



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 2/26/2013

Report Type: Consent

Title: Agreement: Ramona Avenue Extension Project - SMUD 115KV Pole Relocation (T15018400)

Report ID: 2013-00136

Location: Ramona Avenue from Brighton Avenue to Folsom Boulevard, Districts 3 and 6

Recommendation: Pass a Resolution authorizing the city manager to execute an agreement in an amount not to exceed \$631,752 with the Sacramento Municipal Utility District (SMUD) for SMUD to relocate a 115kV pole.

Contact: Jesse Gothan, Associate Engineer, (916) 808-6897; Nicholas Theocharides, Engineering Services Manager, (916) 808-5065, Department of Public Works

Presenter: None

Department: Public Works Department

Division: Funding & Project Development

Dept ID: 15001121

Attachments:

- 1-Description/Analysis
- 2 - Background Information
- 3 - Resolution
- 4 - Exhibit A - Location Map
- 5 - SMUD Agreement

City Attorney Review

Approved as to Form
Gerald Hicks
2/13/2013 11:25:03 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
2/8/2013 10:20:28 AM

Approvals/Acknowledgements

Department Director or Designee: Jerry Way - 2/13/2013 8:45:54 AM

James Sanchez, City Attorney

Shirley Concolino, City Clerk
John F. Shirey, City Manager

Russell Fehr, City Treasurer

Description/Analysis

Issue: The Ramona Avenue Extension Project (T15018400) requires the relocation of a Sacramento Municipal Utilities District (SMUD) pole prior to construction. After analysis of the Ramona Avenue proposed road alignment and attempts to design around the pole, the design team has concluded that the only option is to relocate the pole. SMUD will be paid to complete the design for and the physical relocation of the pole with funds from the Ramona Avenue Extension Project (T15018400). The relocation work includes the replacement of one 115 kilovolt (kV) transmission pole, identified as pole 955, located approximately 1,100 feet northwest of the Ramona Avenue and Brighton Avenue intersection and south of US Highway 50 within SMUD's easement. The City will compensate SMUD for 100% of the costs incurred by SMUD to perform the relocation work.

Policy Considerations: This action requested herein is consistent with the Sacramento City Code Title 3 and the City of Sacramento General Plan goals of improving and expanding public safety and enhancing livability. The work is purely relocation work.

Environmental Considerations:

California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA): The project has an approved Final Environmental Impact Report, and Caltrans has approved the NEPA finding of no significant impact. The relocation of the pole was described and approved in the environmental document.

Sustainability Considerations: This project will improve the 65th Street Transit Station circulation by adding pedestrian and bicycle connections.

Commission/Committee Action: None.

Rationale for Recommendation: In order to move forward with construction, the subject SMUD power pole must be relocated. After analysis of alternatives, staff determined the only option is to relocate the pole. SMUD has agreed to complete the design and relocation. The City will compensate SMUD for 100% of the costs incurred by SMUD to perform the relocation work including, without limitation, costs incurred for labor, materials, construction, administrative and other overhead, engineering, and sales taxes, less any applicable credits.

Financial Considerations: The Ramona Avenue Extension Project (T15018400) has a total budget of \$7,445,207 consisting of Proposition 1B, federal, and local transportation funds. As of January 22, 2013, the unobligated balance is \$4,520,595 which is sufficient to execute the agreement with SMUD in the amount of \$631,752 and complete the right-of-way and the utility relocation phases of the project.

There are no general funds planned or allocated for this project.

Disadvantaged Business Enterprise (DBE): This is a federally funded project. Future public contracting activities carried out with this funding will comply with federal DBE requirements. The relocation work which is the subject of this report will be performed by SMUD and is subject to DBE provisions.

Background

In late 2008, City Council provided authorization to begin work on the environmental documentation for the Ramona Avenue Extension Project (T15018400). The project was identified as a catalyst project within the circulation element of the 65th Street Station Area Study, approved by City Council in 2010. The City has long recognized that the redevelopment potential of the area has been hindered by the confluence of US Highway 50, Regional Transit light rail tracks, and the Placerville Lead Railroad heavy rail. With the proposed project, a pedestrian and bicycle friendly roadway connection will traverse these obstacles and provide a much needed catalyst for redevelopment within the area known as the Sacramento Center for Innovation.

