

STAFF REPORT



ITEM NO. **8**

CITY OF OCEANSIDE

DATE: June 6, 2012

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **APPROVAL OF UTILITY RELOCATION AND REIMBURSEMENT AGREEMENTS WITH CALTRANS FOR THE ROUTE 76 WIDENING PROJECT WEST OF MELROSE DRIVE**

SYNOPSIS

Staff recommends that the City Council approve utility relocation and reimbursement agreements with Caltrans in amounts not to exceed \$142,427 for sewer facilities and \$484,096 for water facilities for the State Route 76 Widening project located west of Melrose Drive; and authorize the Mayor to execute the agreement.

BACKGROUND

The widening of State Route 76 from Melrose Drive to the City Boundary and beyond affected various City-owned water and sewer facilities. A large majority of these facilities are located within the existing State right-of-way (ROW).

In July 2009, the Water Department reviewed and determined the scope of work relating to the proposed project and outlined the fiscal responsibilities for both agencies. It was determined that the City was ultimately responsible for 100 percent of the sewer main relocation costs and 98 percent of the water main relocation costs. The plans and specifications were reviewed and approved prior to bidding and the start of construction.

Construction began in 2010 and the Water Department has performed routine inspections throughout the duration of the project and has concluded that the City-owned facilities have been constructed in accordance with City standards.

ANALYSIS

Caltrans has provided a Utility Relocation and Reimbursement Agreement to the City for the relocation of City-owned utility lines that exist within the State ROW. The project schedule, funding and agency obligations required the City's utility lines to be relocated as soon as possible so as not to adversely affect the project. City facilities that are within Caltrans ROW are under license agreements that require the City to relocate the facilities at our expense should Caltrans perform any improvements where our facilities would impede their work.

FISCAL IMPACT

The Fiscal Year 11-12 adopted budget for Miscellaneous Sewer (800812722.5325) and Miscellaneous Water (750771712.5325) have balances of \$950,818 and \$890,732 respectively. The Caltrans estimate to relocate the City's utilities is \$142,427 for sewer and \$484,096 for water. Therefore, adequate funds are available for the project.

COMMISSION OR COMMITTEE REPORT

The Utilities Commission approved staff's recommendation at its regularly scheduled meeting on May 22, 2012

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

INSURANCE REQUIREMENTS

Does not apply.

RECOMMENDATIONS

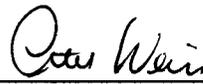
Staff recommends that the City Council approve utility relocation and reimbursement agreements with Caltrans in amounts not to exceed \$142,427 for sewer facilities and \$484,096 for water facilities for the State Route 76 Widening project located west of Melrose Drive; and authorize the Mayor to execute the agreement.

PREPARED BY:



Jason Dafforn
Acting Water Utilities Division Manager

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager



Cari Dale, Water Utilities Director



Teri Ferro, Financial Services Director



Exhibit A - Site Map

Exhibit B - Utility Relocation and Reimbursement Agreements

DISTRICT 11	COUNTY SD	ROUTE 76	POST MILE R007.3-013.1	EA/Proj ID 080109/110000044
FEDERAL AID NUMBER: N/A			OWNER'S FILE:	
FEDERAL PARTICIPATION: On the Project <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		On the Utilities <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

UTILITY AGREEMENT NO. 31959

DATE: _____

The State of California, acting by and through the Department of Transportation, hereinafter called "STATE", proposes to construct a four lane highway, on SR-76 in San Diego County, in and near Oceanside from 0.8 km west of Melrose Drive to 1.0 km east of south Mission Road and

NAME: City of Oceanside
ADDRESS: 300 N. Coast Highway, Oceanside, CA 92054

hereinafter called "OWNER", owns and maintains sewer facilities and appurtenances, within the limits of STATE's project which requires relocation of said sewer facilities along SR-76 as shown on Caltrans Utility Sheets U4, SS1, SSD1 to SSD3, and SSQ1. Relocation work is to be completed by STATE's highway contractor and to be completed in accordance with the Construction Contract 080104 as shown in the work windows listed in the Special Provisions to accommodate STATE's project.

