

JOINT EXERCISE OF POWERS AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2018,
by and between the

CITY OF LOMPOC, a municipal
corporation, hereinafter referred
to as "CITY,"

and the

SANTA BARBARA COUNTY FLOOD
CONTROL AND WATER CONSERVATION
DISTRICT, a California special district, hereinafter
referred to as "DISTRICT."

WITNESSETH:

WHEREAS, CITY and DISTRICT are authorized to jointly exercise any power common to both under the Joint Exercise of Powers Act (Government Code §§ 6500-6514); and

WHEREAS, CITY has the authority to construct, establish and maintain facilities for the collection, control and discharge of storm water and drains pursuant to California Law; and

WHEREAS, DISTRICT has the authority to provide facilities for the collection, control and discharge of storm water and drains in DISTRICT'S jurisdiction pursuant to the Santa Barbara County Flood Control and Water Conservation District Act (Stats. 1955, Chapter 1057, p. 2006, as amended); and

WHEREAS, portions of CITY are in need of facilities for the collection and discharge of storm water, and a joint exercise of powers agreement was entered into on November 15, 2011 ("PRIOR AGREEMENT") between the CITY and the DISTRICT on a project referred to as the "North Avenue Storm Drain Improvements Project," comprised of an East and West Phase, of which the West Phase was constructed in 2012; and

WHEREAS, the PRIOR AGREEMENT controls the obligations related to the completed West Phase, and this Agreement will amend and restate the obligations of the PRIOR AGREEMENT as they relate to the remaining completion of the East Phase; and

WHEREAS, a project, which will finalize the multi-phased North Avenue Storm Drain Improvements Project, has been developed, which project is generally known and

is herein referred to as the "North Avenue Storm Drain Improvements Project, East Phase" or the "PROJECT;" and

WHEREAS, the PROJECT consists of the proposed improvements east of the centerline of H Street, as shown on the enclosed Exhibit 1; and

WHEREAS, it is the intent of DISTRICT and CITY to pursue a schedule which will allow DISTRICT to commence construction of the PROJECT in 2018; and

WHEREAS, the DISTRICT has now accrued sufficient revenue to fund the PROJECT Construction Costs as described in Sections 1 and 2;

NOW, THEREFORE, it is mutually agreed by and between the parties, CITY and DISTRICT shall coordinate design, construction, and maintenance efforts and share certain costs associated with the planning, design, and construction of the PROJECT, in accordance with the following terms, provisions, limitations and conditions:

SECTION 1. SCOPE OF SERVICES, TERM

Obligations stated in the PRIOR AGREEMENT remain applicable to the West Phase of the North Avenue Storm Drain Improvements Project, which was completed in 2012. This Agreement amends and restates the obligations set forth in the PRIOR AGREEMENT, as they relate to design, planning, construction, operations, and maintenance of the North Avenue Storm Drain Improvements Project, East Phase.

For and during the term commencing _____, 2018, and continuing until the filing of a Notice of Completion verifying the PROJECT improvements are completed and installed, CITY and DISTRICT shall provide services as necessary to produce the improvements required according to the concurrence of DISTRICT'S Deputy Director, County Public Works, Water Resources and CITY'S City Engineer, and according to plans, which will be produced by DISTRICT and then will be incorporated by this reference as though fully set forth herein, to complete the PROJECT, according to the terms, conditions and limitations provided for herein.

CITY and DISTRICT shall be responsible for providing their respective services as follows:

SERVICES PROVIDED BY CITY:

City Permits, Certificates, and Agreements

CITY shall issue a business tax certificate to the PROJECT contractor at no charge.

CITY shall issue a Public Works Encroachment Permit to the PROJECT contractor and shall waive the customary charges for the permit, inspection, and related work.

CITY shall issue other permits, certificates, and agreements to the PROJECT contractor as necessary to construct the PROJECT at no charge.

