon California, Inc. (Sunbelt District) hereinafter called "OWNER," owns and maintains telephone facilities along the west of Indian Canyon Drive between north of 20th Avenue to south of Garnet Avenue within the limits of CITY'S project which requires relocation to accommodate CITY'S project

It is hereby mutually agreed that:

I. WORK TO BE DONE

"In accordance with Notice to Owner No. 21471 dated August 12, 2009, OWNER shall relocate the existing telephone facilities and associated manholes. All work shall be performed substantially in accordance with OWNER'S Plan No. 0528-8P0A0-BW dated July 6, 2009 consisting of 1 sheet, a copy of which is on file in the District office of the Department of Transportation at 161 W. 4th Street, San Bernardino, CA 92401. Deviations from the OWNER'S plan described above initiated by either CITY or the OWNER, shall be agreed upon by both parties hereto under a Revision Notice to Owner. Such Revised Notice to Owner, approved by the CITY and agreed to/ acknowledged by the OWNER, will constitute an approved revision of the OWNER'S 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."

II. LIABILITY FOR WORK

"The existing facilities described in Section I above will be relocated at 50% CITY expense and 50% OWNER expense in accordance with Section 5 of the Master Contract dated January 8, 2004.

III. PERFORMANCE OF WORK

"OWNER agrees to perform the herein described work with its own forces or to cause the herein described work to be performed by the OWNER'S contractor, employed by written contract on a continuing basis to perform work of this type, and to provide and furnish all necessary labor, materials, tools, and equipment required therefor, and to prosecute said work diligently to completion."

"Use of out-of-state personnel or personnel requiring lodging and meal ("per diem") expenses will not be allowed without prior written authorization by City's representative. Requests for such permission must be contained in

UTILITY AGREEMENT (Cont.)

RW 13-5 (Rev 4/2000)

UTILITY AGREEMENT NO.	21471
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OWNER's estimate of actual and necessary relocation costs. OWNER shall include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed. Per diem expenses shall not exceed the per diem expense amounts allowed under the State's Department of Personnel Administration travel expense guidelines."

"Pursuant to Public Works Case No. 2003-059 determination by the California Department of Industrial Relations dated October 25, 2002, work performed by OWNER's contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above."

IV. PAYMENT FOR WORK

"The CITY shall pay its share of the actual and necessary cost of the herein described work within 45 days after receipt of five (5) copies of OWNER'S itemized bill, signed by a responsible official of OWNER'S organization and prepared on OWNER'S letterhead, compiled on the basis of the actual and necessary cost and expense incurred and charged or allocated to said work in accordance with the uniform system of accounts prescribed for Owner by the California Public Utilities Commission, Federal Energy Regulatory Commission or Federal Communications Commission, whichever is applicable."

"It is understood and agreed that the CITY will not pay for any betterment or increase in capacity of OWNER'S facilities in the new location and that OWNER shall give credit to the CITY for the "used life" or accrued depreciation of the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER."

"Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit progress bills for costs incurred not to exceed OWNER'S recorded costs as of the billing date less estimated credits applicable to completed work. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by CITY of documentation supporting the cost increase and after an Amendment to this Agreement has been executed by the parties to this Agreement."

"The OWNER shall submit a final bill to the CITY within 360 days after the completion of the work described in Section I above. If the CITY has not received a final bill within 360 days after notification of completion of OWNER'S work described in Section I of this Agreement, and CITY has delivered to Owner fully executed Director's Deeds, Consents to Common Use or Joint Use Agreement as required for OWNER'S facilities, CITY will provide written notification to OWNER of its intent to close its file within 30 days and OWNER hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned. If the CITY processes a final bill for payment more than 360 days after notification of completion of OWNER'S work, payment of the late bill may be subject to allocation and/or approval by the California Transmission Commission."

"The final billing shall be in form of an itemized CITY of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, the CITY shall not pay final bills which exceed the estimated cost of this Agreement without documentation of the reason for the increase of the said cost from the OWNER and approval of documentation by CITY. Except, if the final bill exceeds the OWNER'S estimated cost 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. In either case, payment of the amount over the estimated cost of this Agreement may be subject to allocation and/or approval by the California Transportation Commission."

UTILITY AGREEMENT (Cont.)

RW 13-5 (Rev 4/2000)

UTILITY AGREEMENT NO.	21471
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"In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an Amended Agreement shall be executed by the parties to this Agreement prior to the payment of the OWNER'S final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section 1 of this Agreement shall have the prior concurrence of CITY."

"Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final payment and will be available for audits by CITY and/or Federal auditors. Owner agrees to comply with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23CFR, Chapter 1, Part 645 and/or 18 CFR, Chapter 1, Parts 101, 201, et al. If a subsequent CITY and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse CITY upon receipt of CITY billing."

V. GENERAL CONDITIONS

"All costs accrued by OWNER as a result of CITY'S request of March 31, 2009 to review, study and/ or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement."

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

"All obligations of CITY under terms of this Agreement are subject to the passage of the annual Budget Act by the CITY Legislature and the allocation of those funds by the California Transportation Commission."

"Owner shall submit a Notice of Completion to the CITY within 30 days of the completion of the work described herein."

"It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement by reference; provided, however, that the provisions of any agreements entered into between the CITY and the OWNER pursuant to CITY law for apportioning the obligations and costs to be borne by each, or the use of accounting procedures prescribed by the applicable Federal or CITY regulatory body and approved by the Federal Highway Administration, shall govern in lieu of the requirements of said 23 CFR 645."

