

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** Dave Klotzle, City Engineer/Public Works Director 

**DATE:** July 29, 2015 (CC Meeting of 8/19/15)

**SUBJECT:** Consider Amendment No. 1 to Agreement with Ventura County Waterworks District No. 1 for Adjusting to Grade Surface Facilities Affected by City of Moorpark Pavement Rehabilitation Projects

**DISCUSSION**

On October 7, 2009, the City Council authorized the City Manager to sign an agreement with Ventura County Waterworks District No. 1 (District) for the adjustment of District surface facilities that are affected by City pavement rehabilitation projects (Agreement). The Agreement provides that the District will reimburse the City for the actual costs, plus City administrative overhead, to adjust District sewer manholes and water valve covers as required when a street is rehabilitated with a slurry seal or asphalt overlay. The Agreement was executed by both parties with an effective date of December 9, 2009 and has been used for several City pavement rehabilitation projects since then.

The attached draft Amendment No. 1 to the Agreement includes provisions for the District to reimburse the City for the actual costs to design and construct the relocation of District underground water and sewer facilities as required by a City capital improvement project. District underground facilities include pipes, valves, fittings, manholes and related appurtenances.

The City and District intend to utilize the provisions of the amended Agreement for the design and construction of the adjustment and relocation of District surface and underground facilities required by the City's Princeton Avenue widening project. The City's current project design engineer will include the adjustment and relocation of District surface and underground facilities in the project construction plans, and the contractor eventually hired by the City to construct the project will adjust and relocate the surface and underground facilities as required. The District will then reimburse the City for the actual cost incurred, plus City administrative overhead, to design and construct the adjustment and relocation of District surface and underground facilities.

The proposed Amendment No. 1 has been reviewed and approved by the City Attorney and is under review by District counsel. Upon concurrence of the final language, the Amendment No. 1 will be approved and signed by the Ventura County Board of Supervisors, and signed by the City Manager. The amended Agreement will then be utilized for the Princeton Avenue project as well as for other future City projects as required.

**FISCAL IMPACT**

The amended Agreement provides that all costs incurred by the City, plus City administrative overhead, for design and construction of the adjustment and relocation of District surface and underground facilities will be reimbursed by the District.

**STAFF RECOMMENDATION**

Authorize the City Manager to sign Amendment No. 1 to the Agreement with Ventura County Waterworks District No. 1 for Adjusting to Grade Surface Facilities Affected by City of Moorpark Pavement Rehabilitation Projects, subject to final language approval by the City Manager and City Attorney.

Attachment:

Draft Amendment No. 1

**AMENDMENT NO. 1 TO AGREEMENT FOR ADJUSTING TO GRADE  
SURFACE FACILITIES REQUIRED BY CITY OF MOORPARK PAVEMENT  
REHABILITATION PROJECTS**

This Amendment No. 1 to the Agreement between the City of Moorpark ("City"), a municipal corporation, and Ventura County Waterworks District No. 1 ("District"), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Whereas, on December 9, 2009, the City and District entered into an agreement for adjusting to grade District surface facilities required by City pavement rehabilitation projects; and

Whereas, District owns and operates certain potable water, recycled water and sanitary sewer facilities ("Facilities") within the City of Moorpark; and

Whereas, the City and District have determined that said Facilities include underground pipes, valves, fittings, manholes and related appurtenances ("Underground Facilities"); and

Whereas, said Facilities have been placed and are maintained by the District, within street rights-of-way ("Streets") owned and maintained by the City; and

Whereas, City, as owner of Streets, has prior rights with respect to conflicts between any utility and any existing or proposed City-owned improvement ("City Improvement") within Streets; and

Whereas, said City prior rights obligate the District to relocate, and/or pay any and all costs related to the relocation of any Facility in conflict with any City Improvement; and

Whereas, the City plans to construct Infrastructure Improvement Projects requiring the replacement, reconstruction, rehabilitation, relocation, removal, modification and widening of City Improvements; and

Whereas, Underground Facilities may need relocation, replacement, removal, modification or adjustment ("Relocation") as a result of City Improvement.

