May 3, 2016

TO: ACHD Commissioners, ACHD Director, ACHD Deputy Directors

FROM: Dyan Bevins, P.E., Capital Projects Supervisor

SUBJECT: Actual Cost Utility Relocation Agreement
Franklin Rd, Black Cat Rd/Ten Mile Rd
Project Nos:  711023 and 711024
Staff Report for May 11, 2016 Commission Meeting

Executive Summary
Staff has prepared an agreement with Idaho Power to modify and/or relocate some or all of its facilities for the Franklin Rd, Black Cat Rd/Franklin Rd project. This project is a federally funded project that will widen the Franklin Rd & Black Cat Rd intersection as well as Franklin Rd between Black Cat Rd and Ten Mile Rd to include five lanes, curb, gutter, sidewalk and bike lanes. In the agreement Idaho Power will perform the work at their expense and ACHD will reimburse them. ACHD legal has reviewed and approved the agreement. Staff recommends approval of the agreement.

Facts & Findings
Idaho Power will coordinate and perform the work necessary in its entirety prior to construction beginning on the roadway. The following are two specific highlights of the agreement:

- Idaho Power will arrange for all labor, materials, and equipment necessary for the completion of the utility relocation.
- ACHD will reimburse Idaho Power for ACHD’s portion of the work for actual costs incurred.

Fiscal Implications
ACHD’s portion of the Idaho Power work is estimated at $528,724. However, since this is a federally funded project ACHD will only be responsible for $38,810 after receiving reimbursement from ITD.

Policy Implications
This project was approved as part of the FY16 Budget and the 2016-2020 Integrated Five Year Work Plan, adopted by the Commission on October 28, 2015.
Alternatives
1. Approve the Idaho Power agreement and authorize the Commission President and Director to sign.
2. Do not approve the agreement.

Recommendation
Staff recommends Alternative 1, approve the Idaho Power agreement and authorize the Commission President and Director to sign.

Attachment(s): Agreement with Idaho Power
UTILITY RELOCATION AGREEMENT FOR IUE-RELATED RELOCATIONS

Project Name: Franklin Rd, Black Cat Rd to Ten Mile Rd

Project No.: ACHD: 711023, ITD Key No. 12368

THIS AGREEMENT (“this Agreement”) made and entered into this 2 day of May, 2016 by and between the ADA COUNTY HIGHWAY DISTRICT, hereinafter referred to as the “District”, and IDAHO POWER COMPANY, hereinafter referred to as the “Company”.

PURPOSE: The District proposes to construct Project No. 711023, Project Name: Franklin Rd, Black Cat Rd to Ten Mile Rd (“Project”). It is necessary for the Company to perform utility relocation of some or all of its facilities located in or about the construction area to accommodate the Project. The Project involves relocation of Company facilities that are located on property within which the Company claims an easement interest. The easement interests claimed by the Company consist of either the easement referred to as the Interurban Easement (“Easement”) or other private easements owned by the Company (“Private Easement”). Therefore, costs to relocate the Company’s facilities located within the Easement or other Company-owned Private Easements shall be allocated pursuant to this Agreement, in accordance with the terms and provisions contained in the parties Resolution of Lawsuits and Relocation Agreement dated March 10, 2016.

This Agreement sets out the terms by which the District shall reimburse the Company for relocation of its facilities located within the Easement or other Private Easement owned by the Company in order to accommodate the Project.

THE PARTIES, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, agree as follows:

DEFINITIONS:

Project – The work defined by the plans and specifications developed by the District assigned the Project Number located at the top of this Agreement.

Facilities – Company transmission lines, distribution lines, and/or related facilities that are subject to Utility Relocation.

Private Easement – Any written easement or court-decreed prescriptive easement held by the Company within the boundaries of the Interurban Easement, except the Interurban Easement itself.
Utility Relocation – The modification in place, relocation or reconstruction of Company Facilities necessary to accommodate the Project.

