



Agenda Item A.3
CONSENT CALENDAR
Meeting Date: July 20, 2021

TO: Mayor and Councilmembers

FROM: Charles W. Ebeling, Public Works Director

CONTACT: Gerald Comati, Project Manager

SUBJECT: Utility Agreement with the Goleta Water District for the Ekwill Street and Fowler Road Extensions Project (Project No. 9002)

RECOMMENDATION:

Approve and authorize the City Manager to enter into a Utility Agreement with the Goleta Water District for the Ekwill Street and Fowler Road Extensions Project.

BACKGROUND:

The purpose of the Ekwill Street and Fowler Road Extensions Project (Ekwill-Fowler Project) is to improve access to and circulation within Old Town, improve access to the Santa Barbara Airport, enhance pedestrian and bicycle circulation and safety, and allow the expansion of transit opportunities within the Goleta Old Town area.

The Ekwill-Fowler Project will construct:

- The Ekwill Street extension from Kellogg Avenue through to Fairview Avenue, with a roundabout at the Ekwill Street and Pine Avenue intersection.
- Fowler Road from the terminus of existing South Street (South Kellogg Avenue) to existing Technology Drive.
- Operational improvements at the interchange of Hollister Avenue and State Route 217 including the installation of roundabouts at the State Route 217 Southbound and Northbound Hollister Avenue intersections.
- Widening of Kellogg Avenue to allow additional right turn storage capacity from northbound Kellogg Avenue to eastbound Hollister Avenue.

The Ekwill-Fowler Project is partially funded through the State Transportation Improvement Program (STIP) which includes Federal funding. Additionally, a portion of the project along Hollister Avenue lies within Caltrans right-of-way, therefore right-of-way and utility agreements are required to meet federal and Caltrans requirements. The project results in a significant number of utility relocations on Hollister Avenue, Ekwill Street and Fowler Road. In order to determine the cost liability for these utility relocations, utility owners are required to prove prior rights for those utilities within the City right-of-way. If prior rights are shown, then a cost sharing situation occurs in which the utility owners pay for the cost of relocations in areas where no prior rights exist, and the City

pays for the cost of relocations where prior rights do exist. Federal funding guidelines require utility agreements be executed between the City of Goleta and the utility owners in order to define responsibility and payment.

DISCUSSION:

In 2015 the design team completed the 65% design for the Ekwill-Fowler Project. At that time, the design team identified all potential conflicts to existing utilities as a result of the Ekwill-Fowler Project. Subsequently, the design team submitted utility conflict letters to all associated utility companies with potential utility conflicts. The utility conflict letters directed the utility companies to confirm potential utility conflicts, provide a position of liability based on prior rights, if applicable, and to develop utility relocation plans.

The Goleta Water District (GWD) was one of the utility companies identified with potential utility conflicts with proposed project improvements. Upon receiving the conflict letter, GWD performed an assessment and identified prior rights in some locations within the Ekwill-Fowler Project footprint. The City design team reviewed the liability assessment and concurred with it. GWD also developed utility relocation designs and a cost share estimate between the City of Goleta and GWD. The cost of all the required GWD utility relocation work for the Ekwill-Fowler Project is estimated to be approximately \$1,000,000, of which \$203,000 is estimated to be the City responsibility based on prior GWD rights.

The utility agreement between the City and GWD addresses the roles and responsibilities of the City, which provides that the work would be performed by GWD, and the City would reimburse GWD for its share of the work (\$203,000). As stated in the agreement, the City's cost may vary depending on actual construction costs. All the required relocation work will be performed by GWD prior to the start of construction of the Ekwill-Fowler Project. Execution of the City-GWD Utility Agreement is a requirement for the City to secure Right-of-Way Certification from Caltrans for the Ekwill-Fowler Project. The Right-of-Way Certification is a federal funding requirement before construction funds can be allocated to initiate project construction. The GWD Board approved the Utility Agreement in 2020.

Public Works recommends that the City Council approve and authorize the City Manager to enter into the utility agreement with GWD for the Ekwill Street and Fowler Road Extensions Project.

FISCAL IMPACTS:

There are no immediate fiscal impacts associated with the execution of the utility agreement with Goleta Water District; however, sufficient budget will be needed prior to the start of utility construction work for the Ekwill-Fowler Project. The City's share for the GWD utility construction work is estimated at \$203,000. There are sufficient funds available in the project construction budget for the project to cover the City's share of the GWD's utility work. The specific account that will fund this expenditure will be Account 220-90-9002-57071 (DIF Construction).

