



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814

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Meeting Date: 10/18/2011

Report Type: Consent

Title: First Amendment to Reimbursement Agreement for North 7th Street Electrical Undergrounding Project

Report ID: 2011-00865

Location: River District (District 1)

Recommendation: Adopt a Resolution: 1) repealing Section 2 of Resolution 2011-363; and 2) authorizing the City Manager or his designee to execute a first amendment to the reimbursement agreement with the Sacramento Regional Transit District for the construction of the North 7th Street Utility Underground Project (City Agreement 2010-1015) to increase the contract amount by \$31,702.

Contact: Diana Sasser, Project Manager, (916) 80-5519, Economic Development Department

Presenter: None

Department: Economic Development Dept

Division: Citywide Development

Dept ID: 18001031

Attachments:

1-Description/Analysis

2-Background

3-City Resolution

4-Exhibit A - Signed North 7th St First Amendment to RT Contract

City Attorney Review

Approved as to Form

Michael T. Sparks

10/6/2011 2:11:39 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt

Russell Fehr

10/3/2011 3:27:25 PM

Approvals/Acknowledgements

Department Director or Designee: Jim Rinehart - 10/5/2011 2:16:29 PM

Description/Analysis

Issue:

On September 7, 2010, the City Council approved the North 7th Utility Underground Project for the undergrounding of the utility lines on North 7th Street, between North B Street and Richards Boulevard, as a project under the System Enhancement Program. This work will avoid the need for Regional Transit (RT) to place overhead power lines along the east side of North 7th Street to serve the new Green Line light rail extension, and will allow for removal of the existing power lines on the west side of North 7th Street. This undergrounding project has already been designed by RT and is under construction.

On November 30, 2010, the City Council approved an amendment to establish revenue and expenditure accounts and increase the “not to exceed” amounts for each of the contracts. In addition, on December 14, 2010, the City Council and Redevelopment Agency approved the allocation of \$50,000 in tax increment funds to purchase the required temporary construction easements; permanent easements for conduits, cubicles, manholes, boxes and related facilities; and pay for the AT&T contingency related to hazardous substances remediation and unforeseen site conditions.

Once the project was approved and under construction, the Sacramento Municipal Utility District (SMUD) requested a change to the original scope of work, increasing the SMUD contract amount by \$12,617, which SMUD agreed to fund. Additionally RT discovered hazardous substances, which exceeded the original allowance in contingency in the RT agreement by \$19,085. On June 21, 2011, the City Council approved several amendments to the project agreements: the SMUD agreement was increased by \$12,617, and the RT agreement was increased by \$31,702 (\$12,617 for the SMUD-funded change order and \$19,085 for the hazardous substance mitigation). The amendment to the RT agreement (RT First Amendment) was attached as Exhibit A to Resolution 2011-363. The document attached as Exhibit A was approved as to form by the City Attorney, but RT had not signed it.

In August of 2011 the RT First Amendment was still not signed by RT and RT was requesting additional changes to the text to document that was attached as Exhibit A to Resolution 2011-363. City Staff is recommending approval of the changes in the text. In order to amend the RT First Amendment to reflect these changes, staff is recommending that the City Council repeal Section 2 of Resolution 2011-363 (approved on June 21, 2011) and authorizes the City Manager to execute a revised first amendment to the RT agreement.

Policy Considerations: The recommendations in this report are consistent with: 1) the City’s Strategic Plan goals of improving sustainability and livability; 2) City Code Section 3.64.040(A) requiring City Council approval for supplemental agreements in excess of \$25,000 for agreements originally executed for a price of less than \$250,000; and 3) the River District Redevelopment Plan and its Implementation Plan goal to eliminate blight addressing infrastructure deficiencies such as substandard streets and circulation systems and to allow for additional redevelopment opportunities.

Environmental Considerations: The North 7th Street Utility Underground Project is Categorically Exempt under the California Environmental Quality Act (CEQA) Guidelines Section 15302 (d), which exempts conversion of overhead utility lines to underground facilities. There is no federal funding or any other federal action associated with this action; therefore, the National Environmental Policy Act (NEPA) does not apply.

Sustainability: This report does not address any sustainability issues.

