

CITY OF CORONA
COOPERATIVE AGREEMENT
FOR UTILITY RELOCATION IMPROVEMENTS
(CITY OF CORONA -MCKINLEY STREET GRADE SEPARATION)

1. PARTIES AND DATE.

This Cooperative Agreement for Utility Relocation Improvements (“Agreement”) is made and entered into as of this 11th day of January 2021 (“Effective Date”) by and between the City of Corona, a California municipal corporation organized under the laws of the State of California with its principal address located at 400 S. Vicentia Avenue, Corona, California 92882 (“Corona”) and the City of Riverside, a California charter city and municipal corporation organized under the laws of State of California with its principal address located at 3750 University Avenue, 3rd Floor, Riverside, California 92501, acting by and through its Public Utilities Department, Water Division (“RPU”). Corona and RPU are sometimes individually referred to as “Party” and collectively as “Parties” throughout this agreement.

2. RECITALS.

2.1 McKinley Grade Separation Project. Corona intends to construct a new four-lane overhead grade separation at the McKinley Street/BNSF Railway double tracks, north of the intersection with Sampson Avenue, in the City of Corona, County of Riverside (“County”), California, as more particularly depicted in Exhibit “A” attached hereto and incorporated herein by reference (“the Project”). The southern limits of the Project commence at Magnolia Avenue and terminate to the north at the State Route 91. The Project also includes a portion of Estelle Street immediately to the west of the McKinley Street intersection. RPU is the primary water service provider for certain properties south of the BNSF Railway double tracks and owns and operates water facilities within the existing rights of way on McKinley Street and Estelle Street, which facilities are more particularly depicted in Exhibit “B” attached hereto and incorporated herein by reference (“RPU Water Facilities”). Due to the change in elevations anticipated along McKinley Street as a result of the Project, conflicts will occur to RPU Water Facilities within the Project limits and relocation of certain RPU Water Facilities will be required in connection with the Project.

2.2 RPU Water Facilities. The RPU Water Facilities within the Project limits are lawfully maintained in the present location and, thus, qualify for relocation at Corona’s expense. RPU has superior rights for the RPU Water Facilities that pre-date the establishment of the existing City and County right of way within the Project limits, and relocation of the RPU Water Facilities is not subject to franchise agreements authorized by the California Public Utilities Code sections 6201 through 6302.

2.3 Cooperation; Relocation Improvements. Corona and RPU desire to cooperate with each other in the design, construction and inspection of the relocation of the RPU Water Facilities that is necessary due to conflicts with the Project (“Relocation Improvements”). The purpose of this Agreement is to memorialize the mutual understandings by and between Corona

and RPU with respect to the design, construction, inspection and funding for the Relocation Improvements.

3. TERMS AND CONDITIONS.

3.1 RPU Obligations.

3.1.1 Plans, Specifications and Estimates. RPU shall prepare, or cause to be prepared, Plans, Specifications and Estimates ("PS&E") for the Relocation Improvements in accordance with all applicable city, county and state standards and requirements. RPU shall prepare the PS&E such that the Relocation Improvements do not conflict or interfere with the Project. RPU shall submit the PS&E to Corona for its review and approval, which shall not be unreasonably withheld, prior to commencement of any advertisement to contractors for construction of the Relocation Improvements.

3.1.2 Lead Agency. RPU shall be the lead agency for the design and construction of the Relocation Improvements. RPU shall prepare and obtain necessary environmental clearance in accordance with the California Environmental Quality Act, advertise and obtain all design and construction bids, award all contracts, and administer all contracts, including inspection through completion of the Relocation Improvements. RPU shall furnish or have furnished all equipment, tools, materials, labor and engineering services necessary to fully and adequately design and complete the Relocation Improvements.

3.1.3 Construction Schedule. Prior to the completion of the PS&E for the Relocation Improvements, RPU shall provide Corona with a construction schedule and work plan of the major activities for the Relocation Improvements, including mobilization, demolition, roadway trenching, traffic control/handling, water improvement construction, and demobilization, which Corona will incorporate into the construction schedule for the Project.

3.1.4 Construction of Relocation Improvements. In accordance with all applicable federal, state or local statutes, ordinances, orders, governmental requirements, laws or regulations, RPU shall advertise, competitively bid, and award a public works construction contract for the Relocation Improvements. RPU shall administer the construction contract and shall ensure that the Relocation Improvements are completed in accordance with the approved PS&E and all applicable federal, state or local statutes, ordinances, orders, governmental requirements, laws or regulations. RPU or RPU's contractor shall submit to Corona applications for encroachment permits to authorize entry into the City and/or County right of way for the purposes of constructing the Relocation Improvements. If, during the course of construction and installation of the Relocation Improvements, it is determined by RPU that alterations are required to the Relocation Improvements, RPU shall immediately notify Corona of said changes prior to implementation of such alterations. RPU shall coordinate and cooperate with Corona to ensure that such alterations do not conflict or interfere with the Project.

