



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

**SUBJECT: HIGHWAY 87 – SANITARY
SEWER RECONSTRUCTION**

DATE: 11-23-09

Approved

Date

11/30/09

COUNCIL DISTRICT: 3

RECOMMENDATION

Approval of the second amendment to Utility Agreement No. 1390.1, between the California Department of Transportation (Caltrans) and the City of San José, to transfer the remaining agreement balance of \$4,230,000 to the City for the completion of the Highway 87 Detour II Sanitary Sewer Reconstruction Project – Phase II.

OUTCOME

Approval of the second amendment to the Utility Agreement will enable the City to proceed with the design and construction of a new sewer required to alleviate both structural and maintenance access concerns for the existing sewer system that resulted from Caltrans' construction of the Highway 87 Project.

BACKGROUND

On June 18, 2002, the City of San José and Caltrans entered into Utility Agreement No. 1390.1 ("Agreement"), for the replacement of a portion of the City's sanitary sewer system. The original sewer was not structurally designed for the additional loading caused by the construction of the Highway 87 Project. As a result, the City and Caltrans entered into the Agreement to replace the existing sewer with a new sewer that is properly designed for the freeway load. Under the terms of the Agreement the City is serving as the lead agency for the design and construction of the sanitary sewer replacement under Highway 87 between Hedding Street and Interstate 880 ("Project"). The Agreement also provides that Caltrans will compensate the City in the amount of \$4,970,500 for all costs required for the design, inspection, and construction of the Project on a reimbursement basis.

The existing sewer crossing beneath Highway 87 was reinforced by Caltrans during the construction of the freeway. Recent inspection of the sewer verified that it remains in good condition to provide continued reliable sewer service.

In June 2002, the City entered into a consultant agreement with Raines, Melton and Carella, Inc. (RMC), for design services related to the sewer reconstruction in the amount of \$683,016. In March 2005, a construction contract in the amount of \$4,939,146 was awarded to McGuire and Hester Inc. The contract was based on the design documents prepared by RMC. On February 14, 2006, Council approved the First Amendment to the Agreement. This amendment increased the total amount of compensation to the City from \$4,970,500 to \$6,993,000. The increase in the Agreement amount was due to a higher than estimated construction contract bid and additional costs associated with work within the Santa Clara Valley Transportation Authority's Younger Maintenance Yard.

After successfully installing approximately 120 feet of the sewer, McGuire and Hester was unable to advance the tunneling machine required for the sewer installation under the Guadalupe River and Highway 87 due to flooding in the construction tunnel. McGuire and Hester claimed that the flooding occurred as a result of differing site conditions and filed a lawsuit against the City on July 25, 2006, alleging breach of contract, among other claims. In February 2008, the parties agreed to terminate the construction contract and entered into a Mutual Release and Settlement Agreement ("Settlement Agreement"). Under the terms of the Settlement Agreement the City paid McGuire and Hester \$1,900,000 and its subcontractor, the owner of the microtunneling machine, Nada Pacific, \$1,100,000. The City also assigned all of its rights to pursue any legal action against RMC to McGuire and Hester with the provision that any amounts recovered by McGuire and Hester would be shared with the City in accordance with the terms of the Settlement Agreement. The action between McGuire and Hester and RMC is still pending and mediation began in October 2009.

To date a total of \$2,760,000 has been expended and reimbursed to the City by Caltrans for all of the design and construction costs including City staff and consultant expenditures associated with the installation of the initial 120 feet of sewer. There is a balance of \$4,230,000 remaining in the Agreement for the completion of the original project.

ANALYSIS

Sewer improvements are recommended in order for the sewer main to withstand the long term impact of the additional loading caused by embankment fills of Highway 87. The anticipated sewer reconstruction is being separated into two phases. Phase I consists of the work underneath Highway 87 (Highway Sewer) and Phase II consists of the sewer work underneath the Guadalupe River (River Siphon). The original project designed by RMC proposed to install the sewer under the highway and river in one continuous operation. Separating into two phases will mitigate the risks of a longer single tunneling operation.

The second amendment to the Agreement will provide the City with a lump sum transfer of the remaining agreement balance from Caltrans in the amount of \$4,230,000. These funds will be utilized for the evaluation, design, and construction of an alternate Highway Sewer in Phase I. The second amendment also includes a term releasing the City from any obligation to repay the \$2,760,000 that was used to pay for the initial 120 feet of sewer. Upon completion of the

construction of the Highway Sewer, the City will have satisfied its obligations to Caltrans under the Agreement. An alternative sewer alignment evaluation is expected to begin in November 2009 followed with design and award of a construction contract in 2010-2011. The anticipated cost for design and construction of the Highway Sewer is \$3.8 million to \$4.8 million dollars.

The River Siphon is not required to be immediately constructed with the Phase I Highway Sewer since the Highway Sewer will be connected to the existing sewer under the Guadalupe River and will be fully functional. This connection of the Highway Sewer to the existing system will require several 90 degree bends which make the sewer less efficient and prone to the release of odors. Therefore, completion of the River Siphon and eventual connection to the Highway Sewer will eliminate the bends and provide a more hydraulically efficient system. The design and construction of the River Siphon will be funded by the City and scheduled at a later date. Staff will begin programming funds from the Sanitary Sewer Capital Improvement Program into the 2012-2016 five-year CIP for design and construction of the River Siphon. The anticipated cost for design and construction of the River Siphon is \$4 million to \$4.5 million dollars.

EVALUATION AND FOLLOW-UP

No additional follow-up action related to the Agreement or Second Amendment with the Council is expected at this time.

POLICY ALTERNATIVES

Alternative #1: Maintain the existing terms of the Agreement. The City would continue to invoice Caltrans for reimbursement on an as incurred basis.

Pros: A second amendment to the Agreement would not be required.

Cons: The City would have to initially utilize its own capital improvement funds for continuation of the originally designed project.

Reason for not recommending: Due to the recent volatilities in the State's budget, it is possible the funds allocated for the project will not be available in the future.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item meets Criteria 1: Requires Council action on the use of public funds equal to \$1 million or greater. This memorandum will be posted on the City's website for the December 15, 2009 Council agenda.

COORDINATION

This agreement and memorandum were coordinated with the Departments of Planning, Building and Code Enforcement, Department of Transportation and City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This Agreement is consistent with the Council-approved Budget Strategy to continue with capital investments that spur construction spending in our local economy.

COST SUMMARY/IMPLICATIONS

The lump sum transfer from Caltrans will be received in revenue code 545-570000007415 – Hwy 87 Detour 2 SS PHII. The revenue reimbursements will be included in the Five-year Sanitary Sewer Capital Improvement Program.

CEQA

CEQA: Mitigated Negative Declaration, PP03-12-378.

/s/

KATY ALLEN
Director, Public Works Department

For questions please contact TIMM BORDEN, DEPUTY DIRECTOR, at 408-535-8300.