Now, therefore, in consideration of the mutual covenants, benefits, and premises herein stated, the parties hereto agree to amend the aforesaid Agreement as follows:

I. Section 2, Project Scope, of the Agreement is amended to read, in its entirety, as follows:

"a. Streets affected will be identified to the District by the City at such time as the City prepares the design of the City Improvement.

b. The District and City agree that the City, shall design, and through its contractors, shall adjust all affected Surface Facilities and that the District shall reimburse the City for all costs related thereto except as provided for in this Agreement.

c. The District and City further agree that the City, may elect to design, and through its contractors, relocate, replace, remove, modify or adjust all affected Underground Facilities and that the District shall reimburse the City for all costs related thereto except as provided for in this Agreement.

d. The District and City further agree that except for Surface Facilities and Underground Facilities that are adjusted or relocated by City pursuant to this Section, the District shall be responsible to relocate, replace, remove or modify all affected Facilities consistent with applicable City standards, policies, rules, regulations and procedures pertaining to such work within Streets.”

II. Section 3, Cost, of the Agreement is amended to read, in its entirety, as follows:

“The cost of Adjustment and/or Relocation shall include all design (“Design Cost”) and construction contract costs (“Construction Cost”) incurred by the City related to Adjustment and Relocation efforts, plus fifteen percent (15%) of total Adjustment and Relocation design and construction costs to cover all inspection and administrative costs incurred by the City. Cost shall not include any cost incurred by the District.”

III. Section 6, Cost Calculation of the Agreement is amended to read, in its entirety, as follows:

a. Prior to the City incurring any Design Costs, the City shall calculate the estimated amount of Design Cost and provide the estimated Design Cost to the District in writing. The District may, within five (5) working days after receiving the Design Cost estimate, notify the City in writing that it will complete the design in a timely manner with its own forces and/or consultant. Failure to so notify the City shall be deemed acceptance of the Design Cost estimate by the District and the District will issue work orders to provide direction for the City to proceed with design.

b. Upon completion of the plans and specifications, the City shall calculate the estimated amount of Construction Cost and provide the estimated Construction Cost to the District in writing. The District may, within five (5) working days after receiving the Construction Cost estimate, notify the City in writing that it will complete the Adjustment and/or Relocation in a timely manner with its own forces and/or contractor. Failure to so notify the City shall be deemed acceptance of the Construction Cost estimate by the District and the District will issue work orders to provide direction for the City to proceed to bid.

c. Upon receipt of bids but prior to award of contract, the City shall calculate the estimated amount of Construction Cost, based on the bids received, and provide same to the District.

- d. In the event the estimated Construction Cost, based on bids received, is fifteen percent (15%) higher than the Construction Cost originally estimated, the City shall so notify the District in writing prior to award of construction contract. The District shall have the option of completing the Adjustment and/or Relocation with its own forces and/or contractor if, within five (5) working days after receiving such notice, the District notifies the City in writing of its intent to do so. The District's failure to so notify the City shall be deemed acceptance of the estimated Construction Cost based upon the bids and direction for the City to proceed with award of contract.
- e. The City shall notify the District in writing of any proposed contract change orders that exceed ten percent (10%) of the Design Cost or Construction Cost. The District shall notify the City within five (5) working days of its concurrence or disagreement with the proposed contract change orders. Failure to so notify the City shall be deemed acceptance of the proposed contract change orders.
- f. Upon completion of any individual City Improvement, the City shall calculate the final Design Cost and Construction Cost, based on amount of actual related expenses, and provide same to the District."