3.1.5 Contractor Obligations. RPU shall require the contractor for the Relocation Improvements to: a) comply with the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq.; b)

provide and maintain adequate liability insurance for the Relocation Improvements; c) name Corona, its directors, officials, officers, employees, volunteers and agents as additional insured with respect to the Relocation Improvements performed by or on behalf of the contractor; and d) indemnify and hold harmless Corona, its directors, officials, officers, employees, volunteers and agents from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of, pertaining to, or incident to the Relocation Improvements except if caused by the negligence or willful misconduct of Corona.

3.1.6 RPU Inspection Personnel. RPU shall provide a minimum of forty-eight (48) hours advanced notice to Corona prior to conducting any inspections of the Relocation Improvements. RPU shall ensure that its inspection personnel have appropriate personal protection equipment and abide by the Project's applicable safety, health, and environmental Plans (SHEP).

3.1.7 Completion of Relocation Improvements. RPU shall complete the PS&E for the Relocation Improvements and obtain all necessary approvals and permits as may be required for the Relocation Improvements. Corona shall obtain all easements necessary to construct the Relocation Improvements by March 31, 2021. RPU shall complete construction of the Relocation Improvements, including any closeout activities, by October 31, 2021. Corona shall ensure that RPU has free and unfettered access to construct the Relocation Improvements, provided that RPU shall not interfere with construction of the Project or any other activities of the City's contractor on the Project. Prior to March 31, 2021, the City will provide RPU a detailed work plan and schedule of construction activities to be performed by the City's contractor. It shall be RPU's responsibility to include provisions in the Relocation Improvement PS&Es to ensure that RPU's contractor will cooperate and coordinate with the City's contractor and that construction of the Relocation Improvements will be completed cooperatively with the City's Project. If RPU fails to complete construction of the Relocation Improvements by October 31, 2021 due to conditions or events outside of their control, the parties will meet and confer and agree to a reasonable and appropriate extension of time to complete the Relocation Improvements. RPU shall make all reasonable efforts to complete the Relocation Improvements by the deadline set forth above.

3.2 Corona Obligations.

3.2.1 Review of PS&E. Upon receipt of the PS&E for the Relocation Improvements, Corona shall promptly review the PS&E. Corona shall approve PS&E for the Relocation Improvements so long as they do not conflict or interfere with the Project.

3.2.2 Encroachment Permits. Corona shall, upon application by RPU or RPU's contractor, issue, at no cost to RPU, the necessary encroachment permits to construct the Relocation Improvements within Corona's right-of-way. Corona shall also, on behalf of RPU and at Corona's sole cost, obtain from the County, upon receipt of all necessary County permit application packages from RPU or RPU's contractor, any encroachment permits that may be necessary to construct the Relocation Improvements within the County right-of-way.

3.2.3 Corona Cooperation. Corona shall work with RPU to identify a work period for RPU's contractor to construct and complete the Relocation Improvements during the construction of the Project.

3.2.4 Inspection. Corona shall have the right to be present during any inspections of the Relocation Improvements by RPU personnel to ensure that the Relocation Improvements do not conflict or interfere with the Project.

3.2.5 Real Property Rights. Corona shall acquire all permanent and temporary interests necessary for RPU to construct and permanently maintain the Relocation Improvements, as more particularly described in Exhibit "C" attached hereto and incorporated herein by reference ("Relocation Improvements ROW"). Corona shall acquire all such property interests directly and grant interests to RPU upon receiving possession and legal conveyance of title for such property.

3.2.6 Payment of Total Costs of Relocation Improvements. Corona agrees to pay one hundred percent (100%) of the Total Costs, as defined below, to construct the Relocation Improvements. For purposes of this Agreement, the term "Total Cost" shall mean all labor, materials, tools, equipment, services and incidental and customary work necessary to plan, engineer, design, environmentally review, permit, site, bid, and construct the Relocation Improvements, including without limitation, all costs and expenses for the following: engineering, legal, and other consultant services throughout the pre-construction and construction phases; bid preparation and administration services; soil, project and other inspection and testing services; construction and project management services; and all other construction and project close-out activities. The Total Cost for the Relocation Improvements is currently estimated to be Two Million, Ninety Thousand Dollars (\$2,090,000) as is more particularly described in Exhibit "D" attached hereto and incorporated herein by reference ("Estimated Costs").