On June 12, 2012, the City Council approved the Final Environmental Impact Report under CEQA and the associated mitigation monitoring plan for the Ramona Avenue Extension. Caltrans has approved the NEPA finding of no significant impacts. Prior to construction of the roadway extension, a 115 kilovolt (kV) Sacramento Municipal Utility District (SMUD) transmission pole must be relocated.

The relocation work includes the replacement of one 115 kV transmission pole, identified as pole 955, located approximately 1,100 feet northwest of the Ramona Avenue and Brighton Avenue intersection and south of US Highway 50 within SMUD's easement. The City will compensate SMUD for 100% of the costs incurred by SMUD to perform the relocation work, including, without limitation, costs incurred for labor, materials, construction, administrative and other overhead, engineering, and sales taxes, less any applicable credits. The City is not financially responsible for engineering or construction costs involving any betterment (as defined in 23 C.F.R. Part 645) to SMUD's facilities. SMUD preliminarily estimates the cost of the relocation work to be \$631,752.

RESOLUTION NO.

Adopted by the Sacramento City Council

RAMONA AVENUE EXTENSION PROJECT – ESTABLISHING AN AGREEMENT WITH SMUD FOR RELOCATION OF 115KV POLE (T15018400)

BACKGROUND

- A. The Ramona Avenue Extension Project (T15018400) requires the relocation of a Sacramento Municipal Utilities District (SMUD) pole prior to construction.
- B. Sufficient funds are available from the Ramona Avenue Extension Project (T15018400) to complete the design for and the physical relocation of the pole.
- C. The relocation work includes the replacement of one 115 kilovolt (kV) transmission pole, identified as pole 955, located approximately 1,100 feet northwest of the Ramona Avenue and Brighton Avenue intersection and south of US Highway 50 within SMUD's easement.
- D. The City will compensate SMUD for 100% of the costs incurred by SMUD to perform the relocation work.

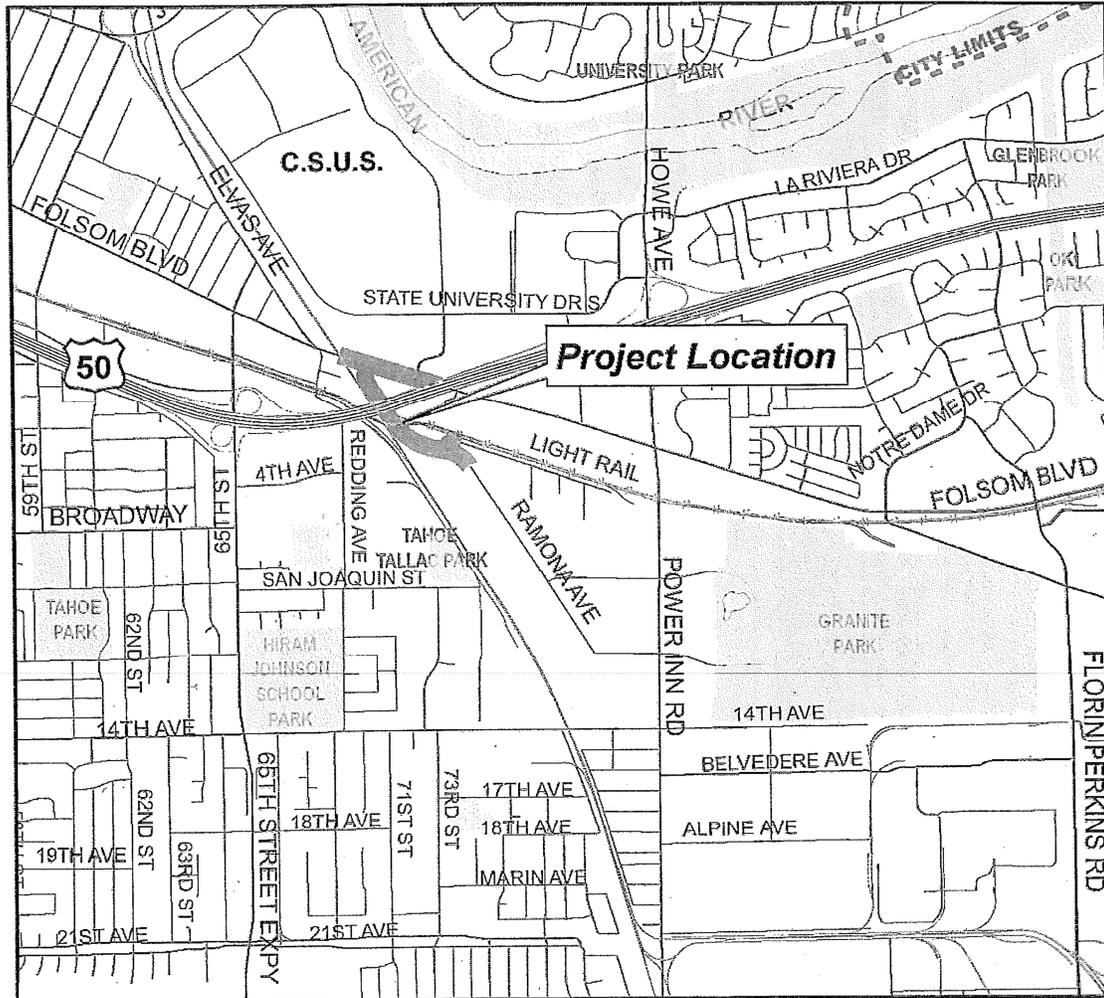
BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager or his designee is authorized to execute an agreement with SMUD for the design and relocation of one 115kV SMUD power pole for an amount not to exceed \$631,752.

