

## REPORT TO CITY COUNCIL

**DATE: APRIL 14, 2021**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: NATHAN HAMBURGER, CITY MANAGER**

**BY: JESSICA FORTE, DIRECTOR OF PUBLIC WORKS/CITY ENGINEER**

**SUBJECT: REQUEST FOR APPROVAL OF ROADSIDE DRIVE BRIDGE WIDENING  
MEMORANDUM OF AGREEMENT WITH THE LAS VIRGENES  
MUNICIPAL WATER DISTRICT**

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On March 10, 2021, the City Council awarded a contract to Powell Constructors, Inc. (Powell), for the Roadside Drive Bridge Widening Project; NIB 20-03. The scope of work consists of widening the existing bridge from 30 feet to 42 feet in width; adding a sidewalk on the south side of Roadside Drive (west of the bridge), and installing landscape and drainage improvements.

As part of the project, various utilities surrounding the project area will need to be relocated. Staff worked with all the affected utilities, including the Las Virgenes Municipal Water District (LVMWD), in regards to this matter. Currently, LVMWD owns and maintains a 10-inch water main line, water meter, and fire hydrant that will need to be relocated in order to construct the improvements. The costs of the utility relocations are the responsibility of LVMWD. At the request of LVMWD staff, this work was incorporated into the Plans, Specifications, and Estimates (PS&E) in order for the City's contractor to potentially perform the work.

On February 16, 2021, the LVMWD Board of Directors approved Powell's estimated cost of \$214,575 to perform their utility work. As a result, a Memorandum of Agreement (MOA) is required to be executed between the City and LVMWD prior to the start of work.

The purpose of the agreement is to define each agency's costs, roles, and responsibilities for the LVMWD portion of work. It should be noted, inspections of the water facilities shall be conducted by LVMWD staff at no cost to the City.

The proposed agreement has been reviewed by the City Attorney and approved as to form.

### **RECOMMENDATION**

Staff respectfully recommends the City Council approve the Roadside Drive Bridge Widening Memorandum of Agreement with the Las Virgenes Water District.

Attachment: Memorandum of Agreement

MEMORANDUM OF AGREEMENT  
FOR THE ROADSIDE DRIVE BRIDGE WIDENING PROJECT  
BETWEEN  
THE CITY OF AGOURA HILLS  
AND  
LAS VIRGENES MUNICIPAL WATER DISTRICT

This Memorandum of Agreement ("MOA") is entered into by and among the City of Agoura Hills ("City") and the Las Virgenes Municipal Water District ("District"), collectively referred to herein as the "Parties." The MOA is effective as of the date of execution by the last party to execute the MOA.

**RECITALS**

- A. WHEREAS, on March 10, 2021, City awarded Contract No. NIB #20-03 ("Contract") to Powell Constructors, Inc. ("Contractor") for the Roadside Drive Bridge Widening Project ("Project"), a public works project.
- B. WHEREAS, the City's Notice Inviting bids for the Project also included items for relocation of a 10-inch water main line, 8-inch sewer line, and appurtenances ("District Work").
- C. WHEREAS, the City and the District desire to improve Roadside Drive in the most cost effective manner with the least amount of disruption to the residents of the City of Agoura Hills.
- D. WHEREAS, the District has asked the City to include bid items pertinent to their utility relocations hereto and incorporated herein by this reference as though set forth in full, as part of its Project to include the District Work.
- E. WHEREAS, the Parties desire to divide responsibilities under this MOA, as described in the bid schedule, with the District paying for all construction costs associated with the District Work and inspecting its potable water line, and the City paying for all other costs and managing the construction of the Project, including the District Work.
- F. WHEREAS, the City will serve as the main agency for the administration of the construction of the Project on behalf of the Parties; and
- G. WHEREAS, the Parties desire to enter into this MOA voluntarily to, among other things: 1) act in a cooperative manner to complete the District Work; 2) set forth the Parties' intent to have the Project administered and coordinated by the City; 3) establish the roles of the Parties relative to each other; and 4) establish the terms of payment from the District to the City.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual benefits and representations made herein, the Parties hereby agree as follows:

1. Purpose - This MOA is entered into by the Parties to provide for the relocation of a 10-inch water main line, 8-inch sewer line, and appurtenances ("District Work") within Roadside Drive and on the bridge above Medea Creek. The Work Site is identified and described in the

Contract Documents and Drawings for NIB #20-03 and incorporated herein by this reference as though set forth in full.