It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. 31959 dated August 13, 2009, STATE shall relocate OWNER's sewer facilities and appurtenances as shown on STATE's contract plans for the improvement of State Route 76, EA 080104 which by this reference are made a part hereof. OWNER hereby acknowledges review of STATE's plans for work and agrees to the construction in the manner proposed. Deviations from the plan described above initiated by either the STATE or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the STATE and agreed to/acknowledged by the OWNER, will constitute an approved revision of the 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. Owner shall have the right to inspect the work during construction. Upon completion of the work by STATE, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to STATE ownership of the replaced facilities, except in the case of liability determined pursuant to Water Code 7034 or 7035.

II. LIABILITY FOR WORK

The existing facilities are located within the STATE's right of way under permit and will be relocated at OWNER's expense under the provisions of Section 673 of the Streets and Highways Code.

III. PERFORMANCE OF WORK:

Owner shall have access to all phases of the relocation work to be performed by STATE, as described in Section I above, for the purpose of inspection to ensure that the work is in accordance with the specifications contained in the Highway Construction Contract; however, all questions regarding the work being performed will be directed to STATE's Resident Engineer for their evaluation and final disposition.

Engineering services for locating, preparation of plans, specifications, and estimates are to be furnished by the consulting engineering firm of Kimley-Horn & Associates on a fee basis previously approved by STATE. Cost principles for determining the reasonableness and allowability of consultant costs shall be determined in accordance with 48 CFR, Chapter 1, Part 31; 23 CFR, Chapter 1, Part 645.

Use of out-of-state personnel, (or personnel requiring lodging and meal per diem expenses) will not be allowed without prior written authorization by state's representative. Requests for such authorization must be contained in OWNER's estimate of actual and necessary relocation costs. Accounting Form FA 1301 is to be completed and submitted for all non-State personnel travel per diem. 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. 2001-059 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 OWNER shall pay its share of the actual cost of said work included in the STATE's design and highway construction contract in advance, compiled on the basis of the estimated bid price of said contract. The estimated cost to OWNER for the work being performed by the STATE's highway contractor is **\$119,519.50**. The estimated cost for the design performed by the STATE's design consultant is **\$ 22,907.13** for a total estimated cost of **\$ 142,426.63**.

It is understood and agreed that the STATE 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 STATE 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.

In the event actual final relocation costs as established herein are less than the sum of money advanced by OWNER to STATE, STATE hereby agrees to refund to OWNER the difference between said actual cost and the sum of money so advanced. In the event that the actual cost of relocation exceeds the amount of money advanced to STATE, in accordance with the provisions of this Agreement, Owner hereby agrees to reimburse STATE said deficient costs upon receipt of an itemized bill as set forth herein.

The final billing shall be in the form of an itemized statement 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 STATE shall not pay final bills which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the OWNER and approval of documentation by STATE. Except, if the final bill exceeds the OWNER's estimated costs 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.

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 STATE.

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 audit by State 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., 23 CFR, Chapter 1, Part 645 and/or 18 CFR, Chapter 1, Parts 101, 201, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse STATE upon receipt of STATE billing.

V. GENERAL CONDITIONS:

All costs accrued by OWNER as a result of STATE's request of December 26, 2008 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 STATE's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, STATE will notify OWNER in writing and STATE reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

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

OWNER shall submit a Notice of Completion to the STATE within 30 days of the completion of the work described herein.

* * * *

UTILITY AGREEMENT (Cont.)

RW 13-5 (REV 6/2010)

UTILITY AGREEMENT NO. 31959

THE ESTIMATED COST TO STATE FOR ITS SHARE OF THE ABOVE DESCRIBED WORK IS \$ 0.00.

CERTIFICATION OF FUNDS				
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure shown here.				
HQ Accounting Officer				Date
ITEM	CHAP	STAT	FY	AMOUNT

FUND TYPE	EA	AMOUNT
Design Funds		\$ 0.00
Construction Funds		\$ 0.00
RW Funds		\$ 0.00

IN WITNESS WHEREOF, the above parties have executed this Agreement the day and year above written.

