



REPORT TO CITY COUNCIL

DATE: NOVEMBER 28, 2018
TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM: GREG RAMIREZ, CITY MANAGER 
BY: NATHAN HAMBURGER, ASSISTANT CITY MANAGER 
SUBJECT: APPROVE SETTLEMENT AGREEMENT AND MUTUAL RELEASE WITH SOUTHERN CALIFORNIA EDISON

The City and Southern California Edison (SCE) have been in discussions and negotiations to resolve a dispute regarding undergrounding and relocation costs for work along the U.S. 101 at Kanan Road.

This proposed settlement agreement has been constructed via direction from the City Council and the City Attorney's Office. The agreed upon settlement amount of \$115,000 will be paid from the City's Traffic Improvement Fund, consistent with other expenditures related to improvements completed in conjunction with the U.S. 101 at Kanan Road.

The proposed agreement has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends the City Council approve the settlement agreement and mutual release with Southern California Edison.

Attachments: (1) Settlement agreement and mutual release

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE BETWEEN
THE CITY OF AGOURA HILLS AND
SOUTHERN CALIFORNIA EDISON COMPANY**

This Settlement Agreement and Mutual Release (Agreement) is entered into by and between the CITY OF AGOURA HILLS, a California municipal corporation (City), and SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation (SCE) and is effective as of the date the Agreement is fully-executed by the City and SCE (Effective Date). The City and SCE may be referred to below collectively as the Parties.

RECITALS

A. On or about June 9, 2004, the City and the State of California, acting by and through its Department of Transportation, entered into a Cooperative Agreement identified as District Agreement No. 07-4563 in connection with the Kanan Road/State Route 101 Interchange Project in the City of Agoura Hills (Project). The Project replaced the diamond configuration of the interchange with a partial cloverleaf configuration for both the southbound on- and off-ramps and the northbound on- and off-ramps on Route 101 at the Kanan Road interchange.

B. On or about July 22, 2004, the City requested that SCE relocate its electric distribution and telecommunication facilities from their existing locations to facilitate the City's construction of the Project. SCE identified its relocation work as project numbers REL05126484 and REL04100995 (collectively, the "Relocation Project"). The City's July 2004 request for relocation of SCE's facilities in connection with the Project together with a copy of the City's ledger evidencing the payment of \$20,000 for engineering costs are attached collectively as Exhibit A hereto, which is incorporated herein by this reference. SCE and the City entered into the series of four agreements described in Recitals C, D, E, and F below (collectively Agreements) to facilitate that request.

C. SCE and the City entered into a letter agreement dated November 10, 2004 (2004 Letter Agreement) providing for the relocation of SCE's electric distribution and telecommunication facilities located on the north side of the 101 Freeway from the corner of Kanan Road at the old Canwood, connecting to the new Canwood in connection with the Project. Pursuant to the 2004 Letter Agreement, the City was to pay the estimated cost of the Relocation Project to SCE in advance of SCE's beginning the work. The 2004 Letter Agreement also provided that, after completion of SCE's work, SCE would send an invoice for the actual costs it incurred on the Relocation Project, with the City agreeing to pay any additional costs if the actual costs were greater than the estimated costs, and SCE agreeing to refund any excess cost if the actual cost was less than the estimated costs. The 2004 Letter Agreement set SCE's estimated costs for the Relocation Project at \$400,000 with a \$20,000 engineering advance already received from the City to be credited against that amount, leaving a remaining balance of \$380,000. On or about December 30, 2004, the City transmitted to SCE check number 53240 for the remaining balance of \$380,000. A copy of the 2004 Letter Agreement and a copy of check number 53240 in the amount of \$380,000 are attached collectively as Exhibit B hereto, which is incorporated herein by this reference.

D. On June 23, 2005, SCE and the City amended the November 10, 2004 Letter Agreement to increase the estimated cost of SCE's relocation work on the North portion of the Project to \$433,964.09 (2005 North Amendment). Pursuant to the 2005 North Amendment, SCE acknowledged the previous receipt from the City of \$400,000 and requested the payment of the remaining balance of \$33,964.09. On or about July 13, 2005, the City transmitted to SCE check number 54459 for the remaining balance of \$33,964.09. A copy of the 2005 North Amendment and a copy of check number 554590 in the amount of \$33,964.09 are attached collectively as Exhibit C hereto, which is incorporated herein by this reference.