2. Incorporation of Recitals - The recitals above are incorporated by reference and hereby made a part of this MOA.
3. Term of MOA - This MOA shall continue in effect until the Project is completed and all Contractor's payments and reimbursements have been made, unless earlier terminated or extended by written agreement of the Parties.
4. Information Sharing - The Parties mutually agree to share, to the extent not otherwise prohibited by law or by legal or trade secret privilege, all information required to develop, prepare and submit documents required for the Project.
5. Contractor Payment - The City shall pay Contractor in accordance with the terms outlined in the bid documents for both the City's Project and the District Work.
6. Payment - The District shall pay to the City, in an amount, which shall not exceed Two Hundred Fourteen Thousand Five Hundred Seventy-Five dollars and zero cents (\$214,575.00) for costs for utility relocation. All other costs incurred by the City with the work shall be paid by the City and all other costs incurred by the District for the work shall be paid by the District. The City shall incrementally invoice the District for the District Work (i.e., the District's respective share of the Project). The District shall promptly pay the City for the amount stated in an invoice, but not later than 30 days after receipt of an invoice.
7. Contracting - The Parties agree that the City shall be considered the contracting agency and the administrator of the Project. It is the intent of the Parties that the Contractor should look solely to the City for payment and to resolve any issues with the Contract.
8. Supervision of Contractor - The City shall act as the lead agency in the construction of the Project and the District Work by managing the Project, including the District Work. In such capacity, the CITY shall award the construction contract and make all construction decisions. The City shall be responsible for coordinating all activities of Contractor and resolving all issues with the Contract or Project. The City shall further be responsible for reviewing and approving all change orders for the Project, including such change orders within the scope of the District Work. The District shall have the opportunity to approve discretionary change orders and all change orders that shall affect District Work. The District will inspect the District Work and may direct the contractor and subcontractor related to the work within the scope of the Contract. Except for change orders issued on an emergency basis, the City shall notify the District regarding all change orders, including cost and scope changes, and shall offer the District reasonable time to comment.
9. Indemnification
  - A. District shall defend, indemnify and hold harmless CITY and its officers, employees, and other representatives and agents from and against any and all liabilities, actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and attorney's fees, for injury to or death of person(s), for damage to property (including property owned by the City) resulting from acts or omissions of the District or any of its officers, employees or agents in connection with the District's obligations and

performance under this MOA.

B. City shall indemnify and defend District, its officers, agents and employees from the intentional or negligent acts or omission to act, by City, its officers, agents and employees. The City shall have no liability to the District for the negligent or intentional acts or omissions of City's Contractor or consultants for this Project. The District's sole recourse for any negligent or intentional act or omission of City's Contractor or consultants shall be against Contractor, the consultants and their insurance.

C. This Section 9 shall survive the termination or expiration of this MOA

10. Representation – The representative of the City shall be the Director of Public Works/ City Engineer. The representative of the District shall be its Senior Engineer. These individuals shall be the primary contact persons for the Parties regarding the performance of this MOA unless otherwise designated by a Party's representative.

11. Notices – Any notices, bills, invoices, or reports relating to this MOA and any request, demand, statement or other communication required or permitted hereunder shall be in writing and shall be delivered to the representatives of the Parties at the addresses set forth below:

To City: City of Agoura Hills  
Attn: Jessica Forte, P.E.,  
Public Works Director/City Engineer  
30001 Ladyface Court  
Agoura Hills, CA 91301

To District: Las Virgenes Municipal Water District  
Attn: Oliver Slosser, P.E.,  
Senior Engineer, Engineering & External Affairs  
4232 Las Virgenes Road  
Calabasas, CA 91302-1994

Written notice shall include notice delivered via email. A notice shall be deemed to have been received on (a) the day of delivery, if delivered by hand during regular business hours or by confirmed facsimile or by confirmed email; or (b) on the third business day following deposit in the United States mail, postage prepaid to the addresses set forth herein.

12. Relationship of the Parties – The Parties are, and shall at all times remain as to each other, wholly independent entities. Neither Party to this MOA shall have power to incur any debt, obligation, or liability on behalf of any other Party or otherwise act on behalf of any other Party as an agent except as expressly provided by this MOA. No official, employee, agent, or officer of a Party shall represent that he, she or anyone else from that Party is in any manner an official, agent, employee or officer of the other Party.

13. Governing Law – This MOA shall be governed, interpreted, construed and enforced in accordance with the law of the State of California, excluding California's choice of law rules. Venue for any legal action or other proceeding relating to this MOA shall be in the Los Angeles County Superior Court.

14. Severability – If any provision of this MOA shall be determined by any court to be invalid, illegal or unenforceable to any extent, the remainder of this MOA shall not be affected and this MOA shall be construed as if the invalid, illegal or unenforceable provision had never been contained in this MOA.
15. Amendment – This MOA may be modified or amended, or provisions or breach may be waived, only by subsequent written agreement signed by the Parties.
16. Authority – The persons executing this MOA on behalf of each Party represents and warrants that he or she has the authority to execute this MOA on behalf of such Party and has the authority to bind the Party to the performance of its obligations hereunder.
17. No Presumption in Drafting. The Parties to this MOA agree that the general rule than an agreement is to be interpreted against the Party drafting it, or causing it to be prepared, shall not apply.
18. Entire Agreement – This MOA, including any other documents incorporated herein by specific reference, represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations or agreements, either written or oral.
19. Counterparts – This MOA may be executed in counterparts, all such executed counterparts shall constitute the same MOA, and the signature of any party to any counterpart shall be deemed a signature, and may be appended to, any other counterpart.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to sign below.

**CITY OF AGOURA HILLS**

\_\_\_\_\_  
Denis Weber,  
Mayor

Attest:

\_\_\_\_\_  
Kimberly M. Rodrigues, MMC  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Candice K. Lee,  
City Attorney

**LAS VIRGENES MUNICIPAL WATER DISTRICT**

\_\_\_\_\_  
DAVID W. PEDERSEN,  
General Manager

Attest:

\_\_\_\_\_  
Josie Guzman,  
Clerk of the Board of Directors

Approved as to Form:

\_\_\_\_\_  
Wayne K. Lemieux,  
District Counsel