CITY permits, certificates, and agreements shall be issued to the PROJECT contractor no later than ten working days after contractor submits an application or written request to CITY; provided, that the submittal meet all technical and legal requirements.

Plans and Specifications

CITY shall reasonably approve all improvements or relocations associated with CITY-owned potable water, sanitary sewer, electrical, and street light systems, and shall provide related design consultation for such improvements as needed.

CITY or its consultant shall provide engineering design and prepare and complete construction plans, cost estimates, and material specifications for any water line relocations known to CITY, which will be necessary for the PROJECT. Those CITY services shall be completed and provided to DISTRICT no later than four weeks after CITY'S receipt of DISTRICT'S written request for such services.

If during the course of construction, unforeseen conflicting water, sanitary sewer, electrical or street light line relocations are determined to be necessary for the PROJECT, then CITY or its consultant shall review and provide comments and revise or reasonably approve the proposed relocation solution provided by DISTRICT. Those CITY services shall be completed and provided to DISTRICT in a timely manner that minimizes delays during construction to the maximum extent feasible. Where CITY operates solely-owned electrical lines and facilities, those CITY services shall be completed and provided to DISTRICT no later than two weeks after DISTRICT requests such services in writing. Where CITY operates joint utility poles or other such facilities such as with telecommunications companies, those CITY services shall be completed and provided to DISTRICT no later than 60 days after DISTRICT requests such services in writing. The parties acknowledge the PROJECT involves protecting in place one power pole in the vicinity of the PROJECT and removing and relocating the guy wire and anchor related to that one power pole during construction. If that one power pole remains protected in place during construction, as intended for the PROJECT, then the 60-day relocation design and approval requirements provided for herein will not apply as to that one power pole.

Electrical or Street Light Relocations

Electrical and street light relocation work is necessary to construct the PROJECT. The street light pole shown on plans to be removed by CITY prior to start of construction of the Project shall be removed by CITY within 30 working days after CITY'S receipt of written notification by DISTRICT. CITY shall reinstall the street light pole after the completion of construction. The power pole's guy wire and anchor shown on plans to be removed and relocated by CITY prior to start of construction shall be removed by CITY and relocated within 30 working days after CITY'S receipt of written notification by the

DISTRICT. CITY shall construct and/or perform all necessary work appurtenant to the street light and power pole guy wire replacements described above. CITY shall reimburse DISTRICT for any costs or claims resulting from failure to perform the proposed work prior to the commencement of construction.

Temporary Bus Service Relocation

CITY shall temporarily relocate any COLT bus stop and change the bus route, as necessary for construction of the PROJECT.

Staff Assistance

CITY shall provide staff and professional assistance as may be necessary in the progress and construction of the PROJECT. This includes, without limitation, review of the PROJECT construction contractor's proposed traffic control plan and construction inspection of CITY's water, sanitary sewer, electrical and street light utilities and pavement restoration affected by the PROJECT.

SERVICES PROVIDED BY DISTRICT:

Plans and Specifications

DISTRICT or its consultant shall provide engineering design, surveying, pot holing for utilities, geotechnical investigations, construction plans, specifications, contract documents and cost estimates required for construction of the PROJECT, except CITY shall provide review and comments and revisions, or approval of documents, as necessary for removal/relocation/replacement of water, sanitary sewer, electrical and street lights as described previously. DISTRICT shall base surveys on CITY datums per Record of Survey Book 172 Page 4. CITY'S City Engineer and DISTRICT'S Deputy Director, County Public Works, Water Resources prior to advertising for bids, shall approve all plans and specifications.

If during the course of construction unforeseen conflicting water, sanitary sewer, electrical or street light line relocations are determined to be necessary for the PROJECT, then DISTRICT or its contractor shall provide to CITY within two weeks after discovering such conflict, a description including sketches or cut-sheets showing a proposed relocation solution for CITY's review and approval.