3.2.6.1 Estimated Costs. Within thirty (30) days of the Effective Date of this Agreement, Corona shall pay RPU the Estimated Costs in immediately available funds.

3.2.6.2 Change Order Costs. RPU shall submit to Corona any contract change order that relates to changes to the work for the Relocation Improvements. Corona shall review such change orders promptly and in sufficient time to allow RPU to review and process them within the time required by their contract with the contractor. In the event Corona disagrees with any change order, the Parties shall promptly meet and confer in order to resolve such concerns; provided however, that ultimately RPU shall have the sole discretion in determining whether to approve any change order in whole or in part. Once RPU approves a change order, RPU shall invoice Corona for such change order costs ("Change Order Costs"). Corona shall pay such Change Order Costs to RPU within thirty (30) days of the date of RPU's invoice.

3.2.6.3 Final Costs. Upon completion of the Relocation Improvements and acceptance by RPU, RPU shall prepare a final written accounting of the Total Costs for the Relocation Improvements ("Final Costs"). To the extent that the Final Costs exceed the Estimated Costs and the Change Order Costs, if any, Corona shall pay RPU the difference within thirty (30) days of receipt of an invoice for RPU detailing the Final Costs and any amounts

due and payable to RPU. To the extent that the Final Costs are less than the Estimated Costs and the Change Order Costs, if any, RPU shall refund to Corona the difference.

3.2.6.4 Abandonment of Existing RPU Facilities. Corona shall be responsible for all costs related to the abandonment of any existing RPU Facilities, as identified in Exhibit B, and shall coordinate with RPU to avoid any disruption of water service by RPU to its customers.

3.3 Termination. This Agreement shall terminate upon final completion and acceptance by the RPU of the Relocation Improvements, conveyance to and acceptance by RPU of all real property interests required for the Relocation Improvements and payment by Corona to RPU of all amounts owed to RPU under this Agreement.

3.4 Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other addresses as the respective Parties may provide in writing for this purpose:

City of Corona: City of Corona 400 S. Vicentia Ave. Corona, CA 92882 Attention: Jacob Ellis, City Manager Email: Jacob.Ellis@CoronaCA.gov	City of Riverside Public Utilities Department City of Riverside Public Utilities Department 3750 University Avenue, 3 rd Floor Riverside, CA 92501 Attention: Todd Corbin, General Manager Office number: 951-826-5772 Fax number: 951-826-2450 Email: TCorbin@riversideca.gov
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Such notice may be provided by personal delivery, by first class mail, by express delivery or by email transmission. Notice shall be deemed to made as follows: (A) when personally delivered, upon actual delivery; (B) when mailed, seventy-two (72) hours after deposit in the U.S. Mail, first class postage prepaid; (C) when sent by express delivery, upon delivery as documented by the delivery service; and (D) when sent via facsimile transmission, upon actual delivery as documented by any verifiable facsimile transmission record. Facsimile transmissions shall be followed by first class delivery along with a copy of the facsimile transmission record. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5 Cooperation and Further Acts. The Parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.6 Attorneys' Fees. If any Party commences an action against another Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, all parties shall bear their own attorney fees.

3.7 Indemnification. Each Party shall indemnify and hold the other Party and its officials, officers, employees and agents free and harmless from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, to the extent arising out of or incident to any negligent acts, omissions or willful misconduct of the indemnifying Party or its officials, officers, employees and agents related to the performance of this Agreement or the completion or maintenance of the Relocation Improvements or the Project, including attorneys' fees and other related costs and expenses; provided, however, that employees of any Party shall not be deemed to be agents of any other Party for purposes of this Section. Notwithstanding the foregoing, the indemnifying Party shall not settle any lawsuit with respect to the other Party to this Agreement without such Party's consent, which consent shall not be unreasonably withheld.

3.8 Entire Agreement; Amendments. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.9 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any cause of action arising under this Agreement shall be in Riverside County.

3.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.11 Assignment or Transfer No Party shall assign, hypothecate, subcontract or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of the other Party. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.12 Construction, References and Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to any Party shall include all officials, officers, employees and agents of that Party, except as otherwise specified in this Agreement. The caption of the various sections are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.13 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give any other Party any contractual rights by custom, estoppel, or otherwise.

3.14 No Third-Party Beneficiaries. There are no third-party beneficiaries of any right or obligation assumed by the Parties.

3.15 Invalidity and severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect. In addition, if any portion of this Agreement is declared to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, or is otherwise deemed to be such by legal counsel for the Parties to this Agreement, the Parties shall use their reasonable best efforts to amend this Agreement to remove the inappropriate provision(s); provided, however, that if the amendment cannot be made in a manner which preserves all essential parts of the consideration for any Party, such Party may terminate this Agreement as soon as is reasonably practicable or as required by law.