Commission/Committee Action: Not applicable

Rationale for Recommendation: After the City Council approved an amendment to the RT agreement on June 21, 2011, RT's legal counsel requested additional text changes to the amendment. A new amendment is required to reflect these changes. The proposed resolution repeals the section in Resolution 2011-363 that authorized the City Manager to execute the RT First Amendment and authorizes him to execute a revised amendment to the RT agreement.

Financial Considerations: This amendment reauthorizes the increase in the expenditure budget for the North 7th Street Utility Underground Project (B18219400) in the amount of \$31,702. Resolution 2011-363, approved on June 21, 2011, approved the increase in the revenue budgets for this project in the amount of \$12,617 in the Capital Reimbursable Fund (Fund 3702) from SMUD and in the amount of \$19,085 in the Tax Increment Fund (Fund 3701) from the River District Redevelopment Project.

Emerging Small Business Development (ESBD): Not applicable

BACKGROUND

The relocation of primary voltage overhead power lines into an underground utility trench improves the reliability of utility services, improves aesthetics, facilitates redevelopment and economic vitality and improves safety and access by the disabled along commercial corridors within the City of Sacramento. SMUD recognized these attributes and established the System Enhancement Program in order to relocate or underground power lines below 69 kV. SMUD, where feasible, funds the cost to relocate or underground its facilities provided that the City has identified a project; determined that the project is in the public interest; ensured that the relocation of all telecommunication companies with leases and rights to the affected joint pole facilities are funded and included in the project; has completed plans and specifications; has constructed the underground improvements to allow SMUD to install its facilities to SMUD's satisfaction; and has procured all required building permits and executed easement and service relocation agreements with all affected property owners.

The System Enhancement Program is funded by SMUD on a year by year basis and projects are approved only if there are sufficient funds in the budget. Projects must be approved by the SMUD Board to encumber the funds, and the underground utility trench must be constructed before the funding is released. SMUD covers its own costs to relocate its facilities in the trench constructed by others.

On September 7, 2010, in Resolution 2010-532, the City Council approved the North 7th Utility Underground Project for the undergrounding of the utility lines on North 7th Street, between North B Street and Richards Boulevard, as a project under the System Enhancement Program.

On November 30, 2010, in Resolution 2010-675, the City Council approved an amendment to establish revenue and expenditure accounts and increase the "not to exceed" amounts for each of the contracts.

In addition, on December 14, 2010, the City Council, in Resolution 2010-712, and Redevelopment Agency, in Resolution 2010-049, approved the allocation of \$50,000 in tax increment funds to purchase the required temporary construction easements; permanent easements for conduits, cubicles, manholes, boxes and related facilities; and pay for the AT&T contingency related to hazardous substances remediation and unforeseen site conditions.

On June 21, 2011, the City Council, in Resolution 2011-363, approved the following amendments to increase the amounts the following agreements:

1. The SMUD Agreement, 2010-0983, increased by \$12,617 or from \$884,771 to \$897,388;
2. The Regional Transit (RT) Agreement, 2010-1015, was amended to reflect an increase from SMUD by \$12,617 or from 704,238 to \$716,855 and an increase from the City by \$19,085 or from \$42,000 to \$61,085. This amendment was attached as

Exhibit A to the resolution. The document attached as Exhibit A was approved as to form by the City Attorney, but it was not signed by RT;

3. The IPA with the Redevelopment Agency increased by \$19,085 or from \$50,000 to \$69,085.

In August 2011, before RT signed the amendment to the RT agreement, RT's legal counsel requested additional changes to the text of the amendment. As a result, staff is recommending that the City Council repeal section 2 of Resolution 2011-363 (authorizing the City Manager to execute the amendment to the RT agreement) and authorizing him to execute a revised amendment to the RT agreement. The funding amounts were unchanged and the amendment will still reflect an increase from SMUD by \$12,617 or from 704,238 to \$716,855 and an increase from the City by \$19,085 or from \$42,000 to \$61,085.

