

PREVAILING WAGES AGREEMENT

This Prevailing Wages Agreement (“**Agreement**”) is dated and effective as of June 23, 2020 (the “**Effective Date**”), by and between the City of Manhattan Beach, a California municipal corporation (“**City**”) and Southern California Edison Company, a California corporation (“**Edison**”). City and Edison are sometimes collectively referred to herein as the “Parties”, and individually as a “Party”.

RECITALS

A. WHEREAS, City has formed Underground Utility Assessment District Number 19-12 (“**District 12**”) at the request of a majority of the property owners located within District 12.

B. WHEREAS, Edison, Charter Communications, Inc. (“**Charter**”), and Frontier Communications Corporation (“**Frontier**”) own certain facilities in District 12.

C. WHEREAS, City has requested that Edison, Charter, and Frontier underground certain facilities located in District 12 (the “**Undergrounding Project**”).

D. WHEREAS, funds generated from District 12 have been paid to Edison for the Undergrounding Project.

E. WHEREAS, Edison conducted a competitive procurement process on behalf of itself, Charter, and Frontier to select a contractor to perform the utility undergrounding work in District 12 (the “**Competitive Procurement Process**”).

F. WHEREAS, Edison and Charter entered into agreements with Hot Line Construction, Inc. (“**Hot Line**”) and City entered into an agreement with Hot Line on Frontier’s behalf under which Hot Line agreed to perform the utility undergrounding work in District 12 as a result of the Competitive Procurement Process.

G. WHEREAS, the Parties have determined that, pursuant to Labor Code Section 1720 *et seq.*, Hot Line is required to pay prevailing wages for all construction work performed in connection with the Undergrounding Project.

H. WHEREAS, neither Edison’s Request for Bids nor its contract with Hot Line included the requirement to pay prevailing wages in connection with the Undergrounding Project.

I. WHEREAS, the Parties have agreed that City will pay Edison the difference in cost between Hot Line’s non-prevailing wage rates under its contract with Edison for the Undergrounding Project (“**Edison/Hot Line Contract**”) and the requisite prevailing wage rates for work performed under the Edison/Hot Line Contract, and Edison will cause Hot Line to pay prevailing wage rates and comply with all applicable provisions of the California Labor Code.

NOW, THEREFORE, in consideration of the mutual obligations, covenants, and conditions hereinafter set forth, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. Scope of Agreement.** Edison acknowledges that the Undergrounding Project requires the payment of prevailing wages under Labor Code Section 1720 *et seq.* Edison also represents to City that, as of the date of this Agreement, the Edison/Hot Line Contract does not require the payment of prevailing wages. City agrees to pay Edison the difference in cost between Hot Line's non-prevailing wage rates under the Edison/Hot Line Contract and the requisite prevailing wage rates for Hot Line's utility undergrounding services performed under the Edison/Hot Line Contract, subject to the following:

 - a) Edison shall cause its contractor, Hot Line, to pay prevailing wages for services performed under the Edison/Hot Line Contract; and
 - b) Edison shall incorporate the terms of **Exhibit A**, "Terms for Compliance with California Labor Law Requirements," into the Edison/Hot Line Contract and cause Hot Line to comply with **Exhibit A**.
- 2. Payment.** In reliance on Section 1 of this Agreement, City agrees to pay Edison Two Hundred One Thousand Seven Hundred Eighty-Two Dollars and Eighty-Seven Cents (\$201,782.87).
- 3. Method of Payment.** City shall make a one-time payment to Edison of the amount set forth in Section 2 of this Agreement. City shall make the one-time payment to Edison within 30 days of the execution of this Agreement.
- 4. Labor Code Requirements.** The document titled "Terms for Compliance with California Labor Law Requirements" is attached hereto as **Exhibit A**. Edison shall incorporate **Exhibit A** into the Edison/Hot Line Contract and cause Hot Line to comply with all provisions of **Exhibit A**.
- 5. Governing Law and Choice of Forum.** This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a superior court with geographic jurisdiction over the City of Manhattan Beach.

