



CITY COUNCIL STAFF REPORT

Date: November 4, 2009

CONSENT CALENDAR

Subject: APPROVAL OF A LIABILITY IN DISPUTE UTILITY AGREEMENT WITH SOUTHERN CALIFORNIA EDISON 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. A utility agreement was previously approved with Southern California Edison ("SCE"), however, the City and SCE have been unable to resolve the appropriate method of calculating the City's share of the cost to relocate SCE's utilities, and a revised utility agreement is required.

RECOMMENDATION:

- 1) Terminate Agreement No. 5893, a 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
- 2) Approve Agreement No. _____, a State of California, Department of Transportation, Liability in Dispute 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
- 3) Authorize the City Manager to execute all necessary documents.

ITEM NO. 2.15

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.

On September 2, 2009, the City Council approved Utility Agreements with 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.

In reviewing SCE's estimated cost to relocate their utilities, the City's consultant (Dokken Engineering) brought to our attention the fact that SCE's estimate incorrectly calculated the City's 50% share for the work. Specifically, SCE's estimate includes costs to install a new circuit on the overhead high-voltage power lines that are being relocated for our project. The new circuit expands the capacity of SCE's utility, and is considered a "betterment" for which the City has no liability and is to receive credit. Further, in accordance with the terms of the Caltrans master contract with SCE, the City is to receive credit for salvage and depreciation of the relocated utilities.

The City does not dispute SCE's estimated costs and credits; the City disputes the manner in which the City's 50% share is calculated after considering credits due. SCE's estimate is calculated as follows:

Labor:	\$86,717.00
Material	\$226,901.00
Contract:	\$58,379.00
Salvage:	(\$1,478.00)
Depreciation:	(\$10,347.54)
System better credit:	(\$70,837.00)
CRE:	\$43,400.25
Total:	\$332,734.71
50% City expense:	\$166,367.36

In this way, SCE's estimate considers the credits before equally dividing the total cost between the City and SCE. Therefore, the credits for system betterment, salvage and depreciation are also being equally shared instead of being applied entirely to City's 50% share. The City has prepared its own estimate using SCE's amounts, as follows:

Labor:	\$86,717.00
Material:	\$226,901.00
Contract:	\$58,379.00
CRE:	\$43,400.25
Sub-Total:	\$415,397.25
50% City expense:	\$207,698.63
Salvage:	(\$1,478.00)
Depreciation:	(\$10,347.54)
System better credit:	(\$70,837.00)
Total City Expense:	\$125,036.09

The resulting disparity between SCE's and City's estimate is \$41,331.27. The City requested that Caltrans review the City's estimate and to determine if the method of calculating the estimate and considering credits due was consistent with the master utility agreement between Caltrans and SCE. Caltrans determined that the City's estimate was appropriate.

SCE is disagreeing that the City's estimate is correct, based on the fact that SCE has prepared many estimates for utility relocation work for Caltrans state highway projects, pursuant to its master utility agreement, which were reviewed and approved by Caltrans. Additionally, SCE disagrees with the City's method of calculation as it would set new precedence for SCE in all future projects.

Caltrans, although having approved estimates prepared by SCE in this way in the past, agrees that the City's approach is the appropriate method, and in the case of any system betterment, 100% of the credit for that work should be applied to the City's (or Caltrans') share of the cost. Given Caltrans' determination that the City's estimate is correct and SCE does not, Caltrans is now requiring that the City enter into a "Liability in Dispute Utility Agreement" in lieu of the original utility agreement previously approved by Council. Therefore, in order to move forward with this project, it is necessary to terminate the previously approved utility agreement with SCE and approve the new agreement, which preserves the City's argument while allowing the project to move forward. The matter of whose calculation is correct will be resolved in the future, by mediation or another approved method.

FISCAL IMPACT:

The estimated cost to relocate the SCE transmission lines is \$415,397.25 of which the City and SCE share 50% equally. However, after considering appropriate credits for system betterment, salvage and depreciation, the City's 50% share is calculated as \$125,036.09. SCE has determined the City's share is \$166,367.36, resulting in a disparity of \$41,331.27. In accordance with the terms of the agreement, this disparity will be deposited up front into a separate accounting pending final resolution of which method of calculation is correct. Sufficient funds are available in the Regional Measure A account 134-4497-50185 (Indian/I-10 Interchange).