E. SCE and the City further entered into a letter agreement dated May 25, 2006 regarding the relocation of SCE's distribution and telecommunication facilities located on the south side of the 101 Freeway, from the corner of Kanan Road, to Agoura Road, to the proposed Road Side Drive, then east back to Kanan Road in connection with the Project (2006 Letter Agreement). Like the 2004 Letter Agreement, the 2006 Letter Agreement also provided that the City was to pay the estimated cost of the relocation work to SCE in advance of SCE's beginning the work. The 2006 Letter Agreement also provided that, after completion of SCE's work, SCE would send an invoice for the actual costs it incurred on the Project, with the City agreeing to pay any additional costs if the actual costs were greater than the estimated costs, and SCE agreeing to refund any excess cost if the actual cost was less than the estimated costs. The 2006 Letter Agreement, set the estimated costs for SCE's work on the south portion of the Relocation Project at \$678,823. On or about June 19, 2006, the City transmitted to SCE check number 70578 in the amount of \$678,823 in consideration for said work. A copy of the 2006 Letter Agreement and a copy of the accounting ledger identifying the payment in the amount of \$678,823 by check number 70578 are attached collectively as Exhibit D hereto, which is incorporated herein by this reference.

F. On August 31, 2006, SCE and the City entered into an Amendment to the 2006 Letter Agreement in which the estimated cost of the South portion of the project was increased by \$457,151.69 to a total estimate of \$1,135,974.69 (2006 South Amendment). In September 2006, SCE received check number 71170 transmitted by the City for the additional \$457,151.69. A copy of the 2006 South Amendment, a letter from SCE dated September 1, 2018 confirming receipt of payment of the \$457,151.69, and the accounting ledger identifying said payment by check number 71170 are attached collectively as Exhibit E hereto, which is incorporated herein by this reference.

G. The construction of the SCE Relocation Project was completed at the end of 2008. Pursuant to the Agreements, SCE after completion, invoiced the City collectively for its actual costs incurred on both phases of the Project. SCE's June 15, 2015 invoice exceeded the estimated costs of the Project, by the amount of \$299,159.34.

H. A dispute arose between the Parties regarding the final amount due to SCE, if any, under the Agreements. SCE requested that the City remit the amount of \$299,159.34 to it pursuant to the Agreements. The City declined to do so and disputed any obligation to do so under the Agreements.

I. The Parties have now negotiated a compromise and settlement of their dispute regarding the final amount due SCE pursuant to the Agreements and mutually desire to avoid the

costs of litigation between them and to settle and resolve, pursuant to the terms of this Agreement, all issues between them relating to the Agreements and the Project.

NOW THEREFORE, in consideration of the above Recitals, which are incorporated herein by this reference, the mutual covenants and promises herein, and for other valuable consideration, which is hereby acknowledged, the City and SCE agree to the following:

1. **Settlement.** This Agreement is intended by the Parties to be a settlement of all obligations arising from or related to the Agreements, and a settlement of all claims arising from or related to the relocation and/or undergrounding of SCE's distribution and telecommunication facilities in connection with the Project.

2. **Settlement Payment.** The City agrees to pay to SCE, and SCE agrees to accept, the sum of \$115,000 (One Hundred Fifteen Thousand Dollars) as the total and final payment for the full resolution and settlement of all obligations arising from or related to the Agreements, and a settlement of all claims arising from or relating to the relocation and/or undergrounding of SCE's distribution and telecommunication facilities in connection with the Project. The City will issue a check payable to SCE in the amount of \$115,000, and shall mail said check to SCE at the address shown in Paragraph 4 below, within fifteen business days of the Effective Date of this Agreement.

3. **Mutual Release.** Except for the obligations of this Agreement, the Parties herein release and discharge each other, and each of their current and former subsidiaries, affiliates, divisions, parent companies, dealers, and their respective stockholders, shareholders, officers, directors, employees, former employees, present council members, former council members, consultants, owners, agents, related entities, assigns, predecessors-in-interest, successors-in-interest, attorneys, insurers, representatives, and all persons acting by, through or in concert with any of them, (collectively, the "Released Parties") from any and all claims, demands, contracts, liabilities, obligations, accounts, expenses, covenants, liens, causes of action, suits, damages, judgments, interest, fees, costs, orders and liabilities, of whatever kind of nature, in law, equity or otherwise, whether known or unknown, suspected or unsuspected, past, present or future, which they ever had, now have, or claim to have, or may have in the future, against the Released Parties based upon, arising out of or in any way related to the Project, the Agreements, or the Recitals herein.