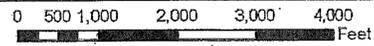
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Exhibit A - Location Map

Location Map for
Ramona Avenue Extension
(PN: T15018400)



Map Contact: S. Tobin



**FACILITIES MODIFICATION AGREEMENT
BETWEEN THE CITY OF SACRAMENTO
AND THE SACRAMENTO MUNICIPAL UTILITY DISTRICT**

Ramona Avenue Extension

This Facilities Modification Agreement ("Agreement") is made and entered into by and between the City of Sacramento ("City") and the Sacramento Municipal Utility District ("SMUD").

RECITALS

WHEREAS, City is planning to construct improvements at the Ramona Avenue Extension (City Project Number: T15018400) ("City Project").

WHEREAS, SMUD and City have identified SMUD-owned transmission electrical facilities ("SMUD Facilities") that will need to be relocated and/or modified in order to accommodate the City Project;

WHEREAS, City desires for SMUD to perform the design work ("Design Work") necessary to relocate and/or modify the SMUD Facilities as necessary to accommodate the City Project ("Relocation Work").

WHEREAS, City will be responsible for 100% of the actual costs of the Design Work and the Relocation Work;

WHEREAS, this Agreement provides for SMUD's performance of the Design Work and the Relocation Work and City's payment to SMUD for the same;

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SMUD and City agree as follows:

1. **Term of Agreement.** This Agreement shall be effective upon the date the last party executes this Agreement and shall remain in effect until all of the obligations under this Agreement are performed by the respective parties hereunder; provided, however, that the indemnity obligations of Section 7 shall survive the termination of this Agreement.
2. **Design Work.** Within ten (10) days of the execution of this Agreement by both parties, City shall deposit thirty thousand dollars (\$30,000) in immediately available funds with SMUD ("Design Work Deposit"). The Design Work Deposit will be applied by SMUD towards the actual costs of the Design Work. SMUD may, from time to time, require City to supplement the Design Work Deposit with additional funds if the actual costs of the Design Work exceed the Design Work Deposit. If City does not provide the required funds, SMUD shall immediately cease performance of the Design Work; provided, however, that City shall remain responsible for the costs of all Design Work performed prior to SMUD's cessation of the work. Upon completion of the Design Work, SMUD shall provide City with a final accounting of the actual Design Work costs. If the actual Design Work costs exceed the Design Work Deposit, City shall pay the difference to SMUD within ninety (90) days of SMUD's delivery of the final accounting to City. If the actual Design Work costs are less than the Design Work Deposit, and provided City has paid the entire Design Work Deposit to SMUD, SMUD will either immediately credit the

refund to the Relocation Work or refund the overpayment to City within ninety (90) days of SMUD's delivery of the final accounting to City.