STATE:

OWNER: CITY OF OCEANSIDE

By [Signature] 5/8/2012
 District Division Chief, Right of Way
 Delegated, GREG GUTIERREZ, Chief
 Utility Relocation Branch

By _____
 Name _____
 Title _____

APPROVAL RECOMMENDED:

By Alma Villanueva 5/8/2012
 Alma Villanueva
 Utility Coordinator

APPROVED AS TO FORM
 OCEANSIDE CITY ATTORNEY
[Signature]
 BARBARA L. HAMILTON
 Assistant City Attorney

THIS AGREEMENT SHALL NOT BE EXECUTED BY THE STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION UNTIL FUNDS ARE CERTIFIED.

DO NOT WRITE BELOW - FOR ACCOUNTING PURPOSES ONLY

PLANNING AND MANAGEMENT COMPLETES EXCEPT SHADED FIELDS:

UTILITY COMPLETES:

T CODE	DOCUMENT NUMBER	SUF FIX	DIST	UNIT	CHG DIST	EA	SUB JOB	SPECIAL DESIGNATION	FFY	FA	OBJ CODE	DOLLAR AMOUNT
	UA										054	
	UA										054	

Proj ID# 1100000044

EA FUNDING VERIFIED:
Sign:>
Print> Joyce Wiggs x3149 R/W Planning and Management
Date

REVIEW / REQUEST FUNDING:
Sign>
Print> Alma Villanueva x3216 Utility Coordinator
Date

Distribution: 4 originals to R/W Planning & Management
 1 original to Utility Owner
 1 original to Utility File

DISTRICT 11	COUNTY SD	ROUTE 76	POST MILE R007.3-013.1	EA/Proj ID 080109/1100000044
FEDERAL AID NUMBER: N/A			OWNER'S FILE:	
FEDERAL PARTICIPATION: On the Project <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			On the Utilities <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

UTILITY AGREEMENT NO. 31958 **DATE** _____

The State of California, acting by and through the Department of Transportation, hereinafter called "STATE", proposes to construct a four lane highway, on SR-76 in San Diego County, in and near Oceanside from 0.8 km west of Melrose Drive to 1.0 km east of south Mission Road and

NAME: City of Oceanside
 ADDRESS: 300 N. Coast Highway, Oceanside, CA 92054

hereinafter called "OWNER", owns and maintains water facilities and appurtenances, within the limits of STATE's project which requires relocation of said water facilities along SR-76 as shown on Caltrans Utility Sheets U3 to U9, U35 to U40, UD1 to UD9, and UQ1 to UQ3. Relocation work is to be completed by STATE's highway contractor and to be completed in accordance with the Construction Contract 080104 as shown in the work windows listed in the Special Provisions to accommodate STATE's project.

It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. 31958 dated July 15, 2009, STATE shall relocate OWNER's water facilities and appurtenances as shown on STATE's contract plans for the improvement of State Route 76, EA 080104 which by this reference are made a part hereof. OWNER hereby acknowledges review of STATE's plans for work and agrees to the construction in the manner proposed. Deviations from the plan described above initiated by either the STATE or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the STATE and agreed to/acknowledged by the OWNER, will constitute an approved revision of the 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. Owner shall have the right to inspect the work during construction. Upon completion of the work by STATE, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to STATE ownership of the replaced facilities, except in the case of liability determined pursuant to Water Code 7034 or 7035.

II. LIABILITY FOR WORK:

The existing facilities described in Section I above will be relocated 2 % STATE expense and 98 % OWNER expense in accordance with the following proration: based on City of Oceanside's prior right documentation.

III. PERFORMANCE OF WORK:

Owner shall have access to all phases of the relocation work to be performed by STATE, as described in Section I above, for the purpose of inspection to ensure that the work is in accordance with the specifications contained in the Highway Construction Contract; however, all questions regarding the work being performed will be directed to STATE's Resident Engineer for their evaluation and final disposition.