3.16 Authority to Execute Agreement. Each Party warrants that it has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party also warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party hereto.

3.17 Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original.

[signatures on next pages]

CORONA'S SIGNATURE PAGE FOR

**CITY OF CORONA
COOPERATIVE AGREEMENT
FOR UTILITY RELOCATION IMPROVEMENTS
(CITY OF CORONA – MCKINLEY STREET MCKINLEY GRADE SEPARATION)**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their respective duly authorized representatives.

CITY OF CORONA,
a California municipal corporation

DS
VRW

DocuSigned by:

Jacob Ellis

By: _____

0CB6AE0095944B4...

Jacob Ellis
City Manager

Attest:

DocuSigned by:

Sylvia Edwards

0A4F880ED5E6404...

Sylvia Edwards
City Clerk

Approved as to form:

DS
ML

DocuSigned by:

Dean Derleth

A78D5842626D4DE

Dean Derleth
City Attorney

**CITY OF RIVERSIDE
PUBLIC UTILITIES DEPARTMENT'S SIGNATURE PAGE FOR**

**CITY OF CORONA
COOPERATIVE AGREEMENT
FOR UTILITY RELOCATION IMPROVEMENTS
(CITY OF CORONA – MCKINLEY STREET GRADE SEPARATION)**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their respective duly authorized representatives.

CITY OF RIVERSIDE,
a California municipal corporation

by: _____
Al Zelinka
City Manager

Attest:

By: _____
Colleen Nicol
City Clerk

Approved as to form:

Susan D. Wilson

Susan D. Wilson
Assistant City Attorney

EXHIBIT A

MCKINLEY STREET GRADE SEPARATION PROJECT

SEE ATTACHED ONE (1) PAGE

EXHIBIT "A"