RESOLUTION NO. 2011- _____

Adopted by the Sacramento City Council

October 18, 2011

AMENDING THE REGIONAL TRANSIT (RT) AGREEMENT FOR THE NORTH 7TH STREET ELECTRICAL UNDERGROUNDING PROJECT (B18219400)

BACKGROUND

- A. The relocation or undergrounding of primary voltage overhead power lines is desirable to the City as it improves aesthetics, economic vitality, safety and disabled access along corridors.
- B. The Sacramento Municipal Utility District (SMUD) recognized these benefits and established the System Enhancement Program in order to fund selected distribution system enhancements by relocating or undergrounding existing power lines below 69 kV.
- C. SMUD will fund the cost to relocate or underground its facilities and will fund the costs to construct the utility trench provided that: (i) the City has established the project and determined that it is in the public interest, (ii) the relocation of all telecommunication company facilities with leases and rights to the existing joint pole facilities has been funded and approved by those companies, (iii) the plans and specifications for the relocation of SMUD's facilities has been completed by others, (iv) the underground improvements have been constructed to SMUD's satisfaction, (v) all required building permits have been approved, (vi) all private property right of way requirements and easements and service relocation agreements with all affected property owners have been executed, and (viii) any easements that may be required by SMUD for its above-ground utility boxes have been granted.
- D. On September 7, 2010, in Resolution 2010-532, City Council amended the priority list for the SMUD Enhancement Program to add North 7th Street, between North B Street and Richards Boulevard (the "North 7th Street Utility Underground Project"), so that the work could be funded by SMUD and undertaken as part of RT's construction of the Green Line extension project to Richards Boulevard.
- E. On November 30, 2010, in Resolution 2010-675, City Council authorized the City Manager, or his designee, to establish the North 7th Street Utility Underground Project (B18219400) and the revenue and expenditure budgets.
- F. Resolution 2010-712, adopted on December 14, 2010, authorized the City Manager, or his designee, to execute an IPA with the Redevelopment Agency in the amount of \$50,000 for the North 7th Street Utility Underground Project for

temporary construction easements, permanent easements and hazardous material remediation.

- G. Sections 3, 4, and 5 of Resolution 2011-363, adopted on June 21, 2011, authorized the City Manager, or his designee, to execute a first amendment to the agreement with the Sacramento Municipal Utilities District (SMUD) for the North 7th Street Utility Underground Project (City Agreement 2010-0893) to increase the contract amount by \$12,617; to execute a first amendment to the Individual Project Agreement (IPA) with the Redevelopment Agency for the North 7th Street Underground Project to increase the contract amount by \$19,085 in River District Tax Increment funds and \$12,617 in funds from SMUD; and, to increase the North 7th Street Utility Underground Project (B18219400) revenue and expenditure budgets by \$19,085 in River District Tax Increment Funds (Fund 3701) and \$12,617 in funds from SMUD.
- H. Section 2 of Resolution 2011-363, adopted on June 21, 2011, authorized the City Manager, or his designee, to execute a first amendment (RT First Amendment) to the reimbursement agreement with the Sacramento Regional Transit District (RT) for the construction of the North 7th Street Utility Underground Project (City Agreement 2010-1015) to increase the contract amount by \$31,702. The RT First Amendment was attached as Exhibit A to Resolution 2011-363 and approved as to form by the City Attorney, but RT had not signed it.
- I. In August 2011, RT had not signed the RT First Amendment and its legal counsel requested additional changes to the text of the document that was attached as Exhibit A to Resolution 2011-363.
- J. The North 7th Street Utility Underground Project is Categorically Exempt under the California Environmental Quality Act (CEQA) Guidelines Section 15302 (d), which exempts conversion of overhead utility lines to underground facilities.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. Section 2 of Resolution 2011-363 is repealed.

Section 2. The City Manager or his designee is authorized to execute a first amendment to the reimbursement agreement with the Sacramento Regional Transit District for the construction of the North 7th Street Utility Underground Project (City Agreement 2010-1015) to increase the contract amount by \$31,702; the amendment is attached as Exhibit A and is a part of this resolution.