The table below summarizes the FY 2020-21 project budget estimated carryovers and FY 2021-22 adopted budget amounts and funding source accounts:

Project: Ekwil Street and Fowler Road Extensions Project (Project No. 9002)					
Account	Fund Type	FY 2020-21 Carryovers (Estimated)	FY 2021-22 Adopted Budget	YTD Activity	Available Balance
220-90-9002-57050 (Land Acquisition)	DIF	\$1,133,845	\$0	\$244,719	\$889,126
220-90-9002-57070 (Design)	DIF	\$1,250,762	\$1,000,000	\$747,699	\$1,503,063
220-90-9002-57071 (Construction)	DIF	\$5,925,648	\$0	\$0	\$5,925,648
230-90-9002-57071 (Construction)	LRDP	\$0	\$1,821,577	\$0	\$1,821,577
308-90-9002-57071 (Construction)	STIP – State Grant	\$11,372,000	\$0	\$0	\$11,372,000
	Total	\$19,682,255	\$2,821,577	\$992,418	\$21,511,414

ALTERNATIVES:

The City Council may elect not to approve the GWD Utility Agreement. However, doing so would not allow the City to secure Right-of-Way Certification for the project funding, would result in project delays and could jeopardize the STIP grant funding.

Reviewed By:

Legal Review By:

Approved By:


Kristine Schmidt
Assistant City Manager


Michael Jenkins
City Attorney


Michelle Greene
City Manager

ATTACHMENTS:

1. Utility Agreement between the City of Goleta and the Goleta Water District for the Ekwil Street and Fowler Road Extensions Project.

ATTACHMENT 1

Utility Agreement between the City of Goleta and the Goleta Water District for the Ekwill Street and Fowler Road Extensions Project

City of Goleta

UTILITY AGREEMENT

County	Route/Street	P.M.	Project #
Santa Barbara	Hollister Avenue	NA	9002
Fed. Aid No.			
Owner's File	9002		
FEDERAL PARTICIPATION: On the Project Yes/No:			Yes
FEDERAL PARTICIPATION: On the Utilities: Yes/No:			No

UTILITY AGREEMENT NO. EF-2-GWD-UtilAgmt-2

The City of Goleta hereinafter called "LOCAL AGENCY" proposes to construct the Ekwill Street and Fowler Road extensions and construct improvements at the Hollister Avenue intersections with State 217 ramps ("PROJECT") in the City of Goleta, Santa Barbara County, California.

And: Goleta Water District
4699 Hollister Avenue
Goleta, CA 93110-1999

hereinafter called "OWNER", owns and maintains various waterline facilities ("FACILITY") located within the limits of LOCAL AGENCY's PROJECT that requires relocation of said facilities to accommodate LOCAL AGENCY's PROJECT.

It is hereby mutually agreed that:

I. WORK TO BE DONE

In accordance with Notice to Owner No. EF-GWD dated July 31, 2020, OWNER shall relocate its water line facility and appurtenances. All work shall be performed substantially in accordance with OWNER's Plan No. 12-4111 and 16-4356 dated July 15, 2020, consisting of 15 sheets, ("Owner's Plan") a copy of which is on file in the Office of LOCAL AGENCY at 130 Cremona Drive, Suite B, Goleta, CA 93117.

Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and agreed to/ acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said

deviation shall commence prior to written execution by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner.

II. LIABILITY FOR WORK

Existing facilities are located in their present position pursuant to rights superior to those of the LOCAL AGENCY and will be relocated at LOCAL AGENCY's expense.

III. PERFORMANCE OF WORK

OWNER agrees to perform the herein-described work with its own forces or cause the herein described work to be performed by the OWNER's contractor, employed by written contract on a continuing basis to perform work of this type, and to provide and furnish all necessary labor, materials, tools, and equipment required therefore; and to prosecute said work diligently to completion.

Travel Expenses Per Diem: (Has been made as part of the mandatory language of the agreement)

Use of personnel requiring lodging and meal "per diem" expenses will not be allowed without prior written authorization by LOCAL AGENCY's representative. Requests for such authorization must be contained in OWNER's estimate of actual and necessary relocation costs. OWNER shall include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed. Per Diem expenses shall not exceed the per diem expense amounts allowed under the California Department of Human Resources travel expense guidelines.

Work performed by OWNER's contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements; but, work performed directly by Owner's employees falls within the exception of Labor Code Section 1720(a)(1) and does not constitute a public work under Section 1720(a)(2) and is not subject to prevailing wages. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above.

IV. PAYMENT FOR WORK

The LOCAL AGENCY shall pay its share of the actual and necessary cost of the herein described work within 90 days after receipt of OWNER's itemized bill in quintuplicate, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual and necessary cost and expense. The OWNER shall maintain records of the actual costs incurred and charged or allocated to the

project in accordance with recognized accounting principles. It is estimated that the LOCAL AGENCY's cost will be \$203,000.

