

JOINT EXERCISE OF POWERS AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2011,
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, 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 project which will accomplish these purposes has been developed, which project is generally known and is herein referred to as the "North Avenue Storm Drain Improvements Project" or the "PROJECT;" and

WHEREAS, the PROJECT will be broken down into two separate phases. One phase of the PROJECT consists of the proposed improvements west of the centerline of H Street (West Phase) and the other phase of the PROJECT consists of the proposed improvements east of the centerline of H Street (East Phase), as shown on the enclosed Exhibit 1.

WHEREAS, it is the intent of DISTRICT and CITY to pursue a schedule which will allow DISTRICT to commence construction of the PROJECT in 2012; and

WHEREAS, CITY and DISTRICT intend to share services and costs for such project and improvements;

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 drainage systems the PROJECT, which may be referred to as the North Avenue Storm Drain Improvements Project, in accordance with the following terms, provisions, limitations and conditions:

SECTION 1. SCOPE OF SERVICES, TERM

For and during the term commencing _____, 2011, and continuing until the filing of a Notice of Completion verifying that the 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, to provide the North Avenue Storm Drain Improvements 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.

Plans and Specifications

CITY shall 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 DISTRICT requests 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, provide comments, revise, or 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 and no longer than two weeks after DISTRICT requests such services in writing. If CITY fails to comment or approve within two weeks, then DISTRICT may proceed with the proposed work. CITY shall reimburse DISTRICT for any cost or claims resulting from failure to approve the proposed work.

Award of Construction Contract

If CITY proceeds with advertisement for bids or award of a construction contract for the East Phase of the PROJECT after DISTRICT'S funding contribution defined in SECTION 2, REIMBURSEMENT AND ACCOUNTING has been exhausted, then CITY shall at its sole expense be responsible for performing/administering all work and paying for all costs exceeding said DISTRICT contribution.

Construction Contract Administration, Surveying, Geotechnical Services, Materials Testing

If CITY proceeds with construction of the East Phase of the PROJECT after DISTRICT'S funding contribution defined in SECTION 2, REIMBURSEMENT AND ACCOUNTING has been exhausted, then CITY shall at its sole expense be responsible for performing/administering all work and paying for all costs exceeding said DISTRICT contribution. Such work includes providing construction contract administration of the PROJECT construction for the East Phase of the PROJECT, including inspection, surveying, geotechnical services, and materials testing.

Electrical or Street Light Relocations

If electrical or street light relocation work is necessary to construct the PROJECT, then CITY shall construct electrical pull boxes, conduit, lines, connections, and related improvements. CITY shall commence such construction in a timely manner that minimizes delays during construction and no longer than within two weeks of written request from DISTRICT, shall coordinate the work with the PROJECT contractor, and shall complete such work within 10 working days. CITY shall reimburse DISTRICT for any costs or claims resulting from failure to perform the proposed work within 10 working days.

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 that CITY shall provide review, comments, revisions, or approval of documents as necessary for relocation of water, sanitary sewer, electrical and/or 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 both the East and West Phases for CITY's review and comments.

DISTRICT shall provide 100% complete design plans, specifications, and construction cost estimate for the West Phase at least 30 days prior to the scheduled beginning of advertisement for construction bids. As funds allow, DISTRICT shall provide 100% complete design plans, specifications, and construction cost estimate for the East Phase at least 30 days prior to the scheduled beginning of advertisement for construction bids. The cost estimates shall clearly depict the items for which CITY is responsible for funding, and both the cost estimate and the bid sheets shall use units that facilitate separation of the cost of such items.

DISTRICT shall provide to CITY as a part of the 60% and the 100% complete construction cost estimate submittals, an estimate of the cost of all construction within the Caltrans right-of-way.

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 West Phase of the PROJECT and, as funding allows, DISTRICT shall advertise for bids and award a contract or contracts for the construction of the East Phase of the PROJECT.

Pavement Marking

No later than one month after the construction of pavement and concrete restoration, DISTRICT or DISTRICT'S contractor shall replace markings and legends that are removed during the course of construction.

Any construction contract awarded by DISTRICT shall be cost shared between DISTRICT and CITY per SECTION 2 of this Agreement.

