

RESOLUTION NO. 2011-567

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

Adopted by the City of Sacramento City Council on October 18, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

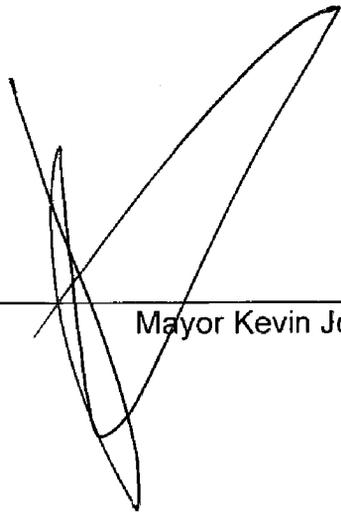
Noes: None.

Abstain: None.

Absent: None.

Attest:


Shirley Concolino, City Clerk


Mayor Kevin Johnson

**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