3. **Relocation Work.**

A. **Scope; Costs.** The Relocation Work includes the replacement of one (1) 115 kilovolt (kV) transmission pole identified as pole 955 located approximately 1100 feet northwest of the Ramona Ave and Brighton Ave intersection and south of highway US 50 along SMUD's easement. The City will compensate SMUD for 100% of the costs incurred by SMUD to perform the Relocation Work, including without limitation costs incurred for labor, materials, construction, administrative and other overhead, engineering, and sales taxes, less any applicable credits. The City is not financially responsible for engineering or construction costs involving any betterment (as defined in 23 C.F.R. Part 645) to SMUD's facilities. SMUD preliminarily estimates the cost of the Relocation Work to be **six hundred and thirty one thousand seven hundred fifty two dollars (\$631,752)**. The parties acknowledge the actual cost of the Relocation Work may vary from the estimate based on a number of factors, including but not limited to final engineering, design, labor and material costs. SMUD must promptly provide notice to the City if SMUD determines that it is likely that the final actual costs will exceed the foregoing estimate by more than 10% and at that time the City must agree to the cost increase through a written amendment to the Agreement. Should the City disagree with the actual cost valuation by SMUD, SMUD shall meet with the City within 15 business days to review the disputed costs. The City shall have the ability to review SMUD's audit and may also perform an audit at its own expense. Notwithstanding the City's rights to perform the audit, the City shall bear all costs incurred by SMUD for the Design Work and the Relocation Work, and any other costs incurred by SMUD in connection with the City Project.

B. **Schedule.** SMUD shall propose a schedule for performing the Relocation Work. Such schedule shall be subject to the City's concurrence and the parties' joint efforts to minimize any adverse affects of outages to either party during the construction phase. The City and SMUD agree to work expeditiously to meet each party's schedule objectives and constraints, which will include the following:

- (1) SMUD construction shall occur during SMUD's off-peak load period, October 1 to April 1; and
- (2) The City's desired construction completion date is no later than April 1st, 2014.

If the agreed-upon schedule cannot accommodate SMUD's outage constraint period and causes SMUD to incur material costs due to extended or delayed outages, SMUD reserves the right to seek additional appropriate compensation from the City, which the City agrees, is compensable costs and shall reimburse SMUD for the costs in their entirety; or the City and SMUD will delay construction until SMUD's aforementioned off-peak load period.

C. **Design.** The City and SMUD agree to continue to work toward a mutually agreeable design for the City Project. If an amended mutual agreement has not been reached at the time of SMUD's planned construction date, SMUD construction will be delayed until such agreement is reached.

D. Milestone Payments. SMUD shall submit an invoice to the City for each of SMUD's three (3) milestone payments for the project with an aggregate total equivalent to the amount described above in Paragraph A. The City agrees to milestone payments in which the total estimated amount described in Paragraph A above must be paid in full prior to the start of construction activities. The milestone payment schedule is as follows:

- (1) \$30,000 upon the execution of this agreement for the Design Work;
- (2) \$229,022 due prior to the procurement of materials for the Relocation Work; and
- (3) \$372,730 due prior to the start of construction activities for construction costs, including outside services, for the Relocation Work.

E. Existing Materials. The City acknowledges that, as practicable, SMUD plans to reuse existing materials or equipment as part of the replacement and anticipates that any material or equipment not re-used shall be scrap with zero (0) value. The value of credits for any salvage or scrap material will be determined in accordance with applicable records consistent with SMUD's business practices.