DISTRICT shall provide 60% complete design plans and construction cost estimates for CITY's review and comments.

DISTRICT shall provide 100% complete design plans, specifications, and construction cost estimate at least 30 days prior to the scheduled beginning of advertisement for construction bids.

Environmental Clearances

DISTRICT shall serve as Lead Agency for, and provide the environmental review, permits, and monitoring required for the PROJECT, and obtain such permits, approvals, and similar prerequisites for construction of the PROJECT.

Award of Construction Contract

DISTRICT'S obligations hereunder are contingent on the availability and appropriation of funding.

DISTRICT shall advertise for bids and award a contract or contracts for the construction of the PROJECT.

Pavement Marking

DISTRICT'S contractor shall replace markings and legends that are removed during the course of construction.

Construction Contract Administration, Surveying, Geotechnical Services, Materials Testing

DISTRICT or its consultants shall provide construction contract administration of the PROJECT, including inspection, surveying, geotechnical services, and materials testing. Geotechnical and materials testing services shall be those necessary for the storm drain project construction, and shall not include any services that might be necessary in the event that cultural or historical resources, or hazardous materials regulated under CERCLA are encountered during construction.

Staff Assistance

DISTRICT shall provide staff and professional assistance as may be necessary in the progress and construction of the PROJECT.

SECTION 2. REIMBURSEMENT AND ACCOUNTING

The services described in SECTION 1 shall be provided by CITY and DISTRICT at its own respective expense.

By definition the Construction Contract amounts shall include contract change orders, claims judged valid and paid by DISTRICT, and any other expenses necessary for the project and paid by DISTRICT. DISTRICT shall pay the Construction Contract amounts and construction contract administration costs for all work items, including the work shown within the Caltrans right-of-way. CITY shall pay for the costs to remove and reinstall the street light pole and to remove and relocate the power pole's guy wire and anchor; provided, that CITY shall not be responsible for costs in excess of \$10,000.

SECTION 3. OWNERSHIP AND MAINTENANCE OF FACILITIES

Notwithstanding the division of costs and expenses, after completion of construction of the PROJECT and after the CITY'S acceptance of the PROJECT, CITY shall own, operate, maintain, repair, and rehabilitate all drains and related facilities and be responsible for all aspects of the PROJECT, including any water quality / NPDES Permit requirements. Upon the CITY'S acceptance and the DISTRICT'S filing of a Notice of Completion verifying the satisfactory completion of improvements related to the PROJECT, DISTRICT will convey to CITY and CITY will accept ownership and all responsibility for the facilities constructed pursuant to this Agreement and will release the DISTRICT from any and all liability related to maintenance and operation of the said facilities.

SECTION 4. PROVISIONS FOR CONTRACTORS' SERVICES

Contracts for services of independent contractors and consultants for work required shall require:

- A. Prudent provisions for, and limits of, Comprehensive General Liability Insurance and Comprehensive Automobile Liability Insurance;
- B. Workers' Compensation and Employer's Liability Insurance, as required by law, to cover all employees while performing any work incidental to the services required.
- C. Other surety bonds and security as required by law.
- D. A CITY business tax certificate for Contractor and all sub-contractors be maintained through the term of agreements for those services to be performed within CITY.

SECTION 5. RECORDS AND STATEMENTS

The CITY and the DISTRICT shall keep separate records concerning PROJECT expense items on a generally recognized accounting basis and records shall be maintained for a period of 3 years following the completion of the work assigned. Such records shall be made available for copying, inspection or audit by employees or independent agents of either party during reasonable business hours.

SECTION 6. OWNERSHIP OF DOCUMENTS

All completed drawings, specifications, and estimates prepared by DISTRICT pursuant to this Agreement shall become the property of CITY upon either termination or completion of this Agreement.

DISTRICT may retain copies of said original documents for its files. Any use of the aforesaid completed documents for other projects and/or any use of the aforesaid

documents will be at CITY's sole risk and without liability or legal exposure to DISTRICT, and CITY shall indemnify and hold harmless DISTRICT from all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting therefrom.