Cost of Utility Relocation – The sum of those costs that are actually incurred by the Company as a result of Utility Relocation less salvage credits as agreed to by the parties. The Cost of Utility Relocation excludes the cost of betterments and upgrades to the Company’s Facilities resulting from the Utility Relocation, except as set forth in Section 4 of this Agreement. As used in this Agreement, the Cost of Utility Relocation shall not include:

- Costs to relocate Company Facilities which are not required to be relocated by the District as part of the Project;
- Costs to relocate Company Facilities which are required to be relocated by the District as part of the Project, but which are located within the public right-of-way and not within the Easement or a Private Easement;
- Costs to relocate Company Facilities which are not within the Easement or Company-owned Private Easements, subject to Section 3(A) below.

Cost Neutral – Costs which are no more than 110% (one-hundred ten percent) of the actual cost of replacing the item.

TERMS:

1. Property Rights

   A) The Company will quitclaim to the District all its property rights, title and interest in the Easement or any Private Easements located within the right-of-way of the Project, including the right to enter and occupy the Easement or Company-owned Private Easements located within the right-of-way of the Project, which right-of-way is depicted in the Project drawings attached hereto as Exhibit A (“Project Drawings”).

   B) The Facilities will be relocated to a location that is mutually acceptable to the parties. The parties will work in good faith to determine the most efficient, safe, and cost effective location for the relocated Facilities.

2. Utility Relocation of Facilities Located Within the Easement

   A) In the event the District requests the Company to relocate its Facilities from within the Easement (excluding Facilities located in written Private Easements), the associated Cost of Utility Relocation will be allocated as follows:

      (i) The District and the Company will share the Cost of Utility Relocation on a 50/50 basis if the Facilities are relocated to a location that is acceptable to the parties within the Easement. Subsequent relocation costs for these Facilities will be shared by the District and the Company on a 50/50 basis.
If the Facilities are required to be relocated to a location outside the Easement, the District will acquire a new easement for the relocated Facilities to be held in the name of the Company and on the Company’s standard power line easement form, which is attached hereto as Exhibit B. The new location of the Company’s Facilities will be shown on the Project Drawings. The District and the Company will share the acquisition costs, purchase land cost of the new easement, and the Cost of Utility Relocation of the Facilities on a 50/50 basis. Subsequent relocation costs for these Facilities will be shared by the District and the Company on a 50/50 basis.

3. Utility Relocation of Facilities Not Located within the Easement

A) The calculation, allocation and payment for Utility Relocation for Company Facilities that are located in the boundaries of right-of-way for the Project and not within the Easement (including Company Facilities located in prescriptive easements claimed by the Company but which have not been court decreed), or Facilities located on Private Easements owned by the Company, will be determined in accordance with applicable statutory and common law requirements and not in accordance with this Agreement.

B) In the event the Company owns a Private Easement other than the Easement, the District will provide the Company, at no expense to the Company, a new, non-exclusive utility easement with similar size and dimensions to be held in the name of the Company.

4. Reimbursable Cost of Utility Relocation. The District will reimburse the Company the actual, out of pocket Cost of Utility Relocation incurred by the Company as set forth in Sections 2 and 3 above.

A) The Cost of Utility Relocation shall not include betterment or upgrades to the Company's Facilities, except to the extent that the actual cost for betterment or upgrades are:

(i) Required by the District’s Project;

(ii) Replacement devices or materials that are of substantially equivalent standards and at reasonably equivalent cost, although not identical;

(iii) Replacement of devices or materials no longer regularly manufactured with substantially equivalent cost, grade, or size;

(iv) Required by law under governmental and appropriate regulatory commission code, including, but not limited to, the NESC and NEC codes;

(v) Required by utility design standards adopted by the Company, limited to the following exceptions:

(a) The replacement of open wire secondary cable (which could be shorted out by animals, etc.) with triplex (which is fully insulated);

(b) The replacement of buried underground cable that was originally placed directly in the ground with cable in conduit;
(c) The replacement of an overhead line that cannot be moved to the available right-of-way in a manner that fits within the Company’s overhead design practice (i.e., there may be too many angles); and thus the new power line may require upgraded poles or new anchor wires or other adjustments, or may need to be placed underground (for distribution lines).