F. Accounting of Actual Costs. Within a reasonable period of time (not to exceed 90 days) after SMUD completes the Relocation Work, SMUD will furnish an accounting of final actual costs, itemizing material, billing rates and time expended, where applicable. The City shall pay any amount due within 30 days after receipt. In the event that SMUD's total actual costs for work performed under this Agreement are less than the amount pre-paid by the City under Paragraph D, SMUD will refund any excess to the City within 60 days after completion of the Relocation Work.

Compensable costs are to be determined in accordance with SMUD's accounting policies and the uniform system of accounts prescribed by the Federal Energy Regulatory Commission (FERC).

G. Work Standards. The City and SMUD agree that all operations and work performed by the City above or adjacent to SMUD's facilities and by SMUD adjacent to the City Project must be performed in a workmanlike and safe manner, in accordance with all applicable industry standards and government regulations, and in accordance with any restrictions and conditions that may reasonably be imposed by SMUD or the City from time to time. SMUD may, at its own expense, inspect any such work for the sole purpose of ensuring that the City work does not negatively impact SMUD facilities. At any such inspections, SMUD shall inform the City of any concerns discovered in the course of such inspection.

H. Termination. Prior to SMUD commencing construction, the City may terminate work under this Agreement, in whole in part, for its convenience, upon giving 30 days' advance written notice to SMUD. The City must pay SMUD for the costs of any Design Work or Relocation Work performed prior to the effective date of the termination and any costs incurred as a result of such termination in accordance with the provisions of this Agreement, but only to the extent the costs are not reasonably avoidable. If the prepayment by the City under Paragraph D exceeds SMUD's actual costs, SMUD will

refund to the City, within 60 days after the effective date of the termination, the amount by which the payment exceeds SMUD's actual costs.

Once construction has started the City may **NOT** terminate work under this Agreement for any reason as this could have a severe negative impact on SMUD's operations and reliability.

I. **Easements.** City shall acquire all necessary easements and shall develop all related documents as required to allow for relocation of the SMUD Facilities, subject to SMUD's approval of same, including without limitation temporary construction easements, permanent public utility easements, and/or any easements required for access to the SMUD Facilities (for purposes of the Relocation Work and subsequent maintenance of the SMUD Facilities). All easements obtained by the City under this Agreement shall be granted to SMUD for dedicated use by SMUD. To the extent applicable, the easements (if any) shall grant SMUD the right to construct, place, inspect, remove, replace, maintain, access and use SMUD facilities located within said easements.

J. **Disputes.** In the event of a claim or dispute arising out of or related to this Agreement, both parties will make good faith efforts at resolution through negotiation.

5. **Invoicing and Payments.** Invoicing and payments shall be submitted to the parties at the addresses set forth in the notice provision of this Agreement. Invoices shall reference Ramona Avenue Extension Project Number T15018400 and SMUD Work Order Number 12015284.
6. **Environmental Compliance.** City shall be solely responsible for environmental review, and environmental compliance activities including without limitation California Environmental Quality Act activities (review and compliance), environmental permit compliance, Storm Water Pollution Prevention Program activities, and all approved BMP strategies and mitigation measure implementation.
7. **Indemnification.** SMUD and City, respectively, as indemnitor, will indemnify the other, as indemnitee, and save it harmless from any and all loss, damage, expense and liability resulting from injuries to or death of persons, including, but not limited to, employees of either party hereto, and damage to or destruction of property, including, but not limited to, the property of either party hereto, arising out of or in any way connected with the performance of this Agreement of any operations hereunder by indemnitor, its agents or employees, excepting only such injury, death, damage or destruction as may be caused by the sole negligence or willful misconduct of the indemnitee, its agents or employees. Indemnitor shall, upon indemnitee's request, defend at its sole cost any suit asserting a claim covered by this indemnity.

It is the intent of the parties hereto that, where negligence is determined to have been contributory, principles of comparative negligence will be followed and each party shall bear the proportionate costs of any loss, damage, expense and liability attributable to that party's negligence.