Prepared by:



Marcus L. Fuller
Assistant Director of Public Works

Recommended by:

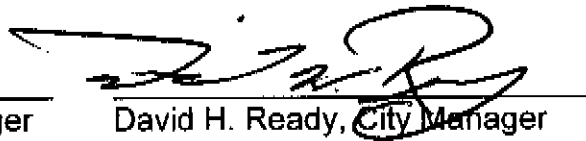


David J. Barakian
Director of Public Works/City Engineer

Approved by:



Thomas J. Wilson, Asst. City Manager



David H. Ready, City Manager

ATTACHMENTS:

1. Agreement

ATTACHMENT 1
UTILITY AGREEMENT

E.A.: 455701
Fed. Aid No.: N/A
Owner's File No: WEP-00644/CAL200491176

UTILITY AGREEMENT NO. 21532

WHEREAS, the City of Palm Springs, a California charter city, hereinafter called City, is the Lead Agency on the reconstruction of the Indian Canyon Drive (formerly Indian Avenue) at Interstate 10 Interchange, hereinafter referred to as "the I-10 Project"; and

WHEREAS, as the I-10 Project is considered an "On-System" state highway project, affecting Interstate 10, requires the City to coordinate the I-10 Project with the State of California, acting by and through the Department of Transportation, hereinafter referred to as "State"; and

WHEREAS, the I-10 Project necessitates the relocation of certain utility facilities owned, operated and maintained by Southern California Edison (An Edison International Company), hereinafter referred to as "Owner"; and

WHEREAS, relocation of Owner's utility facilities as part of City's I-10 Project must comply with State's rules and regulations, including the Master Freeway Agreement between State and Owner, dated November 1, 2004, hereinafter referred to as the "Master Agreement", a copy of which is incorporated hereto as Attachment "A"; and

WHEREAS, the City has issued Notice to Owner No. 21532 dated August 12, 2009, further amended on October 21, 2009, incorporated hereto as Attachment "B", to Owner, which Notice to Owner sets forth the terms and conditions pursuant to which Owner has been ordered to relocate certain Owner's facilities to clear the City's I-10 Project, and;

WHEREAS, City, in order to clear the right of way for the I-10 Project, has ordered Owner to relocate the portions of its facilities within said Notice to Owner, hereafter referred to as "Owner's facilities", and;

WHEREAS, City and Owner have agreed that Owner does not have rights that are prior and superior to those of City and agrees to relocate Owner's facilities as ordered with a shared liability of cost defined as 50% City expense and 50% Owner expense in accordance with Section 5.C of the Master Agreement, said right described in attached Notice to Owner, and;

WHEREAS, Owner has, on its own initiative, determined to install new facilities during relocation of Owner's facilities as part of City's I-10 Project, hereinafter referred to as "Owner's new facilities"; and

WHEREAS, the installation of Owner's new facilities are not required by or in any way related to City's I-10 Project or the required relocation of Owner's facilities; and

WHEREAS, in accordance with Section 2.C of the Master Agreement, Owner's new facilities are considered a "betterment"; and

WHEREAS, Owner has prepared an estimate for relocation of Owner's facilities, identified by Transmission Order Number 800310444, hereinafter referred to as "Owner's estimate", wherein the shared liability of cost between City and Owner is calculated as follows:

Labor:	\$86,717.00
Material:	\$226,901.00
Contract:	\$58,379.00
Salvage:	(\$1,478.00)
Depreciation:	(\$10,347.54)
System better credit:	(\$70,837.00)
Sub-Total:	\$289,335.46
CRE:	\$43,400.25
Total:	\$332,734.71
50% City expense:	\$166,367.36

WHEREAS, City has reviewed the Master Agreement, and finds that Section 6.A of the Master Agreement requires the City to receive credits for "The amount of any betterment to the Utility Facility", and "The salvage value of any materials or parts salvaged and retained by Owner", and depreciation value; and

WHEREAS, in accordance with City's understanding of Section 6.A of the Master Agreement, City has prepared its own estimate for relocation of Owner's facilities using the same costs and credits provided by Owner in Owner's estimate, hereinafter referred to as "City's estimate", wherein the shared liability of cost between City and Owner is calculated as follows:

Labor:	\$86,717.00
Material:	\$226,901.00
Contract:	\$58,379.00
CRE:	\$43,400.25
Sub-Total:	\$415,397.25

50% City expense:	\$207,698.63
Salvage:	(\$1,478.00)
Depreciation:	(\$10,347.54)
System better credit:	(\$70,837.00)