McKinley Grade Separation Project

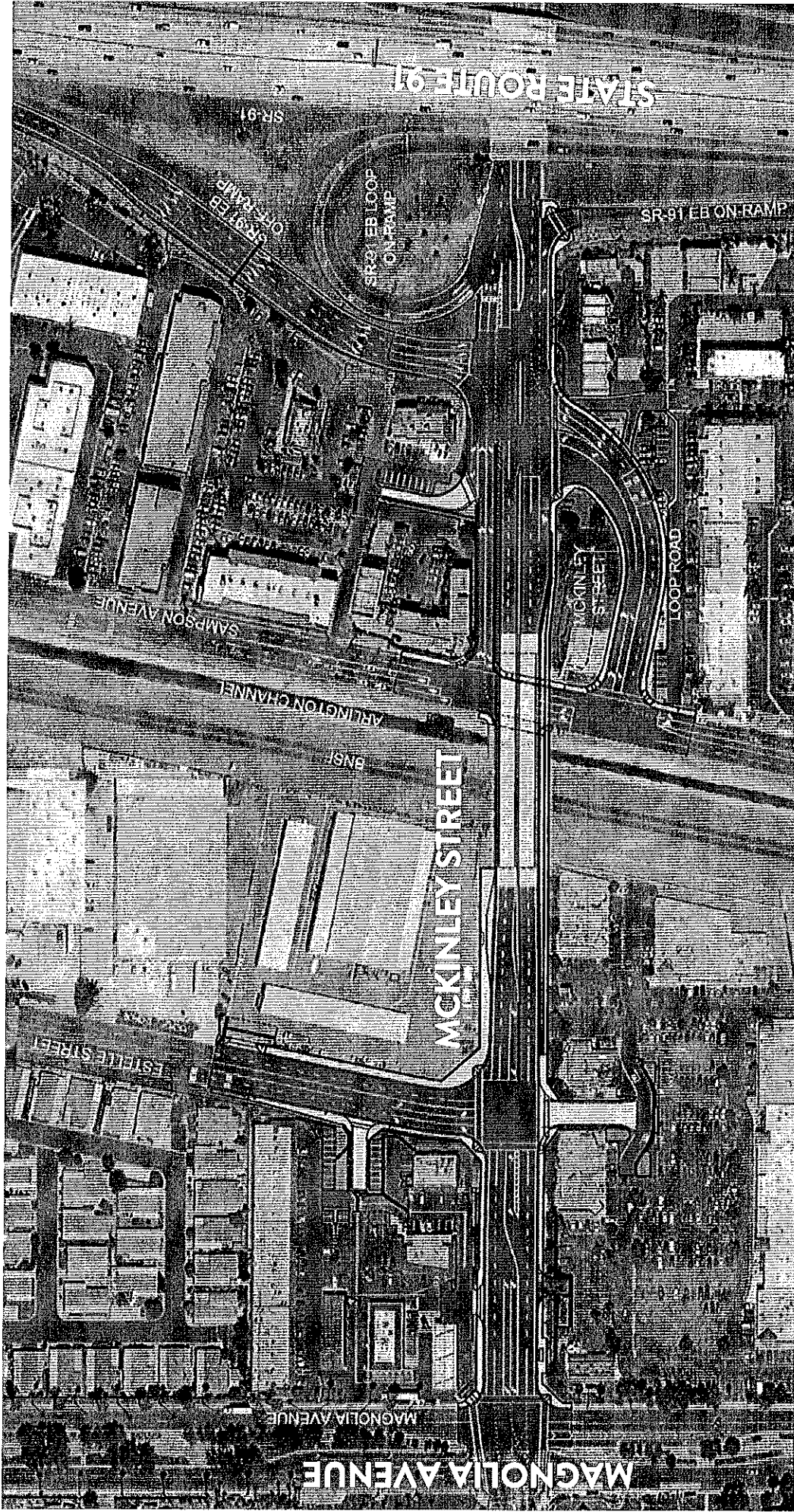


EXHIBIT B

RPU WATER FACILITIES

SEE ATTACHED ONE (1) PAGE

EXHIBIT C

RELOCATION IMPROVEMENTS ROW

RPU Relocation Project ROW			
Project ID	Ownership	APN(s) / Jurisdiction	Interests
MSG07	Ewing Irrigation Products, Inc.	115-300-026 / Riverside County	<u>Permanent Utility Easement</u> : City is acquiring a 30 feet wide easement to be shared with RPU, Southern California Gas Company and Southern California Edison. RPU will permit a 10 feet wide portion of the easement for the relocation and permanent operation/maintenance of RPU Water Facilities and the remaining 20 feet for access only.
MSG10/11	BPL, LLC	115-300-050 & 051 / Riverside County	<u>Temporary Construction Easements for Utility Service Repairs</u> : City is acquiring a TCE for Utility Service Repairs within each subject property limits and will grant RPU rights to perform as needed utility service repairs associated with relocation of RPU Water Facilities.
MSG12	Nguyen Hoang Revocable Trust	172-050-004 / Corona	
MSG13A	RHI/WWW L.P. / Carsten Company, LLC / Cancun Properties, LLC	172-050-006 / Corona	
MSG13D-E	DD&E, LLC	172-050-001, 002, 003, 005, & 007 / Corona	
McKinley Landscape Easements	McKinley Street Partnership, GP	Three 20 feet Wide Strips East of McKinley St between Magnolia Ave and the BNSF Railroad (No APNs) / Corona	<u>Underlying Fee</u> : City is acquiring underlying fee beneath City Landscape Easements created through Parcel Map No. 23376 and convert it to public right of way. City will permit RPU use of the 20 feet wide strips for the relocation and permanent operation/maintenance of RPU Water Facilities.

EXHIBIT D

ESTIMATED COSTS FOR RELOCATION IMPROVEMENTS

SEE ATTACHED ONE (1) PAGE

Exhibit "D"**Estimated Costs: RPU Mainline Relocation - McKinley Grade Separation Project**

ITEM	QUANTITY	UNIT	UNIT COST (\$/Dia-in)	Unit Cost (\$)	Total Cost (\$)
1 12-inch Ductice Iron Pipeline ¹	2,500	LF	25	300	750,000
2 8-inch Pipe ¹	450	LF	30	240	108,000
3 6-inch Pipe ¹	330	LF	30	180	59,400
4 2-inch Pipe ¹	390	LF	30	60	23,400
5 24-inch Casing ¹	70	LF	20	480	33,600
6 Service Relocation McKin. Plaz & Ewing	2			36,000	72,000
7 Paving (40% of Pipeline) ³					372,000
8 Potholing Work ⁴					30,000
				Sub-Total	1,448,400
9 Engineering - Design	10 %				145,000
10 Engineering - Contract Admin	10 %				145,000
11 Contingency ⁵	20 %				348,000
				Total Cost	2,087,000
				Use	2,090,000

¹ Costs were projected from past pipeline replacement costs using ENR CCI's

² Total Cost may be reduced if bore and jack is not required.

³ Paving cost is 40% of line item 1 and 2; cost includes trench backfill and paving per PW Std. No. 453

⁴ Estimated from potholing work done on previous projects

⁵ Contingency includes Construction Subtotal and Engineering Costs