8. **Miscellaneous Provisions.**

A. Compliance with Laws. Each of the parties will comply with all applicable Federal, State and local laws, regulations and ordinances in connection with the performance of this Agreement .

THIS PROJECT IS SUBJECT TO THE "BUY AMERICA" PROVISIONS OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982 AS AMENDED BY THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991.

BUY AMERICA REQUIREMENTS

Section 1518 of MAP-21 amends the Buy America statute at 23 U.S.C. 313 to require the application of Buy America to all contracts eligible for assistance under title 23 within the scope of a finding, determination, or decision under the National Environmental Policy Act (NEPA), regardless of funding source, if at least one contract within the scope of the same NEPA document is funded with Federal funding provided under Title 23.

Attention is directed to the "Buy America" requirements of the Surface Transportation Assistance Act of 1982 (Section 165) and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Sections 1041(a) and 1048(a), and the regulations adopted pursuant thereto. In conformance with the law and regulations, all manufacturing processes for steel and iron materials furnished for incorporation into the work on this project shall occur in the United States; with the exception that pig iron and processed, pelletized and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting, and other coating that protects or enhances the value of steel or iron materials shall be considered a manufacturing process subject to the "Buy America" requirements.

A Certificate of Compliance, conforming to the provisions in Section 6-1.07, "Certificates of Compliance," of the California Department of Transportation's State Standard Specifications, shall be furnished for steel and iron materials. The certificates, in addition to certifying that the materials comply with the specifications, shall specifically certify that all manufacturing processes for the materials occurred in the United States, except for the above exceptions.

The requirements imposed by the law and regulations do not prevent a minimal use of foreign steel and iron materials if the total combined cost of the materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. The contractor shall furnish the engineer acceptable documentation of the quantity and value of the foreign steel and iron prior to incorporating the materials into the work.

B. Governing Law. This Agreement shall be interpreted and governed by the laws of the State of California.

C. Entire Agreement and Amendments. This Agreement constitutes the entire agreement between the parties regarding the subject matter of this Agreement and any prior agreements regarding the subject matter of this Agreement, whether oral or written, are void. This Agreement may be amended or revised only by written amendment executed by the authorized representatives of the parties.

D. Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the provision, covenant or condition determined to be invalid, void or unenforceable does not materially alter the essential terms of this Agreement.

E. No Waiver. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other requirement, obligation or right under this Agreement. No waiver shall be binding unless executed in writing by the party making the waiver.

F. Further Assurances. The parties to this Agreement agree to execute and deliver all such other instruments and take all such other actions that may be reasonably necessary from time to time to effectuate the transactions contemplated by this Agreement and carry out the purposes of the agreements contained herein.

G. Notices. Any notice, demand, consent or approval by either party made under this Agreement shall be in writing and shall be personally delivered or sent by mail, addressed as follows:

<p>To City:</p> <p>Attn: Jesse Gothan City of Sacramento 915 I Street, Room 2000 Sacramento, CA 95814</p>	<p>To SMUD:</p> <p>Attn: Jose Hernandez Principal Transmission Engineer Grid Assets, MS E204 Sacramento Municipal Utility District 1708 59th Street Sacramento, CA 95819</p>
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H. Counterparts. This Agreement may be executed in multiple counterparts and shall be deemed executed when signed by the authorized representatives of both parties.

WHEREAS, the parties have executed this Agreement as of the dates set forth below:

Sacramento Municipal Utility District

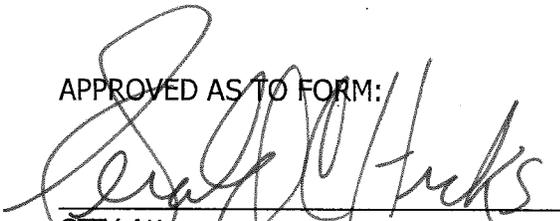

Ed LaBranch , Manager T&D Line Assets

CITY OF SACRAMENTO
a California Charter CITY

For John F. Shirey, CITY Manager

ATTEST:

CITY Clerk

APPROVED AS TO FORM:

CITY Attorney