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Exhibit A – First Amendment to Reimbursement Agreement for North 7th Street Electrical Undergrounding Project

**FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT FOR
NORTH 7TH STREET ELECTRICAL UNDERGROUNDING PROJECT**

THIS FIRST AMENDMENT to the Reimbursement Agreement for North 7th Street Electrical Undergrounding Project, designated as City Agreement 2010-1015 (the "Principal Agreement") made and entered into on November 29, 2010, by and between **SACRAMENTO REGIONAL TRANSIT DISTRICT**, a public corporation ("RT"), and the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), is made and entered into on _____, 2011. CITY and RT may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

RECITALS

WHEREAS, under the Principal Agreement, CITY must pay RT for the actual costs incurred for work performed by RT (including RT staff time and the cost of RT's contractor) for CITY's project to underground electrical and communication lines that were on poles along the west side of North 7th Street between North B Street and Richards Boulevard (the "Undergrounding Project"); and

WHEREAS, due to unexpected hazardous materials costs and additional SMUD work, there was a change in the scope of the Undergrounding Project, which increased the construction costs by \$31,701.80 above the original estimate of \$1,019,341.00 (the estimated cost plus the allocated contingency amounts). The change in the Project Costs is shown in the attached Exhibit A1, which is incorporated herein by this reference. The new cost for the Undergrounding Project is \$1,051,042.80; and

NOW, THEREFORE, THE PARTIES DO MUTUALLY AGREE AS FOLLOWS:

1. PROJECT COSTS. The first paragraph in Paragraph 3, entitled "Project Costs," is hereby revised to read in its entirety as follows:

"RT's contractor prepared a cost estimate for the Undergrounding Project, a copy of which is attached as Exhibit A. The actual cost to complete the Undergrounding Project is shown in Exhibit A1. CITY must pay RT for the actual costs incurred for work performed by RT (including RT staff time and the cost of RT's contractor) for the Undergrounding Project, as set out herein and based on the amounts set forth in Exhibit A1. CITY anticipates using the SD-14 funding provided to CITY by SMUD, which has been estimated at an amount not to exceed \$716,855, and with the amount AT&T is to pay to CITY, which is estimated at an amount not to exceed \$167,467, for a total of \$884,322. In addition, SMUD will fund \$105,636 for the unforeseen site conditions encountered by RT. CITY will pay \$61,085 for AT&T's share of the contingency costs related to encountering hazardous materials and other unforeseen site conditions, contingent on approval by the Redevelopment Agency of the City of Sacramento. RT acknowledges that SMUD and AT&T will pay CITY for all work performed by RT or its contractor on a reimbursement basis, subject to the foregoing not-to-exceed amounts. Progress payments may be made as permitted under CITY's agreements with SMUD and AT&T, for work performed by RT's contractor. The Parties acknowledge that neither RT nor CITY has responsibility for Undergrounding Project costs that exceed the funding provided to CITY by SMUD or AT&T, and the amount of AT&T's contingency costs CITY has agreed to pay RT as set forth above."

2. EFFECT. The effect of this First Amendment is to amend the scope and to increase the Project Cost by \$31,701.80, from an estimate of \$1,019,341.00 (including contingency amounts) to 1,051,042.80 and increase City's funding of AT&T's portion by \$19,085, from \$42,000 to \$61,085.

3. FULL FORCE AND EFFECT. To the extent not inconsistent herewith, all other terms and provisions of the Principal Agreement, as amended, remain the same and in full force and effect.

4. INTEGRATION. This First Amendment to the Principal Agreement embodies the entire agreement of the parties in relation to the scope of services herein described, and no other understanding whether verbal, written, or otherwise exists between the parties.

5. AUTHORITY TO BIND. Each of the signatories to this First Amendment to the Principal Agreement represent that they are authorized to sign this Amendment on behalf of such party and that all approvals, resolutions and consents that must be obtained to bind such party have been obtained and that no further approvals, acts, or consents are required to bind such party to this Amendment.

6. COUNTERPARTS. The Parties may execute this First Amendment to the Principal Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

CITY OF SACRAMENTO,
a charter city and municipal corporation

By: _____
John F. Shirey, City Manager

Date: _____

Attest:

CITY CLERK

Approved as to Form:

Michael T. Sparks, Senior Deputy City Attorney

SACRAMENTO REGIONAL TRANSIT DISTRICT,
a public corporation

By: Michael R. Wiley
MICHAEL R. WILEY, General Manager/CEO

Date: 9/14/11

Approved as to Content:

By: Diane Nakano
DIANE NAKANO, AGM Engineering & Construction

Approved as to Legal Form:

By: Bruce A. Behrens
BRUCE A. BEHRENS, Chief Legal Counsel

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