Total City Expense: \$125,036.09

WHEREAS, Owner's estimate and City's estimate result in a disparity of \$41,331.27 as the 50% City share for relocation of Owner's facilities, hereinafter referred to as the "cost disparity"; and

WHEREAS, City has requested State review of City's estimate, and State has agreed that City's estimate is appropriate and consistent with the terms of the Master Agreement; and

WHEREAS, Owner has determined that Owner's estimate is appropriate and consistent with the terms of the Master Agreement, and is consistent with past practice and history of prior estimates prepared for and approved by State; and

WHEREAS, in accordance with Section 706 of the Streets and Highways Code, City may, without prejudice to its rights, or that of Owner, advance the costs of removal or relocation, and upon advancement by City of said costs, Owner shall remove or relocate Owner's facilities as stated in the attached Notice to Owner so as not to delay City's I-10 Project, and;

WHEREAS, City and Owner disagree on the issue of the appropriate method of calculating the shared liability of relocation costs in accordance with the Master Agreement, City and Owner agree that, in order to expedite City's I-10 Project, City shall deposit with Owner, in accordance with Section 706 of the Street and Highways Code, the cost disparity of \$41,331.27, and Owner agrees to do the relocation work as set forth in Notice to Owner No. 21532 dated August 12, 2009, further amended on October 21, 2009, incorporated hereto as Attachment "B".

Utility Agreement No. 21532

NOW THEREFORE, it is agreed between City and Owner as follows:

1. Within 30 days of City's execution of this Agreement, City shall advance Owner 100% of the cost disparity, which advance shall be \$41,331.27.
2. Owner shall relocate Owner's facilities in accordance with Notice to Owner No. 21532 dated August 12, 2009, further amended on October 21, 2009, incorporated hereto as Attachment "B".
3. Owner shall place the advance in a separate interest-bearing account pending final resolution of liability, and shall pay City all accrued interest, if Owner's estimate is found to be calculated inconsistent with the terms of the Master Agreement, and City's estimate is determined to be correct.
4. In signing this Agreement, neither City nor Owner diminishes its position, waives any of its rights or accepts liability.
5. City and Owner reserve the right to have such liability resolved by future negotiations or by an action in a court of competent jurisdiction pursuant to the provisions of Section 706 of the Streets and Highways Code.
6. Owner agrees to perform the herein-described work with its own forces or by the Owner's contractor and to provide and furnish all necessary labor, materials, tools and equipment required therefore, and to prosecute said work diligently to completion.
7. 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 all accrued depreciation on the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by Owner.
8. Owner shall submit a Notice of Completion to the City within 30 days of the completion of the work described herein.
9. It is understood that said highway is a Federal Aid Highway and, accordingly, 23 CFR 645 is hereby incorporated into this Agreement by reference; provided, however, that the provisions of any agreements entered into between the City and Owner pursuant to State law for apportioning the obligations and costs to be borne by each, or the use of accounting procedures prescribed by the applicable Federal or State regulatory body and approved by the Federal Highway Administration, shall govern in lieu of the requirements of said 23 CFR 645.

ATTACHMENT "A"
MASTER FREEWAY AGREEMENT

FREEWAY MASTER CONTRACT

BETWEEN
CALIFORNIA DEPARTMENT OF TRANSPORTATION
AND
SOUTHERN CALIFORNIA EDISON COMPANY

PARTIES:

The State of California, acting by and through its Department of Transportation ("Department"), which term "Department" includes its officers, agents, contractors, successors, assigns and other public agencies performing projects in connection with Department's freeway system, and Southern California

Edison Company ("Owner"), which term "Owner" includes its officers, agents, contractors, successors and assigns,

hereby agree effective this 1st day of November, 2004, as follows:

RECITALS:

- A. Owner owns, operates or maintains, in the State of California, Utility Facilities as defined in Section 700 of the Streets and Highways Code. Certain of Owner's Utility Facilities may be operated under regulations of the California Public Utilities Commission.
- B. Department has various Freeway Projects throughout the State of California and from time to time these projects require the Relocation of Owner's Utility Facilities.
- C. The cost of such Relocation is presently apportioned between Department and Owner as provided for in the statutes of the State of California and/or existing Master Agreements.
- D. Pursuant to Section 707.5 of the Streets and Highways Code, Department and Owner desire to enter into a contract apportioning the obligations and costs of the above-referenced Relocations to be borne by each party.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Freeway Master Contract and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Department and Owner agree as follows:

1. This Freeway Master Contract ("Master Contract"), in accordance with the provisions of Section 707.5 of the Streets and Highways Code ("S&H Code") shall govern exclusively the determination of the obligations and costs to be borne by Department and Owner in regard to Utility Facility work described herein in lieu of determination under the current provisions of Sections 702 to 707, inclusive, of the S&H Code and all other laws, and prior contracts and agreements which would be applicable to the determination of liability or the obligation for costs incurred in connection with this work. This Master Contract shall apply throughout the State of California to all of Department's Freeway Projects.