The Parties acknowledge that they may have sustained damage, loss, costs or expenses which are presently unknown and unsuspected, and such damage, loss, costs, or expense which may have been sustained, may give rise to additional damages, loss, costs, or expenses in the future. Nevertheless, each Party to this Agreement acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and each Party hereby expressly waives any and all rights it may have under California Civil Code Section 1542, or under any statute, common law, or equitable principle of similar effect as these may apply to the releases set forth in this Section 3. California Civil Code Section 1542 states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

SCE's Initials: grh

City's Initials: _____

4. Notices. All notices and demands will be given in writing by certified or registered mail, postage prepaid, and return-receipt requested, or by overnight carrier. Notices will be considered given upon the earlier of (a) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (b) one business day following deposit with an overnight carrier service. The Parties will address such notices as provided below, or as may be amended by written notice:

City: City of Agoura Hills
Attention: City Manager
30001 Ladyface Court
Agoura Hills, California 91301

Copy to: Richards, Watson & Gershon
Attention: Candice Lee, City Attorney
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071-3101

SCE: Southern California Edison Company
Reference Invoice 7500544930
Post Office Box 800
Rosemead, California 91771-0001

Copy to: Southern California Edison Company Law Department
Commercial Litigation Section
Attn: Lisa DeLorme, Senior Attorney
2244 Walnut Grove Ave.
Rosemead, California 91770

5. Miscellaneous.

a. *Applicable Law.* This Agreement will be construed and interpreted under, and governed and enforced according to the laws of the State of California.

b. *Further Documents.* Each Party to this Agreement will execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments and documents, as may reasonably be necessary in order to carry out the intent and purpose of this Agreement.

c. *Amendments.* This Agreement may be amended by a written instrument executed by both Parties.

d. *Entire Agreement.* This Agreement supersedes any prior agreements, oral or written, and contains the entire agreement between SCE and the City regarding the Parties' obligations relating to the Agreements and to the relocation and/or undergrounding of SCE's facilities in connection with the Project. No subsequent agreement, representation, or promise made by either Party hereto, or by or to any employee, officer, agent, or representative of either Party, will be of any effect unless it is in writing and executed by the Party to be bound thereby. No person is authorized to make, and by execution hereof, SCE and the City acknowledge that no person has made, any representation, warranty, guaranty, or promise except as set forth herein; and no such agreement, statement, representation, or promise that is not contained herein will be valid or binding on SCE or the City.

e. *Successors and Assigns.* This Agreement will be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Parties hereto.

f. *Time of Essence.* The Parties acknowledge that time is of the essence in this Agreement.

g. *Counterparts.* This Agreement may be executed simultaneously in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. For purposes of this Agreement, facsimile and electronic signatures will be deemed to be original signatures.

h. *Interpretation and Construction.* Each Party to this Agreement has reviewed this Agreement and each has had the opportunity to have its respective counsel, if any, review and revise this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply in the interpretation of this Agreement or any amendments or exhibits thereto. In this Agreement the neuter gender includes the feminine and masculine, and singular number includes the plural, and the words "Person" and "Party" include corporation, partnership, firm, trust, or association wherever the context so requires. Any captions of the Paragraphs and Subparagraphs are for convenience and reference only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

i. *Attorneys' Fees.* The Parties agree to bear their own costs and attorneys' fees in connection with the Project, including the negotiation and execution of this Agreement. If either Party hereto incurs attorneys' fees in order to enforce, defend or interpret any of the terms, provisions, or conditions of this Agreement or because of a breach of this

Agreement by the other Party, the prevailing Party, whether by suit, negotiation, arbitration, or settlement will be entitled to recover from the other Party its costs and reasonable attorneys' fees.

j. *Authority.* Each individual executing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement and that it is binding in accordance with its terms. The Parties warrant that they are the true holders of all rights and remedies that they purport to release, and that they have not assigned or transferred any of those rights or remedies to any individuals and/or entities.

k. *Severability.* If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid.