Engineering services for locating, preparation of plans, specifications, and estimates are to be furnished by the consulting engineering firm of Kimley-Horn & Associates on a fee basis previously approved by STATE. Cost principles for determining the reasonableness and allowability of consultant costs shall be determined in accordance with 48 CFR, Chapter 1, Part 31; 23 CFR, Chapter 1, Part 645.

alw
 3/15/2012

Use of out-of-state personnel, (or personnel requiring lodging and meal per diem expenses) will not be allowed without prior written authorization by state's representative. Requests for such authorization must be contained in OWNER's estimate of actual and necessary relocation costs. Accounting Form FA 1301 is to be completed and submitted for all non-State personnel travel per diem. 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. 2001-059 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 OWNER shall pay its share of the actual cost of said work included in the STATE's design and highway construction contract within 45 days after receipt of STATE's bill, compiled on the basis of the actual bid price of said contract. The estimated cost to OWNER for the work being performed by the STATE's highway contractor is \$431,768.98. The estimated cost for the design performed by the STATE's design consultant is \$ 52,326.37 for a total estimated cost of \$484,095.35.

It is understood and agreed that the STATE 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 STATE 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.

In the event actual final relocation costs as established herein are less than the sum of money advanced by OWNER to STATE, STATE hereby agrees to refund to OWNER the difference between said actual cost and the sum of money so advanced. In the event that the actual cost of relocation exceeds the amount of money advanced to STATE, in accordance with the provisions of this Agreement, Owner hereby agrees to reimburse STATE said deficient costs upon receipt of an itemized bill as set forth herein.

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alw
3/15/2012

V. GENERAL CONDITIONS:

All costs accrued by OWNER as a result of STATE's request of December 26, 2008 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 STATE's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, STATE will notify OWNER in writing and STATE reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

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

OWNER shall submit a Notice of Completion to the STATE within 30 days of the completion of the work described herein.

Where OWNER has prior rights in areas which will be within the highway right of way and where OWNER's facilities will remain on or be relocated on STATE highway right of way, a Joint Use Agreement or Consent to Common Use Agreement shall be executed by the parties.

* * * *

UTILITY AGREEMENT NO. 31958

THE ESTIMATED COST TO STATE FOR ITS SHARE OF THE ABOVE DESCRIBED WORK IS \$ 0.00.

CERTIFICATION OF FUNDS				
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure shown here.				
HQ Accounting Officer				Date
ITEM	CHAP	STAT	FY	AMOUNT

FUND TYPE	EA	AMOUNT
Design Funds		\$ 0.00
Construction Funds		\$ 0.00
RW Funds		\$ 0.00

IN WITNESS WHEREOF, the above parties have executed this Agreement the day and year above written.

STATE:

OWNER: CITY OF OCEANSIDE

By _____ Date _____
District Division Chief, Right of Way
Delegated, GREG GUTIERREZ, Chief
Utility Relocation Branch

By _____ Date _____
Name _____
Title _____

APPROVAL RECOMMENDED:

By _____ Date _____
Alma Villanueva
Utility Coordinator

APPROVED AS TO FORM
OCEANSIDE CITY ATTORNEY
Barbara L. Hamilton
BARBARA L. HAMILTON
Assistant City Attorney

THIS AGREEMENT SHALL NOT BE EXECUTED BY THE STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION UNTIL FUNDS ARE CERTIFIED.

DO NOT WRITE BELOW - FOR ACCOUNTING PURPOSES ONLY

PLANNING AND MANAGEMENT COMPLETES EXCEPT SHADED FIELDS:

UTILITY COMPLETES:

T CODE	DOCUMENT NUMBER	SUF FIX	DIST	UNIT	CHG DIST	EA	SUB JOB	SPECIAL DESIGNATION	FFY	FA	OBJ CODE	DOLLAR AMOUNT
	UA										054	
	UA										054	

Proj ID# 1100000044

EA FUNDING VERIFIED:
Sign:>
Print> Joyce Wiggs x3149 R/W Planning and Management
Date

REVIEW / REQUEST FUNDING:
Sign>
Print> Alma Villanueva x3216 Utility Coordinator
Date

Distribution: 4 originals to R/W Planning & Management
1 original to Utility Owner
1 original to Utility File