FREEWAY MASTER CONTRACT

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2. As used in this Master Contract, the following terms have the following meanings:

- (A) "Freeway" means:
1. a highway, together with any designated frontage roads, under the jurisdiction of the Department in respect to which, and along the right-of-way of which, the owners of abutting lands have no right or easement of access to or from their abutting lands or only limited or restricted right or easement of such access; or
 2. a like contemplated highway together with any designated frontage roads, where the California Transportation Commission has selected, adopted and determined the location of the same and declared the same to be a State freeway, and Department has approved a right-of-way map in conjunction with its property appraisal, which map delineates the limited or restricted right or easement of access. Said maps shall be available for inspection by Owner.
- (B) "Freeway Project" means a project in connection with Department's freeway system by Department or others which includes, but is not limited to, work occasioned by and of benefit to the construction, improvement, maintenance, operation or use of a freeway, and which may include such work within the right-of-way of a freeway or any other public road or on other real property.
- (C) "Notice to Owner" means a formal written demand as required by law and as defined in Section 673 of the S&H Code.
- (D) "Relocation" means removal, relocation, protection or any other rearrangement of Owner's Utility Facility as ordered and approved by Department to accommodate Department's Freeway Project. Relocation shall include, but not be limited to: preparation and submission by Owner and approval by Department of relocation plans or drawings sufficiently engineered to allow construction of the ordered Relocation, and a detailed estimate by Owner of the actual and necessary cost of the ordered Relocation.
- (E) "Wasted Work" means design or construction work performed by Owner, upon written direction from the Department, for a Relocation rendered useless or unnecessary as a result of the Department's cancellation and/or scope of changes as agreed by both parties of the specific Freeway Project.
- (F) "Betterment" means the difference in cost between the intended Relocation of Owner's Utility Facility proposed and submitted by Owner for Department's approval and a Relocation which would provide the Owner with equivalent substitute Utility Facilities for those Utility Facilities requiring Relocation to accommodate Department's project. As employed herein, betterment does not include those differences in cost caused by changes in manufacturing standards, availability of materials, or regulatory requirement.

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- (G) "Private Right-of-Way of Owner" means a property right held by Owner in the form of either a recorded or fully executed deed in the usual form or other valid instrument recorded or fully executed and conveying a permanent property right for the Utility Facility in a defined area of real property, or a defined area within the State highway right-of-way that is subject to a recorded Joint Use Agreement (JUA) or Consent To Common Use Agreement (CCUA)
 - (H) "Hazardous Material(s)" means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law.
3. The work to be performed under this Master Contract shall be all work necessary to accomplish Relocation of Owner's existing Utility Facilities as necessitated by Department's Freeway Project.
 4. All work under this Master Contract shall be preceded by the issuance of a written Notice to Owner by Department.
 5. The cost of all work to complete the Relocation of Owner's existing Utility Facilities necessitated by Department's Freeway Project shall be calculated pursuant to the provisions of Paragraph 6 and shall be allocated as follows:
 - (A) Department shall pay one hundred percent (100%) of the cost of Relocation of Owner's existing facilities located in a Private Right-of-Way of Owner, upon delivery by Owner to Department a copy of such Private Right-of-Way concurrent with timely submission of Owner's relocation plan to Department.
 - (B) Owner shall pay one hundred percent (100%) of the cost of Relocation of Owner's Utility Facilities originally installed within State Right-of-Way pursuant to Department's Encroachment Permit and without benefit of a valid franchise.
 - (C) In all other circumstances, including but not limited to Owner's existing Utility Facilities in place pursuant to a valid franchise, statute, or non-perfected claim of prescription, the cost of Relocation of Owner's existing Utility Facilities shall be borne equally by Department and Owner.
 6. Cost of Relocation includes the actual and reasonable cost of all necessary engineering, labor and transportation, and all necessary materials exclusive of any dismantled Utility Facilities used in any Relocation, together with reasonable and usual indirect and overhead charges attributable to that work, and any necessary new private Utility Facility right-of-way involved in the Relocation, except:
 - (A) In any case in which Department is required under the provisions of this Master Contract to pay its share of the cost of Relocation of any Utility Facility, the Department shall be entitled to credits as follows:
 1. The amount of any betterment to the Utility Facility resulting from such Relocation.