- 6. Attorneys' Fees.** In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

[SIGNATURE PAGE FOLLOWS]

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Manhattan Beach,
a California municipal corporation

Company:

Southern California Edison,
a California corporation

By: _____

Name: Bruce Moe
Title: City Manager

By: _____

Name: _____
Title: _____

ATTEST:

By: _____

Name: _____
Title: _____

By: _____

Name: Liza Tamura
Title: City Clerk

**PROOF OF AUTHORITY TO BIND
CONTRACTING PARTY REQUIRED**

APPROVED AS TO FORM:

By: _____

Name: Quinn M. Barrow
Title: City Attorney

APPROVED AS TO FISCAL IMPACT:

By: _____

Name: Steve S. Charelian
Title: Finance Director

APPROVED AS TO CONTENT:

By: _____

Name: Stephanie Katsouleas
Title: Public Works Director

EXHIBIT A
TERMS FOR COMPLIANCE WITH CALIFORNIA LABOR LAW REQUIREMENTS

1. The Edison/Hot Line Contract to which this Exhibit is attached calls for services that, in whole or in part, constitute “public works” as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code (“Chapter 1”). Further, Hot Line acknowledges that the Edison/Hot Line Contract is subject to (a) Chapter 1 and (b) the rules and regulations established by the Department of Industrial Relations (“DIR”) implementing such statutes. Therefore, in performing the Edison/Hot Line Contract, Hot Line (“Contractor”) shall comply with and be bound by all the terms, rules and regulations described in 1(a) and 1(b) as though set forth in full herein.

2. California law requires the inclusion of specific Labor Code provisions in certain contracts. The inclusion of such specific provisions below, whether or not required by California law, does not alter the meaning or scope of Section 1 above.

3. Contractor shall be registered with the Department of Industrial Relations in accordance with California Labor Code Section 1725.5, and has provided proof of registration to Edison and the City of Manhattan Beach (“City”) prior to the Effective Date of this Agreement. Contractor shall not perform work with any subcontractor that is not registered with DIR pursuant to Section 1725.5. Contractor and subcontractors shall maintain their registration with the DIR in effect throughout the duration of the Edison/Hot Line Contract and this Agreement. If the Contractor or any subcontractor ceases to be registered with DIR at any time during the duration of the project, Contractor shall immediately notify City.

4. Pursuant to Labor Code Section 1771.4, Contractor’s Services are subject to compliance monitoring and enforcement by DIR. Contractor shall post job site notices, as prescribed by DIR regulations.

5. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Edison/Hot Line Contract are on file at the Manhattan Beach Public Works Facility (3621 Bell Avenue, Manhattan Beach, CA 90266) and will be made available to any interested party on request. Contractor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Contractor shall post such rates at each job site covered by the Edison/Hot Line Contract.

6. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. Contractor shall, as a penalty to the City of Manhattan Beach (“City”), forfeit \$200.00 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to the Edison/Hot Line Contract by Contractor or by any subcontractor.

7. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and

verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform City of the location of the records. Pursuant to Labor Code Section 1771.4, Contractor and each subcontractor shall furnish such records to the Labor Commissioner, at least monthly, in the form specified by the Labor Commissioner.

8. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code Title 8, Section 200 et seq. concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under the Edison/Hot Line Contract, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within 60 days after concluding work pursuant to the Edison/Hot Line Contract, Contractor and each of its subcontractors shall submit to City a verified statement of the journeyman and apprentice hours performed under the Edison/Hot Line Contract.

9. The Contractor shall not perform Work with any Subcontractor that has been debarred or suspended pursuant to California Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. The Contractor and Subcontractors shall not be debarred or suspended throughout the duration of the Edison/Hot Line Contract pursuant to Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. If the Contractor or any subcontractor becomes debarred or suspended during the duration of the project, Contractor shall immediately notify City.

10. Contractor acknowledges that eight hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to City, forfeit \$25.00 for each worker employed in the performance of the Edison/Hot Line Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.

11. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

12. For every subcontractor who will perform work on the project, Contractor shall be responsible for such subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Contractor shall include in the written contract between it and each subcontractor a copy of those statutory provisions and a requirement that each subcontractor shall comply with those statutory provisions. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any failure.

13. To the maximum extent permitted by law, Contractor shall indemnify, hold harmless and defend (at Contractor's expense with counsel reasonably acceptable to City) City and Edison, their officials, officers, employees, and agents from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Contractor, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with the Edison/Hot Line Contract or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. All duties of Contractor under this Section shall survive the termination of the Edison/Hot Line Contract and this Agreement.