UTILITY AGREEMENT

RW 13-5 (Rev 4/2000)

<u>District</u>	<u>County</u>	<u>Route</u>	<u>PM</u>	<u>EA</u>
08	Riverside	10	32.6/33.7	155701
Federal Aid No.:		n/a		
Owner's File:		WEP-00644/CAL200491176		
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 NUMBER 21532**DATE**

The City of Palm Springs, hereinafter called "CITY" proposed to upgrade the existing Indian Canyon Drive (formerly Indian Avenue) Interchange.

and

Southern California Edison (An Edison International Company) hereinafter called "OWNER," owns and maintains 115kV overhead electrical and transmission poles along the north of Garnet Avenue, in addition to an anchor pole on the south of Garnet Avenue, within the limits of CITY'S project which requires relocation to accommodate CITY'S project

It is hereby mutually agreed that:

I. WORK TO BE DONE

"In accordance with Notice to Owner No. 21532 dated August 12, 2009, OWNER shall remove the existing three (3) wooden poles and replace with two (2) tubular steel poles, in addition to the relocation of an anchor pole for the 115kV overhead electrical facilities. All work shall be performed substantially in accordance with OWNER'S Plan No. 5129109 dated May 22, 2009 consisting of 3 sheets, a copy of which is on file in the District office of the Department of Transportation at 464 W. 4th Street, San Bernardino, CA 92401. Deviations from the OWNER'S plan described above initiated by either CITY or the OWNER, shall be agreed upon by both parties hereto under a Revision Notice to Owner. Such Revised Notice to Owner, approved by the CITY and agreed to/ acknowledged by the OWNER, will constitute an approved revision of the OWNER'S 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."

II. LIABILITY FOR WORK

"The existing facilities described in Section I above will be relocated at 50% CITY expense and 50% OWNER expense in accordance with Section 5.C of the Master Contract dated November 1, 2004.

III. PERFORMANCE OF WORK

"OWNER agrees to perform the herein described work with its own forces or to cause the herein described work to be performed by the OWNER'S contractor, employed by written contract on a continuing basis to perform work of this type, and to provide and furnish all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion."

UTILITY AGREEMENT (Cont.)

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UTILITY AGREEMENT NO. 21532

"Use of out-of-state personnel or personnel requiring lodging and meal ("per diem") expenses will not be allowed without prior written authorization by City's representative. Requests for such permission must be contained in OWNER's estimate of actual and necessary relocation costs. OWNER shall include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed. Per diem expenses shall not exceed the per diem expense amounts allowed under the State's Department of Personnel Administration travel expense guidelines."

"Pursuant to Public Works Case No. 2003-059 determination by the California Department of Industrial Relations dated October 25, 2002, work performed by OWNER's contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above."

IV. PAYMENT FOR WORK

"The CITY shall pay its share of the actual and necessary cost of the herein described work within 15 days after receipt of five (5) copies of OWNER'S itemized bill, signed by a responsible official of OWNER'S organization and prepared on OWNER'S letterhead, compiled on the basis of the actual and necessary cost and expense incurred and charged or allocated to said work in accordance with the uniform system of accounts prescribed for Owner by the California Public Utilities Commission, Federal Energy Regulatory Commission or Federal Communications Commission, whichever is applicable."

"It is understood and agreed that the CITY will not pay for any betterment or increase in capacity of OWNER'S facilities in the new location and that OWNER shall give credit to the CITY for the "used life" or accrued depreciation of the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER."

"Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit progress bills for costs incurred not to exceed OWNER'S recorded costs as of the billing date less estimated credits applicable to completed work. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by CITY of documentation supporting the cost increase and after an Amendment to this Agreement has been executed by the parties to this Agreement."

"The OWNER shall submit a final bill to the CITY within 360 days after the completion of the work described in Section I above. If the CITY has not received a final bill within 360 days after notification of completion of OWNER'S work described in Section I of this Agreement, and CITY has delivered to Owner fully executed Director's Deeds, Consents to Common Use or Joint Use Agreement as required for OWNER'S facilities, CITY will provide written notification to OWNER of its intent to close its file within 30 days and OWNER hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned. If the CITY processes a final bill for payment more than 360 days after notification of completion of OWNER'S work, payment of the late bill may be subject to allocation and/or approval by the California Transmission Commission."

"The final billing shall be in form of an itemized CITY of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, the CITY shall not pay final bills which exceed the estimated cost of this Agreement without documentation of the reason for the increase of the said cost from the OWNER and approval of documentation by CITY. Except, if the final bill exceeds the OWNER'S estimated cost 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. In either case, payment of the amount over the estimated cost of this Agreement may be subject to allocation and/or approval by the California Transportation Commission."

UTILITY AGREEMENT (Cont.)

RW 13-5 (Rev 4/2000)

UTILITY AGREEMENT NO.	21532
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"In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an Amended Agreement shall be executed by the parties to this Agreement prior to the payment of the OWNER'S final bill. 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 CITY."

"Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final payment and will be available for audits by CITY and/or Federal auditors. Owner agrees to comply with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23CFR, Chapter 1, Part 645 and/or 18 CFR, Chapter 1, Parts 101, 201, et al. If a subsequent CITY and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse CITY upon receipt of CITY billing."

V. GENERAL CONDITIONS

"All costs accrued by OWNER as a result of CITY'S request of March 31, 2009 to review, study and/ or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement."

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

"All obligations of CITY under terms of this Agreement are subject to the passage of the annual Budget Act by the CITY Legislature and the allocation of those funds by the California Transportation Commission."

"Owner shall submit a Notice of Completion to the CITY within 30 days of the completion of the work described herein."

"It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement by reference; provided, however, that the provisions of any agreements entered into between the CITY and the OWNER pursuant to CITY law for apportioning the obligations and costs to be borne by each, or the use of accounting procedures prescribed by the applicable Federal or CITY regulatory body and approved by the Federal Highway Administration, shall govern in lieu of the requirements of said 23 CFR 645."