SECTION 7. INDEMNITY AND DISCLAIMER

Neither DISTRICT nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement. It is also agreed that, pursuant to California Government Code Section 895.4, CITY shall fully indemnify and hold DISTRICT harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.

Neither CITY nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by DISTRICT under or in connection with any work, authority or jurisdiction delegated to DISTRICT under this Agreement. It is also agreed that, pursuant to California Government Code Section 895.4, DISTRICT shall fully indemnify and hold CITY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by DISTRICT under or in connection with any work, authority or jurisdiction delegated to DISTRICT under this Agreement.

SECTION 8. CULTURAL AND HISTORICAL SITES

All known sites of cultural, archeological or historical significance that exist within the PROJECT area will be identified and addressed during environmental review and the PROJECT permitting. If previously unidentified sites of potential cultural, archaeological or historical significance are encountered during construction, then CITY shall fully bear all increased the PROJECT costs incurred as a result of finding and addressing such cultural, archaeological or historical sites.

SECTION 9. HAZARDOUS SUBSTANCES REGULATED UNDER CERCLA

In the event hazardous substances, including, but not limited to, those regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 USC Sections 9601-9675 are encountered in the construction area, DISTRICT shall notify CITY and appropriate regulatory agencies. All parties shall coordinate to identify property owner and legal responsible party. CITY and District shall work expeditiously to implement changes to the PROJECT scope and minimize work stoppage.

SECTION 10. AMENDMENT

This Agreement may be amended or adjusted by the parties, from time to time, only in writing signed by both parties.

SECTION 11. APPLICABLE LAW

This Agreement shall be subject to the laws, rules, and regulations in effect within CITY, County of Santa Barbara, California, and any interpretation of the law that may be necessary shall be pursuant to the laws applicable within that jurisdiction. If any provision of this Agreement is determined to be invalid, illegal or unenforceable for any reason, that provision shall be deleted from this Agreement and such deletion shall in no way affect, impair, or invalidate any other provision of this Agreement, unless it was material to the consideration for the performance required. If a provision is deleted which is not material to such consideration, then the remaining provisions shall be given the force and effect originally intended.

SECTION 12. INTEGRATED AGREEMENT

This Agreement constitutes the sole and entire agreement between CITY and DISTRICT with respect to the subject matter hereof. This Agreement correctly sets forth the obligations of CITY and DISTRICT hereto each other as of the date of this agreement. The terms of this Agreement shall apply to all of the separate construction contracts that may be awarded by DISTRICT for this project. All agreements or representations respecting the subject matter of this Agreement not expressly set forth or referred to in this Agreement are null and void.

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

CITY OF LOMPOC,
a municipal corporation

SANTA BARBARA COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT

Date: _____

Date _____

BY: _____
Jim Throop, City Manager

BY: _____
Das Williams, Chair
Board of Directors

ATTEST:
Stacey Haddon
City Clerk

ATTEST:
Mona Miyasato
County Executive Officer
Ex Officio Clerk of Board of Directors of the Santa
Barbara County Flood Control and Water
Conservation District

BY: _____

BY: _____
Deputy Clerk

APPROVED AS TO FORM:
Joseph W. Pannone
City Attorney

APPROVED AS TO FORM:
Michael C. Ghizzoni
County Counsel

BY: _____

BY: _____
Deputy

APPROVED AS TO ACCOUNTING FORM:
Theodore A. Fallati, C.P.A.
Auditor-Controller

BY: _____
Deputy County Counsel

APPROVED AS TO FORM:
Ray Aromatorio, ARM, AIC
Risk Manager

BY: _____

APPROVED:
Scott D. McGolpin
Public Works Director

BY: _____

EXHIBIT 1

North Avenue Storm Drain Improvements Project - East Phase