(vi) Cost Neutral.

5. **Relocation or Modification of Company Facilities**

   A) The Company shall arrange for all labor, materials, and equipment necessary, including survey services, for the completion of Utility Relocation as shown on the Project Drawings attached hereto as Exhibit A and by reference hereby made a part of this Agreement. Any modification to the Utility Relocation set forth in the Project Plans will require the written consent of the District and the Company.

   B) Utility Relocation may either be done with Company forces and equipment or by a contract awarded by the Company.

   C) Utility Relocation shall be completed either prior to the District advertising the Project for bids or by coordinating with the District’s Contractor during construction of the Project. The Company shall either verify that the District has acquired right-of-way or make its own arrangement with each property owner before starting Utility Relocation. All Utility Relocation shall be completed as provided in the Project Plans and Work Schedule.

   D) The Company shall furnish detailed plans, specifications, lists of materials, and estimates of cost that may be required in addition to those prepared by the District. These plans specifications, lists, and estimates are hereby made a part of this Agreement as Exhibits C and D, and are included as part of Utility Relocation.

   E) The Company shall furnish a work schedule, including dates for begin and end of work, to the District prior to the start of Utility Relocation. This work schedule is to include any activities or work required by the District or its Contractor necessary for the completion of Utility Relocation. The work schedule is to be in a printed format that may include descriptive text, charts, or diagrams. The work schedule is attached hereto as Exhibit E (“Work Schedule”) and by reference is hereby made part of this agreement, and is included as part of Utility Relocation. Revised work schedules are to be furnished to the District when requested. The parties understand that the Work Schedule represents the Company’s current good faith estimate for its relocation work for the Project, but the Work Schedule is subject to change by the Company where it deems appropriate, due to changes in the timing of the Project, weather, working conditions, availability of labor and materials, and other factors relating to the work. The Company will communicate any material changes to the Work Schedule to the District on a timely basis.

   F) The Company shall notify the District 48 hours prior to the start of Utility Relocation and shall notify the District in writing of the date when Utility Relocation is completed.
G) Within sixty (60) days of the date when Utility Relocation is completed, the Company shall provide the District with information acceptable to the Company and the District showing the location, as of the completion of construction and subject to reasonable indicated tolerances, of any relocated underground utility Facilities and other Facilities installed as part of the Utility Relocation within the public right-of-way.

6. **Estimated Cost, Submission and Payment of Billings**

   A) The District will reimburse the Company for the actual cost of the Utility Relocation eligible for reimbursement as defined by the Idaho Transportation Department Utility Accommodation Policy. The estimated Cost of Utility Relocation ("Estimated Cost") is $530,000. Cost estimating information is attached hereto as Exhibit F and by reference hereby made a part of this Agreement. The parties recognize and agree that the Estimated Cost is provided solely for budgeting purposes, may be greater or lesser than the actual Cost of Utility Relocation, and is not binding on either party.

   B) Upon written request by the District, the Company will provide reasonable documentation and support, as well as updated cost-documentation and support as more specific information becomes available, of the relocation costs sought by the Company, including documentation for each type of betterment and upgrade noted in Section 4(a) above that may be included in the Cost of Utility Relocation.

   C) The Company may submit billings for reimbursement of the Cost of Utility Relocation to the District for progress payments during the progress of the work. The Company shall submit a final bill to the District for reimbursement of the total Cost of Utility Relocation within one hundred twenty (120) days after completion of the work. All billings shall include supporting documentation, applicable to the Project, used by the Company to substantiate the cost of Utility Relocation.

   D) The District shall pay progress billings within forty-five (45) days and final billing within ninety (90) days after receipt of the bills. All payments are subject to the findings of a final audit by the District.