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2. The salvage value of any materials or parts salvaged and retained by Owner.
3. If a new Utility Facility or portion thereof is constructed to accomplish such Relocation, an amount bearing the same proportion to the original cost of the displaced facility or portion thereof as its age bears to its normal expected life.

$$\text{Credit} = \frac{\text{Age of facility}}{\text{Normal expected life}} \times \text{Original cost}$$

- (B) A credit shall not be allowed against any portion of the cost that is otherwise chargeable to Owner.
 - (C) A credit allowance for age shall not be applied to publicly-owned sewers.
7. This Master Contract does not apply to:
- (A) The positive location of underground Utility Facilities.
 - (B) Buildings or any Utility Facilities located therein or thereon, whether or not devoted to public use.
 - (C) Telecommunications facilities, including, but not limited to, wireless antennae and related equipment and/or fiber optic lines, installed pursuant to an agreement with specific provisions relating to the removal or relocation of the telecommunication facilities. Such an agreement includes, but is not limited to, the Master License Agreement for Cellular and PCS Carriers and any agreement or permit for the longitudinal use of controlled access right-of-way facilities such as freeways, expressways and bridges.
 - (D) "Service" utility facilities for which Department is the regularly billed sole customer for the commodity provided, or as defined by California Public Utilities Commission.
8. Where Owner is the owner of a part of, or of a present undivided part interest in, any Utility Facility, this Master Contract shall apply to the extent of such interest.
9. For each Relocation, Department and Owner shall enter into a project specific Utility Agreement setting forth, among other things, the Relocation arrangements between the parties regarding cost apportionment, billing, payment, documentation, documentation retention, and accounting, generally using the standard clauses and form published in Department's current Right-of-Way and Contracts manuals.

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10. Upon the issuance of a Notice to Owner, or as otherwise agreed upon in the specific Utility Agreement, the Owner shall diligently undertake, or cause to be undertaken, the Relocation of its Utility Facilities in accordance with Department's reasonable schedule.
11. Department will pay, in its entirety, that portion of the cost of the Relocation constituting Wasted Work. The remainder of the cost of that Relocation shall be borne pursuant to the cost allocation provisions defined in Paragraph 5.
12. If Department requires the Relocation within its right-of-way of any Utility Facility more than once during a four-year period, Department shall pay the cost of that second Relocation, and any subsequent additional Relocations of that Utility Facility within such four-year period on any subsequent or additional project.
13. Upon discovery of Hazardous Material in connection with the Relocation, both Owner and Department shall immediately confer to explore all reasonable alternatives and agree on a course of action, and Owner shall immediately reschedule the work to complete the Relocation in accordance with Department's reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of Hazardous Material.
 - (A) Department will pay, in its entirety, those costs for additional necessary effort undertaken within State's right-of-way to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that Relocation, unless such conditions are attributable to Owner's existing installation or operation.
 - (B) Those costs for additional necessary efforts undertaken within the area of the replacement property right located outside State's right-of-way which are required to comply with existing statutes or regulations concerning the disposition of Hazardous Material shall be allocated between the parties pursuant to the hereinabove provisions of Paragraph 5.
 - (C) Each party to this Master Contract retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other party or third parties in accordance with existing law.
14. Whenever Owner's affected Utility Facilities will remain within the existing Private Right-of-Way of Owner, and these Utility Facilities will fall within the right-of-way of a public road under the jurisdiction of the Department, Department and Owner shall jointly execute an agreement for common use of the subject area which agreement shall also confirm any prior rights held by Owner in said Private Right-of-Way of Owner.