It is understood and agreed that the LOCAL AGENCY will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the LOCAL AGENCY for all accrued depreciation on the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER.

Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit progress bills for costs incurred not to exceed OWNER's recorded costs as of the billing date less estimated credits applicable to completed work performed under this agreement. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by LOCAL AGENCY of documentation supporting the cost increase and after an Amendment to this Agreement has been executed by the parties to this Agreement.

The OWNER shall submit a final bill to the LOCAL AGENCY within 180 days after the completion of the work described in Section I above. If the LOCAL AGENCY has not received a final bill within 180 days after notification of completion of OWNER's work described in Section I of this Agreement, and LOCAL AGENCY has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements as required for OWNER's facilities; LOCAL AGENCY will provide written notification to OWNER of its intent to close its file within 30 days and and if OWNER DOES NOT WITHIN 15 days respond to such notice, OWNER hereby acknowledges, to the extent allowed by law that all remaining costs will be deemed to have been abandoned.

The final billing shall be in the form of an itemized statement of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, the LOCAL AGENCY shall not pay final bills, which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the OWNER. If the final bill exceeds the OWNER's estimated costs solely as the result of a revised Notice to Owner as provided for in Section I, a copy of said revised Notice to Owner shall suffice as documentation.

In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an amended Agreement shall be executed by the parties to this Agreement prior to the payment of the OWNER's final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section I of this Agreement shall have the prior concurrence in writing of LOCAL AGENCY.

Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final payment and will be available for audit in accordance with Contract Cost Principals and Procedures as set forth in 48 CFR, Chapter 1, Subpart E, Part 31 by LOCAL AGENCY and/or Federal Auditors. In

performing work under this Agreement, OWNER agrees to comply with the Uniform System of Accounts for Public Utilities found at 18 CFR, Parts 101, 201, et al., to the extent they are applicable to OWNER doing work on the project that is the subject of this agreement, the contract cost principles and procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and 2 CFR, Part 200, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse LOCAL AGENCY upon receipt of LOCAL AGENCY billing. If OWNER is subject to repayment due to failure by LOCAL AGENCY to comply with applicable laws, regulations, and ordinances, then LOCAL AGENCY will ensure that OWNER is compensated for actual cost in performing work under this agreement.

V. GENERAL CONDITIONS

All costs accrued by OWNER as a result of LOCAL AGENCY's request of OWNER to review, study and/or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement.

If LOCAL AGENCY's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, LOCAL AGENCY will notify OWNER in writing, and LOCAL AGENCY reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.

All obligations of LOCAL AGENCY under the terms of this Agreement are subject to the acceptance of the Agreement by the City Council of the LOCAL AGENCY and the Board of Directors of OWNER the passage of the annual Budget Act by the State Legislature, and the allocation of those funds by the California Transportation Commission.

OWNER shall submit a Notice of Completion to the LOCAL AGENCY within 30 days of the completion of the work described herein.

It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement.

In addition, the provisions of 23 CFR 635.410, BA, are also incorporated into this agreement. The BA requirements are further specified in Moving Ahead for Progress in the 21st Century (MAP-21), section 1518; 23 CFR 635.410 requires that all manufacturing processes have occurred in the United States for steel and iron products (including the application of coatings) installed on a project receiving funding from the FHWA.

OWNER understands and acknowledges that this project is subject to the requirements of the BA law (23 U.S.C., Section 313) and applicable regulations, including 23 CFR 635.410 and FHWA guidance. OWNER hereby certifies that in the performance of this Agreement, for products where BA requirements apply, it shall use only such products for

which it has received a certification from its supplier, or provider of construction services that procures the product certifying BA compliance. This does not include products for which waivers have been granted under 23 CFR 635.410 or other applicable provisions or excluded material cited in the Department's guidelines for the implementation of BA requirements for utility relocations issued on December 3, 2013.

LOCAL AGENCY further acknowledges that OWNER, in complying with the Buy America Rule, is expressly relying upon the instructions and guidance (collectively, "Guidance") issued by LOCAL AGENCY and its representatives concerning the Buy America Rule requirements for utility relocations within the State of California. Notwithstanding any provision herein to the contrary, OWNER shall not be deemed in breach of this Agreement for any violations of the Buy America Rule if OWNER's actions are in compliance with the Guidance.

IN WITNESS WHEREOF, the above parties have executed this Agreement the day and year above written.

CITY OF GOLETA

By: _____

GOLETA WATER DISTRICT

By:  _____

Date: _____

Date: 8/12/20 _____