

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

March 12, 2024

FROM

NOEL CASTILLO, Director, Department of Public Works – Transportation

SUBJECT

Joint Use Agreements with Southern California Edison Company for Ranchero Road Corridor Widening Project in the Hesperia Area

RECOMMENDATION(S)

1. Approve Joint Use Agreement (Serial No. 73222A) (**Agreement No. 24-237**), including non-standard terms, with Southern California Edison Company for easements for its facilities at various locations within the Ranchero Road Corridor Widening Project in the Hesperia area.
 2. Approve Joint Use Agreement (Serial No. 73223A) (**Agreement No. 24-238**), including non-standard terms, with Southern California Edison Company for easements for its facilities at various locations within the Ranchero Road Corridor Widening Project in the Hesperia area.
 3. Approve Joint Use Agreement (Serial No. 73227A) (**Agreement No. 24-239**), including non-standard terms, with Southern California Edison Company for easements for its facilities at various locations within the Ranchero Road Corridor Widening Project in the Hesperia area.
- (Presenter: Noel Castillo, Director, 387-7906)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Provide for the Safety, Health and Social Service Needs of County Residents.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). The County's share of the Ranchero Road Corridor Widening Project in the Hesperia area (Project) is funded by Discretionary General Funding as authorized in the 2018-19 budget, Measure "I" 2010-2040 Local Pass-Through funds, Regional Development Impact Fees collected for the Victor Valley subarea, Senate Bill 1 Local Partnership Program grant funds, and California Department of Resources Recycling and Recovery grant funds. The recommended Joint Use Agreements (Agreements) are non-financial in nature.

BACKGROUND INFORMATION

On June 28, 2011 (Item No. 95), the Board of Supervisors (Board) approved County Contract No. 11-424 with the City of Hesperia for the Project approval, environmental documentation, and design phases of the Project. On March 24, 2020 (Item No. 9), the Board approved Amendment No. 1 to Contract No. 11-424 to include the construction phase.

During the design phase of the Project, it was determined that several Southern California Edison (SCE) electrical facilities were in conflict with the widening activities and would need to be relocated. It was further determined that some of these facilities were located within three

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separate easements held by SCE and would need to be relocated to three new joint use easement areas shared with the County. SCE has provided the three Agreements individually identified as Serial Nos. 73222A, 73223A, and 73227A. The relocation of the electrical facilities is necessary to complete the roadway widening.

Approving these Agreements will protect SCE's prior easement rights by granting SCE the same rights on the relocated facilities in areas where SCE had prior rights. Should future County projects requiring additional right-of-way require the relocation of SCE facilities within these easements, the County will be responsible for relocation costs and for entering into another Joint Use Agreement to grant SCE the same rights on the relocated facilities where it is evidenced that SCE had prior rights. All SCE facility relocations for the Project occurred within the County's jurisdiction of the Project limits and the Project is currently in the construction phase. The City of Hesperia is the Project lead.

The recommended Agreements are based on SCE's standard Joint Use Agreement template with the following non-standard County terms:

1. The County is required to indemnify, defend and reimburse SCE for any loss or claim SCE may suffer because of any lack of or defect in County's title to said new location or any subsequent location within road right-of-way, or in the title to any easement provided by County over private property, to which SCE relocates its facilities. County further agrees that if SCE is ever required to relocate its facilities because of any lack or defect in title, County shall reimburse SCE for relocation costs, including right-of-way acquisition. County shall not be responsible for reimbursing SCE for any loss caused by SCE's own fault or negligence. The County also warrants that the County's rights to the new location will allow SCE to exercise all rights granted by the SCE easement.
 - The County standard contract does not require the County to defend or indemnify a Contractor under any circumstance.
 - Potential Impact: By agreeing to indemnify SCE, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against SCE without such limitations and the County would be responsible to defend and reimburse SCE for costs, expenses, and damages.
2. The Agreements do not require SCE to indemnify the County.
 - The County standard contract indemnity provision requires contracting parties to indemnify, defend, and hold the County harmless from third party claims arising out of the acts, errors, or omissions of any person.
 - Potential Impact: SCE is not required to defend, indemnify, or hold the County harmless from any claims, including indemnification for claims arising from their negligent or intentional acts and intellectual property infringement. If the County is sued for any claim, the County may be solely liable for the costs of defense and damages.
3. The Agreements do not require SCE to meet the County's insurance standards as required pursuant to County Policy 11-07.
 - The County Policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and set forth in the County standard contract.

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- Potential Impact: The Agreements do not include County standard insurance requirements. This means that the County has no assurance that SCE will be financially responsible for claims that may arise from the Agreements, which could result in expenses to the County that exceed the total contract amount.

The Department recommends the approval of the Agreements, including the non-standard terms, as necessary for relocation of SCE electrical facilities in connection with the Project.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Aaron Gest, Deputy County Counsel, 387-5455) on February 14, 2024; Risk Management (Victor Tordesillas, Director, 387-8623) on January 25, 2024; Finance (Carl Lofton, Administrative Analyst, 387-5404) on January 22, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on January 22, 2024.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Jesse Armendarez

Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: March 12, 2024



cc: Transportation- Nguyen w/ agrees
Contractor c/o Transportation w/ agrees
File w/ agree
JLL 03/20/2024