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15. Whenever Owner's affected Utility Facilities will be relocated from the existing Private Right-of-Way of Owner to a new location that falls outside such existing Private Right-of-Way of Owner, the Department shall convey or cause to be conveyed a new right-of-way for such relocated Utility Facilities as will correspond to the existing Private Right-of-Way of Owner. For such Relocations, the Department shall issue, or cause to be issued, to Owner, without charge to Owner or credit to Department, appropriate replacement rights in the new location mutually acceptable to both Department and Owner for those rights previously held by Owner in its existing Private Right-of-Way. In discharge of Department's obligations under this Paragraph, in the event that the new location falls within the right-of-way of a public road under the jurisdiction of Department, Department and Owner shall jointly execute an agreement for joint use of said new area which agreement shall also confirm any prior rights held by Owner in said Private Right-of-Way of Owner. In consideration for these replacement rights being issued by Department, Owner shall subsequently convey to Department, or its nominee, within Department's Right-of-Way, all of its corresponding right, title and interest within Owner's existing Private Right-of-Way so vacated.
16. If the existing Private Right-of-Way of Owner includes fee title, Department shall acquire from Owner, for just compensation under State law, those property rights required by Department for the public roadway by separate transaction, leaving to Owner those remaining property rights appropriate for the placement and operation of Owner's Utility Facilities in the Private Right-of-Way of Owner.
17. This Master Contract shall inure to the benefit of, and shall be binding upon, the successors and assigns of the parties.
18. This Master Contract may be amended, changed or altered by mutual consent of the parties in writing.
19. Either party, upon one year's written notice, may terminate this Master Contract, except that, notwithstanding that termination, the provisions of this Master Contract shall remain in full force and effect with respect to any Relocation of Utility Facilities required under a Notice to Owner issued prior to the Master Contract termination.
20. Time shall be of the essence of this Master Contract.
21. This Master Contract supersedes any previous Master Agreement entered into between the parties under Section 707.5 of the S&H Code. This Master Contract does not supersede any Notices to Owner or Utility Agreements issued or executed pursuant to any previous valid Master Agreement.
22. This Master Contract shall become effective when executed by the last of the two parties.
23. No state funds or resources are allocated or encumbered as against this Master Contract and Department's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Transportation Commission and the encumbrance of funds under a project specific Utility Agreement.

FREEWAY MASTER CONTRACT

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Owner

By Barbara A. Reeves Date October 28, 2004
Barbara A. Reeves
Vice President, Shared Services

APPROVED
STEPHEN E. PICKETT
Sr. Vice President and
General Counsel
By [Signature]
Attorney
October 26, 2004

State of California
Department of Transportation

By [Signature] Date Nov. 1, 2004
Chief
Division of Right of Way and Land Surveys

Approved as to form and procedure

By [Signature] Date Nov. 2, 2004
Attorney for California/Department of Transportation

ATTACHMENT "B"
NOTICE TO OWNER

NOTICE TO OWNER

RW 13-4 (Rev 9/06)

NOTICE TO OWNER

<u>District</u> 08	<u>County</u> Riverside	<u>Route</u> 10	<u>PM</u> 32.6/33.7	<u>EA</u> 455701
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Number 21532

Federal Aid No.: n/a

Owner's File: 800310444

Date: August 27, 2009
October 21, 2009

Freeway: Yes No

To: Southern California Edison
Transmission Facilities
9500 Cleveland Avenue
Rancho Cucamonga, CA 91730

Attention: Robert Castillo, Operations Support (909.944.4408)

Because of the State Highway construction project:

The City of Palm Springs is developing a project to upgrade the existing Indian Canyon Drive (formerly Indian Avenue) Interchange, including a sidewalk on the west side, a bike lane in each direction, realignment of the eastbound and westbound direct on- and off-ramps, and widening of 20th Avenue and Garnet Avenue, to accommodate existing and future traffic. The project is located in Riverside County in the City of Palm Springs on Interstate 10 from 0.77 km west to 0.92 km east of the Indian Canyon Drive Overcrossing.

Which affects your facilities:

The 115kV overhead electrical and transmission poles on the north side of Garnet Avenue, approx. 1 km west of Garnet Avenue.

You are hereby ordered to:

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 pursuant to your Plan No. 5129109 dated May 22, 2009.

Your work schedule shall be as follows:

Commence work immediately and complete by October 1, 2010.

Notify Marcus Fuller, at telephone number 760.322.8253 x8744, 72 hours prior to initial start of work, and 24 hours prior to subsequent restart when your work schedule is interrupted.

Liability of cost of the work is:

50% CITY expense and 50% OWNER expense in accordance with Section 5.C of the Freeway Master Agreement dated November 1, 2004.

Application of credits and final 50% CITY expense is "In Dispute". (Revised October 21, 2009)

CITY OF PALM SPRINGS

By Marcus Fuller

 Marcus Fuller, ASST. DIRECTOR OF PUBLIC WORKS

CC: Resident Engineer
 Permits
 R/W