IV. Section 7, Invoice and Payment, of the Agreement is amended to read, in its entirety, as follows:

"Within thirty (30) days of the completion of the construction of a City Improvement, Adjustment and/or Relocation, the City shall provide an Invoice to the District for the amount of the Design Cost and/or Construction Cost. Within sixty (60) days of the receipt of said invoice, District shall pay City the amount of the non-disputed Design Cost and/or Construction Cost. If the District disputes any of City's Design Cost and/or Construction Cost, it shall give written notice to City within (30) days of receipt of any disputed Design Cost and/or Construction Cost set forth on the invoice. Projects involving a dispute between City and District may be decided by an arbitrator or mediator if both sides agree in writing on the arbitration or mediation and on the arbitrator or mediator selected, with costs of arbitration or mediation (not including attorney fees) to be equitably allocated between the parties as determined by the arbitrator or mediator."

V. Section 8, Faithful Performance Bond, of the Agreement is amended to read, in its entirety, as follows:

"The City shall require its general contractor for the construction of any individual Project to furnish a bond conditioned upon the faithful performance of the work associated with construction of all Project work, including Adjustment and/or Relocation. City shall require its general contractor to warrant and guarantee all materials and work for a period of one year after the date of filing of the Notice of Completion on the Project and that the warranty be secured by a warranty bond or an extension of the performance bond for the project through the one-year warranty period."

VI. Section 9, Indemnification, of the Agreement is amended to read, in its entirety, as follows:

“City shall indemnify, defend and hold harmless the District and its directors, officers, employees and agents and the District’s Engineers from and against any and all liability, loss, damage, claims, demands, expenses, costs (including without limitation reasonable attorney’s and expert’s fees and costs in connection with litigation) of any kind or nature (including without limitation personal injury, death, or property damage), arising out of the failure of City to comply with any of the obligations of this Agreement, or the performance of Adjustment and/or Relocation work by City or its contractor(s) or subcontractor(s) or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, except where caused by the sole or active negligence or willful misconduct of the District.

Submission by City of proof of compliance with the insurance requirements of this Agreement shall not relieve City from liability under this indemnity section and District does not waive any rights against City because of the District’s acceptance of such insurance policies. The obligations of this indemnification section shall apply regardless of whether: (a) such insurance policy or policies shall have been determined to apply to any of such losses, damage, liability, costs, expenses, claims or demands; or (b) the District has prepared, supplied or approved the Plans, or any changes thereof.

District shall indemnify, defend and hold harmless the City and its directors, officers, employees and agents and the City’s Engineers from and against any and all liability, loss, damage, claims, demands, expenses, costs (including without limitation reasonable attorney’s and expert’s fees and costs in connection with litigation) of any kind or nature (including without limitation personal injury, death, or property damage), arising out of the failure of District to comply with any of the obligations of this Agreement, or the performance of Adjustment and/or Relocation work by District or its contractor(s) or subcontractor(s) or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, except where caused by the sole or active negligence or willful misconduct of the City.”

VII. Section 11, Completion and Acceptance, of the Agreement is amended to read, in its entirety, as follows:

“Prior to acceptance of Project by the City, the District’s Engineer shall have the right to reject any or all of the Adjustment and/or Relocation work if the work does not conform to the requirements of the City Improvement plans and specifications. Upon satisfactory completion of all required Adjustment and Relocation efforts, the District shall certify in writing that the work has been satisfactorily completed. At the completion of the construction of the City Improvement, the City shall execute, acknowledge, and record a notice of completion in the manner provided by law. Upon completion of the construction of the City Improvement, all Surface and Underground Facilities which were subject to Adjustment and/or Relocation shall vest in and become the property of the District.”

VIII. Remaining Provisions

All other provisions of the aforesaid Agreement shall remain in full force and effect.

In witness whereof, the parties hereto have executed this Amendment on the day and year written below.

VENTURA COUNTY WATERWORKS DISTRICT NO. 1

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Chair, Board of Supervisors

CITY OF MOORPARK

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Steven Kueny  
City Manager

Attest: \_\_\_\_\_  
Maureen Benson  
City Clerk