Construction Contract Administration, Surveying, Geotechnical Services, Materials Testing

DISTRICT or its consultants shall provide construction contract administration of the PROJECT construction for the West Phase of the PROJECT and, as funding allows, for the East Phase 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 for all work items, except for the costs described in SECTION 8 and SECTION 9 of this Agreement, and except for the cost of work items assigned to CITY, up to \$750,000.00 minus DISTRICT incurred costs for Construction Contract Administration, Surveying, Geotechnical Services, Materials Testing and developing Plans and Specifications

In the event this funding is insufficient to complete the West Phase of the PROJECT, DISTRICT and CITY may consider an amendment to this Agreement to cover the additional project costs. In the event DISTRICT has funds remaining from the designated \$750,000 after the completion of the West Phase, those funds will be used toward completion of the plans, specifications and construction of the East Phase.

At its sole expense, CITY shall pay the Construction Contract amounts for the following assigned work items: water line relocation and appurtenant construction, excluding potholing; all construction costs and construction administration costs associated with work within the State right of way; and sanitary sewer line, electrical line, and street light relocation, excluding potholing, if necessary for construction of the proposed storm drain. If CITY proceeds with completion of the plans, specifications, and construction of the East Phase of the PROJECT after DISTRICT'S \$750,000 of funding has been exhausted, then CITY shall at its sole expense pay for all costs exceeding DISTRICT'S \$750,000 contribution.

DISTRICT shall provide to CITY Engineer an itemized invoice of all applicable PROJECT Construction Contract amount expenses incurred by DISTRICT. CITY shall pay the amount contained in such invoices for work items assigned to CITY within net thirty (30) days after receipt.

DISTRICT shall not be held accountable for construction costs and construction administration costs incurred for work within the State right of way during the course of the PROJECT.

SECTION 3. OWNERSHIP AND MAINTENANCE OF FACILITIES

Notwithstanding the division of costs and expenses, after completion of construction of the PROJECT, CITY shall own, operate, maintain, repair, and rehabilitate all drains and related facilities and be responsible for all aspects of PROJECT including any water quality / NPDES Permit requirements.

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

DISTRICT shall tender itemized invoices of applicable project expenses, upon standard forms, to CITY'S City Engineer. Parties shall keep records concerning payment 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 or incompletd 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 or incompletd 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. Should previously unidentified sites of potential cultural, archaeological or historical significance be encountered during construction, 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 that hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 USC Sections 9601-9675 are encountered in the construction area, CITY shall provide geotechnical services, material testing services, response and cleanup activity required under CERCLA. CITY shall fully bear all increased PROJECT costs incurred as a result of finding and addressing such hazardous substances.

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.

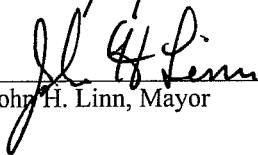
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF LOMPOC,
a municipal corporation

SANTA BARBARA COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT

Date: 10/13/11

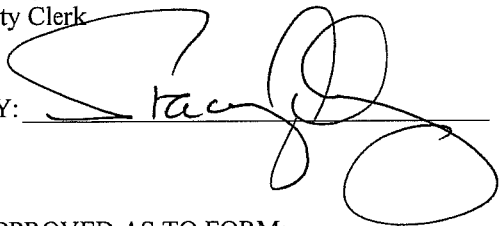
Date _____

BY: 
John H. Linn, Mayor

BY: _____
Chair, Board of Directors

ATTEST:
Stacey Alvarez
City Clerk

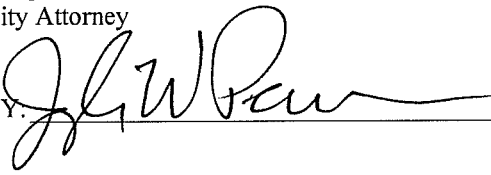
ATTEST:
Chandra L. Wallar
Clerk of the Board


BY: 

BY: _____
Deputy Clerk

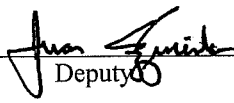
APPROVED AS TO FORM:
Joseph W. Pannone
City Attorney

APPROVED AS TO FORM:
Dennis Marshall
County Counsel

BY: 

BY: 
Deputy

APPROVED AS TO ACCOUNTING FORM:
Robert W. Geis, C.P.A.
Auditor-Controller

BY: 
Deputy

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

BY: 

APPROVED:
Scott D. McGolpin
Public Works Director

BY: 