IN WITNESS WHEREOF, this Settlement Agreement and Mutual Release is effective on the date it is fully executed by the Parties.

**SOUTHERN CALIFORNIA EDISON
COMPANY, a California Corporation**

Dated: _____

By: _____
Tracee Reeves
Principal Manager

Dated: _____

By: _____
Jennifer R. Hasbrouck
Assistant General Counsel

Approved as to form:

SOUTHERN CALIFORNIA EDISON
COMPANY LAW DEPARTMENT

Lisa DeLorme
Lisa DeLorme, Senior Attorney

**CITY OF AGOURA HILLS, a
California municipal corporation**

Dated: _____

By: _____
William D. Koehler, Mayor

ATTEST:

Kimberly M. Rodrigues, MPPA, MMC
City Clerk

Approved as to form:

RICHARDS, WATSON & GERSHON

Candice Lee, City Attorney

Exhibits Attached:

Exhibit A – July 22, 2004 Letter identifying relocation requirements

Exhibit B – November 10, 2004 Letter Agreement and
check no. 53240 in the amount of \$380,000

Exhibit C – June 23, 2005 North Amendment and
July 13, 2005 check no. 54459 in the amount of \$33,964.09

Exhibit D – May 25, 2006 Letter Agreement and ledger identifying payment in the
amount of \$678,823 by check number 70578

Exhibit E – August 31, 2006 Letter Amending Estimated Costs of May 2006 Letter
Agreement, September 1, 2006 Letter from SCE, and ledger identifying the
payment in the amount of \$457,151.69 by check number 71170

Exhibit A

Copy of July 2004 Agreement and Check No. 52722 in the Amount of \$20,000



George P. Perez
Rights of Way Agent
George.Perez@sce.com

July 22, 2004

Jim Thorsen
City of Agoura Hills
30001 Ladyface Court
Agoura Hills, Ca 91301

SUBJECT: Relocation of Facilities
Malibu - Crater - Valdez 66kV
Kanan Offramp - US 101 Fwy
REO File # RELO4100995 J.C.# 2432

Dear Jim,

I am in receipt of your request to relocate SCE Facilities at the subject location. In order to process your request, you are to provide SCE with an engineering advance of \$20,000.00. Additionally, please provide one copy of the Preliminary Title Report covering the present ownership of the property. We are in receipt of your most recent Street Improvement / Grading Plan. Following receipt of the above items, the cost estimates and documents will require a minimum 90 days to process.

SCE has already requested a prior rights check to begin processing your project per our field meeting on May 12, 2004. At that meeting, we discussed the feasibility of under grounding of a portion of our Malibu - Crater - Valdez 66kV transmission line. As discussed, a study would need to be completed to determine whether breaker replacement at Malibu and Crater Substations would be required. This is due to the change in "charging current", which occurs when under grounding 66kV, and its effect on the performance of existing circuit breakers.

If you choose for SCE to study the feasibility to under ground the 66kV, SCE will require an additional engineering advance of \$10,000.00, for a total of \$30,000.00 engineering advance. Please be advised that if you are considering utilizing Rule 20A funds, please contact Mark Neil, Southern California Edison Rule 20 Coordinator at 805-654-7301.

If this project is canceled, we will deduct from the engineering advance, any expenses we have incurred in connection with the relocation prior to any refund; however, if the project is continued, the engineering advance will be applied to the total cost of relocation.

At that time, you will be billed for the total cost of relocating the facilities. We will require the full amount to be paid prior to commencement of any work. When we have received your check for that amount, plus any required documents, the subject job will be cleared. The actual construction for the overhead relocation will commence approximately 90 days after clearance. This timeline does not apply to under grounding of SCE facilities. All prices quoted and/or written are applicable for a period of 90 days and are subject to change thereafter.

10180 Telegraph Rd
Van Nuys CA 91411

Invoice Date	Description	Distribution	Amount
10/13/2001	DEPOSIT UNDER JUDICIAL MAN INT		20,000.00
Check Amt Total			20,000.00

44 67763 5772225 - 7896 14 - 1 020104 12011

77 20010104 12011 12011

Date: 10/13/2001

CITY OF AGOURA HILLS

Check #

53722