   E) Reference to the Project Number shall be indicated on all bills, correspondence, and records pertaining to this Project.

7. **Disposal of Materials**

   The District shall be afforded a reasonable opportunity to inspect materials recovered by the Company prior to disposal by sale or scrap. This requirement will be satisfied by the Company giving timely written notice, or oral notice with prompt written confirmation, to the District of the time and place where the material will be available for inspection. The giving of notice is the responsibility of the Company, and it may be held accountable for full salvage value of materials disposed of without notice.
8. **Indemnification of the District by the Company**

   The Company agrees to indemnify, save harmless and defend the District, regardless of outcome, from the expenses of and against suits, actions, claims or losses of every kind, nature and description, including costs, expenses and attorney fees that may be incurred by reason of any negligent act or omission, neglect or misconduct of the Company or its contractor in the design, construction and maintenance of the Utility Relocation, which is covered by this Agreement.

9. **Indemnification of the District by the Company**

   Subject to the provisions and limitations of the Idaho Tort Claims Act, the District agrees to indemnify, hold harmless and defend the Company, regardless of outcome, from the expenses of and against suits, actions, claims, or losses of every kind, nature and description, including costs, expenses and attorney fees that may be incurred by reason of any negligent act or omission, or misconduct of the District or its contractor in the design, construction and maintenance of the Project in relation to the Utility Relocation under this Agreement.

10. **Resolution of Lawsuits and Relocation Agreement Controls**

    In the event of any conflict between the terms of this Agreement and the terms of the Resolution of Lawsuits and Relocation Agreement, the terms of the Resolution of Lawsuits and Relocation Agreement shall be controlling, and the terms of this Agreement shall be interpreted to be consistent with the Resolution of Lawsuits and Relocation Agreement and/or amended with no further action necessary by the parties to comply with the Resolution of Lawsuits and Relocation Agreement.

11. **District and Company Contact Persons**

    A) The Company is to submit billings, documents and coordinate all Utility Relocation activities through the District contact person of:

       Greg Fullerton – Utility Coordinator  
       Ada County Highway District  
       3775 Adams Street  
       Boise, ID 83714  
       (208)387-6259

       The District may change its contact person by notifying the Company in writing.

    B) The District is to coordinate all Utility Relocation activities through the Company’s contact person of:

       Ed Kosydar  
       Idaho Power Company  
       P.O. Box 70  
       Boise, ID 83707  
       (208) 388-2747
The Company may change its contact person by notifying the District in writing.

12. **Choice of Law and Severability**

   A) This Agreement is governed by the laws of the State of Idaho. If a term of this Agreement is determined to be illegal by competent authority, it will not invalidate the remaining terms of this Agreement.

   B) If a term of this Agreement is determined to be in conflict with the parties’ Resolution of Lawsuits and Relocation Agreement, the Resolution of Lawsuits and Relocation Agreement shall govern.

   C) Any lawsuit or litigation against the District is to be filed in a court located in Ada County, Idaho.

13. **Modifications to Agreement or Utility Relocation**

   This Agreement is the result of extensive negotiation between the Parties. No term of this Agreement shall be construed against either Party on the grounds that the Party is deemed to be the drafter thereof nor shall evidence of any terms contained in previous drafts of this Agreement that are not contained herein be used to construe this Agreement or evidence the intent of the Parties hereto.

   Proposed modifications to this Agreement or Utility Relocation as defined by the Project shall be approved by both parties in advance by a change order issued from the District. Deviation from the Agreement or Utility Relocation as defined by the Project without prior approval by one party will remove that portion of the Utility Relocation from reimbursement under this Agreement unless the deviation is promptly cured by the deviating party after written notice from the other party.

14. **Successors and Assigns**

   This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.
IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized representatives.

ATTEST: IDAHO POWER COMPANY

By: ____________________________  By: ____________________________

ATTEST: ADA COUNTY HIGHWAY DISTRICT

By: ____________________________  By: ____________________________